



International
Labour
Office

Formalizing employment relationships in Domestic Work

International Labour Office
**Making Decent Work a Reality for Domestic Worker in Africa:
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What is an employment relationship?

An employment relationship is a legal link between employers and employees. It exists when a person performs work or services under certain conditions in return for remuneration. Indicators for the existence of an employment relationship are suggested in the ILO's Employment Relationship Recommendation, 2006 (No. 198).

Some possible indicators of an employment relationship

Countries have various ways and indicators for determining the existence of an employment relationship. Recommendation 198 suggests specific indicators that Member states may consider:

„ (a) the fact that work: is carried out according to the instructions and under the control of another party; involves the integration of the worker in the organization of the enterprise; is performed solely or mainly for the benefit of another person; must be carried out personally by the worker; is carried out within specific working hours or at a workplace specified or agreed by the party requesting the work; is of a particular duration and has a certain continuity; requires the worker's availability; or involves the provision of tools, material, and machinery by the party requesting the work;

(b) periodic payment of remuneration to the worker; the fact that such remuneration constitutes the worker's sole or principal source of income; provision of payment in kind, such as food, lodging or transport; recognition of entitlements such as weekly rest and annual holidays; payment by the party requesting the work for travel undertaken by the worker in order to carry out the work; or absence of financial risk for the worker.“

R198 Employment Relationship Recommendation, 2006, Paragraph 13

An employment relationship entails reciprocal rights and obligations between the employee and the employer. Its existence determines the application of labour and social security legislation and/or collective agreements regarding employees; in other words, an employee's rights to labour and social protection.

Informality of employment in domestic work: What does this mean?

Domestic work is a major segment of the informal economy in many countries around the world. The informality of employment in domestic work manifests itself in various ways. In some cases, the relationship between the domestic worker and the recipient of service rendered may be regarded as a traditional form of mutual assistance between families of the same clan or village, and thus treated more like a kinship arrangement, not an employment relationship. The domestic work arrangement may take on the characteristics of master-servant, an extension of colonial practices and sometimes of local customs. In these contexts, the performance of domestic work remains in the realm of family and personal relations and not perceived or acknowledged as being subject to formal public policies on labour and employment.

In other situations, the relationship between a domestic worker and the private individual who employs her may be based on the notion of contract; in other words, an agreed arrangement that implies mutual rights and obligations. But this arrangement may be governed by (private) contract law rather than (public) labour law, and thus also falls outside the scope of public policies in the field of labour, employment and social protection.

However, informality may also exist in situations where labour and social legislation clearly recognizes domestic workers as "workers" and the recipients of their service as "employers", and their arrangements as employment relationships governed by an employment contract with its associated statutory protections. In other words, the existence of labour law provisions governing domestic work by itself does not end informality of employment. Non-compliance with relevant laws may

be widespread in practice, and domestic workers might be employed without a clear agreement or understanding of the terms and conditions of their employment. Few domestic workers might be registered with the social security system even though they are entitled to coverage. These situations could be the result of a range of factors, including the pre-eminence of social customs and personalised arrangements over law; the predominance of oral and tacit agreements; the lack of knowledge of applicable laws among employers and workers; and inadequate capacity of institutions responsible for enforcement. It is also possible that the regulatory framework excludes certain categories of workers (e.g. part-time workers; live-out workers) or lack specific procedures and strategies for effective application of the law in domestic work.

There are also cases where workers and/or employers prefer not to declare the employment because of perceived net benefits. For example, some workers would prefer a higher take-home pay in lieu of social security deductions; or keep a low declared income to benefit from state subsidies. Migrant domestic workers without the appropriate work permit or migration status in Europe are undeclared.

Why is it important to formalize employment relationships in domestic work?

Informal employment (in various forms mentioned above) in domestic work, along with related uncertainties about the existence of an employment relationship, imply ambiguities as regards to the mutual rights and obligations of worker and employer. This has disadvantages for both parties, with particularly pronounced power imbalance in favour of employers.

Social norms and customs or tacit agreements do not provide adequate protection of domestic workers' fundamental human rights, which includes "just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity" and "rest and leisure, including reasonable limitation of working hours". To a large extent, the prevalence of long working hours,

absence of daily and weekly rest periods, sub-minimum wages, high incidence of delayed payment of wages, lack of access to medical care and social security including maternity benefits for women result from the lack of established, formal employment relationships.

Undoubtedly, many employers treat their domestic workers well but the absence of legal standards and formal contractual arrangements renders workers completely dependent on the goodwill of employers. As the subordinate party in the employment relationship, domestic workers are vulnerable to exploitation and abuse. In case of disagreements over wages and other terms of employment, they are in a weak position and lack concrete basis on which to raise and enforce any legal claims.

Formalizing employment relationship assists in achieving a better recognition of domestic workers as “real workers”, and of the important work they do for the safety, cleanliness and care of the household.

Formalizing the employment relationship also benefits employers. Statutory requirements are a useful guide for negotiating or proposing specific contractual arrangements with a prospective employee. Clarity and transparency in rights and obligations, in general, will help the parties to avoid misunderstandings, and implement their employment relationship in a harmonious manner. And in case of problems, the employer could also rely on law and formal contractual arrangement for redress and just resolution.

How to facilitate the formalizing of employment relationships in domestic work?

Briefly, several factors tend to promote informality of employment in domestic work, even in places where labour legislation explicitly governs it: the fact that it takes place in the private household away from public view and that it involves highly personalised relationships between the worker and the employer’s household; widely held perceptions that a domestic worker is a “like a member of the family”;

social customs and traditions that strongly influence the relationships between domestic worker and employer; a general reliance on oral or tacit agreements; and lack of power among workers to insist on formal contractual arrangements. To promote formal employment relationships, measures should take these factors into account and address them. As an entry point for achieving decent work for domestic workers, Convention No. 189 and Recommendation No. 201 put forward a set of measures to facilitate the formalization of the employment relationship in the context of domestic work.

1. Labour and social legislation: A first step towards facilitating formalized employment relationships is putting in place inclusive labour and social laws and regulations in line with international human rights and labour standards, including the Domestic Workers Convention, 2011 (No. 189). But this is not sufficient.

2. Recognition that domestic work is real work; domestic workers are workers with rights: Because social customs, imaginary kinship relationships, and vestiges of colonial and ancient traditions partly explain informal domestic work arrangements (as well as unacceptable forms such as domestic servitude, child labour and forced labour), concerted efforts towards changing attitudes and perceptions, and raising public consciousness about domestic workers’ rights and social value are necessary. Making domestic workers and their contribution to families and economies more “visible” to the public, such as through better data, contributes to these efforts.

3. Written employment contracts: Domestic workers should receive full information on their terms and conditions of employment, preferably through a written contract. Contracts lay down the key terms and conditions of employment (see Article 7 of the Convention and Paragraph 6 of the Recommendation). A written contract is a strong manifestation of formality and a proof

of existence of an employment relationship. It plays an important role in empowering domestic workers and is a guarantee of decent working conditions if applied. While the legislation of a country may not make a written contract mandatory, it can require employers to provide a written statement of particulars with specific provisions on the conditions of the employment.

Written contracts are essential for the protection of migrant domestic workers as they move from their country of origin to another country. They should receive the contract before travelling to the country of employment.

4. Information and understanding of terms and conditions of employment: Many domestic workers are not able to read or understand terms of contracts or statements of particulars, even when written, because they may be illiterate or have a different language. For this reason, they will need support (e.g. translation into their mother language) and explanation in more simple words. The same holds true for many employers who also need guidance in understanding his/her rights and obligations in an employment relationship, and how to define the terms and conditions of an employment contract.

5. Records: Payslips or other types of proof of payment, working time records, and the registration of contracts with a public body, are other ways of formalizing the employment relationship.

6. Easy, transparent procedures: Administrative procedures and institutions that make it easy for employers and workers to register employment contracts, register with the social security system and pay their social insurance contributions also promote formal employment in domestic work.

Proposed questions for discussion

1. In your country, what are the principal conditions and causes of informal employment relationships between domestic workers and the households they work for? What are the main obstacles to formalizing these employment relationships?
2. How can these challenges and obstacles be addressed in order to ensure protection of workers' rights and decent working conditions, while taking into account the concerns and rights of the households that employ domestic workers?
3. Do you have specific practices to share of formalizing the employment of