

# Responsible Contracting: Best practices

*Responsible contracting is important to sustainable companies, employees, and consumers. Complying with labor laws and adopting responsible practices is good business and supports our local and national economies. From 2005 to 2015, the percentage of Americans who were temporary workers, on-call workers, contract workers, or independent contractors or freelancers rose from 10.7 percent to 15.8 percent. During that same time period, workers hired through contract companies rose from 1.4 percent to 3.1 percent.<sup>1</sup> Today, responsible contracting practices are essential to attracting, retaining, and protecting a qualified workforce.*

## Better for Business

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Many companies maintain responsible contracting procedures and business models. These companies appreciate that everyone connected to their supply chain or business operation -- be they full time employees or contractors -- deserves decent wages and basic workplace protections. These companies have decided to:

- contract-out services with above-board contractors with built-in monitoring, clear contractual language, guaranteed payment schedules, and assurances that the contracted jobs provide labor protections;
- refrain from outsourcing at all so as to ensure high quality control and compliance with baseline labor protections throughout their operations or supply chain;
- not call their workers “independent contractors” but rather treat them as [employees](#), some in the fast-growing on-demand economy;<sup>2</sup> and
- develop partnerships with unions or other worker allied organizations to ensure that contracted jobs do not suffer in a wide range of larger contracted worksites like universities and hospitals.

## Responsible Practices

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Businesses can adopt and enforce responsible contracting practices through these four tools that can align a company’s practices with its values.

### **Responsible supply chain or business operations instrument, with enforcement mechanisms**

Businesses can take measures to ensure that, throughout their supply chain or overall business operations, labor standards are upheld. Industries likely to adopt these practices are in garment, technology, logistics and warehousing, fisheries, farming, and other food

supplies. Examples of good practices and resources include:

- Worker Rights Consortium: [Workplace Standards and Factory Obligations](#)<sup>3</sup>
- Equitable Food Initiative: [EFI Labor Standards](#)<sup>4</sup>

### **Responsible contractor policy (RCP)**

Responsible Contractor Policies (RCP) support and encourage fair wages and protections for workers employed by a company's contractors and subcontractors. Industries where these policies can be found are often in janitorial and building services, construction, manufacturing, warehouses, public sector, and hospitals. RCP's can also cover agreements with staffing or temp agencies. Examples of good practices and resources include:

- Bentall Kennedy: [Responsible Contracting Policy](#)<sup>5</sup>
- Panda Power Funds: [Responsible Contractor Policy](#)<sup>6</sup>
- Partnership for Working Families: [Policy & Tools: Responsible Contracting](#)<sup>7</sup>
- Santa Clara Valley Transportation Authority: [Contractor Pre-qualification Pilot Program](#)<sup>8</sup>
- Harvard University: [Wage & Benefit Parity](#)<sup>9</sup>

### **Franchising and franchisee agreements**

Responsible franchisors can play a critical role in informing and enforcing the labor standards of franchisees. This can happen in any franchise relationship, be it fast food, restaurant, home care, or other franchises. An example of a good practices includes:

- US DOL: [Agreement with Subway to Protect Workers](#)<sup>10</sup>

### **Proper employee classification**

Responsible companies should classify their employees as such, and not as independent contractors. In most instances, an individual performing labor or services for another should be covered as an employee under our employment laws, unless the person operates an independent business, with specialized skill, capital investment, and the ability to engage in arms-length negotiations over the terms of a job. Misclassification has been seen in industries such as: transportation, janitorial, logistics, home care and domestic work, construction, tech, and other sectors. Examples of good practices and resources include:

- Hello Alfred: [Company Efforts to Provide Good Jobs in the On-Demand Economy](#)<sup>11</sup>
- Munchery: [Delivery Team](#)<sup>12</sup>
- National Employment Law Project materials:
  - [Independent Contractor Misclassification Imposes Huge Costs on Workers and Federal and State Treasuries](#),<sup>13</sup>
  - [Independent Contractor vs. Employee: Why independent contractor misclassification matters and what we can do to stop it](#),<sup>14</sup>
  - [Independent contractor classification in home care](#).<sup>15</sup>
  - [Employers in the On-Demand Economy](#)<sup>16</sup>

### **Other resources**

- [The Road to Responsible Contracting](#), NELP<sup>17</sup>
- [Contracting that Works](#), NELP<sup>18</sup>
- [The Fissured Workplace: Why Work Became So Bad for So Many and What Can Be Done to Improve It](#), David Weil<sup>19</sup>
- [Administrator's Interpretation No. 2016-1](#), US Department of Labor<sup>20</sup>

## Contacts

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## Endnotes

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- <sup>1</sup> Lawrence F. Katz, Alan B. Krueger, *The National Bureau of Economic Research, The Rise and Nature of Alternative Work Arrangements in the United States, 1995-2015*, September 2016. <http://www.nber.org/papers/w22667>
- <sup>2</sup> Ruckelshaus, Catherine, NELP, *Independent Contractor vs. Employee: Why Misclassification Matters and What We Can Do to Stop It*, May 2016. <http://www.nelp.org/publication/independent-contractor-vs-employee/>
- <sup>3</sup> Worker Rights Consortium, *The Designated Suppliers Program*, February 2012. <http://www.workersrights.org/dsp/DSP%20Program%20Description.%202012.pdf>
- <sup>4</sup> Equitable Food Initiative, *Working together to produce food that's better for everyone*, retrieved April 2017. <http://www.equitablefood.org/about>
- <sup>5</sup> Brentall Kennedy, *Responsible Contracting Policy*, March 2015. [http://cr.bentallkenedy.com/Assets/Documents/RC%20Policy\\_2015.pdf](http://cr.bentallkenedy.com/Assets/Documents/RC%20Policy_2015.pdf)
- <sup>6</sup> Panda Power Funds, *Responsible Contractor Policy*, retrieved April 2017.
- <sup>7</sup> Partnership for Working Families, *Policy & Tools: Responsible Contracting*, retrieved April 2017. <http://www.forworkingfamilies.org/page/policy-tools-responsible-contracting>
- <sup>8</sup> Santa Clara Valley Transportation Authority, *Contractor Pre-qualification Pilot Program*, May 2003. [http://www.vta.org/inside/boards/packets/2003/06\\_jun/060503/21](http://www.vta.org/inside/boards/packets/2003/06_jun/060503/21)
- <sup>9</sup> Harvard University Strategic Procurement, *Wage and Benefit Parity policy*, retrieved April 2017. <http://procurement.harvard.edu/wage-benefit-parity>
- <sup>10</sup> U.S DOL blog, *Keeping it Fresh: New Agreement with Subway Will Protect Workers*, August 1, 2016, retrieved December 2016. <https://blog.dol.gov/2016/08/01/keeping-it-fresh-new-agreement-with-subway-will-protect-workers/> and *Department of Labor Agreement with Subway Will Keep Workers Protected From Wage Theft*, August 2, 2016. <http://waiterpay.com/2016/08/02/department-labor-subway-wage-theft-violations/>
- <sup>11</sup> Hello Alfred, *US Labor Secretary Thomas Perez Visits NYC-Based Start-up Hello Alfred*, December 7, 2016. <https://blog.helloalfred.com/us-labor-secretary-thomas-perez-visits-nyc-based-start-up-hello-alfred-19f6094bdce9>
- <sup>12</sup> Munchery, *Delivery Driver application*, retrieved April 2017. <https://munchery.com/jobs/219207/delivery-driver/>
- <sup>13</sup> NELP, *Independent Contractor Misclassification Imposes Huge Costs on Workers and Federal and State Treasuries*, July 2015. <http://www.nelp.org/content/uploads/Independent-Contractor-Costs.pdf>
- <sup>14</sup> Supra 1
- <sup>15</sup> NELP, *Independent Contractor Classification in Home Care*, May 2016. <http://www.nelp.org/content/uploads/Home-Care-Misclassification-Fact-Sheet.pdf>
- <sup>16</sup> NELP, *Employers in the On-Demand Economy: Why treating workers as employees is good for business*, March 2016. <http://www.nelp.org/content/uploads/Fact-Sheet-Employers-in-the-On-Demand-Economy.pdf>
- <sup>17</sup> NELP, *The Road to Responsible Contracting*, June 2009. <http://www.nelp.org/content/uploads/2015/03/responsiblecontracting2009.pdf>
- <sup>18</sup> NELP, Center for American Progress Action Fund, American Worker Project, *Contracting that Works: A Toolkit for State and Local Governments*, March 2010. <http://www.nelp.org/content/uploads/2015/03/ContractingThatWorks2010.pdf>
- <sup>19</sup> David Weil, *The Fissured Workplace, Why Work Became So Bad for So Many and What Can Be Done to Improve It*, May 2017. <http://www.hup.harvard.edu/catalog.php?isbn=9780674975446> and <http://www.fissuredworkplace.net/> and *How to Make Employment Fair in an Age of Contracting and Temp Work*, March 24, 2017. <https://hbr.org/2017/03/making-employment-a-fair-deal-in-the-age-of-contracting-subcontracting-and-temp-work>
- <sup>20</sup> US DOL, *AI 2016-1, Joint employment under the Fair Labor Standards Act and Migrant and Seasonal Agricultural Worker Protection Act*, January 20, 2016. [https://www.dol.gov/whd/flsa/Join\\_Employment\\_AI.htm](https://www.dol.gov/whd/flsa/Join_Employment_AI.htm)

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