Risk factors to manage

The exploitation of workers is made possible by a power imbalance between an employer organisation and its staff. Please note:

- There is no specific formula that can be applied to find out if an employer organisation is exploiting its staff.
- Each and every situation must be taken on its own merit.
- There are a number of risk factors that when put together indicate a greater risk of not meeting minimum employment rights requirements.

The table below notes some key factors that indicate a greater or lesser level of risk for procurers to manage. Please note:

- These are general factors that apply commonly across many sectors and industries.
- Each organisation has a greater understanding of their supply chain(s). They may have a different view of the relative risk level of each factor as it applies in their own circumstances.
- Other industry specific risk factors should also be considered.

Note: In this document the term 'migrant workers' is defined as workers who are not New Zealand citizens or permanent residents.

Risk Factor	Considerations	Risk Category
Majority of the workforce is made up of migrant workers	› Migrant workers are often unaware or not sure of local legislation and employment rights. This is especially so when English is not their first language or employment laws and conditions in their original country are less favourable. › Migrant workers are often not aware that they are not receiving their rights to employment standards, they have different terms and conditions to local workers, and/or they are being taken advantage of by their employer. › Dependence on 'Employer-assisted work visas' to stay in New Zealand may create another particular power imbalance with the employer. Employees may not feel able to seek enforcement of their rights because they fear consequences from their employer such as dismissal. Dismissal may breach any visa conditions tying them to that role and that could lead to them being deported.	Greater
The workforce has a high percentage of young/ elderly/female/ unskilled workers	› Generally these types of workers have limited employment opportunities and therefore rely on staying in their current job to remain employed. › They may also have limited knowledge of employment rights and therefore may be more likely to settle for less than their minimum entitlements. › A power imbalance between employer and employee can occur where an employer may exploit the workers' circumstances and lack of knowledge, either deliberately or by mistake.	Greater

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Risk Factor	Considerations	Risk Category
The workforce is predominantly low waged, temporary and/or seasonal labour	› Generally these types of workers have limited employment opportunities and rely on staying in their current job to remain employed. › Where a "piece rate" payment model is used, the minimum wage per hour may not be met depending on how long each piece takes to complete, e.g. a cleaner being paid per room they clean versus being paid per the time they worked. › When time pressure or seasonal demand requires it, suppliers may have no choice but to introduce a third-party labour arrangement to meet business demands. See supply chains with a reliance on third-party labour hire further below.	**Greater**
Suppliers or company owned or managed by migrants, employing mainly migrants of the same ethnicity	› Migrant business owners may have an "information gap" meaning they have limited or no knowledge of New Zealand's minimum employment rights. They may only know about their originating country's laws and apply those foreign-based expectations of the law into their businesses in New Zealand. › The information gap can be significant and may mean that they are less aware of the challenges of running a profitable business. They may see breaching employment standards as a viable option to make sure they have a profit or even survive as a going concern. › Migrant employers may also choose to apply business models that more readily enable non-compliance to avoid New Zealand's legislative requirements.	**Greater**
Non-unionised sector or workplace	› Without union representation, workers may not have a collective voice to raise their concerns. › The lack of a union may also limit a workers' ability to negotiate higher wages, better terms and conditions of employment; and to be vigilant about compliance with these.	**Lesser**
Geographic location of business, or businesses that have workers in remote or isolated locations	› Workers may not have easy access to their family or community for support if any employment standards issues arise, and they are more vulnerable to exploitation. › Workers who are on remote sites, or are isolated from their manager, may find it hard to raise any potential issues or know who they should raise issues with. › Where businesses operate internationally, risks are higher if the home country is known to have poor employment standards.	**Lesser**

High-risk business models

Risk Factor	Considerations	Risk Category
Suppliers operating in a sector that have a history of human and labour rights issues	› A high number of reported incidents of exploitation in the particular at-risk economic sector increases the probability of further incidents taking place.	Greater
Supply chains with a reliance on third-party labour hire (an employment agency that hires the workers directly)	› Using a third-party labour hire company to source workers may increase risk by reducing visibility over recruitment practices. Workers may be charged fees that they are required to pay to the recruiter for employment. In New Zealand it is illegal to sell a job to someone. This is commonly called a job premium. › These types of fees are sometimes justified by recruiters and employers as payment to cover accommodation and visa, or sponsorship arrangement costs. This can result in the worker being bound by a large debt to the recruiter or employer. › In businesses where the primary cost is staff, it may seem to the employer the only way to reduce expenses and increase profit is by reducing payment to workers.	Greater
Supply chains with multiple layers of sub-contractors	› A lack of oversight and auditing from the primary contractor and first-tier subcontractors can lead to compliance failures down the supply chain going unnoticed. › If there are multiple sub-contractors then this may inflate costs or affect the provision of minimum entitlements provided to the actual worker doing the service. When a set price for service fee is set at the top of the supply chain, as more layers of sub-contracting are added, this can reduce the terms and conditions for workers lower down the chain. › There may be a lack of formalised contractual controls over sub-subcontracting between layers in the supply chain.	Greater
Franchises with no oversight of employment standards compliance systems and processes	› Varying levels of oversight between a franchisor and franchisee may mean employment standards are not being considered or met. › Business models with high standardised costs may mean the only place to reduce expenditure and increase profit is through reducing staff costs. › The role of who is responsible for making sure of employment standards compliance may not be clear, resulting in no one ensuring employment standards are upheld.	Greater

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Small businesses with decreased capability	› Businesses with smaller numbers of employees do not usually have a dedicated Human Resources (HR) or payroll person or team. Therefore, they are less likely to have information and knowledge, which will help them to monitor their employment practices and make sure they are up to standard. › They may be less aware of the challenges of running a profitable business and may breach employment standards to alleviate pressures in their business to make a profit.	**Greater**
Companies that have limited central or corporate oversight	› Multiple levels of management can reduce the level of employment standards oversight within an organisation. › When there are many people to go through to get issues resolved, the effort required can be a strong disincentive. This can lead to poor compliance with employment standards not being addressed. › Companies that are spread out geographically may encounter issues with being able to action complaints promptly.	**Lesser**
Internationally-owned parent company	› Other countries will have different employment standards in their legislation, or may not have employment standards at all. If the head office of the organisation is in another country, that business may not have sufficient systems in place to ensure compliance with local legislation. This applies, even if the head office is proficient in their own country's legislation.	**Lesser**
Large businesses with limited systems and processes	› Businesses with a large national operation or with a large number of employees, may not have systems that provide transparency in terms of employment practices across their business. They run the risk of not complying with employment standards.	**Lesser**
High set-up costs for workers	› Workers that are in professions with high personal set-up costs (eg purchase of tools and equipment by tradespeople/apprentices) may be reluctant to complain	**Lesser**

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