

# Labour Inspectorate Audit Tool

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## Using this tool

Auditing using this tool includes analysis of records and documents, an interview with the employer and interviews with workers. As well as testing against criteria arising from employment standards legislation there is also criteria from Immigration legislation which is aligned to employment standards for migrant workers.

This document is not intended to be used as a list of questions for interviews but rather is used to record the information gathered through the audit process and assist with assessment and decision making. To operate this audit tool Inspectors need to be: 1. familiar with the criteria that are being tested; 2. be well versed in the employment legislation; and 3. 6(c)

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## PART ONE: Audit Criteria

The audit criteria are organised into six groupings as follows:

### The audit elements:

- 1.1 Individual Employment Agreements
- 1.2 Wage & time records
- 1.3 Records of deductions
- 1.4 Leave records
- 1.5 Inclusive annual leave
- 1.6 Consistency with visa declarations & conditions

Performance by the employer against the criteria are graded using the grading system shown in the table below.

Where the required records or documents have not been kept the entire element is allotted an overall grading of Non-Compliant (NC)

### Grading of the audit elements:

Grade	Key	Guidance
Compliance	C	This applies only if <b>all</b> criteria have been checked against documentation and verified with interviews with the employer and sample employees. It cannot be used if there are <b>any</b> matters where there is partial non-compliance.
Partial compliance with minor improvements required	Pm	Minor improvements are breaches that can be easily and quickly corrected <b>AND</b> can reasonably be accepted as one-offs caused through a genuine lack of understanding. It is <b>not</b> applied where there is a claim not to have known how to comply when the employer is not new to business or has previously been found non-compliant in relation to any employment or immigration standards or when the matters are systemic and relate to a high number of employees in a large workplace(s)
Partial compliance with significant improvements required	PS	Significant improvements are where more than just a small amount of time and resource is required to correct, the employer knew or ought to have known because for example the employer (or director(s) of the employer) is not new to business or has previously been found non-compliant in relation to any employment or immigration standards or matters are systemic and relate to a high number of employees in a large workplace or across several associated workplaces.
Non compliance	NC	Used for an individual criteria when non-compliant for an individual criteria or where, for a whole section there is mostly partial compliance grades and non-compliance. Where the whole section relies on records to be in place and they are not then the whole section is marked non-compliant.
Not applicable	NA	Where the element criteria does not apply to the workplace being audited. For example the element relating to inclusive rates of holiday pay are not applicable if the employer does not pay holiday pay in such a manner.

### 1.1 Individual Employment Agreements

Criteria	Agreement has accurate parties including the legal entity that is truly the employer	Agreement has clear description of the work to be performed by the employee	Agreement has an indication of where the employee is to work	Agreement indicates arrangements for work times and start date	Employees have seen, understood and were provided with time to get independent advice before signing	Agreement has wages or salary payable to the employee
Document	Y / N	Y / N	Y / N	Y / N	Y / N	Y / N
Employer interview						
Employee (1) interview						
Employee (2) interview						
Employee (3) interview						
Employee (4) interview						
Grading	C Pm PS NC NA	C Pm PS NC NA	C Pm PS NC NA	C Pm PS NC NA	C Pm PS NC NA	C Pm PS NC NA
<p><b>Objective:</b> To ensure that employment agreements are being provided correctly, copies are retained, they include all required information and they are an accurate reflection of the working reality.</p> <p><b>Legislative references:</b> sections 64, 65 &amp; 68 of the Employment Relations Act</p> <p><b>Notes:</b> 1. Where an employer does not have written agreements this entire element is graded as Non Compliant (NC)</p>						
<p><b>Element 1.1 Grading:</b> C Pm PS NC NA</p>						

## 1.2 Wage & Time Records

Criteria	Records contain the employee's correct name , postal address (and age where less than 20 years)	Records include the kind of work the employee usually does	Start & finish times and days worked are recorded to enable an accurate calculation of the employee's pay	Pay is accurately recorded with calculation method for each employee's pay period	Employer has paid no less than minimum wage rates for every hour worked.	The employee (or representative) can access their records by request
Document	Y / N	Y / N	Y / N	Y / N	Y / N	Y / N
Employer interview						
Employee (1) interview						
Employee (2) interview						
Employee (3) interview						
Employee (4) interview						
Grading	C Pm PS NC NA	C Pm PS NC NA	C Pm PS NC NA	C Pm PS NC NA	C Pm PS NC NA	C Pm PS NC NA
<p><b>Objective:</b> To ensure that the minimum wage is being paid for all hours worked and ensure that required records are being kept.</p> <p><b>Legislative references:</b> sections 6 &amp; 8A of the Minimum Wage Act, and, section 130 of the Employment Relations Act 2000</p> <p><b>Notes:</b> 1. Where an employer does not have wage &amp; time records this entire element is graded as Non Compliant (NC)            2. Inspectors need to be clear on when the legislation requires to keep detailed time records.</p>						
<b>Element 1.2 Grading:</b> C Pm PS NC NA						





### 1.3 Records of deductions

Criteria	Any deductions made without written consent are statutory – eg PAYE, child support, ACC levies, student loan	Employees receive their wages (including holiday pay) free from deductions unless there is specific written consent	Written consent for deductions are not disguised penalty clauses or directing employees on how to spend their wages	There is no written record showing deductions or payment by the employee to the employer in exchange for the job offer or the job.
Document	Y / N	Y / N	Y / N	Y / N
Employer interview				
Employee (1) interview				
Employee (2) interview				
Employee (3) interview				
Employee (4) interview				
Grading	C Pm PS NC NA	C Pm PS NC NA	C Pm PS NC NA	C Pm PS NC NA
<p><b>Objective:</b> To ensure that employees are not having amounts deducted from their wages except in accordance with the Wages protection Act. Also to ensure that employees are not being directed how to spend their wages or being charged premiums for their job.</p> <p><b>Legislative references:</b> sections 4,5,12,12A &amp; 15 of the Wages Protection Act</p> <p><b>Notes:</b> 1. It is unlikely to encounter a premium that is detailed in records and in exploitative cases employees can be required to pay money to the employer which again is not shown in records. The interviews with employees and employer are the primary mechanism for testing these criteria.            2. for the reasons above - even when no deductions are evident through the records, Inspectors need to ensure that interviews cover this topic</p>				
<p><b>Element 1.3 Grading:</b> C Pm PS NC NA</p>				

### 1.4 Leave Records

Criteria - <i>Holiday &amp; Leave records to include:</i>	Start & finish dates. Also holiday pay paid at termination	Days worked (if relevant for leave calculations)	Current entitlement to annual & sick leave. Also last anniversary date	Dates of annual, sick & bereavement leave taken	Payments for annual, sick & bereavement leave taken	Dates, amounts paid & hours worked for public holidays worked	Payment for all public holidays or alternate days <u>not</u> worked	Dates when became entitled to alternate holidays	Alternate days paid out - on request after 1 year since entitled
Document	Y / N	Y / N	Y / N	Y / N	Y / N	Y / N	Y / N	Y / N	Y / N
Employer interview									
Employee(1) interview									
Employee(2) interview									
Employee(3) interview									
Employee(4) interview									
Grading	C Pm PS NC NA	C Pm PS NC NA	C Pm PS NC NA	C Pm PS NC NA	C Pm PS NC NA	C Pm PS NC NA	C Pm PS NC NA	C Pm PS NC NA	C Pm PS NC NA
<p><b>Objective:</b> To ensure that all holiday entitlements are being provided for and the required records are being kept</p> <p><b>Legislative references:</b> Holidays Act 2003 – particularly section 81 for records</p> <p><b>Notes:</b> Where an employer does not have leave records this entire element is graded as Non Compliant (NC)</p>									
<p><b>Element 1.4 Grading:</b> C Pm PS NC NA</p>									



### 1.5 Inclusive annual leave

Criteria	Is the rate of pay inclusive of annual holiday pay? <i>If 'no' - mark whole element as NA.</i> <i>If 'yes' - answer all questions.</i>	The inclusive rate is recorded as agreed in the written employment agreement	Work is so intermittent and irregular it is impracticable to provide 4 wks annual leave. - or - there is a <i>genuine</i> fixed term of less than 12 months	The inclusion is shown as a separate and identifiable component of the pay rate. - eg. What does the payslip or other documentation say?	The inclusion is no less than 8% of the employee's total gross earnings
Document	Y / N	Y / N	Y / N	Y / N	Y / N
Employer interview					
Employee (1) interview					
Employee (2) interview					
Employee (3) interview					
Employee (4) interview					
Grading	C Pm PS NC NA	C Pm PS NC NA	C Pm PS NC NA	C Pm PS NC NA	C Pm PS NC NA
<p><b>Objective:</b> To ensure that where annual leave is paid on a pay-as-you-go basis (inclusive rate) this is done in accordance with the Holidays Act.</p> <p><b>Legislative references:</b> section 28 of the Holidays Act 2003</p> <p><b>Notes:</b> 1. Where an employer does not pay annual leave as an inclusive rate then grade this entire element as Not Applicable (NA) 2. In order to be compliant for this element an employer must be compliant across all criteria.</p>					
<b>Element 1.5 Grading:</b> C Pm PS NC NA					

### 1.6 Consistency with visa declarations & conditions

Criteria	The employee is working in the job position stated in the employment agreement and visa conditions	The place of work is the same as that on the visa conditions and in the employment agreement	Migrant workers have not had a 'change of status' to self-employed contractors - whether this is genuine self-employment or not	The employee is receiving the rate of pay that forms part of the employment agreement and visa conditions	The employee is working at least the minimum amount of hours stated in the employment agreement and visa conditions
Document	Y / N	Y / N	Y / N	Y / N	Y / N
Employer interview					
Employee (1) interview					
Employee (2) interview					
Employee (3) interview					
Employee (4) interview					
Grading	C Pm PS NC NA	C Pm PS NC NA	C Pm PS NC NA	C Pm PS NC NA	C Pm PS NC NA
<p><b>Objective:</b> To ensure that for any migrant workers on visas the working conditions, pay and employment agreements match visa declarations &amp; conditions.</p> <p><b>Legislative references:</b> section 342 of the Immigration Act 2009</p> <p><b>Notes:</b> 1. Where an employer does not employ any migrant workers on visas then mark the entire section as Not Applicable (NA)</p>					
<p><b>Element 1.6 Grading:</b> C Pm PS NC NA</p>					

## PART TWO: Environmental Scan

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### Areas of Serious Concern

#### 2.1 Premiums (Section 12A(1) Wages Protection Act)

*No employer can seek or receive money in respect of the employment of any person, whether sought or received from the person employed or proposed to be employed or from any other person.*

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Notes:

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**2.2 Serious breach of minimum wage** (Section 6 Minimum Wage Act)

*Entitlement to receive wages for work from the employer at no less than the current minimum wage rates set by the Government.*

6(c)

Notes:

**2.3 Liability of individuals behind companies with serious breaches**

(Section 234 Employment Relations Act)

*Allows the Labour Inspector (after he or she has commenced a recovery action for minimum wage or holiday pay) to ask the Authority to proceed against an individual director, officer or agent of a company if that person has directed non-payment of arrears for an employee of the company and the company has financial difficulties.*

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Notes:

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**2.4 Obstruction** (Section 235 Employment Relations Act)

*A person commits an offence who, without reasonable cause, (a) obstructs, delays, hinders, or deceives; or (b) causes to be obstructed, delayed, hindered, or deceived,—any Labour Inspector while the Labour Inspector is lawfully exercising or performing any power, function, or duty.*

6(c)

Notes:

**2.5 Defining employment as opposed to self-employment**

(Section 6 Employment Relations Act)

6(c)

Notes:

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**2.6 False and misleading information** (Section 342 Immigration Act)

*Where any person makes a statement, or provides information that is false or misleading in support of a visa application (even if not their own) or in any expression of interest in a visa or in any request for variation, cancellation or waiver of a visa.*

6(c)

Notes:

**2.7 Aiding and abetting** (Section 343 Immigration Act)

*Where a person (for the purpose of material benefit or not) aids or abets, counsels or procures any other person to:*

- i. attempt to enter or actually enter NZ and or remain when unlawful*
- ii. breach visa conditions or help the person to create documents for the same purpose*

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Notes:

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## 2.8 Employing or helping workers to work when not entitled

(Section 350 Immigration Act)

*Where a person (for the purpose of material benefit or not) aids or abets, counsels or procures any other person to:*

- i. attempt to enter or actually enter NZ and or remain when unlawful*
- ii. breach visa conditions or help the person to create documents for the same purpose*

6(c)

Notes:

## 2.9 Exploitation- offence against an employer

(Section 351 Immigration Act)

*Where an employer knows a person is unlawful and allows that person to:*

- a. Work for them and is then responsible for serious failure to pay the employee under the Holidays Act 2003, Minimum Wage Act 1983, the Wages Protection Act 1983. A serious failure is defined in the legislation as a question of fact and takes into consideration the amount of money involved, how many instances and over what period they occurred, whether or not it was intentional, whether or not the employer has complied with the record keeping provisions imposed by the relevant Act, any other relevant matter; or*
- b. Work for the employer and while doing so prevents the person from leaving the job, NZ, seeking entitlements under NZ law or telling anyone about what is happening. Examples of this are defined as taking or retaining a person's passport or travel documents and tickets, preventing the person from using a telephone or using a telephone privately, preventing the person from leaving premises or from leaving premises unaccompanied. Also defined as preventing or hindering a labour inspector from entering or having access to any place or premises to which he or she is entitled to have access under any enactment.*

*See also: Employer tries to prevent the Labour Inspector from entering the workplace - section 351(4)(c) Immigration Act 2009.*

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6(c)

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**Note that a serious breach of the Minimum Wage Act 1983, Wages Protection Act 1983, Holidays Act 2003 is defined in section 351 Immigration Act 2009** as a question of fact and takes into consideration the amount of money involved, how many instances and over what period they occurred, whether or not it was intentional, whether or not the employer has complied with the record keeping provisions imposed by the relevant Act, any other relevant matter.



**Other compliance indicators**

6(c)

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## PART THREE: Decision Making Guide

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There are three compliance outcomes that may result from an audit, being:

1. There is no compliance action because the employer appears to be fully compliant
2. Compliance is required through the use of an Enforceable Undertaking or Improvement Notice
3. There are breaches or concerns which warrant a fuller investigation (or referral to another agency).

Compliance & enforcement decision making through the audit process should not vary from the Inspectorate's overarching enforcement policy. Use the simple guide below to aid decision making..

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Use **Enforceable Undertakings** or **Improvement Notices** when:

- Grading is mostly Compliance (C) with some Partial Compliance requiring minor improvements (Pm), **and**
- There are no concerns noted in the Environmental Scan

Move to **Investigation** and/or **Referral** to another agency when:

- There is anything graded less than Full Compliance (C) and there are issues noted in the Environmental Scan, **or**
- Grading includes mostly Non Compliance (NC) and/or Partial Compliance requiring significant improvement (PS)

Where the concerns or failings relate solely to another agency's jurisdiction then action is referral as opposed to investigation.

## PART FOUR: Audit Summary Report

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The following report is designed to be provided to the operational manager (or operational lead) of the audit programme. This summary report is to be completed within one day of the final collection of all audit material.

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### Audit Summary Report

Prepared by:

File number:

Contributions from:

Employer: (correct legal entity to be used if known)

Trading name(s):

Associated companies or businesses or individuals:

Place(s) of work:

Number of employees:

Number of employees on visas:

VV	WHV	WV	RV

Size of workplace:

Type of business:

Type of payroll system: manual system or payroll system

If payroll system – name of system:

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## Audit Summary Report: Employees Interviewed

### Employee 1

<b>First Name(s):</b>				<b>Surname:</b>		<b>Alias:</b>	
<b>Nationality:</b>				<b>Gender:</b>		<b>Date of Birth:</b> (DD/MM/YYYY)	
				Male	Female		
<b>AMS C/N:</b>				<b>Passport Number:</b>		<b>Visa Expiry date:</b>	
<b>Visa Type:</b>				<b>Email Address:</b>		<b>Contact Phone No.:</b>	
VV	WHV	WV	RV				

### Employee 2

<b>First Name(s):</b>				<b>Surname:</b>		<b>Alias:</b>	
<b>Nationality:</b>				<b>Gender:</b>		<b>Date of Birth:</b> (DD/MM/YYYY)	
				Male	Female		
<b>AMS C/N:</b>				<b>Passport Number:</b>		<b>Visa Expiry date:</b>	
<b>Visa Type:</b>				<b>Email Address:</b>		<b>Contact Phone No.:</b>	
VV	WHV	WV	RV				

## Audit Summary Report: Employees Interviewed

### Employee 3

<b>First Name(s):</b>				<b>Surname:</b>		<b>Alias:</b>	
<b>Nationality:</b>				<b>Gender:</b>		<b>Date of Birth:</b> (DD/MM/YYYY)	
				Male	Female		
<b>AMS C/N:</b>				<b>Passport Number:</b>		<b>Visa Expiry date:</b>	
<b>Visa Type:</b>				<b>Email Address:</b>		<b>Contact Phone No.:</b>	
VV	WHV	WV	RV				

### Employee 4

<b>First Name(s):</b>				<b>Surname:</b>		<b>Alias:</b>	
<b>Nationality:</b>				<b>Gender:</b>		<b>Date of Birth:</b> (DD/MM/YYYY)	
				Male	Female		
<b>AMS C/N:</b>				<b>Passport Number:</b>		<b>Visa Expiry date:</b>	
<b>Visa Type:</b>				<b>Email Address:</b>		<b>Contact Phone No.:</b>	
VV	WHV	WV	RV				

## Audit Summary Report: Audit Criteria Summary

		Comments
<b>1.1 Individual Employment Agreements</b>	C Pm PS NC	
<b>1.2 Wage &amp; Time Records</b>	C Pm PS NC	
<b>1.3 Records of Deductions</b>	C Pm PS NC	
<b>1.4 Leave Records</b>	C Pm PS NC	
<b>1.5 Inclusive Annual Leave</b>	C Pm PS NC	
<b>1.6 Consistency with Visa Declarations &amp; Conditions</b>	C Pm PS NC	

## **Audit Summary Report: Environmental Scan Summary**

Areas recommended for further investigation with grounds explained.

**Recommended compliance action:**

Approval/Amendment Operational Manager:

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## APPENDIX A: Task Checklist

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### Before the Visit

- 6(c)
  
- Obtain any necessary safety footwear, high visibility vest and hard hat if the workplace requires this
- Familiarise thoroughly with all parts of the tool
- 6(c)
  
- Obtain tips from an experienced Inspector about work site visits
- Familiarise with all legislation and ensure understand interpretation
- Have sufficient copies of audit sheets and forms
- Identify the best time and place to visit according to the nature of the business, opening hours, likely busy times and times when best to talk with at least 2 employees to verify the conditions of their employment
- Consider the likely employees and whether interpreters are necessary and if so arrange noting current MBIE guidelines for contracting interpreters
- 6(c)
- If the visit is announced follow through clear documented communication about this to the employer
- Prepare any pre prepared letters and notices that may be required:
  - Letter to leave if the employer is not present 233(3)&(4) ERA2000
  - Notice to employer requesting records and agreements to be produced no later than 5 working days.
- Everyone on team have cell phones, are familiar with safety and contingency if challenging situations present
- Everyone on team have warrants and understand how to introduce themselves and use powers

## Task Checklist

### During the visit

- Lead inspector identifies with person in charge and identifies and shows warrant
- 6(c)
  
- Lead to ensure that those in charge of the workplace are not left wondering about next steps, time frames and expectations.
- 6(c)
- Call operational manager when visit is completed if after hours

### After the Visit

- 6(c)
- When next steps are finalised an Inspector either completes a final letter and audit grade sheets to the employer noting due to a finding of compliance no further steps are taken OR
- Completes a letter and audit grade sheets to the employer confirming that due to compliance issues immediate enforcement steps will be followed as appropriate (EU or IN)
- If the matter is to be investigated more fully consider the next communication with the employer is decided on a case by case approach with operational manager as to how this is to be communicated. Whatever the approach the audit grade sheets should be made available to the employer at the earliest opportunity following the visit.
- 6(c)