

CODE OF PRACTICE
FOR
LABOUR PROVIDERS TO AGRICULTURE AND THE
FRESH PRODUCE TRADE

Critical, Major and Minor Non-Compliances

Code of Practice for labour providers – non compliances

DEFINITIONS

Critical non compliance

A critical failure to comply with the code of practice resulting in –

- Serious risk of personal injury or ill health.
- Use of trafficked workers or bonded labour.
- Systematic payment of less than the minimum wage.
- Severe restriction of freedom of association.
- Tax evasion.

Any critical non compliance should be communicated immediately to the labour provider, labour user, code secretariat and customer. The offending practice should cease immediately. In extreme cases (particularly where there is a risk to life and limb) enforcement agencies may be informed.

Major non compliance

Failure to comply with legislation that is significant but not critical.

The labour provider should agree to action over an agreed timescale (within 28 days if practically possible) and confirm that the required action has been taken. There may be a need for a revisit by an auditor to verify that remedial actions have been taken.

Minor non compliance

A minor or technical failure to comply with the law or the good practice requirements of the code.

The labour provider should agree to consider these points and to implement remedial action to comply with those requirements which are legal.

Note: Non compliances in respect of health and safety matters may well be the responsibility of the labour user rather than the labour provider. This will almost invariably be the case where the non-compliance is on the labour user's premises. Where this is the case, this should clearly be identified, with the labour user being informed. The non compliance does not count against the labour provider in respect of compliance with the code of practice provided the labour provider can demonstrate that they have tried to address these issues with the labour user.

	LABOUR PROVIDERS CODE OF PRACTICE COMPLIANCE SECTIONS	CRITICAL NON COMPLIANCE (CRI)	MAJOR NON COMPLIANCE (MAJ)	MINOR NON COMPLIANCE (MIN)
1	BASIC BUSINESS REQUIREMENTS			
1.1	BASIC BUSINESS REQUIREMENTS ➤ General			
1.2	BASIC BUSINESS REQUIREMENTS ➤ Income Tax & National Insurance	<ul style="list-style-type: none"> • No evidence of registration as an employer with HMCR • No evidence of PAYE or National Insurance contributions being paid to HMCR 	<ul style="list-style-type: none"> • Poor tax records 	

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1.3	BASIC BUSINESS REQUIREMENTS ➤ Value Added Tax (VAT)	<ul style="list-style-type: none"> • No evidence of VAT if the LP is liable to pay VAT • Not registered for VAT if turnover is above the threshold • NO evidence of payment of VAT to HMRC 	<ul style="list-style-type: none"> • Poor records 	
1.4	BASIC BUSINESS REQUIREMENTS ➤ Employment Agencies Act 1973 requirements		<ul style="list-style-type: none"> • No/insufficient written contract with all customers that cover the items specified within the Employment Agencies and Employment Businesses Regulations 2003 	

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1.5	<p>BASIC BUSINESS REQUIREMENTS</p> <p>➤ Sub-Contracting</p> <p>If the LP supplies labour to another LP, i.e. is the subcontractor, they must have the documentation and done the checks to show that their customers comply.</p>		<ul style="list-style-type: none"> • No attempt to check that S/C comply with the code • No invoice trail of workers and their hours supplied via a subcontractor • No records of S/Cs used • No requirement for subcontractor to declare the number of subcontractors they use • Absence of written contract or agreement with any S/C . 	<ul style="list-style-type: none"> • No liaison or regular contact between LP and subcontractors • Failure to declare the use of any subcontractor to any customer
2	TAKING ON WORKERS			
2.1	<p>➤ Employment is freely chosen</p>	<ul style="list-style-type: none"> • Trafficked workers • Bonded Labour – e.g. preventing workers access to their original ID documents, debt, contracts, retaining deposits etc 		

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2.2	TAKING ON WORKERS ➤ Right to Work in the UK - Immigration	<ul style="list-style-type: none"> • No copies of workers ID held • Systematic failure to establish entitlement to work 	<ul style="list-style-type: none"> • No copies of worker ID held for every worker • Failure to encourage workers from Accession States to register within 1 month of beginning work 	<ul style="list-style-type: none"> • No relationship with local IND office
2.3	TAKING ON WORKERS ➤ Employment of Children and Young Persons	<ul style="list-style-type: none"> • Employment of children in prohibited activities or undertakings 	<ul style="list-style-type: none"> • Employment of young persons without an adequate and suitable risk assessment or precautions. • No systems in place for checking the ages of young workers 	

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2.4	TAKING ON WORKERS ➤ SAWS Foreign Students & Work Permits		<ul style="list-style-type: none"> • Provision of SAWS those with pre-existing work permits, self employed students, or asylum seekers who do not have the right to work. • Foreign Students attending UK courses working in excess of 20 hours per week • Workers on working holidays do not have correct visas or are not from the approved categories 	<ul style="list-style-type: none"> • No relationship with local IND office
2.5	TAKING ON WORKERS ➤ Right to Work in the UK– Benefits & NI Numbers		<ul style="list-style-type: none"> • No records of workers' NI numbers • No evidence of helping workers with temporary numbers to obtain permanent numbers 	
2.6	TAKING ON WORKERS ➤ Workers' records			<ul style="list-style-type: none"> • Inadequate personnel records

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2.7	TAKING ON WORKERS ➤ Data protection			<ul style="list-style-type: none"> • Insecure storage of workers' details • If LP is releasing personal details about workers to a third party without worker's permission.

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3	CONDITIONS OF EMPLOYMENT			
3.1	Conditions of Employment ➤ Employment Contracts, Terms & Conditions		<ul style="list-style-type: none"> • If contracts of employment are used – No/insufficient written contract or terms and conditions for workers employed for more than one month. • If contracts for services are used – No/insufficient contract for service issued before the worker begins their first assignment • No evidence of workers receiving a copy of their contract • No evidence of arrangements to help workers who cannot understand English understand their terms and conditions 	

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3.2	Conditions of Employment <ul style="list-style-type: none"> ➤ Written Service Level Agreements for Customers 		<ul style="list-style-type: none"> • See section 1.4 	
3.3	Conditions of Employment <ul style="list-style-type: none"> ➤ Recording workers supplied 		<ul style="list-style-type: none"> • No evidence of worker details being supplied on a regular basis 	<ul style="list-style-type: none"> • Insufficient records of workers provided.

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3.4	Conditions of Employment			
3.4.1	<p>➤ H&S Issues</p> <p>Place of work</p> <p>Issues found in this section (marked with *) that are under the control of the LU will be raised as an observation for the LU. The LP should however work with the LU to ensure these are addressed and resolved.</p>	<ul style="list-style-type: none"> • Conditions giving rise to a serious risk of personal injury or ill health. • Drivers or workers operating vehicles, machinery or plant without valid licences or certificates • No health & safety training/information for workers • Fire exits obstructed or locked * 	<ul style="list-style-type: none"> • Inadequate or poorly maintained toilet, washing or canteen facilities * • No written agreement on the responsibility for H&S issues and training. • Lack of First Aid facilities or arrangements * • Personal protective equipment missing or damaged * • Escape routes not clearly identified * • Insufficient or inadequate H&S training/information for workers • Inadequate arrangements for communicating H&S issues to workers who do not understand English (responsibility depends on the arrangements between LU and LP) • No risk assessments for the work, temporary workers are doing * • LP does not have copies of risk assessments from all their customers and/or are unaware of risks on customers' sites 	<ul style="list-style-type: none"> •

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3.4 3.4.2	Conditions of Employment ➤ H&S Issues Employers Liability Insurance		<ul style="list-style-type: none"> No valid employer's liability insurance for workers whilst under the control of the Labour User* No valid employer's liability insurance if/when workers are under the control of the labour provider. 	<ul style="list-style-type: none"> Copies of insurance certificates not kept for 5 years
3.4 3.4.3	Conditions of Employment ➤ H&S Issues Providing Transport	<ul style="list-style-type: none"> Vehicles in clear need of repair/maintenance and with serious safety defects identified 	<ul style="list-style-type: none"> Vehicles without proper tax, insurance or MOT. Drivers without appropriate licences (UK, EU) Drivers do not have PSV licences when workers are charged for transport, 	

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3.4 3.4.4	Conditions of Employment ➤ H&S Issues Providing Accommodation	<ul style="list-style-type: none"> Evidence of grossly overcrowded or unsafe accommodation when under the Labour Providers control 	<ul style="list-style-type: none"> Workers not free to choose their accommodation Escape routes not clearly identified No landlord's gas and electrical safety certificates (if accommodation provided by LP). 	
4	TREATMENT OF WORKERS			
4.1	➤ Trade Unions	<ul style="list-style-type: none"> Severe restriction of freedom of association 	<ul style="list-style-type: none"> Evidence that workers have been discriminated against for belonging to a union 	
4.2	Treatment of Workers ➤ Regular Employment is provided		<ul style="list-style-type: none"> see section 3.1 	

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4.3	Treatment of Workers ➤ Payroll	<ul style="list-style-type: none"> No record of payments made to workers 		<ul style="list-style-type: none"> Inadequate/inaccurate payroll system
4.4	Treatment of Workers ➤ Income Tax and National Insurance		<ul style="list-style-type: none"> Inaccurate deductions from workers pay for tax and national insurance 	

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4.5	Treatment of Workers ➤ Minimum wages are paid	<ul style="list-style-type: none"> • Systematic payment of less than the appropriate minimum wage 	<ul style="list-style-type: none"> • Compulsory deductions, such as transport and administration that take workers below minimum wage • Deductions from pay other than tax and NI without the written consent of workers. • Failure to pay holiday pay, statutory sick pay, statutory paternity pay, statutory maternity • Failure to pay wages regularly • Withholding of wages for any reason e.g. non payment by client • Failure to pay holiday pay on termination 	<ul style="list-style-type: none"> • Workers do not understand or there is lack of clarity about benefit entitlements, e.g. SSP, holiday requirements
4.6	Treatment of Workers ➤ Itemised Pay Statements	<ul style="list-style-type: none"> • Failure to provide itemised payslips 	<ul style="list-style-type: none"> • Inadequate/inaccurate payslips • Payslips do not reflect the number of hours worked • Payslips that do not show any deductions for tax and NI. 	

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4.7	<p>Treatment of Workers</p> <ul style="list-style-type: none"> ➤ Working Hours are not excessive 		<ul style="list-style-type: none"> • Fewer than 2 days off in 14 • No opt outs for workers working more than 48 hours per week • No system for monitoring the number of hours workers are working • Workers forced to work in excess of contractual hours. • No/insufficient records of hours worked by workers • Less than 20 minutes rest breaks after 6 hours worked 	
4.8	<p>Treatment of Workers</p> <ul style="list-style-type: none"> ➤ No Discrimination is Practised 		<ul style="list-style-type: none"> • Demonstrable discrimination 	<ul style="list-style-type: none"> • No anti-discrimination/equal opportunities policy • Policy is not communicated to workers or not understood by those whose first language is not English

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4.9	Treatment of Workers ➤ No Harsh or Inhumane Treatment is allowed	<ul style="list-style-type: none"> • Physical or Mental abuse 	<ul style="list-style-type: none"> • No disciplinary or grievance procedures if on a contract of employment • No complaints mechanism if workers are on a contract for service • Verbal abuse 	<ul style="list-style-type: none"> • Lack of adequate disciplinary and grievance procedures or complaints mechanism • Lack of knowledge of labour users' procedures • Lack of communication of policies to workers
4.10	Treatment of Workers ➤ Pensions		<ul style="list-style-type: none"> • No evidence that workers have been informed of pension scheme 	