

Fair Work First Guidance

**Supporting the implementation of Fair Work
First in workplaces across Scotland**

September 2021



Scottish Government
Riaghaltas na h-Alba
gov.scot

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Purpose of the Fair Work First Guidance

Who the guidance is for

It is intended for those who are involved in awarding public sector grants, other funding and public contracts as well as those who receive funding through public sector grants, sponsorship arrangements with the Scottish Government and/or are involved in the delivery of contracts. In this regard, public bodies should give due regard to their dual role as an employer and in administering public funding.

Throughout the guidance, the terms 'employer', 'business' and 'organisation' are used interchangeably to describe the range of private, public and third sector organisations within the labour market and to which Fair Work First can be applied.

What the guidance aims to achieve

This guidance is designed to encourage and support employers to adopt fair work practices within their organisation.

In rolling out Fair Work First, the Scottish Government is primarily interested in the steps the employer is taking to deliver good quality and fair work. While Fair Work is relevant for all employers and all workers, the context in which it can be applied will vary depending on factors such as the type and size of the organisation and the sector and location in which it operates. The guidance aims to help organisations to identify and progress their fair work priorities as part of their continuous improvement approach. It does not set a minimum standard but provides direction on how the Fair Work First criteria can be adopted. It provides scope for organisations to do so in a way that is relevant and proportionate to the activity and/or contract they have agreed to deliver.

Learning from good practice

The guidance provides examples of what the Fair Work First criteria means in practice, which are intended to guide organisations in their approach. The examples are neither prescriptive nor exhaustive and employers should not feel limited in considering how workplace practices can be strengthened to enhance workers' experiences at work.

Fair Work First: the approach and what it aims to achieve

Fair Work First is the Scottish Government's flagship policy for driving high quality and fair work across the labour market in Scotland by applying fair work criteria to grants, other funding and contracts being awarded by and across the public sector, where it is relevant to do so. Through this approach the Scottish Government is asking employers to adopt fair working practices, specifically:

- appropriate channels for effective voice, such as trade union recognition;
- investment in workforce development;
- no inappropriate use of zero hours contracts;
- action to tackle the gender pay gap and create a more diverse and inclusive workplace;
- * payment of the real Living Wage;

And, from October 2021:

- offer flexible and family friendly working practices for all workers from day one of employment; and
- oppose the use of fire and rehire practice.

Note: * those involved in procurements should refer to the [Statutory Guidance](#), [Best Practice guidance](#) and [toolkit](#) to understand how to consider fair pay for workers, including payment of the real Living Wage, in the procurement process.

These criteria seek to address particular challenges in the labour market, to make a real difference to people and their communities, business and other organisations and the economy. The criteria and guidance have been updated to reflect two additional elements, on flexible working practices and the use of fire and rehire, in recognition of specific issues raised during the Covid-19 pandemic.

The value of Fair Work First was highlighted by the Advisory Group for Economic Recovery (AGER) in its [June 2020 report](#), where it recognised Fair Work First as a form of conditionality which encourages and rewards employers adopting fair work practices, and which is encouraging good practice.

Fair Work First relationship with the Scottish Business Pledge

The [Scottish Business Pledge](#), like Fair Work First, aims to promote fairness, equality and opportunity in Scotland, helping to create greater economic success and sustainable, inclusive growth.

Accordingly, the Fair Work First criteria is included in the Business Pledge: three of the criteria are [core elements of the Pledge and two other criteria are reflected in the optional elements](#) of the Pledge. Some elements of the Pledge cover issues that are wider than Fair Work, including addressing issues such as environmental impact, innovation and internationalisation; while the adoption of fair work will have a positive impact on these elements they are not included in Fair Work First criteria.

Strategic context

Scotland is leading the way in creating a wellbeing economy; delivering sustainable and inclusive growth for the people of Scotland. This means creating a more resilient economy where businesses can thrive, innovate and create good quality jobs in a way that enhances quality of life, reduces inequalities and is compatible with a net zero, sustainable economy.

The strategic ambitions for Fair Work are set out in the [Fair Work Convention's Framework](#) (2016). In response to this, the Scottish Government set out the actions it will take forward to achieve this agenda in its [Fair Work Action Plan](#) (2019). Fair Work is central to achieving the government's priority for sustainable and inclusive growth, through which everyone in Scotland can contribute to and benefit from our country's success.

Understanding Fair Work and why it is important

Work is an important part of adult life, and is critical to our wellbeing and shaping how we live. The [Fair Work Convention's Framework](#) defines Fair Work as work that offers [effective voice](#), [fulfilment](#), [opportunity](#), [respect](#) and [security](#). These dimensions of Fair Work will manifest in different ways in different workplaces, aiming to balance the rights and responsibilities of workers and employers. They should be visible in the attitudes, behaviours, culture and policies and practices within an organisation – demonstrating the value placed on fair and equal opportunity in work. The Fair Work First criteria aligns with the dimensions of Fair Work, and are focused on:

- providing a decent standard of living and income;
- offering security of contract, including hours and earnings; other entitlements including sick pay and pension;
- fostering an environment where workers' views are actively sought, listened to and can make a difference, including through a stronger role for trade unions;
- giving opportunities for all to learn, develop and progress;
- creating a healthy and safe environment, where individuals' wellbeing is actively supported;
- enabling people to have a good work-life balance;
- supporting people to feel valued and respected and that they have a sense of purpose in work and wider society; and
- promoting innovation and productivity.

These elements can reinforce each other, creating a virtuous circle of positive practices, behaviours, attitudes and outcomes that can help organisations to remain competitive and to grow and prosper, and creating a culture which ensures workers are treated fairly.

Fair work is key to supporting people and business to flourish and is critical to achieving a modern, high value, inclusive economy – today and in the future. Enabling a more inclusive, people-centred culture of work which supports workers

and employers to shape their organisations together, and to develop the skills needed for a successful future, is key. Talented people are at the heart of every successful operation. By creating the conditions for workers to develop and utilise their skills, Fair Work can enable workers to play a full and active role - underpinning high productivity, performance and innovation and contributing to healthier, wealthier and more inclusive societies.

Fair Work is an agenda for all, and requires employers to go beyond statutory employment rights and protections, including in relation to equality in the workplace. The principles of Fair Work hold true for all workers: direct employees as well as others who are paid to work for and on behalf of an organisation.

Fair Work as part of Scotland's economic recovery and renewal

The Scottish Government has maintained a strong focus on the vision for Scotland to be a Fair Work Nation throughout the Covid-19 pandemic. Fair Work has been at the heart of the national response for protecting workers' health and livelihoods and the economy throughout the pandemic. Along with our strategic partners, the Scottish Government believes that Fair Work will play an important part in supporting a stimulus-led recovery and must remain at the heart of economic recovery and renewal.

Maintaining a focus on Fair Work is, therefore, more important than ever and can support continuing partnerships between workers and employers for addressing workplace issues and ensuring workers are treated fairly as the economy re-opens.

How the guidance should be used

The Fair Work First guidance is designed to support business and other organisations to progress on a journey of continuous improvement in Fair Work. It is a good idea to read the whole document once, however it can and should be dipped into as and when required. The table of contents should assist you to find the sections that are relevant for you.

In addition to accessing support provided by relevant networks, organisations should use the guidance in conjunction with other relevant guidance, such as:

- Grant Policy guidance and information provided as part of the application process;
- Strategic guidance provided to Scotland's public bodies by Scottish Ministers;
- Procurement guidance, such as: [Statutory Guidance - Addressing Fair Work Practices, including the Living Wage, in procurement](#); [Best Practice Guidance and accompanying toolkit](#); and [Scottish Procurement Policy Notes](#);
- The [Scottish Public Finance Manual](#).

Employers are also encouraged to use the [Fair Work Employer Support Tool](#) to understand their fair work practices and access support to enable them to strengthen their approach. Similarly, employers should encourage their workers to

use the Fair Work Convention's [Employee Self-Assessment Tool](#) to assess their own experience of Fair Work and be willing to engage with workers and unions in responding to the findings of these assessment tools.

The guidance can be used by the respective stakeholders as follows:

1. Public sector grants

- **grant-makers** should use the guidance as follows:
 - to consider how the Fair Work First criteria applies to a grant, consistent with the context in which it can be applied;
 - to evaluate a grant applicant's commitment to Fair Work First in their application and assess the verification of such;
 - to engage with a grant recipient to agree relevant milestones and outcomes for supporting delivery of their Fair Work First commitment;
 - to evaluate progress being made towards those commitments as part of grant management arrangements.
- **grant applicants / recipients** should use the guidance to:
 - agree their organisation's approach for applying Fair Work First within the organisation;
 - to provide evidence in the grant application confirming the action they will take to adopt the Fair work First criteria;
 - monitor progress towards delivering against their proposals in relation to the Fair Work First criteria as part of grant management arrangements;
 - consider further action which could be taken to enhance the organisation's Fair Work approach

2. Public sector procurements

- **buyers** (those awarding a public contract) should use the guidance as follows:
 - to consider how Fair Work First applies to a procurement in a relevant and proportionate manner;
 - to support the evaluation of bids submitted by suppliers;
 - where appropriate, to evaluate progress being made towards delivering against their tender proposals in relation to the Fair Work First criteria through contract management arrangements.
- **bidders / suppliers** should use the guidance to:
 - explain in the response to tender actions they will take throughout the lifetime of the contact to deliver the Fair Work First criteria, where it is relevant to the contract;
 - agree their approach for applying Fair Work First within the contract;
 - monitor and provide evidence of progress towards delivering against their Tender response in relation to the Fair Work First criteria as part of contract management arrangements.

3. Funding for public bodies

Public bodies have a dual role to play in supporting the implementation of Fair Work First: as employers; and as the stewards of significant public funding which supports them to deliver public services and support Scottish Government priorities, including through procurements or the award of funding.

- **Scottish Government sponsorship / funding leads** should use the guidance as follows:
 - to consider how Fair Work applies to the public body;
 - to agree with the public body what their Fair Work First priorities will be;
 - to evaluate progress being made towards the body's Fair Work First commitments as part of the agreed monitoring and reporting arrangements.
- **public bodies** should use the guidance to:
 - identify their Fair Work First priorities;
 - monitor and provide evidence of progress towards meeting the Fair Work First criteria as part of sponsorship/funding arrangements;
 - consider further action the body could take to enhance their Fair Work approach;
 - to apply Fair Work First to any relevant grants or contracts they themselves award, as illustrated in sections (1) and (2) above

Verification of an organisation's Fair Work First commitment

Organisations who are accessing grant funding are asked by the Scottish Government to include a short statement on their own website highlighting their commitment to advancing the Fair Work First criteria. The statement should be agreed jointly by the employer and an appropriate workplace representative. This should be from the relevant trade union where one is present, or workers representative(s) where there is no union present.

Organisations delivering a public contract and who have agreed to adopt the Fair Work First criteria, are also asked to include a short statement on their own website highlighting their commitment to advancing the Fair Work First criteria. The statement should be agreed jointly by the employer and an appropriate workplace representative. This should be from the relevant trade union where one is present, or workers representative(s) where there is no union present.

Public bodies should include a short statement on their own website highlighting their commitment to advancing the Fair Work First criteria. The statement should be agreed jointly by the employer and an appropriate workplace representative. This should be from the relevant trade union where one is present, or workers representative(s) where there is no union present. Those civil service bodies who are already part of the Fair Work Agreement between the Scottish Government and relevant trade unions may wish to highlight their commitment to the Agreement. Other public bodies may wish to consider developing similar agreements.

Grants

As part of the application process for grant funding, applicants may be asked to provide a statement verifying their Fair Work First commitment and confirming it has been developed in agreement with the workforce. This should be from the relevant trade union where one is present, or workers representative(s) where there is no union present.

As part of the grant monitoring process, the grant recipient should confirm the progress being made towards the commitments set out in the grant agreement. A short statement agreed by an appropriate workforce representative, confirming the organisation's progress in adopting Fair Work First commitments, should be submitted to the grant maker, in advance of the conclusion of the grant. This should be from the relevant trade union where one is present, or workers representative(s) where there is no union present. Grant recipients will also be expected to provide information about the changes they have made and related impacts for their workforce and organisation. The employer should fully involve and engage the relevant trade union(s) or employee representative(s) to review actions and outcomes and identify further improvements for advancing the fair work first commitments. The Scottish Government grant guidance and relevant guidance from other public funding bodies has been updated to incorporate Fair Work First monitoring requirements, and relevant templates are provided.

Public bodies' funding

In agreeing their annual priorities with relevant Scottish Government policy/sponsorship teams, public bodies should describe how they are meeting and/or intend to advance the Fair Work First criteria across their organisation and the timescales for doing so. They should confirm this has been agreed in collaboration with an appropriate workforce representative. This should be from the relevant trade union where one is present, or workers representative(s) where there is no union present.

As part of the arrangements for monitoring service delivery, the public body should provide evidence of progress towards delivery of their Fair Work First commitments to the relevant policy/sponsorship team. The Scottish Government will confirm the information that public bodies will be expected to provide and appropriate guidance and template/s.

Procurement

As part of the procurement process bidders may be asked, when relevant and proportionate to what is being purchased, to describe how, in performing the contract they will meet the Fair Work First criteria, as described on page 4 of this Guidance.

As part of the contact management process, the supplier may be asked to provide evidence that they are meeting the Fair Work First criteria, in line with the tender response.

Given the importance of effective voice in fair work principles, while not a requirement on employers, it is strongly recommended that they engage with the workforce and unions, where they are present, in defining and monitoring the commitments they make to advancing fair work in the delivery of the contract during the life of the contact.

Fair Work First Criteria: What It Means In Practice

In considering how each of the criteria can be applied, employers should take account of their organisation's context. This will include the type of organisation, its size, sector, and location, as well as how much progress has already been made in adopting fairer work practices. The approach should be progressive, relevant and proportionate.

Appropriate channels for effective voice, such as trade union recognition

What This Means

Effective voice is much more than having a communication channel available within an organisation. It requires a safe environment where dialogue and challenge are central to the organisational culture, are dealt with constructively, and where worker views are sought out, listened to and acted upon, and can make a difference. Effective voice requires workers, employers and trade unions or worker representative groups to work in partnership to make sure the right decisions are made to ensure workers are treated fairly and equitably. The co-determination of working practices is key to delivering all of the dimensions of Fair Work effectively.

Outcomes

Effective voice channels improve information sharing and problem solving, encourage innovation, support cross-learning and can resolve conflict. Effective voice through trade unions can lead to the development of effective HR policy in relation to pay, working time, holiday arrangements, training, health and safety and flexible working that delivers positive outcomes for workers and for employers. While recognising that systems of collective bargaining differ widely internationally, there is evidence¹ that countries with higher rates of trade union membership and collective bargaining coverage experience high employment rates, strong productivity growth and rate well on international indices of competitiveness and innovation.

Good practice examples

Unions

- Involving trade union/employee representatives in key governance and decision-making structures.
- Recognising trade unions for the purpose of collective bargaining and encouraging membership, where this is the workforce's preferred route, and providing appropriate facility time for supporting regular engagement between union/s and members.
- Constructive dialogue between the employer, workers and where appropriate a relevant trade union/s to address workplace issues or disputes, e.g. absence management, grievance, health & safety.

¹ Bryson, A and Forth, J (2015) 'The UK's Productivity Puzzle'

<https://www.niesr.ac.uk/publications/uks-productivity-puzzle-1>

OECD (2018), 'Good Jobs For All In A Changing World Of Work: The OECD Jobs Strategy' <https://www.oecd.org/mcm/documents/C-MIN-2018-7-EN.pdf>

Structures and surveys

- Regular surveys are carried out to understand worker views, including how well they feel effective voice is facilitated in the organisation, and are involved in agreeing and progressing improvement action.
- Formal and informal arrangements are in place through which meaningful individual and collective dialogue take place, including one-to-ones between workers and management, appraisal/feedback processes, team/organisation meetings;
- Appropriate collective consultation and a clear route for resolving issues at both individual and collective levels, such as through a grievance or collective disputes procedure.
- The organisation promotes a strong culture of openness and transparency and encourages acceptance of different viewpoints.

Interpersonal

- Regular supportive contact is offered through one-to-one conversations with managers.
- Workers' experiences are used to influence organisational policy and practice, e.g. how their terms & conditions affect them and any barriers women and minority ethnic and disabled people may be experiencing.
- Worker representation on boards is sought and welcomed.

Conflict Resolution

- Dealing with issues/concerns which have been formally raised fairly in a timely and constructive manner and which promotes confidence that, whatever the outcome, fair processes have supported fair resolution.
- Appropriate measures are in place to support dignity in the workplace and implement zero tolerance of workplace bullying and other forms of abuse and harassment.

Investment in workforce development

What This Means

Effective workforce development involves employers providing opportunities for their staff at all levels of the organisation and should be a shared responsibility and shared commitment between the employer and workers. Everyone should be able to engage in lifelong learning.

Outcomes

Organisations that invest in the skills of their workforce can generally expect their workers to add more value, provide a better service, [achieve higher levels of productivity](#) and be more resilient and responsive to change.

Talent management is crucial, even when labour markets are in flux. Talented job seekers are more likely to apply for roles in organisations that are committed to

developing their people for current and future roles. Fair Work should therefore be built into an employer's recruitment and retention processes.

Investment in workforce development can also build a more engaged and fulfilled staff; and equal access to training is important in advancing equality at work and closing pay gaps. When people can continue to learn and develop, and use their skills and talents to add value, they gain a greater sense of control over their work and scope to make a difference. This helps build their confidence and self-belief, improving individual and organisational wellbeing.

Good practice examples

- Learning & development is integrated in the organisation's strategic planning and workers and management jointly identify development needs and priorities, ensuring both individual and organisational needs are met.
- Regular equality and diversity training is provided for all staff.
- Learning & development opportunities are provided, and regularly reviewed, to help build the organisation's resilience and responsiveness to change.
- Managers have development discussions with individuals and teams and prioritise this as part of operational activity.
- Workforce Development Plans and Succession Management Plans are in place.
- Formal and informal learning is offered across the workforce, relating to people's particular role and wider development.
- The organisation is committed to providing [apprenticeships](#).
- The organisation is committed to supporting the [Young Person's Guarantee](#).
- Staff are supported to keep their professional qualifications up-to-date.
- The organisation has an appropriate charter mark achievement such as [IIP](#) or [EFQM](#).
- The organisation invests in and utilises the skills and knowledge of union equality, learning and other workplace representatives and resources.
- Constructive engagement with union learning reps and Scottish Union Learning activities.
- Carbon literacy training is provided for all staff.

No inappropriate use of zero-hours contracts

What this means

Although there is no legal definition of a zero-hours contract, in the context of Fair Work, such a contract is one which does not guarantee any work to the individual and does not set out a minimum number of hours (whether ongoing or for a set period).

An employer is likely to be using a zero-hours contract inappropriately if:

- it offers a worker a regular pattern of work or regular number of hours but offer only a casual/zero-hours contract;
- a worker has had no say in the zero-hours contract and actually *wants* a contract of employment guaranteeing a minimum number of hours;

- it puts pressure on a worker to accept the terms of a zero-hours contract (where challenged) in order to keep their job;
- there is an expectation that workers will accept all hours offered but no reciprocal expectation that the employer will guarantee hours of work.

It is only right that workers are in jobs that can provide secure, consistent contracts and pay, at least, a real Living Wage. However, in addition to payment of the real Living Wage, the number and frequency work hours is important. That is why The Scottish Living Hours Accreditation Scheme has been launched, which recognises that in addition to payment of the real Living Wage, the number and frequency work hours are critical to tackling in-work poverty.

Those employers using zero-hours contracts should be able to credibly explain their exceptional circumstance which leads to them using such contracts and the steps they are taking to review their business model to eliminate these circumstances.

Outcomes

All workers should be able to plan for their work and life, to know when and for how long they will be required to work, and how much they can expect to earn from week to week. This is key to reducing in-work poverty, which disproportionately affects women. It can also alleviate uncertainty, anxiety and stress, helping to support workers' positive mental health and wellbeing.

As well as being the best option for individuals, the use of secure contracts can benefit the employer. For example, the employer is likely to be regarded as being fair and an employer of choice, which can help with recruitment and retention. Equally, a worker who has a secure contract is likely to be more committed to the organisation and its objectives, which can boost their motivation and productivity.

Good practice examples

- All staff are employed on open-ended or fixed term contracts with confirmed hours and work pattern.
- All staff have a contract which accurately reflects the hours worked, guarantees a fair minimum number of hours per week and does not involve compulsory overtime.
- Staff get reasonable notice of shifts – at least 4 weeks ahead of time, and are paid for cancelled shifts within this period.
- Core and flexible staff resources are reviewed at least annually to determine if any staff on a zero-hours or minimum-hours contract can be moved to a permanent or fixed-term contract with a fixed number of hours and/or a regular pattern.
- Zero-hours contracts are not used to the detriment of workers with protected characteristics and where this is happening, the organisation is taking remedial action.
- Zero-hours contracts are not used to fill actual longer-term vacancies.
- There is a clear, published policy and process to enable someone to request a move from a zero-hour contract with guaranteed and set hours.
- Gained or working to gain Living Hours Accreditation.

Action to tackle the gender pay gap and create a more diverse and inclusive workplace

What this means

Fair Work expects employers to go beyond their legal obligations under the [Equality Act 2010](#), enhancing the protections for workers on the basis of their [age](#), [disability](#), [gender reassignment](#), [marriage and civil partnership](#), [pregnancy and maternity](#), [race](#), [religion and belief](#), [sex](#), and, [sexual orientation](#).

The [gender pay gap](#) exists because women earn significantly less than men over their careers. As women are still regarded as the primary care giver, their work choices can be limited to typically lower-paid and part-time roles. This also limits their opportunities to progress in the same way men can, which dilutes diversity at senior management levels. The [Close your pay gap toolkit](#) provides a range of guidance and advice to help employers calculate their gender pay gap and identify actions to reduce it.

Employment can play a major part in addressing racial inequality. The gap in employment rate for the minority ethnic population in Scotland is consistently and persistently high. Through fair working practice, minority ethnic workers will be able to access and sustain employment commensurate with their skills, experience and/or employment goals and in working environments that are diverse and inclusive. Employers should use the [Minority Ethnic Recruitment Toolkit](#) to improve the diversity of their workforce by recruiting more people from minority ethnic backgrounds.

Disabled people also experience discrimination and a lack of access to opportunity. We need to ensure our workplaces are not designed or operating in ways that can create barriers and exclude disabled people. Fair and equal access, and the provision of appropriate support, can greatly improve disabled people's chances, enabling access to jobs, job retention and career progression. Information about employment issues for disabled people is available from Inclusion Scotland through [We Can Work](#) and from [Scottish Union of Supported Employment \(SUSE\)](#).

Flexible working options are also of huge importance in supporting progression in employment for all of these groups, and you may wish to refer to the advice in family friendly and flexible working practices criteria section of this guidance for examples of good practices, and the benefits to employers and workers in adopting such practices.

Outcomes

By taking action on the gender pay gap and to improve diversity and inclusion, an employer can tap into a rich source of available talent and potential. This makes good business sense and enables people to build a career now and for the future. It can also highlight current practice and areas for change and intervention, helping to create a culture of equality and diversity in the workplace and benefiting workers and employers alike, such as:

For employers

- Increasing diversity and the gender balance in leadership roles leads to better decision making, improved performance and higher profitability across the organisation.
- Positive relationships and diverse teams can generate creativity and innovation, helping to improve productivity, profits and business growth.
- Workforce diversity helps organisations to better understand and meet the needs of a diverse customer base; this can give them a competitive advantage in attracting a wider pool of customers who see themselves reflected in the workforce composition.

For workers

- Simple improvements to the workplace environment and practice convey a positive message about the organisational culture employers wish to create, and help ensure workers feel supported and valued.
- Workers' mental health and wellbeing can improve if their employer introduces practices that support a good work-life balance or systems to tackle bullying and harassment.
- The importance and value of cultural diversity can be improved through equality and diversity training and other positive action.

Good practice examples

- Recruitment, retention and promotion processes prevent bias and barriers, e.g. 'blind' recruitment; providing any additional support/adjustments at interviews; diversity in interview panels; exit interviews are used to understand why a person is leaving.
- Workers have opportunities to influence the organisation's approach to workplace equality, including by sharing their own experiences.
- The organisation gathers data to understand its workforce diversity and has a plan in place to address under-representation.
- Governance structures are gender balanced and the organisation is working to ensure parity for minority ethnic, disabled and younger people.
- Workplace adjustments are made for disabled staff who need it, e.g. Access to Work.
- Flexible working is encouraged across the organisation, subject to business need.
- [Enhanced maternity, parental and adoption leave](#) and pay are available for all staff, and staff are supported to return to work through keep in touch days and refresher courses.
- Everyone has equal access to appropriate learning & development opportunities.
- All staff have opportunities to discuss their support needs with management.
- There are clear career pathways for women, with support for those returning to work after a career break and to help minority ethnic, disabled and older workers to progress.
- The organisation is a recognised [Carer Positive](#) employer.
- Employers are able to provide safe spaces for workers to express their concerns and raise issues and where workers are confident that their concerns are dealt with appropriately by trained personnel.

- Employers promote and support mentally healthy workplaces where mental health and wellbeing is meaningfully discussed and where stigma and discrimination is addressed.

Payment of the real Living Wage

What this means

The Scottish Government promotes payment of the real Living Wage as the minimum rate for everyone in paid work; this is distinct from the statutory National Living Wage and National Minimum Wage which are set by the UK Government. The real Living Wage is a voluntary hourly pay rate based on what families need for an acceptable living standard. The rate is calculated by the Resolution Foundation and overseen by the independent Living Wage Commission; it is reviewed annually to reflect the cost of living, and the rate is announced each November. Building on the strength of the real Living Wage movement, the Scottish Living Hours Accreditation Scheme recognises that in addition to payment of the real Living Wage, the number and frequency work hours are critical to tackling in-work poverty. Businesses looking for certification must meet three criteria for accreditation; payment of the real Living Wage, providing a contract reflecting accurate hours worked and a guaranteed minimum of 16 hours a week (unless the worker requests otherwise) and ensure at least 4 weeks' notice of shifts and guaranteed payment if shifts are cancelled within this period

Payment of the real Living Wage should not be used to limit pay rates, and where sectorally bargained rates have been agreed these should be applied provided they are not below the real Living Wage.

Outcomes

Enabling people to earn a decent income will help them to have a decent standard of living and is the best way of tackling poverty. Low wages are a prime cause of in-work poverty, along with the increased use of zero-hours contracts and other precarious practices.

[Research](#) from the Living Wage Foundation shows that 93% of Living Wage Businesses have benefited since accrediting. 86% of their respondents said it has improved the reputation of their organisation and 75% said it has increased motivation and retention rates of employees. They also reported a 25% drop in absenteeism. Paying the real Living Wage can help businesses attract new workers and skills: the Living Wage Foundation also reported that 93% of students want to work for employers who pay at least the real Living Wage. Currently, two-thirds of workers earning below the real Living Wage are women – by paying the real Living Wage an organisation can reduce their pay gap significantly.

Payment of the real Living Wage can make a material difference to workers and their families, enabling them to access greater opportunities, with less need for worry about affordability.

Good practice examples

- Having an agreed pay structure which means the whole workforce is paid at least the real Living Wage;
- The organisation is recognised as a [Living Wage Accredited Employer](#) or an All Time Service Provider;
- Applying the pay rates collectively bargained between the relevant employer and trade union negotiating body;
- Apprentices are paid at least the real Living Wage rate throughout their apprenticeship.
- The organisation is part of a local partnership working towards [Living Wage Place](#) recognition.
- The employer is actively reviewing the pay structures and developing an incremental plan for paying all staff at least the real Living Wage.

Note: * those involved in procurements should refer to the Statutory Guidance, Best Practice guidance and toolkit to understand how to consider fair pay for workers, which can include payment of the real Living Wage, in the procurement process.

Offer flexible and family friendly working practices for all workers from day one of employment

What this means

Flexible working and family friendly working practices take many forms including, but not limited to, part-time work and job share, flexitime, compressed hours, term-time, staggered hours, and working remotely and from home². It is an important aspect of Fair Work and recognises that being able to balance work with other commitments enables workers to participate and contribute more fully and productively in the workplace whilst protecting their wellbeing and improving job satisfaction.

Genuine flexibility helps to make work possible for people who might otherwise be unable to access, re-enter and sustain employment; creates more diverse and inclusive workplaces and provides greater opportunity and security for workers. Flexible working will vary from employer to employer and not all jobs in all sectors or within an organisation will lend themselves to the same type or level of flexibility; equally, workers' needs will vary. There is no one-size-fits-all approach and flexible working practices need to work for the individual, the team and the employer.

Flexible working should be adopted as a positive practice and never used to weaken contractual terms or impose new unwanted working practices. When considering introducing new ways of working employers should always consult with workers, and where present trade union or other worker representatives, to ensure both the worker's and employer's perspectives are properly considered and any unintended consequences are avoided. The needs of employers and workers are likely to change over time and regular review of policy and practice will ensure appropriate provision is in place.

²https://www.flexibilityworks.org/about-flexible-working/#rslider_2

Outcomes

For employers

Employers who offer flexible and family friendly working practices attract diverse talent, have happier, more engaged workers and increased productivity³. Sixty-seven percent of senior Scottish business leaders who offer flexible working say it has a positive impact on productivity; 70% say it helps worker loyalty and 66% noted reduced sickness and absenteeism⁴. It also helps minimise the loss of valued, skilled workers and the resulting recruitment and upskilling challenges. Offering flexibility allows employers to proactively support workplace equality and tap into an under-utilised talent pool which can help them be competitive, improve their reputation, and attract top new talent and customers⁵.

A range of resources to support employers to adopt flexible working is available, including through [Flexibility Works](#), the [Enterprise Agencies](#) and [CIPD](#). Timewise also have guidance for [line managers](#) and [employees](#), as well as how to [hire flexibly](#).

For workers

People who can access flexible and family friendly working practices are better able to harmonise their work and life commitments. This can help them feel more enthusiastic and fulfilled and enable them to develop their skills⁶; it is good for mental health and overall wellbeing. Flexibility in hours and location can be invaluable for those with caring commitments or preparing for retirement; disabled people or those who experience periods of poor health and people balancing multiple roles or interests. It is of particular benefit to women who are often the primary carer in a household. Flexibility and enhancing parental leave and pay provision can help support women to fully participate in employment and aid their career progression; it can also increase opportunities for workers to share caring responsibilities more evenly by, for example, utilising shared parental leave.

Good practice examples

- Organisational policies and practice are in place to support flexible and family working, developed collaboratively by the employer, workers and, where present, trade union or other worker representative, and are regularly reviewed.
- Jobs are designed around business outcomes not based on fixed locations or times to provide flexibility.
- Flexible working and family friendly policies are highlighted in job adverts.
- Employers and workers have constructive conversations about requests for flexibility. Trial periods or pilots are used to test workable solutions for the individual, team and employer.
- Managers get appropriate training and support to enable them to effectively manage individuals who work flexibly.
- Flexible and family friendly options are available at all levels in the organisation and for all staff – not just women or mothers, and to encourage fathers or partners to share caring responsibilities

³ <https://www.flexibilityworks.org/research/>

⁴ <https://www.flexibilityworks.org/research/>

⁵ [What motivates employers to improve their shared parental leave and pay offers UK Gov.](#)

⁶ <https://www.cipd.co.uk/knowledge/work/trends/goodwork/working-lives-scotland>

- Flexible working is offered as a temporary arrangement to accommodate particular circumstances with review points agreed at the outset by the employer and the worker.
- Learning and development is arranged to accommodate different flexible working arrangements and, where practicable, technology is used to facilitate access.
- Flexible and family friendly options are available at all levels in the organisation and for all staff – not just women or mothers, and to encourage fathers or partners to share caring responsibilities
- Enhanced provision is available to support workers with families, such as more tailored maternity, adoption, and shared parental leave and pay.
- Systems and protocols, such as IT equipment and digital diaries, are used to facilitate effective work practices, enabling remote workers to participate alongside their site-based colleagues.
- Meetings are arranged at times that enable workers to attend (in person, by phone or virtually) so everyone can contribute and feel included.
- Effective use of flexible and family friendly practice is modelled from the top down.
- Employers develop and maintain a home and other remote working policy with consideration given for workers with protected characteristics and suitable provision to support workers' mental health and overall wellbeing.
- Working from home and other remote working is not monitored by invasive worker monitoring software.
- Employers, workers and, where present, union or other worker representative, collaborate to agree an approach to flexible and out-of-hours working, with clear boundaries between work and non-work time - enabling workers to disconnect outside working hours.
- Employers with international connections provide flexibility on hours to manage time differences.

Oppose the use of fire and rehire practice

What this means

There is no legal definition of Fire and Rehire practices. 'Fire and rehire' is the terminology currently most used to describe the practice of 'dismissal and re-engagement'. It is described by [ACAS](#) as one option that may be available to an employer seeking to effect changes to employees' contractual terms; it involves dismissing employees and immediately re-engaging them on a new contract with new terms, with the new terms issued to commence on the day following the termination date of the current contract, in circumstances where the employees' agreement to the changes has not been obtained. The term is also used to refer to employers holding out the prospect of dismissal and re-engagement to employees or their representatives during negotiations about changing terms and conditions.

We recognise that the vast majority of employers consult and reach agreement when they have to consider making changes to contracts and will only consider using fire and rehire practice as an exceptional and pressing business necessity.

However, whilst fire and rehire practice may not in all circumstances be contrary to employment legislation, the Scottish Government's position is that such practice does not align with the principles and expected practice of Fair Work.

Therefore, an employer wishing to access public sector grants or other funding or to deliver a public contract in Scotland will be expected to commit to not using fire and rehire practice; and this will be considered as part of the award decision and form a condition for the delivery of the grant or public contract. It would then be monitored appropriately within the relevant contract or grant management arrangements. In addition, if an employer subsequently uses fire and rehire practice during the life of a grant, the continuation of the grant may be reconsidered and this may also be taken into account in the consideration of any future grant funding requests, where relevant and proportionate.

Scottish Ministers have written to chief officers of public sector organisations to advise them that this new criterion has been introduced and that they should apply it along with the other Fair Work First criteria. Further guidance on the application of Fair Work First criteria in grants, other funding and contracts is contained in the 'How the guidance should be used' section of this guidance.

What is Fire and Rehire

An employer is likely to be using fire and rehire practice if they use dismissal and re-engagement for the purpose of diminishing terms and conditions as described above. Employers should not use the threat of dismissal and/or redundancy in order to pressurise staff into accepting changes to terms and conditions.

The benefits of an alternative approach

Under Fair Work principles and the good practice adopted by organisations of all sizes across Scotland, an employer should - from the start of the process - ensure that workers' voice is fully considered through full and meaningful consultation, and including the relevant union/s if present, or other appropriate employee representative. The employer should also fully consider all alternatives, drawing on support available from [the Scottish Government and its agencies](#), [ACAS](#), [CIPD](#) and other relevant parties.

Where an employer engages constructively with staff to reach voluntary agreement on contractual changes, there are benefits to both employees and the employer, such as:

For employers:

- In avoiding a dismissal and re-engaging process, the employer can retain skills, motivated staff and protect positive relationships with staff and unions.
- They can reduce risk of employment-related litigation and the significant legal and potential damages costs this could bring, along with the time, resource and potential disruption of engaging with the process.
- They can avoid the considerable time and cost associated with replacing personnel who do not accept the new terms and any subsequent training.

For employees:

- They can continue to be employed under terms and conditions they have agreed to, giving them the security of employment and earnings.
- They have a voice in the workplace and feel engaged in decision-making.
- They have an ongoing sense of respect, security and fulfilment which contributes to their overall wellbeing.



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This publication is available at www.gov.scot

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The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-80201-390-0 (web only)

Published by The Scottish Government, September 2021

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS908566 (09/21)

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