

Legal and Code requirements Guidelines for auditors

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Legal requirements and code requirements: guidelines for auditors

Definition of the problem

1. FWF audits compliance with the 8 international labour standards mentioned in the Code, plus with the requirement of Code Awareness. These define the limits of the FWF mandate.
2. The basic rule is that where there are differences or conflicts between the international standards and local law, the higher standard should prevail.
3. Local labour law, OHS law and legislation concerning record keeping can contain elements that go beyond the scope of the 8 international labour standards that FWF uses. E.g. smoking policy.
4. It is not the aim of the FWF to force upon companies a lot of red tape. Especially for small companies the legally required administrative burden can sometimes make business impossible.
5. Also concerning tax payments, auditors can be confronted with the question; are we to take the role of the tax inspector? (Note: not paying social contributions can be directly harmful to workers because they may fall outside insurance schemes that way, but what about general taxes?)
6. In the course of development OHS regulations in a country tend to expand to ban every possible risk, sometimes leading to unrealistic rules. (Compare the proposal to ban assembly lines or to have 'use the handrail' signs in every stairwell). Thus, in many countries there are OHS and other regulations that no-one keeps to in practice.
7. Thus, auditors always have to make judgments as to which legal requirements should be part of FWF audits and which fall outside the scope/mandate of FWF. Pushing too many items that are not practicable really would encourage a tendency towards 'paper compliance' instead of real improvements of social performance.
8. A judgement that a certain legal requirement falls outside the scope of FWF to audit, does not imply that this rule or regulation is not important. It is just an indication of the limits of the instrument of Code Implementation. It is also no permit for companies to not implement this law or regulation. FWF has not the same role as legal labour, factory or tax inspectors.

Guidelines for auditors

9. The FWF Audit Manual gives general guidelines for the auditing. Especially concerning OHS and required documentation these always need to be adjusted to the local situation. This may mean that more items are included in the audit than are mentioned in the Manual. Where possible the Background Study should contain specified guidelines. These will also be discussed during the auditor training. Outcomes of these auditor training discussions have to be documented by FWF in updates of or annexes to the Background Study
10. However, there will always be cases where the audit teams have to make a judgment on the spot. Some general guidelines for this are:
If the issue is to be reported:
 - a. It must be possible to argue a direct relation between the issue at stake and one of the Labour Standards.

- b. It must be possible to proof that the existence of the issue is harmful to workers*. (or in the case of lacking records or documentation: it makes proper auditing impossible).
- c. It must be common practice amongst the better class of companies that the issue of non-compliance does not occur in these companies.
- d. If a and b hold, but not c, the issue must be reported, but it may be followed by a recommendation instead of a requirement.

11. To avoid having to include every single item of local OHS regulation, auditors should check if the right procedures, persons and structures are in place. These must include a system to consult workers and give them a chance to voice concerns and check follow up. If these are correctly in place, the auditing of single OHS issues becomes more of a way to check if the system works then a way to see to every single detail.

12. The audit report may contain some positive remarks about the company implementing legal requirements that normally are not implemented by the average company, under '(4.9) Special positive points of interest'.

- * This is depending, amongst others on the characteristics of the company and the workforce. For example:
- a. Markings on the floor point to emergency exits may be unnecessary because workers may be expected to know where the emergency exits are located:
 - if it is a small factory
 - with hardly any turnover of employees,
 - and when they have regular fire drills.
 - b. If all people work for years on the same sewing machines, written instructions how to use these may be unnecessary (as long as the emergency break/stop is clearly marked).
 - c. Work clothing: if this is not a need because of protective characteristics of the clothing FWF will not check it. Provision of work clothing may be noted as mentioned under 12. above.
 - d. Micro climate test are mandatory in some countries. However if the OHS auditor notices a good air quality in the factory and workers have no complaints concerning this and there are no apparent health problems that could point to problems with the micro climate, then small factories could be excused for not having these tests done every year.