

# Precarious Work

## Short-term contracts, labour-only outsourcing, and casual labour

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Precarious work, and in particular the use of short-term contracts and third-party employment agencies that limit workers' rights and benefits, is recognized as a growing problem in the garment industry world-wide, one that is increasing workers' vulnerability and limiting the exercise of freedom of association.

See **Appendix 1** for a listing of main characteristic and forms of precarious work.

The ILO, Global Unions, civil society networks as well as specific brands and multi-stakeholder initiatives have recognized the problem and have begun to develop proposals to respond to it. Increasingly company and multi-stakeholder codes of conduct are being strengthened to address the issue of precarious work.

This document provides an overview of both company and multi-stakeholder initiatives (MSI) codes and guidance documents as well as existing proposals to address problems of outsourcing, short-term contracts and use of casual labour.

### 1. MSI and Company Codes

Most MSI codes include a provision that forbids the use of: "labour-only contracting arrangements, consecutive short-term contracts, and/or false apprenticeship schemes to avoid fulfilling obligations to personnel under applicable laws pertaining to labour and social security legislation and regulations."<sup>1</sup>

While the exact wording may vary, such provisions can be found in the **SA8000** Standard, the **ETI Base Code**, the **Fair Labor Association (FLA) Code**, and the **Global Social Compliance Program** code. **Nike**, **Levi's** and **adidas** have similar provisions in their company codes.

Of note, the new FLA Benchmarks<sup>2</sup> on "Employment Relationship" also:

- place limits on the use of temporary labour, saying that contract workers cannot be used on a regular basis, or for multiple short-terms, cannot be used to support normal business needs or as a regular employment practice;
- require that contract workers receive at least the same compensation and benefits as regular workers; and

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<sup>1</sup> This version comes from the SA8000 Standard.

<sup>2</sup> The revised FLA code and benchmarks came into effect as of January 2012.

- require that contract workers be given hiring priority for new permanent positions, with seniority starting from the date of the first contract.

**Nike's** Code Leadership Standards set a limit of 15% on the percentage of production line workers that can be on short-term contracts<sup>3</sup> or employed through third party agencies at any one time. It states that temporary workers<sup>4</sup> "should only be used to meet seasonal work or peak season production, or to fill short-term vacancies or staffing needs of less than one year." It also says, "Widespread renewal of short-term contracts" is considered "excessive" when "such practice denies employees full entitlement to severance pay, social security tenure, etc." Homework is prohibited.

**Levi Strauss & Co.** requires that temporary workers "have the same wages, benefits and other conditions of employment as permanent employees after nine months, or earlier, as per law." Their TOE Guidebook also says that "factory management will not impede workers' right to peaceful organization by outsourcing work performed by union members."

**adidas Group** has very similar provisions to those required in the new FLA Code and Benchmarks. It includes limits on the length of probationary periods (3 months), and requires that temporary workers receive the same annual leave, public holidays and sick leave accruing to regular workers. Among other things, adidas' code also:

- prohibits the outsourcing of the entire employment relationship (eg the outside agency being responsible for payroll, benefits, etc). adidas says "Factories must maintain a direct employment relationship with workers;"
- prohibits the hiring of contract workers "on a continuous basis, on multiple short-term contracts, or as regular practice, to support normal business needs;"
- suggests that the factory "should establish a system for managing contract employment, beginning with a policy defining the job functions or tasks that contract workers are hired to perform, and maintain information on the use of contract workers in relation to production needs;" and
- says that "a contract worker of the equivalent skill level, education and experience, who performs the same task as a permanent employee, should receive the same fundamental wage and benefits package as a permanent employee."

adidas also includes: "Rather than relying on a continuous cycle of contract workers who may not be skilled, have no commitment to the factory and no long-term interest in the success of the factory, we expect our business partners to maintain a permanent workforce, of the appropriate size, which can cope with fluctuations in production schedules and seasons. Non-peak production seasons are an opportunity to engage in training, maintenance and housekeeping, and other work related activities. Conversely, permanent workers should not be subjected to excessive working hours during peak production periods."

**However, most company codes include** no specific language related to precarious work.

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<sup>3</sup> Nike says that "in the absence of country law definition, short-term contracts are those of 1 year duration or less"

<sup>4</sup> Nike defines a "temporary worker" as a worker "who works on the contractor's premises, but who is provided and paid by a third party, such as a temporary employment agency."

**Few company codes include provisions concerning:**

- Limits on the amount or duration of short-term contracts. Thus far only Nike has adopted code provisions that include a fixed limit on the duration and percentage of short-term contracts.<sup>5</sup>
- Limits on the number of times someone can be hired consecutively on short-term contracts.
- Protections regarding freedom of association. Levi's addresses the question of outsourcing of work that is currently being done by union members, but no other company code mentions this issue. Further, very few company codes address the impacts of labour outsourcing and/or short-term contracting on freedom of association.<sup>6</sup>
- Providing contract workers the same wages and benefits as regular workers.
- Ensuring that recruitment fees or other fees are not charged to workers.
- Ensuring contract or outsourced workers have the same free access to safety equipment.
- Ensuring contract/temp workers get first-hire opportunities for permanent positions at the factory, and that seniority accrues from the date of the first contract.
- Placing limits, conditions or a prohibition on the use of casual work.<sup>7</sup>

**To our knowledge there are no provisions in any current company codes regarding:**

- Types or categories of work that may or may not be outsourced – for example, are non-core functions allowed to be outsourced?<sup>8</sup>
- Prior consultation with unions on any outsourcing.

**There is inconsistency and less clarity in the company codes we've surveyed on questions such as:**

- Is it acceptable for a significant percentage of core workers to be directly employed by a third-party agency as long as they are treated equally?
- When are short-term contract workers entitled to equal wages and benefits? Levi's requires contract workers to be paid the same after nine months, while adidas requires it at all times.

Whether or not precarious work is addressed in company code language, it is unclear whether and how auditors are assessing issues surrounding the employment relationships when auditing a factory.

## **2. Existing proposals to address outsourcing, short-term contracts and use of casual labour**

### **i. Employment Security should be the norm**

The Global Unions have adopted the following joint principles that serve as a guide for their work on this issue:

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<sup>5</sup> In its TOE Guidebook, Levi's notes that having 85% of workers on temporary contracts would be a code violation, but sets no other limit.

<sup>6</sup> This is not an issue for codes that prohibit labour-only subcontracting and short-term contracting on a regular basis such as those of Nike, Levi's and adidas.

<sup>7</sup> For the most part this should be implicitly forbidden by the requirements for formal employment contracts and limits on temporary work, but most codes do not expressly address this.

<sup>8</sup> Nike's definition of "temporary worker" applies only to "production line worker[s]" which may imply that other non-production workers can be outsourced.

- The primary form of employment should be permanent, open-ended and direct – any deviation from this norm should be justifiable, planned, limited and regulated;
- Agency workers should be covered under the same collective bargaining agreement as other workers in the user enterprise;
- Temporary agency workers should receive equal treatment in all respects;
- The use of temporary agencies should not increase the gender gap on wages, social protections, and conditions;
- Temporary work agencies must not be used to eliminate permanent and direct employment relationships;
- The use of agency workers should never be used to weaken trade unions or to undermine organizing or collective bargaining rights.

## ii. **Outsourcing to temp agencies:**

There are two main approaches to addressing the use of temp agencies.

- **Limiting or forbidding the use of third-party employment agencies:** limits on the use of temp agencies could be either on the types of work or job functions that can be outsourced (for example, categories that are not the core work of the factory, such as cafeteria staff), limits on the percentage of workers that can be outsourced at any one time, or limits on the duration of their use. Global Unions also add that trade unions should be consulted prior to using temp agencies, and that in no circumstances should agency workers be used to replace striking workers.
- **Placing conditions on temp agencies:** for example, ensuring that such agencies do not charge workers fees, and that outsourced workers are compensated the same as regular workers, have the same access to safety equipment, receive the same benefits, or that they are not restricted from obtaining regular employment at the factory. There is also a proposal in the electronics sector in Mexico to certify temp agencies that meet minimum standards.

*Key documents:*

- *Global Unions: Joint Principles on Temporary Work Agencies:* <http://cms.iuf.org/?q=node/413>
- *ILO Convention 181: Private Employment Agencies* [Convention](#), and [Recommendation 188: Private Employment Agencies](#).

## iii. **Short-term contracts**

The main approaches to addressing short-term contracts are:

- **Legal limitations on their use:** Many countries have instituted legal limits on the successive use of fixed-duration contracts, requiring, for example, that short-term contracts become open-ended contracts after two renewals and not more than 2 years.
- **Equal conditions:** At the factory level, ensuring that workers on short-term contracts receive the same compensation and benefits as regular workers, and that if they become regular employees, their seniority accrues from the date of the first contract.
- **Factory-level limits on their use:** Ensuring that the factory has a plan for their use, including adequate justification, circumstances in which they can or can't be used, or setting a limit on the percentage of the workforce that can be on temporary contracts at any one time.

*Key documents:*

- The recommendations of the [Campaign on Short-Term Contracting in the Asian Garment Industry](#)
- [Fair Labor Association Code of Conduct and Employment Relationship Benchmarks](#)
- Allard K. Lowenstein International Human Rights Clinic. [Tearing Apart at the Seams: How Widespread Use of Fixed-Duration Contracts Threatens Cambodian Workers and the Cambodian Garment Industry](#). Yale Law School, April 2011, pp 50-54

iv. **Casual/contingent work**

Similar to the above, the main approaches to addressing the use of casual or contingent workers are to:

- **Control its use:** For example, requiring that all workers must have a valid contract and personnel file, that factories should have written policies and procedures for the use of temporary or contingent workers, and document their use. (adidas and the Fair Labor Association, for example, take this approach.)
- **Forbid its use:** that only a more formal employment relationship is valid. (We are not aware of a code that takes this approach.)

v. **Other types of precarious work**

While the above proposals are raised in the context of labour-only outsourcing, short-term contracts, and casual labour, they may also be applicable to other forms of precarious work. For example, companies may choose to ban or place similar limits on the use of “self-employment” or seasonal work. Homework is generally treated separately, with the proviso that the issues of job security and fair payment are as essential to homeworkers as they are to other workers. (See [SA8000](#) Section 9.10 and [ILO Homework Convention 177](#).)

## APPENDIX 1

### Characteristics and Forms of Precarious Work

**a. Some of the main characteristics of precarious work include the following:**

- little or no job security
- insufficient or no access to statutory benefits (health insurance, severance pay, etc)
- no protection against dismissals
- no accrual of seniority
- no access to advancement within the firm
- no legal or contractual protection
- little or no ability to associate freely
- inability to bargain collectively, along with other workers in the same workplace, with the primary employer

Even if precarious employment arrangements are mitigated by provision of equal benefits, compensation, and seniority rights, precarious work arrangements may still be non-compliant with company codes of conduct if:

- They undermine workers ability to freely associate and bargain collectively;
- They undermine workers' ability to refuse dangerous work, raise concerns about the working environment, or otherwise engage with their employer to improve conditions; and/or
- They create uncertainty as to who is the legal employer, and therefore uncertainty as to the application and enforcement of legal protections.

**b. Precarious work takes various forms:**

**Outsourcing to temp agencies:** employing staff indirectly, where their employer of record is a third-party agency or firm.

**Fixed-term contracts:** Employing staff on successive short-term contracts rather than an **open-ended contract**.

**Bogus self-employment:** Classifying regular employees as “self-employed” to avoid responsibility for legal benefits, even though they work under the supervision and direct control of the company.

**Casual work:** Employing workers with or without an employment contract for hours, days, or weeks with no promise of regular employment.

**Part-time work:** Not all part-time work is precarious work – it may be a preferred choice for some employees. But excessive use of part-time work instead of full-time positions may

signal an effort to avoid legal responsibilities that accrue to a full-time workforce.

**Seasonal work:** Some industries require seasonal work. But strict controls should be placed on seasonal work so that workers can access minimum rights including seniority rights, applicable benefits, etc. and so that companies don't have an overreliance on a strictly seasonal workforce.

**Homework:** Employing workers – usually with no contract, or under a “self-employment” relationship – who work from their homes. If properly regulated and compensated, however, homework can be a viable option for some workers.