

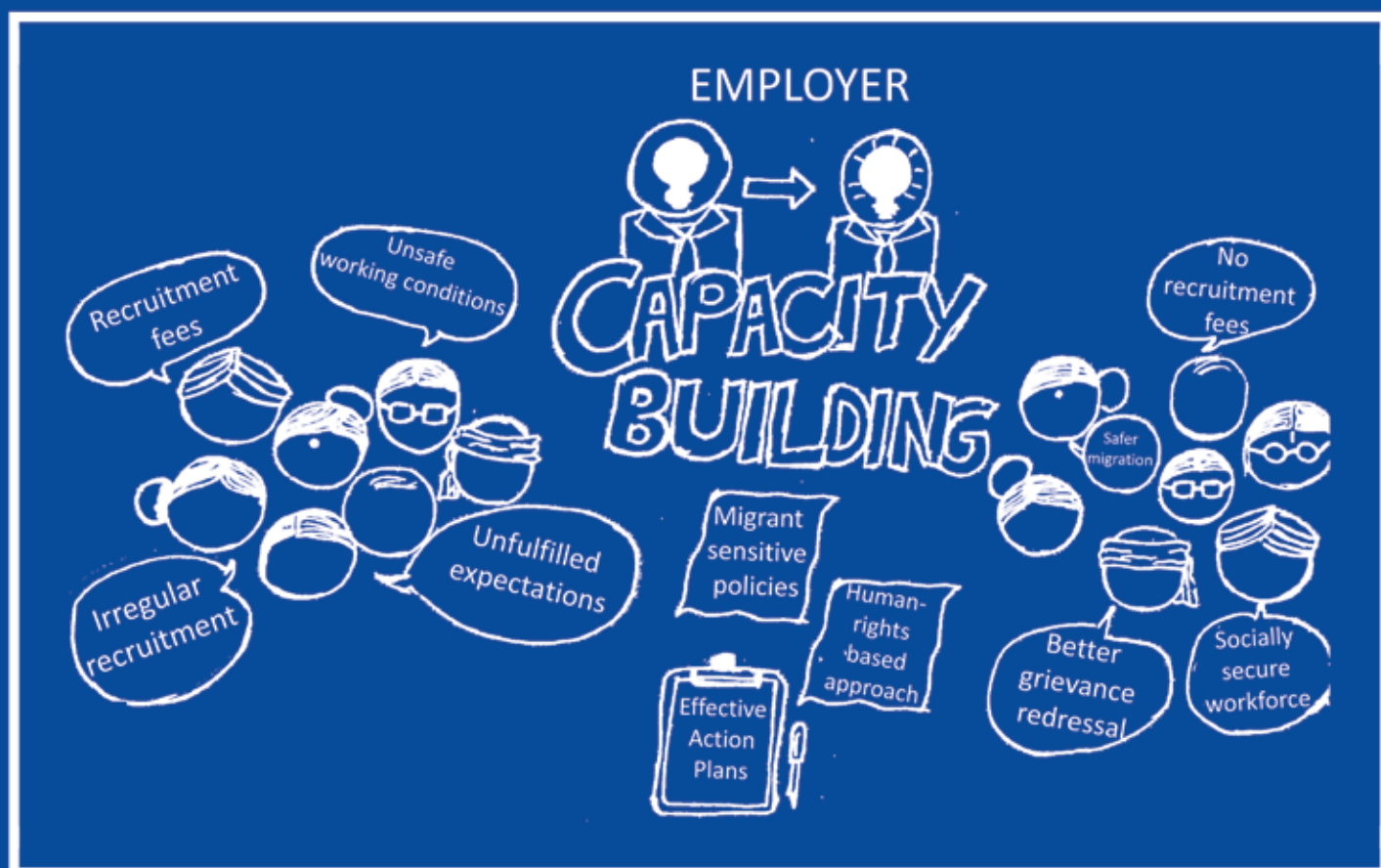
# Capacity Building

Pilot Programme on Fair and Ethical Recruitment and Employment Standards in the garment and textile sector in India

**PART I:** Recruitment and Deployment

**PART II:** Employment, Return and Onward Migration

September 2022



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Pilot Programme on Fair and Ethical  
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**PART I:** Recruitment and Deployment

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## List of Acronyms

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CREST Fashion	Corporate Responsibility in Eliminating Slavery and Trafficking in the Fashion Industry
COVID-19	Coronavirus disease 2019
CSS	Code on Social Security
DDU-GKY	Deen Dayal Upadhyay Grameen Kaushalya Yojana (A Government-led employment placement scheme)
EU	European Union
GDP	Gross domestic product
HR	Human Resource
ICCPR	International Covenant on Civil and Political Rights
ILO	International Labour Organization
IOM	International Organization for Migration
IRIS	International Recruitment Integrity System
ISMW	Inter-State Migrant Workmen
ICCPR	International Covenant on Civil and Political Rights
NGO	Non-Governmental Organization
OECD	Organisation for Economic Co-operation and Development
OSH	Occupational Safety and Health
POE	Protector of Emigrants
PPE	Personal Protective Equipment
P.A.C.E.	Personal Advancement & Career Enhancement
SIMA	Southern India Mills' Association
SMART	Specific, measurable, realistic and time-related
STRT	Slavery & Trafficking Risk Template
UNGPs	United Nations Guiding Principles on Business and Human Rights
USD	United States dollar

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# About the Manual

This manual was developed as part of the International Organization for Migration's (IOM) Capacity Building Pilot Programme on Fair and Ethical Recruitment and Employment Standards under CREST Fashion.

This manual was developed as part of the International Organization for Migration's (IOM) Capacity Building Pilot Programme on Fair and Ethical Recruitment and Employment Standards under CREST Fashion. The purpose of this manual is to help businesses employing migrant workers, particularly in the garment and textile industry, to reduce the risk of labour exploitation in their operations and supply chains through:

- Raising awareness and developing practical actions;
- Providing knowledge on fair and ethical recruitment and employment standards;
- Improving or establishing their internal migration management system at the company level.

This manual is divided into five chapters, in two parts:

## PART I

- The **first chapter** provides information about IOM and its work with the private sector. It also introduces the Capacity Building Pilot Programme and the benefits of adherence to fair and ethical recruitment and employment for businesses.

- The **second chapter** provides an understanding of the garment and textile industry, what labour exploitation is, where there might be risks in businesses' operations and supply chain, and their role in eradicating labour exploitation.
- The **third chapter** provides an understanding of the recruitment and employment stage, where there might be risks to migrant workers in this stage and the role of businesses in promoting the fair and ethical recruitment of migrant workers.

## PART II

- The **fourth chapter** provides understanding of the rights of workers during employment, businesses' responsibilities in protecting and upholding those rights, and mechanisms to support return journeys and onward migration of migrant workers.
- The **fifth chapter** provides an understanding of internal labour migration management systems that need to be in place prior to the hiring of migrant workers and be maintained during recruitment, employment and the facilitation of return or onward migration.

# Chapter I

Established in 1951, the International Organization for Migration (IOM) is the leading intergovernmental organization in the field of migration and works closely with governmental, intergovernmental and non-governmental partners.

This chapter provides information about IOM and its work with the private sector. It also introduces the Capacity Building Pilot Programme and the benefits of adherence to fair and ethical recruitment and employment for businesses.

## 1.1. Introduction to IOM

Established in 1951, the International Organization for Migration (IOM) is the leading intergovernmental organization in the field of migration and works closely with governmental, intergovernmental and non-governmental partners.

With 174 Member States, eight states holding observer status and offices in over 100 countries, IOM works to help ensure the orderly and humane management of migration to promote international cooperation on migration issues, to assist in the search for practical solutions to migration problems and to provide humanitarian assistance to migrants in need, including refugees and internally displaced people.

### 1.1.1. IOM's work with the private sector

IOM is also active in engaging the private sector in promoting fair and ethical recruitment and employment. Global supply chains are complex and involve a wide

range of actors, working at multiple sites, with goods and workers crossing multiple borders. Due to this complexity, businesses working in international supply chains are often unaware that their products may be fully or partly produced by migrant workers who may be subject to unethical recruitment and employment practices and at risk of labour exploitation.

Migrant workers employed in global supply chains may be highly vulnerable to poor working conditions, systematic and targeted abuse and exploitation, and human trafficking that could culminate into forced and/or bonded labour. IOM is actively engaged in addressing these vulnerabilities and has developed comprehensive expertise to assist private sector actors in enhancing procurement policies and reinforce the Employer Pays Principle<sup>1</sup>.

Under its Corporate Responsibility in Eliminating Slavery and Trafficking in the Fashion Industry (CREST Fashion) programme, a three-year regional initiative running from November 2018 until March 2022, IOM has partnered with global brands, suppliers and recruitment agencies operating in apparel and home textile supply chains in Bangladesh, Cambodia, India, Lao People's Democratic Republic and Thailand to promote responsible business conduct in line with the

<sup>1</sup> Employer Pays Principle: The worker does not pay any fees or costs for their recruitment and deployment. These costs are covered by the employer (company). The Employer Pays Principle is considered a best practice and is endorsed and promoted by different industry groups and an increasing number of governments. Available from: [https://iris.iom.int/sites/g/files/tmzbdl201/files/documents/Factsheet1-Overview-of-IRIS\\_2020.pdf](https://iris.iom.int/sites/g/files/tmzbdl201/files/documents/Factsheet1-Overview-of-IRIS_2020.pdf).



United Nations Guiding Principles on Business and Human Rights (UNGPs).<sup>2</sup> Between November 2018 and May 2021, **383 recruiter, brand and supplier representatives** have received training under CREST Fashion and enhanced their capacities to comply with fair and ethical recruitment standards and address risks of labour exploitation and trafficking facing migrant workers.

## 1.2. Introduction to the Capacity Building Pilot Programme on Fair and Ethical Recruitment and Employment Standards

All over the world, the business environment, including the garment and textile industry, is rapidly changing. This evolution is evident in the increasing interest and demand of consumers for sustainably and ethically produced goods, upcoming investment trends,<sup>3</sup> and strengthening of international and national frameworks governing business and human rights.

International frameworks on responsible business conduct such as the UNGPs and the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises<sup>4</sup> influence legislation around the world. As such, many countries are adopting legislation that is encouraging businesses to take action against risks of labour exploitation in their operations and supply chains.

Such legislation includes the Australian Modern Slavery Act,<sup>5</sup> the French Loi de Vigilance,<sup>6</sup> the United Kingdom's Modern Slavery Act,<sup>7</sup> the California Transparency in

Supply Chains Act<sup>8</sup> and the United States' Executive Order "Strengthening Protections Against Trafficking In Persons In Federal Contracts."<sup>9</sup> Most recently, in March 2021, the European Parliament voted in favour of binding European Union (EU) due diligence legislation, which applies to all businesses who wish to enter the EU internal market and its 450 million consumers.<sup>10</sup>

Under these frameworks, businesses have the responsibility to ensure due diligence and respect for human rights within their supply chains, including of the rights of migrant workers. Regardless of who recruited the migrant worker, employers are ultimately responsible for ensuring that all actors involved in the process, such as labour recruiters, sub-agents and brokers, follow fair and ethical recruitment and employment standards in accordance with national laws (at the very least) and international standards. Employers should particularly pay attention if they are operating in a region or industry known to be at risk of forced labour, as is the case of Asia and the Pacific region,<sup>11</sup> as well as the Gulf Cooperation Council region.<sup>12</sup> The costs of not complying, even if unwittingly, can be extremely high. Non-compliance may lead to criminal and civil liability as well as administrative penalties.

Under the CREST Fashion programme, IOM works with global brands and their suppliers to support them in upholding migrant workers' rights and adjusting operational models and management systems to prepare for the changing business and legislative environment. This capacity building pilot programme is based on IOM's field-tested methodologies and approaches

<sup>2</sup> International Organization for Migration, (IOM). (2020). CREST Fashion Information Sheet. Available from: [https://thailand.iom.int/sites/g/files/tmzbd11371/files/documents/IOM Infosheet - CREST Fashion.pdf](https://thailand.iom.int/sites/g/files/tmzbd11371/files/documents/IOM%20Infosheet%20-%20CREST%20Fashion.pdf).

<sup>3</sup> McKinsey & Company (14 December 2020). The future of sustainable fashion. Available from: [www.mckinsey.com/industries/retail/our-insights/the-future-of-sustainable-fashion](http://www.mckinsey.com/industries/retail/our-insights/the-future-of-sustainable-fashion).

<sup>4</sup> Organisation for Economic Co-operation and Development (OECD). (2011). OECD Guidelines for Multinational Enterprises. Available from: <https://mneguidelines.oecd.org/mneguidelines/>.

<sup>5</sup> Australian Modern Slavery Act 2018. Available from: [www.legislation.gov.au/Details/C2018A00153](http://www.legislation.gov.au/Details/C2018A00153).

<sup>6</sup> French Loi de Vigilance 2017. Available from: [www.legifrance.gouv.fr/loda/id/JORFTEXT000034290626/](http://www.legifrance.gouv.fr/loda/id/JORFTEXT000034290626/).

<sup>7</sup> UK Modern Slavery Act 2015. Available from: [www.gov.uk/government/collections/modern-slavery-bill](http://www.gov.uk/government/collections/modern-slavery-bill).

<sup>8</sup> California Transparency in Supply Chains Act 2010. Available from: <https://oag.ca.gov/SB657>.

<sup>9</sup> Executive Order 13627 - Strengthening Protections Against Trafficking in Persons in Federal Contracts. Available from: [www.govinfo.gov/app/details/DCPD-201200750](http://www.govinfo.gov/app/details/DCPD-201200750).

<sup>10</sup> European Parliament, Legislative initiative procedure 2020/2129(INL) Available from: [https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2020/2129\(INL\)](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2020/2129(INL)).

<sup>11</sup> International Labour Organization (ILO). (2021). Forced Labour in Asia and the Pacific. Available from: [www.ilo.org/asia/areas/forced-labour/WCMS\\_634534/lang-en/index.htm](http://www.ilo.org/asia/areas/forced-labour/WCMS_634534/lang-en/index.htm).

<sup>12</sup> ILO. (2013). Tricked and Trapped: Human Trafficking in the Middle East. Available from: [www.ilo.org/beirut/publications/WCMS\\_211214/lang-en/index.htm](http://www.ilo.org/beirut/publications/WCMS_211214/lang-en/index.htm).

as well as on international frameworks, including the Migrant Worker Guidelines for Employers<sup>13</sup>, the International Recruitment Integrity System (IRIS): Ethical Recruitment<sup>14</sup> Standard and the UNGPs. All these frameworks outline the responsibility of businesses to respect human rights regardless of the company's size, sector, operational context, ownership and structure.<sup>15</sup> Part of this responsibility is to ensure that workers, including migrant workers, do not fall victim to forced labour.

### 1.2.1. Benefits of adherence to fair and ethical recruitment and employment standards for businesses

- **Increased competitiveness:** Businesses who invest in identifying and addressing the risks of forced labour and exploitation in their operations will be more attractive to brands, as human rights due diligence requirements become increasingly mandatory.
- **New revenue and business opportunities:** New market trends are emerging in the global economy. Some of these trends, such as conscious consumerism, prove that supporting fair and ethical recruitment and employment for migrant workers is a concrete business opportunity for companies.<sup>16</sup>
- **Enhanced business reputation:** Businesses with a strong positive reputation are perceived as providing more value, which often allows them to charge a premium. Their customers are more loyal and buy broader ranges of products and services.<sup>17</sup>
- **Ensured trust from brands:** More brands are developing policies and codes of conduct that require all suppliers to comply with fair and ethical recruitment and employment standards. To ensure

trust from their buyers (brands), suppliers must prove that they follow through with their fair and ethical commitments.

- **Improved performance of migrant workers:** Fairly and ethically recruited migrant workers whose rights are respected have demonstrably higher morale that may translate into improved quality, efficiency and productivity in performance as well as fewer workplace grievances that often lead to absenteeism, work “slowdowns” or even legal action.<sup>18</sup>
- **Reduced employee turnover:** Migrant workers who are recruited fairly and ethically are more likely to be loyal to a company and satisfied with their job and the company's environment.<sup>19</sup>
- **Reduced risks of civil and criminal litigation:** All companies are required to comply with the laws of the country and state in which they operate. Businesses risk extensive fines, criminal and/or civil prosecution if they are found to be benefiting from the exploitation of workers.

### 1.2.2. Introduction to the Sustainable Business Transformation Model to Enhance Businesses' Management Skills

Improving labour conditions and recruitment practices for migrant workers may require organizational change. The capacity building pilot programme follows a Sustainable Business Transformation Model, which engages businesses and allows them to customize and lead their individual transformations from the onset. The Model ensures that businesses' challenges, priorities and needs are recognized, and is unique because it includes a capacity building component, through which IOM provides businesses with knowledge and skills to drive change in the industry in which they operate. This model follows eight steps (Figure 1).

<sup>13</sup> IOM. (2022). Migrant Worker Guidelines for Employers. Available from: <https://publications.iom.int/books/migrant-worker-guidelines-employers>

<sup>14</sup> IOM. (2021). IRIS Ethical Recruitment. Available from: <https://iris.iom.int>.

<sup>15</sup> United Nations Human Rights, Office of the High Commissioner. (2011). UN Guiding Principles on Business and Human Rights. Available from: [www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](http://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf).

<sup>16</sup> These data refer to a 2013 research, cited in Sobhan S., de Jongh R., Business and the Sustainable Development Goals: Why it matters, in Financing the UN Development System Pathways to Reposition for Agenda 2030, September 2017. Available from: [www.businesscalltoaction.org/news/business-and-the-sustainable-development-goals-why-it-matters](http://www.businesscalltoaction.org/news/business-and-the-sustainable-development-goals-why-it-matters).

<sup>17</sup> Eccles R.G., Newquist S.C., Schatz R. Reputation and Its Risks. In: Harvard Business Review, February 2007. Available from: <https://hbr.org/2007/02/reputation-and-its-risks>.

<sup>18</sup> Gallup. (2018). Three Requirements of a Diverse and Inclusive Culture and Why They Matter for Your Own Organization. Available from: [www.gallup.com/workplace/242138/requirements-diverseinclusive-culture.aspx](http://www.gallup.com/workplace/242138/requirements-diverseinclusive-culture.aspx).

<sup>19</sup> Vincent S Flowers and Charles L. Hoge. Why Employee Stays. In: Harvard Business Review, July 1973. Available from: <https://hbr.org/1973/07/why-employees-stay>.



**Figure 1. Sustainable Business Transformation Model**



1. **Create a sense of urgency:** Businesses are informed about why a change in their practices might be needed and why such change must happen.
2. **Build a guiding coalition:** A guiding coalition is required to sponsor and drive change in the industry in which they operate.
3. **Form vision and strategy:** Vision and strategy ensure that businesses know what the change will lead to. In this capacity building pilot programme, the goal is to align the businesses' recruitment and employment practices for migrant workers with the requirements outlined in international standards, such as IOM's Migrant Worker Guidelines for Employers and IRIS: Ethical Recruitment Standard.
4. **Enlist a volunteer army (communicate the vision and strategy):** Businesses are informed about how they can become champions of change and how they can set examples for other businesses who want to adhere to international recruitment and employment standards for migrant workers.
5. **Enable action by removing barriers:** Once businesses are informed of reasons to change, they are provided with means to make change happen. To empower businesses in leading change, businesses receive tailored capacity building using existing IOM/CREST methodologies and training modules that are aligned with international standards on recruitment and employment of migrant workers, such as IOM's Migrant Workers Guidelines for Employers and IRIS Standard.
6. **Generate short-term wins:** Throughout the programme, businesses report on the indicators they have developed to measure their self-determined targets to enhance their practices and policies on recruitment and employment of migrant workers.
7. **Consolidate change:** Upon completion of the programme, IOM consolidates good practices by collecting lessons learned from engaged partners.
8. **Institute change:** Once implemented, businesses have the option to communicate the results of change they achieved. Moreover, by the end of the programme, the coalition will generate an abundance of good practices and knowledge of challenges encountered.

# Chapter II

This chapter provides an understanding of the garment and textile industry, what labour exploitation is, where there might be risks in businesses' operations and supply chain, and their role in eradicating labour exploitation.

This chapter provides an understanding of the garment and textile industry, what labour exploitation is, where there might be risks in businesses' operations and supply chain, and their role in eradicating labour exploitation. It is divided into four sections:

- The first section provides an understanding of migration and the garment and textile industry.
- The second section provides an understanding of the journey of migrant workers.
- The third section provides an understanding of labour exploitation and its types, risks of labour exploitation to migrant workers and businesses and benefits to actions against labour exploitation.
- The fourth section informs businesses on their role in eradicating labour exploitation and designing a company-based action plan.

## 2.1. Migration and the garment and textile industry: What you should know

### Key facts about global migration

- There are 164 million international migrant workers globally, with men representing a slightly higher proportion of migrant workers than women.<sup>20</sup>



<sup>20</sup> IOM, World Migration Report 2020; ILO, ILO Global Estimates on International Migrant Workers: Results and Methodology. (2018).





**Key facts about migration and the garment and textile industry in India**

- India is the largest country of origin for international migrants. Around 17.5 million Indians are living abroad.<sup>21</sup>
- Internal migration is also significant in India. There are 453.6 million internal migrants in India, 65 million of whom are inter-state migrants.<sup>22</sup>
- The garment and textile industry is vital to India’s economy, with 2.3 per cent share to the country’s gross domestic product (GDP).<sup>23</sup>
- India’s garment and textile industry employs 45 million workers, many of whom are inter-state migrant workers.
- Workers in the garment and textile industry are often factory-based or home-based.



**2.2. Understanding the journey of migrant workers**

Migrant workers’ journey starts in their community or state of origin. This journey can be broken down into three distinct stages (Figure 2).

**Figure 2. Three stages of migrant workers’ journey**



**Recruitment and  
Deployment**



**Employment**



**Return or Onward  
Migration**

Migration routes and recruitment and deployment practices may vary, depending on country and migration context. The three different stages of the labour migration process involve many aspects and stakeholders in state of origin, transit and destination.

Understanding the unique needs and experiences of migrant workers at all stages of the labour migration process will build awareness of the risks they can face and their vulnerabilities. From this understanding, businesses can establish a safe, fair and respectful environment for migration and employment.

<sup>21</sup> IOM, World Migration Report 2020; ILO, ILO Global Estimates on International Migrant Workers: Results and Methodology (2018).

<sup>22</sup> Census of India, 2011.

<sup>23</sup> Government of India, Ministry of Textiles, 2019.



### 2.3. Labour exploitation: what you should know

Labour exploitation exists when working conditions deviate significantly from standard working conditions as defined by legislation or other binding legal regulations.<sup>24</sup> Labour exploitation usually concerns remuneration, working hours, leave entitlements, health and safety

standards and decent treatment. Violating workers' rights under national laws can be punishable.

A common form of labour exploitation is withholding, reducing or denying wages, which is prohibited in national laws or regulations. Severe forms of labour exploitation include forced labour, bonded labour or debt bondage, slavery or slavery-like practices and human trafficking.

**Figure 3. Key facts about labour exploitation**



#### 2.3.1. Types of labour exploitation

##### Forced Labour

All work or service that is exacted from any person under the menace of any penalty and for which the said person has not offered themselves voluntarily.<sup>25</sup>

##### Debt Bondage

Debt bondage occurs when a person offers labour in exchange for a loan or to pay off debt inherited from a relative.<sup>26</sup> The debt may be carried over for generations, trapping family members in a bonded labour system.

##### Slavery

The status or condition of a person over whom any or all the powers attaching to the right of ownership are exercised.<sup>27</sup>

##### Human Trafficking

The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.<sup>28</sup>

<sup>24</sup> European Union Agency for Fundamental Rights. (2015). Severe labour exploitation: workers moving within or into the European Union. Available from: [https://fra.europa.eu/sites/default/files/fra-2015-severe-labour-exploitation\\_en.pdf](https://fra.europa.eu/sites/default/files/fra-2015-severe-labour-exploitation_en.pdf).

<sup>25</sup> ILO Forced Labour Convention, 1930.

<sup>26</sup> UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956.

<sup>27</sup> UN Slavery Convention, 1926 Art.1(1).

<sup>28</sup> UN Palermo Protocol, 2000.

Labour exploitation can sometimes become woven into the social and cultural fabric, making it difficult to identify and address. For instance, child labour and bonded labour have immense social validation despite the obvious criminal elements which violate fundamental human rights. Migrants are disproportionately vulnerable, with an estimated 44 per cent of all labour exploitation victims having migrated either internally or across international borders.<sup>29</sup>

Throughout the supply chain, workers might be subjected to multiple forms of labour exploitation. It is, therefore, imperative that employers are aware of the national and international norms that prohibit all forms of labour exploitation and incorporate strict standards against its perpetration. Most instances of exploitation can be understood as a facet of forced labour.

### 2.3.2. Indicators of forced labour

Not all employer-worker relations lead to forced labour. One of the most effective methods/tools to detect and address forced labour in business operations is through the application of ‘indicators of forced labour’ developed by the International Labour Organization (ILO).<sup>30</sup> These indicators include:

**Figure 4. ILO’s indicators of forced labour**



#### Abuse of Vulnerability

An employer takes advantage of a worker’s pre-existing vulnerable position, or abuses vulnerability arising in the course of work, for example, to impose excessive working hours or to withhold wages.

#### Restriction of Movement

Company regulations that require that workers be locked up or guarded to prevent escape, without free entry or exit, such as measures of protection involving the use of surveillance, cameras and guards, are strong

<sup>29</sup> ILO. (2017). Global estimates of modern slavery: Forced labour and forced marriage. Available from: [www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms\\_575479.pdf](http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575479.pdf).

<sup>30</sup> ILO. (2012). ILO Indicators of Forced Labour. Available from: [www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_203832.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf).

indicators of forced labour. In contrast, restriction of movement within prescribed limits in hazardous employment is legitimate.

### Isolation

Workers may be confined to remote locations, denied contact with their relatives, friends and the outside world, or forcibly boarded in heavily fenced locations. Workers might not even know their whereabouts, especially migrant workers, and feel stranded without means of transportation.

### Physical and Sexual Violence

Violence, whether physical or sexual, may be used to control, threaten, intimidate and coerce, including forced consumption of drugs or to enforce compliance to conditions that are not part of the employment terms. Instances of sexual harassment, grievous hurt and injury, abduction or kidnapping, which also victimize family members, indicate a strong presence of forced labour.

### Intimidation and Threats

Psychological, mental and emotional violence against workers often includes threats like denunciation to the immigration authorities, loss of wages or access to housing or land, sacking of family members, worsening of working conditions or withdrawal of “privileges” such as the right to leave the workplace. Intimidation involving insults to undermine workers constitutes a form of psychological coercion designed to increase their sense of vulnerability.

### Retention of Identity Documents

Workers may be compelled to surrender their documents as a condition for employment. Whenever a situation hinders free access to these documents with a fear of loss of employment as well as the documents themselves, forced labour must be suspected.

### Withholding of Wages

Workers obliged to remain with employers who systematically and deliberately withhold wages to control workers or deny other employment opportunities without paying wages owed to them become victims of forced labour.

### Debt Bondage

Labourers working to pay off an incurred or inherited debt are often trapped in indentured servitude to employers and recruiters who undervalue their work, inflate interest rates to compound debts, make repayment impossible and exploit their socioeconomic condition. At times, children may be recruited in exchange for a loan given to their parents or relatives.

### Abusive Working and Living Conditions

Forced labour victims are likely to endure living and working conditions that workers would never freely accept. Bad working conditions without adequate sanitation, safety or privacy, which workers may be forced or coerced into, might indicate a forced labour occurrence that merits investigation. Prohibiting workers from seeking alternatives to the living environment also indicates confinement and isolation. Extremely bad working and living conditions alone do not prove the existence of forced labour; unfortunately, people may sometimes “voluntarily” accept bad conditions because of the lack of any alternative jobs.

### Excessive Overtime

As a rule of thumb, if employees must work excessive hours or days beyond what is allowed under national law, under some form of threat (such as dismissal or non-payment of wages), these conditions indicate forced labour.

### Deception

Deception relates to the failure to deliver what has been promised to the worker, either verbally or in writing. Instead, recruitment is done without workers’ free and informed consent, trapping them in abusive conditions. Had workers been aware of these conditions, they would never have accepted the job offer.

Forced labour happens at the most extreme end of the spectrum, which ranges from decent work to serious criminal exploitation. While not all substandard labour practices equate to forced labour, they can greatly increase the risk of forced labour ultimately occurring. It is important for businesses to look for these exploitative practices, such as workers not being paid fairly, being forced to work excessive hours or work in unsafe conditions, to identify the risk of forced labour.



**Figure 5. Spectrum of work conditions – from decent work to forced labour<sup>31</sup>**

<ul style="list-style-type: none"> <li>● <b>Forced Labour</b></li> </ul>	<ul style="list-style-type: none"> <li>● Worker cannot refuse or cease work because of coercion, threats or deception</li> <li>● Worker may be deprived of personal freedom</li> </ul>
<ul style="list-style-type: none"> <li>● <b>Dangerous or substandard working conditions</b></li> </ul>	<ul style="list-style-type: none"> <li>● Worker can refuse or cease work but doing so may lead to detriment</li> <li>● Worker is not paid fairly and does not receive some or all entitlements</li> <li>● Worker may be required to work excessive hours</li> <li>● Workplace is unsafe</li> </ul>
<ul style="list-style-type: none"> <li>● <b>Decent work</b></li> </ul>	<ul style="list-style-type: none"> <li>● Workers' rights respected</li> <li>● Worker free to refuse or cease work</li> <li>● Worker paid fairly (at least minimum wage)</li> <li>● Workplace is safe</li> </ul>

### 2.3.3. Potential risks posed to inter-state migrant workers in the garment and textile industry during recruitment and employment

Internal migrant workers in India could face several risks and experience protection gaps throughout their migration journey. In the Indian garment and textile

industry, many migrant workers work informally, which heightens the risks they face. This section outlines the risks and vulnerabilities of internal migrant workers in the garment and textile industry during the recruitment and employment stages.



#### Lack of Access to Formalized Recruitment Channels

Internal migrants often rely on informal, unregistered recruiters to support their migration. In the absence of enforceable contracts, these workers are more likely to be exploited during employment and face challenges in accessing grievance mechanisms and exercising their rights.<sup>32</sup>



#### Deceptive and Coercive Recruitment

Recruiters often do not provide migrant workers with accurate information about the nature of the work they will be doing, wages and working conditions. In 2015, it was found that four out of every five workers worked more hours than they had agreed to with the recruiter.<sup>33</sup>

<sup>31</sup> Adopted from Australian Department of Home Affairs, Modern Slavery Act 2018 – Guidance for Reporting Entities.

<sup>32</sup> International Dalit Solidarity Network. (2019). Bonded Labour Tainted Garments: The Exploitation of Women and Girls in India's Home-based Garment Sector. Available from: <https://idsn.org/portfolio-items/tainted-garments-the-exploitation-of-women-and-girls-in-indias-home-based-garment-sector/>.

<sup>33</sup> ILO. (2015). Insights into working conditions in India's garment industry. Available from: [www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_379775.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_379775.pdf).



### Contracts not Provided in Migrant Workers' Languages

Migrant workers often do not receive written contracts, or these are written in English or the local language where the employer is located, which migrants coming from other States in India cannot understand. In 2015, it was found that less than four out of every 10 workers received a written contract, and less than half understood its contents.<sup>34</sup>



### Debt Bondage

Recruiters primarily target unmarried girls and women aged 14–25 years belonging to lower casts. They are most vulnerable to exploitation, especially when forced to migrate on account of intergenerational debt bondage to pay off inherited debt.<sup>35</sup>



### Victim of Human Trafficking

In 2014–2015, approximately 200,000 children, mostly girls younger than 14 years, were working to produce cottonseed in farms across Andhra Pradesh, Telangana, Gujarat, Tamil Nadu, Karnataka and Rajasthan states and that these children were often trafficked from other states.<sup>36</sup>



### Lack of Access to Decent Living Conditions

Migrant workers face language and financial barriers when searching for housing. Consequently, they often live in factory hostels that can be cramped, unhygienic and lack basic amenities. Those choosing to rent rooms in the city often live in substandard housing, risking frequent and sudden evictions.<sup>37</sup>



### Lack of Access to Rights and Protections among Home-Based Workers

Contractual and home-based workers, who are disproportionately women belonging to marginalized communities, often receive 50–90 per cent less pay than the state-stipulated minimum wage. They also face challenges accessing medical care in case of work-related injuries.<sup>38</sup>

<sup>34</sup> ILO. (2015). Insights into working conditions in India's garment industry. Available from: [www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_379775.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_379775.pdf).

<sup>35</sup> Eldis (2011). Captured by cotton: exploited Dalit girls produce garments in India for European and US markets. Available from: [www.eldis.org/document/A66067?utm\\_source=feedburner&utm\\_medium=feed&utm\\_campaign=Feed%3A+eldis-csr+\(Eldis+Corporate+Responsibility\)](http://www.eldis.org/document/A66067?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+eldis-csr+(Eldis+Corporate+Responsibility)).

<sup>36</sup> India Committee of the Netherlands (2015). Cotton's Forgotten Children. Available from: [www.indianet.nl/pdf/CottonsForgottenChildren.pdf](http://www.indianet.nl/pdf/CottonsForgottenChildren.pdf).

<sup>37</sup> ILO (2020). Roadmap for developing a policy framework for the inclusion of internal migrant workers in India. Available from: [www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new\\_delhi/documents/publication/wcms\\_763352.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/publication/wcms_763352.pdf).

<sup>38</sup> International Dalit Solidarity Network (2019). Bonded Labour Tainted Garments: The Exploitation of Women and Girls in India's Home-based Garment Sector. Available from: <https://idsn.org/portfolio-items/tainted-garments-the-exploitation-of-women-and-girls-in-indias-home-based-garment-sector/>.





### Lack of Enforcement of Legal Protections

Migrant workers struggle to prove formal employment relations, thus wage protection laws cannot be implemented. Consequently, casual or intermittent migrant workers and those paid on a piece-rate basis fall outside the protection of minimum wages legislation.<sup>39</sup>



### Restrictions on Right to Collective Bargaining

Migrant workers may be discouraged from participating in unions due to lack of awareness that unions exist and employers' negative perceptions towards unions. The fragmented nature of production means many workers have little communication with others in the supply chain. Consequently, they are restricted in undertaking collective actions to address risks they face.<sup>40</sup>



### Occupational Health and Safety Risks

The Occupational Safety, Health, and Working Conditions Code 2020 only applies to workplaces with over 10 workers. Thus, it does not protect contractual workers or migrant workers working for small businesses. Micro, Small and Medium Enterprises may be registered under less stringent laws, which do not create pressing legal obligations to ensure decent work.<sup>41</sup>



### Violence in the Workplace

Migrant workers reported experiencing physical, psychological and sexual abuse.<sup>42</sup> Women workers face enhanced risks due to unequal power relationships between women and men. In Karnataka, it was found that 14 per cent of respondents were raped or forced to commit a sexual act, and 6 per cent experienced physical abuse.<sup>43</sup>



### Lack of Access to Grievance Mechanisms

Migrants' employment is often tied to their contractors, limiting their access to justice when experiencing harassment.<sup>44</sup> In 2015, only 20–40 per cent of factories had functional grievance mechanisms. When they do, these mechanisms often address minor rather than structural issues. Access to remediation is even more restricted for home-based workers, who lack social protections as well as access to collective bargaining.<sup>45</sup>

<sup>39</sup> ILO (2020). Road map for developing a policy framework for the inclusion of internal migrant workers in India. Available from: [www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new\\_delhi/documents/publication/wcms\\_763352.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/publication/wcms_763352.pdf).

<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

<sup>42</sup> ILO (2017). Working conditions of migrant garment workers in India. Available from: [www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_554809.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_554809.pdf).

<sup>43</sup> Sisters for Change (2018). Eliminating violence against women at work: Making sexual harassment laws real for Karnataka's women garment workers. Available from: [www.sistersforchange.org.uk/2018/06/20/eliminating-violence-against-women-at-work/](http://www.sistersforchange.org.uk/2018/06/20/eliminating-violence-against-women-at-work/).

<sup>44</sup> ILO (2020). Road map for developing a policy framework for the inclusion of internal migrant workers in India. Available from: [www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new\\_delhi/documents/publication/wcms\\_763352.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/publication/wcms_763352.pdf).

<sup>45</sup> ILO (2015). Insights into working conditions in India's garment industry. Available from: [www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_379775.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_379775.pdf).





### Restricted Freedom of Movement

Migrant workers, mainly women, may not be allowed to leave hostels outside of working hours or are given curfews. It was found that women migrant workers in Tamil Nadu were only permitted to leave their hostel two hours per week for reasons other than work, accompanied by a hostel warden.<sup>46</sup>



### 'Sumangali Scheme'

Some employers use the 'Sumangali Scheme,' a form of bonded labour, forced labour and soft trafficking, in which young women are offered a lump-sum payment at the end of their employment contract.<sup>47</sup>



### Lack of Access to Social Security

Social security provisions provided by the State have income ceilings,<sup>48</sup> limiting eligibility, and do not apply to the unorganized sector, meaning an increasing number of workers do not receive benefits.<sup>49</sup> Migrant workers also face barriers due to lack of awareness and of required domicile certificates in states.

#### 2.3.4. Effects of labour exploitation on businesses

A standalone business or supply chain networks that employ workers in the lower-wage categories and use subcontracting services risk being associated with labour exploitation. Low-wage, daily wage or piece-rated migrant workers are extremely vulnerable because they are hired through irregular and unsafe channels. In the supply chain network, the brand may not always have information on, control of, or a say in the practices and decisions at the factory level. This lack of awareness can affect the brand's reputation, and as the company might unwittingly become part of exploitative labour practices. Some of the common ways this occurs are:

- Through subcontractors: extensive use of subcontractors may increase the risk of subcontractors using illegal or undeclared labour or, in the worst case, forced labour.

- Recruitment and deployment and/or employment through temporary staffing/recruitment agencies may create a lack of transparency regarding recruitment, working and contract conditions.
- Direct employment: there may be a risk of the work being carried out by someone other than the employee and often under worse conditions (such as risks associated with home-based work).

Even if a company is not directly involved, being associated with charges of labour exploitation may have severe, long-term implications, including:

- Penalties for violating the law;
- Closure of business;
- Civil and criminal suits filed against the company;
- Loss of customers;
- Decline in sales and revenue;
- Poor reputation and damage to company image.

<sup>46</sup> ILO (2017). Working conditions of migrant garment workers in India. Available from: [www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_554809.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_554809.pdf)

<sup>47</sup> Mezzadri A. 2017. The Sweatshop Regime. Available from: [www.cambridge.org/core/books/sweatshop-regime/BC69E2879A9BE9AA341C5BBA1124E99C](http://www.cambridge.org/core/books/sweatshop-regime/BC69E2879A9BE9AA341C5BBA1124E99C).

<sup>48</sup> Ministry of Labour & Employment, Government of India (2017). Coverage. Available from: [www.esic.nic.in/coverage](http://www.esic.nic.in/coverage).

<sup>49</sup> Corporate Accountability Research (2016). Forced labour in the textile and garment sector in Tamil Nadu, South India. Available from: [www.indianet.nl/pdf/ForcedLabourTextileGarment.pdf](http://www.indianet.nl/pdf/ForcedLabourTextileGarment.pdf).



*A damaged image may be difficult and costly to restore.*

**2.3.5. Benefits to actions against labour exploitation**

**Build and protect company brand and industry reputation**

Businesses that invest in adopting and following fair and ethical business practices are likely to experience an uptick in customer and investor trust, therefore boosting a company’s market value. In contrast, allegations of labour exploitation in business operations and supply chains can cause serious damage to the reputation of a company, which can take years to rebuild.

**Meet expectations of customers and international buyers**

Consumers are increasingly questioning where their goods come from and the conditions in which they are made. Slavery-like practices are exposed and shared quickly online.

**More command over supply chain businesses**

Current practice shows that many big brands have introduced policies and codes of conduct as a precondition for business activity with their suppliers. Therefore, many big brands have developed policies and codes of conduct that require all suppliers to comply with labour and human rights standards. Businesses (suppliers) that adhere to these policies and codes can benefit from long-term partnerships with responsible buyers, while businesses that breach these conditions can lose contracts. Such practices also allow them to develop model behaviour and create a niche for themselves in the market.

**Protection from civil and criminal litigation**

At a minimum, all businesses are required to comply with the laws of the country and state in which they operate. Failure to do so is punishable with fines, fees or imprisonment.

**Increased competitiveness**

Businesses that treat their workers well by complying with all labour and human rights standards tend to have more productive workplaces, in which the rates of staff turnover are low and fewer workplace accidents and fewer work stoppages take place. Similarly, businesses that invest in fair and ethical recruitment practices and adopt the ‘Employer Pays Principle,’ tend to have workers who are motivated and better matched to their role. This, in turn, helps attract other motivated workers with the skills the company needs.





## 2.4. Role of businesses in eradicating labour exploitation and designing company-based action plans

While the primary responsibility lies with governments, businesses need to ensure that their practices are not contributing to labour exploitation risks and that efforts are in place to prevent occurrences in their operations and supply chains. The UNGPs are clear on the corporate responsibility to respect human rights throughout global supply chains. Part of this responsibility is to ensure that workers, including migrant workers, do not fall victim to labour exploitation.

**Human rights due diligence** is an ongoing process in which businesses manage potential and actual adverse effects on human rights that may be caused by or linked to their operations and supply chains. Human rights due diligence concerns risks to people, not risks to businesses. There are certain steps businesses should undertake to carry out human rights due diligence, respect human rights within their supply chains, and align business’ policies, practices and management systems with fair and ethical recruitment and employment standards.

One of these steps is to develop and implement an action plan for preventing and mitigating risks to migrant workers in their operation and business relationships. By designing their own action plan, businesses are in

charge of the changes they want to implement. With guidance from IOM through the capacity building pilot programme, businesses can set their own targets, techniques to achieve them and indicators to measure them based on their capacity and size.

### How can businesses develop their company-based action plan?

- Identify and prioritize risks to migrant workers during all labour migration stages;
- Draft a company-based action plan using the building blocks technique.

The building blocks technique is a guide for businesses in developing an action plan to address the priority risks. It includes different elements of an action plan such as (1) steps, actions and interventions; (2) performance indicators/monitoring; (3) responsibility for implementation; (4) timeline; and (5) communication (internal and external).

### Step 1: Identify and prioritize risks to migrant workers during all labour migration stages

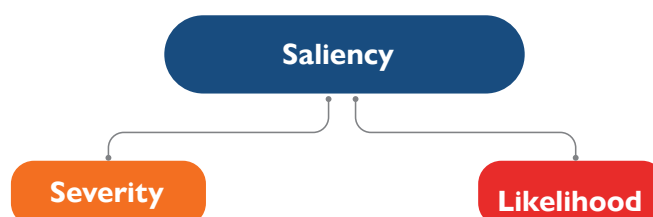
To identify risks, businesses can carry out in-depth assessments to understand how its business practices may negatively impact migrant workers during their recruitment and deployment, employment and return. The Learning Needs Assessment can help identify these risks.

*The Learning Needs Assessment is the survey that participating businesses filled out prior to the kick-off workshop. The survey contains questions on the company, workforce, supply chain, recruitment and employment practices, and responsible recruitment management system.*

*The outcomes of the Learning Needs Assessment contribute to identifying businesses’ challenges, gaps and needs regarding their management of migrant workers.*

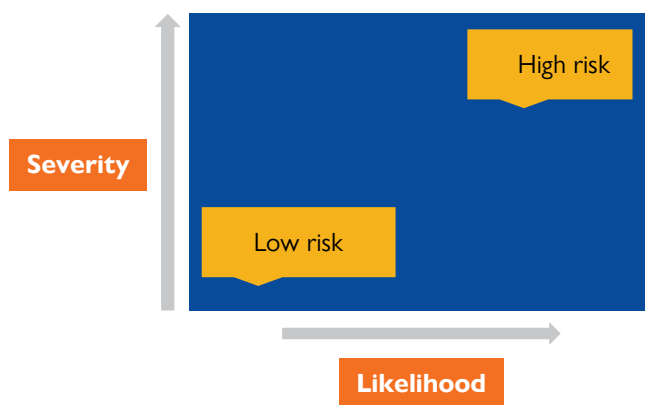
There are often many risks to migrant workers, but businesses cannot address all of them immediately. Therefore, they must identify the most urgent risks. The UNGPs recommend the adoption of various criteria to prioritize risks. One of them is based on “saliency”.

**Figure 6. Variables affecting saliency**



Saliency combines two variables: **severity** of the risk and **likelihood** that it will materialize. A **severe** risk is one that has a long-term impact on the worker (cannot be reversed) and is on a greater scale (many workers impacted). **Likelihood** refers to the degree of probability that the risk might occur.

**Figure 7. Prioritizing risks using saliency**



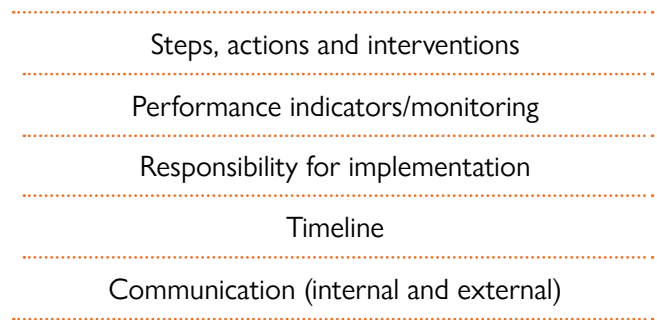
An example of a risk identified could be 'document retention'. This risk might be considered less severe than others because it can be reversed (by releasing the documents).

Another way of prioritizing risks is by using risk mapping tools such as the Slavery & Trafficking Risk Template (STRT).<sup>50</sup> The STRT helps businesses and their suppliers to work together to build socially responsible supply chains by facilitating accurate data collection. The template is a self-assessment questionnaire, in Excel format, used to collect data on human trafficking and labour exploitation-related risks in the supply chain.

**Step 2: Drafting a company action plan based on the building blocks technique**

Once risks are prioritized, businesses can draft a company action plan based on the building blocks technique.

**Figure 8. Building blocks of an action plan**



**Steps, actions and interventions**

Steps, actions, or interventions can be:

- Specific to a particular risk (for example in relation to one supplier, location or category of worker) or broad (a company-wide approach to a more widespread issue);
- Short term or long term;
- Single business actions or in collaboration with others.

Whatever the action, it is important that they are SMART (specific, measurable, realistic and time-related). Relevant actions relating to migrant workers may include:

- Supporting irregular migrant workers in accessing available regularization schemes provided by relevant government departments;
- Revising internal policies to include the prohibition of recruitment fees and related costs being charged to migrant workers;
- Developing comprehensive and standardized orientations for migrant workers to understand their rights at all stages of labour migration;
- Upgrading workers' accommodations to provide healthy, safe, hygienic, decent and gender-responsive living conditions (such as in the context of COVID-19);
- Providing additional trainings to business partners on company relevant policies and good practices to address identified human rights risks of migrant workers.

<sup>50</sup> Social Responsibility Alliance (2021). The Slavery and Trafficking Risk Template. Available from: Error! Hyperlink reference not valid. [www.socialresponsibilityalliance.org/strt/](http://www.socialresponsibilityalliance.org/strt/).

### Performance indicators/monitoring

Once steps, actions and interventions are set, businesses must have a mechanism in place to check that employees and business partners follow their policies, risk mitigation measures and action plans. Implementation monitoring is best done by a responsible entity with authority to objectively monitor progress and identify gaps in performance.

When developing performance indicators, ensuring that they are realistic is important. For instance, if payment of recruitment fees is identified as a priority risk area, it is perhaps unwise to have a performance indicator such as “in one year, no workers will pay fees.” Instead, performance indicators could be iterative, for instance “by next year, business partners such as key suppliers and labour recruiters will receive training on the Employer Pays Principle”<sup>51</sup> followed by “in two years, business partners such as key suppliers and labour recruiters will commit to the Employer Pays Principle,” and so on.

Implementation monitoring is best done by a responsible entity with authority to objectively monitor progress and identify performance gaps. Businesses can engage a diverse and representative group of migrant workers and their representatives at all stages of the labour migration process to understand their experience and uncover instances where the policies of business enterprise have not been followed by employees and/or business partners. Relevant actions relating to migrant workers may include:

- Engaging civil society organizations to support the monitoring of the recruitment and deployment process at the states of origin;
- Verifying directly with migrant workers upon their arrival if they have paid any recruitment fees and related costs;
- Using technology to overcome language barriers and collect regular worker feedback on company policies and processes.

### Responsibility for implementation

For effective execution of steps and actions, identifying a responsible individual or group is crucial. Responsibilities

can be allocated to one person or shared between several people in a group, team or department. It might be determined that internal resources are insufficient and that external resources are necessary. External resources might be used to build the capacity of responsible persons within an organization, or to take on certain responsibilities if necessary.

### Timeline

Actions and results can be achieved on the short and long term. Whatever the timeline for action, it is important for action planning that timelines are both realistic as well as connected to the set objectives, key performance indicators and key risk indicators of the company. A timeline for action against labour exploitation should be aligned with most other goals and objectives of the company.

### Communication (internal and external)

Communication involves communicating actions internally within an organization, as well as external communications where relevant, for example, to customers.

Communicating how risks are addressed is also crucial, since transparency can mitigate risks of labour exploitation. With due regard to commercially sensitive information, businesses can share information with internal and external stakeholders about their policies, identified risks, how they addressed and mitigated risks relating to migrant workers and outcomes they achieved. Such communication could include publishing relevant reports and statements (for example, on the company’s website).

Clearly communicating results and actions provides an opportunity to show leadership in tackling labour exploitation to customers, consumers, employees, governments, civil society organizations, trade unions and other relevant stakeholders. In addition, for some businesses, transparent communication is a legal requirement. Mapping how results will be communicated is easy when performance indicators are met. However, it is more challenging to map a communication strategy when problems arise, or results are not met.

<sup>51</sup> Responsible Recruitment Gateway (2021). The Employer Pays Principle. Available from: [www.ihrb.org/employerpays/the-employer-pays-principle](http://www.ihrb.org/employerpays/the-employer-pays-principle).



**Figure 9. Example of an action plan**

Priority Risk Area	Steps, Actions and Interventions	Performance Indicators / Monitoring	Responsibility for Implementation	Timeline	Communication (Internal and External)
<p>Migrant workers are being charged excessive recruitment fees and costs. To afford these costs, migrant workers borrow money from lenders, which can lead to debt bondage.</p>	<p>Make a commitment to adhering to the Employer Pays Principle, amend internal policies accordingly and ensure that policies are communicated to and well understood by business partners (such as labour recruiters).</p>	<p>The company staff and its business partners receive training on the Employer Pays Principle.</p> <p>The company and its business partners adhere to the Employer Pays Principle and compliance is being monitored.</p>	<p>Training on the Employer Pays Principle to be conducted by staff who participated in the capacity building pilot programme or by the Human Resource team.</p> <p>Monitoring business partners: Audit Team</p> <p>Communications: Communications Team</p>	<p>Within 6 months (January 2022–June 2022)</p> <p>Within 1 year (January 2022–December 2022)</p>	<p>The ‘Employer Pays Principle’ policy is communicated to internal and external stakeholders, including all business partners, and migrant workers and their representatives, in languages they understand. The policy, and its outcomes and results, are also being published.</p>
<p>Migrant workers have limited understanding of the migration process and of their rights.</p>	<p>Develop comprehensive pre-departure orientations for migrant workers in a language they can understand to enhance their understanding of their employment terms and conditions as outlined in the contract, and of their rights under applicable national legislation.</p> <p>Require business partners (labour recruiters) to provide migrant workers with pre-departure orientation.</p>	<p>One comprehensive pre-departure orientation manual is developed.</p> <p>Two hundred newly recruited migrant workers have participated in pre-departure orientation trainings prior to their departure.</p>	<p>Businesses in coordination with civil society organizations, trade unions, migrant worker representatives, and migrant workers.</p> <p>Businesses in coordination with labour recruiters, civil society organizations, and trade unions, migrant resource centres, (among others)</p>	<p>Within six months (January 2022–June 2022)</p> <p>Within one year (January 2022–December 2022)</p>	<p>The training manuals are provided to internal and external stakeholders, including migrant workers, in languages they understand, and are displayed on the business enterprise’s website and at the workplace.</p>

# Chapter III

This chapter provides an understanding of the recruitment and deployment stage, where there might be risks to migrant workers in this stage and the role of businesses in promoting the fair and ethical recruitment of migrant workers.

This chapter provides an understanding of the recruitment and deployment stage, where there might be risks to migrant workers in this stage and the role of businesses in promoting the fair and ethical recruitment of migrant workers. It is divided into three sections:

- The first section provides an understanding of the recruitment and deployment stage, how the journey of migrant workers begins and the common challenges and risks they experience during this stage.
- The second section informs employers of their responsibilities to promote fair and ethical recruitment under national and international legal frameworks.

- The third section explains what fair and ethical recruitment is and provides practical guidelines for employers.

## 3.1. Understanding the recruitment and deployment stage

When employers need workers and cannot find them locally, they may seek to hire migrant workers from other states or outside of the area in which they operate. For migrant workers, the journey starts in their community or state of origin. This journey can be broken down into three distinct stages: recruitment and deployment, employment and return or onward migration.

**Figure 10. Three distinct stages of a migrant worker's journey**



**Recruitment and  
Deployment**



**Employment**



**Return or Onward  
Migration**



Understanding the unique needs and experiences of migrant workers during all stages of the labour migration process will help employers establish a safe, fair and respectful environment for migration and employment. This chapter focuses on the first stage: recruitment and deployment.

### 3.1.1. How the journey of migrant workers begins

Whether they are hiring workers directly or through labour recruiters, employers have the responsibility to ensure that migrant workers are treated fairly and ethically. This recruitment process is often complex, involving numerous actors and processes, which makes monitoring hard.

During this stage, migrant workers respond to job advertisements and are screened and interviewed before being hired. They are also required to undergo the necessary medical tests. In addition, migrant

workers are provided with an employment contract and are prepared for their roles and migration journey, for instance, through undergoing comprehensive pre-departure orientations. Once migrant workers arrive at their destination, migrant workers often must undergo additional medical tests and take steps to obtain security clearances. As part of the deployment process, employers must provide migrant workers with a post-arrival orientation.

The recruitment and deployment stages involve many stakeholders in both the state of origin of the migrant worker as well as in the state of the worksite. Stakeholders include but are not limited to labour recruiters and/or sub-agents; employment agencies; medical, training, transport and housing providers; government departments; and the employer. Although all these actors are involved in, and directly in charge of these processes, employers are responsible for ensuring that these are conducted fairly and ethically.

**Figure 11. Common aspects and actors involved during the recruitment and deployment phase**



### 3.1.2. Common challenges and risks experienced by migrant workers in the garment and textile industry during the recruitment and deployment stage

With the numerous aspects and actors involved in the recruitment and deployment stage, migrant workers

may face risks during this process. These risks, when not addressed nor mitigated, could lead to exploitation.

Inter-state migrant workers in India, including in the garment and textile industry, may face challenges and risks during the recruitment and deployment stage (Table 1).

**Table 1. Common challenges and risks faced by migrant workers during the recruitment and deployment stage according to IOM’s Migrant Worker Guidelines for Employers**

Recruitment carried out by unlicensed or unauthorized sub-agents and/or labour recruiters	Breaches of privacy, including the disclosure of personal information without consent
Worker-paid recruitment fees and related costs, linked to financial loans with high interest rates and potential debt bondage	Contract substitution, where their original employment contract is later replaced with a contract with less favourable terms and conditions
Lack of transparency and/or inaccuracy of terms and conditions of employment	Unsafe conditions of transportation and/or lodging during migration/deployment
Inadequate information about wage payments and deductions	Personal documents withheld
Discrimination during the screening and interview process	No written employment contracts or contracts are in languages migrant workers do not understand

At the onset, labour recruiters and their business partners (such as sub-agents or brokers) may charge inter-state migrant workers with recruitment fees and related costs, despite the existence of a state policy forbidding the charging of fees to nationally recruited workers.<sup>52</sup> Charging fees can lead to exorbitant debts owed to recruiters and/or employers, culminating in exploitative employment conditions.

Labour recruiters may also provide migrant workers with misleading information about jobs, offer unclear terms and conditions or provide them with employment contracts in a language they cannot understand. Because they lack accurate and correct information regarding their migration journey and employment, migrant workers are unable to make well-informed decisions

regarding their migration. Moreover, they may be obliged to accept working terms and conditions different and/or worse than what they had agreed to in their home state, as they are unlikely to learn of the deception until they arrive at the worksite’s location. However, once migrant workers have arrived at the worksite, they have likely already spent a large amount of time and money to secure employment and are not able to decline or reject the terms and conditions offered.<sup>53</sup>

In some instances, migrant workers’ personal documents may also be withheld during the recruitment and deployment stage. Withholding migrant workers’ personal documents, such as their identity cards or ATM cards, restricts their freedom of movement and may put them at risk of forced labour.

<sup>52</sup> ILO (2020). Global Study on Recruitment Fees and Related Costs. Available from: [www.ilo.org/global/topics/labour-migration/publications/WCMS\\_761729/lang--en/index.htm](http://www.ilo.org/global/topics/labour-migration/publications/WCMS_761729/lang--en/index.htm)

<sup>53</sup> ILO (2017).



Regardless of who carried out the recruitment, employers play a significant role in facilitating the fair and ethical recruitment and employment of migrant workers

### 3.2. The responsibility of employers to promote fair and ethical employment

The impact of unethical recruitment practices on migrant workers has been acknowledged globally by stakeholders, including governments, businesses and civil society. Such acknowledgement has spurred an increase in national and international legal frameworks aiming to promote fair and ethical recruitment and employment as an important pathway to end the exploitation of migrant workers in international supply chains.

When recruiting and employing migrant workers, employers must adhere at least to applicable national legislation. However, countries may face challenges in effectively implementing and enforcing their legislation. Moreover, national legislation might not always align with international human and labour rights standards. Where international standards and applicable laws differ, employers should follow the higher standard to ensure the respect of migrant workers' rights.

This section focuses on the national legal framework regulating fair and ethical recruitment and employment of inter-state migrant workers in India as well as international legal frameworks on fair and ethical recruitment and employment of migrant workers that employers have a responsibility to adhere to.

#### 3.2.1. Fair and ethical recruitment

To put it simply, fair and ethical recruitment means hiring migrant workers lawfully, in a fair and transparent manner that respects their dignity and human and labour rights.

Definitions of “fair” and “ethical” recruitment are rooted in existing international standards and conventions. ILO’s C181-Private Employment Agencies Convention (1997) establishes clear protections for jobseekers, notably respect for the fundamental principles and rights at work and prohibition of fee-charging to jobseekers. This convention has been further elaborated in ILO’s General Principles and Operational Guidelines for Fair Recruitment, promoting transparency and fairness for the benefit of both workers and employers. Some key principles of fair and ethical recruitment are:

- Every worker should enjoy freedom of movement.
- No worker should pay for their job.
- No worker should be indebted or coerced to work.

#### 3.2.2. National legal framework on fair and ethical recruitment and employment in India

Recognizing the increasing number of Indians migrating to other states for employment, the Government of India has undertaken efforts to regulate the recruitment process and improve the protection of migrant workers. Migration within the garment sector in India is very high and attracts workers from across the country. Continuing from traditional crafts in garment making, handloom and embroidery, the textile industry is highly lucrative and sought after for employment in garment hubs such as Tirupur in Tamil Nadu, Jaipur in Rajasthan, Bengaluru in Karnataka and places throughout the National Capital Region, to name but a few.<sup>54</sup>

Millions of migrant workers are employed in the garment and textile sector in India. Therefore, employers of inter-state migrant workers are required to abide by at least a set of labour laws and regulations, including but not limited to:

- The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (ISMW);
- The Occupational Safety and Health and Working Conditions Code (OSH), 2020;
- The Equal Remuneration Act, 1976.

#### Key national regulations in India and international standards on the recruitment of inter-state migrant workers in the garment and textile industry

This section explains the regulatory framework governing the recruitment and hiring of inter-state migrant workers in India. Table 2 provides a summary of key regulations for employers and international standards. These obligations were selected by IOM from across the legal frameworks listed above.

<sup>54</sup> Migrants in India’s textile sector | India Development Review (idronline.org)



**Table 2. Regulations regarding the recruitment of inter-state migrant workers**

Indicators	National Regulations	International Standards
Providing necessary paperwork	<p>Under Section 12 (1) (b) of the ISMW, an employer must issue a passbook to every contract worker. This passbook features a passport-size photograph of the worker and must contain information in Hindi, English or the language of the worker on issues related to their employment, such as:</p> <ul style="list-style-type: none"> <li>• Name and place of the establishment where the worker is employed;</li> <li>• Period of work;</li> <li>• Proposed rates and modes of payment of wages;</li> <li>• Payable displacement allowance;</li> <li>• Return fare payable to the worker upon the expiry of the period of employment, in such contingencies, as may be prescribed by the government and as specified in the employment contract;</li> <li>• Deductions made.</li> </ul>	<p>Under Principle 1.6 of IOM's Migrant Worker Guidelines for Employers, employers in coordination with labour recruiters must secure the right type of visa and exit and entry permits for migrant workers prior to their departure.</p>
Employment qualifications	<p>Constitutional provisions that prohibit any manner of discrimination on sex, caste, creed, age, religion and other such factors are in place.<sup>55</sup> In this regard, employers can only seek and collect select information from workers and only as necessary for the fulfilment and realization of the job.</p> <p>For instance, under the Information Technology Rules (2011), the governing legislation on data protection in India, any sensitive or personal data can only be collected for lawful purposes concerned with the functioning of the company.<sup>56</sup> This limitation is also applicable during the recruitment process.</p> <p>Moreover, under Section 5 of the Equal Remuneration Act, 1976, employers shall not make any discrimination against women during the recruitment process.</p>	<p>Under Principle 1.4 of IOM's Migrant Worker Guidelines for Employers, migrant workers must be selected based on merit, without discrimination or coercion.</p>

<sup>55</sup> Article 15 (1) of the Indian constitution. (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

<sup>56</sup> L&E Global (2020). Employment law overview India 2019-2020. Available from: [LEGlobal-Employment-Law-Overview\\_India\\_2019-2020.pdf](#)



Indicators	National Regulations	International Standards
Charging recruitment fees and related costs	Under Section 49 of the OSH (2020), employers are prohibited from charging fees, commission or costs for recruitment and employment to workers.	Under Principle 1.2 of IOM's Migrant Worker Guidelines for Employers, migrant workers must not be charged recruitment fees and related costs throughout the entire labour migration process.  Under Principle 7 of ILO's General Principles and Operational Guidelines for Fair Recruitment, no recruitment fees or related costs should be charged to or otherwise borne by workers or job seekers.
Employment contracts	Section 6 of the OSH states that every employer must issue an appointment letter to every employee.	Under Principle 8 of ILO's General Principles and Operational Guidelines for Fair Recruitment, employers must ensure that a written employment contract is provided to workers and that such contract is transparent and understood by the worker.
Operating licence and certificate	Under Section 47 of the OSH, no employer can: a) supply or engage workers to another establishment; or b) undertake or execute the work on a contractual basis without a license issued by the appropriate authority.	Under Principle 1.1 of IOM's Migrant Worker Guidelines for Employers, employers have the duty to check that labour recruiters are licensed, have no court decisions or administrative sanctions against them and that they adhere to ethical recruitment principles.

### 3.2.3. International legal framework on fair and ethical recruitment

Despite efforts to mitigate the risks faced by migrant workers, changes in national legislation may not be aligned with international standards. The UNGPs were

endorsed by the United Nations Human Rights Council in 2011 to provide a key international framework for governments and all types of businesses in terms of their responsibilities to protect, respect and remedy human rights in international supply chains.<sup>57</sup>

**Figure 12. Pillars of the UNGPs**



<sup>57</sup> United Nations Human Rights Office of the High Commissioner (2011). UN Guiding Principles on Business and Human Rights. Available from: [www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](http://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf).

The UNGPs are clear on the corporate responsibility to respect human rights throughout global supply chains. Under the second pillar, all types of businesses, regardless of their size, sector, operational context, ownership and structure, have a responsibility to respect the human rights of all workers in their supply chain.<sup>58</sup> To do so, businesses are required to carry out ongoing human rights due diligence to proactively manage and address potential and actual adverse human rights consequences in which they could be involved. Migrant workers have specific vulnerabilities that need to be addressed by businesses during their migration journey.

Under the third pillar, all types of businesses have a responsibility to provide an effective remedy to workers whose rights are violated. To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.

The UNGPs have been well received by governments, civil society and businesses and are reflected in various international standards, principles and frameworks. These include the **OECD Guidelines for Multinational Enterprises and ILO's Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy**, both of which provide guidance to businesses on responsible business conduct, similar to the tenets of the UNGPs.

Moreover, in recent years, substantial progress has been achieved to strengthen the international framework on recruitment. These include ILO's Private Employment Agencies Convention (No. 181), 1997,<sup>59</sup> ILO's General Principles and Operational Guidelines for Fair Recruitment and Definition of Recruitment Fees and Costs,<sup>60</sup> IOM's Montreal Recommendations on Recruitment,<sup>61</sup> IOM's IRIS: Ethical Recruitment,<sup>62</sup> and IOM's Migrant Worker Guidelines for Employers. The Migrant Worker Guidelines for Employers, which align with international human rights and labour standards and frameworks on labour migration, provide practical guidance to employers on how to recruit and employ migrant workers responsibly.

IOM's Migrant Worker Guidelines for Employers provide five key overarching principles and practices that must be upheld by employers throughout all stages of labour migration, including the recruitment and deployment stage (Figure 13).

Among these practices, employers should facilitate a regular migration process in accordance with applicable laws relating to migration and employment. Migrant workers should enjoy treatment equal to that of national workers and confidentiality of their personal data; they should have access to effective grievance mechanisms and remedy from the onset of recruitment and during employment and return. As an important lesson learnt during the coronavirus disease 2019 (COVID-19) pandemic, employers must include migrant workers in their planning and response to various types of crises while recognizing the specific risks facing migrant workers.

<sup>58</sup> The responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and ILO's Declaration on Fundamental Principles and Rights at Work.

<sup>59</sup> ILO (1997). C181 - Private Employment Agencies Convention, 1997 (No. 181). Available from: [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312326](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312326).

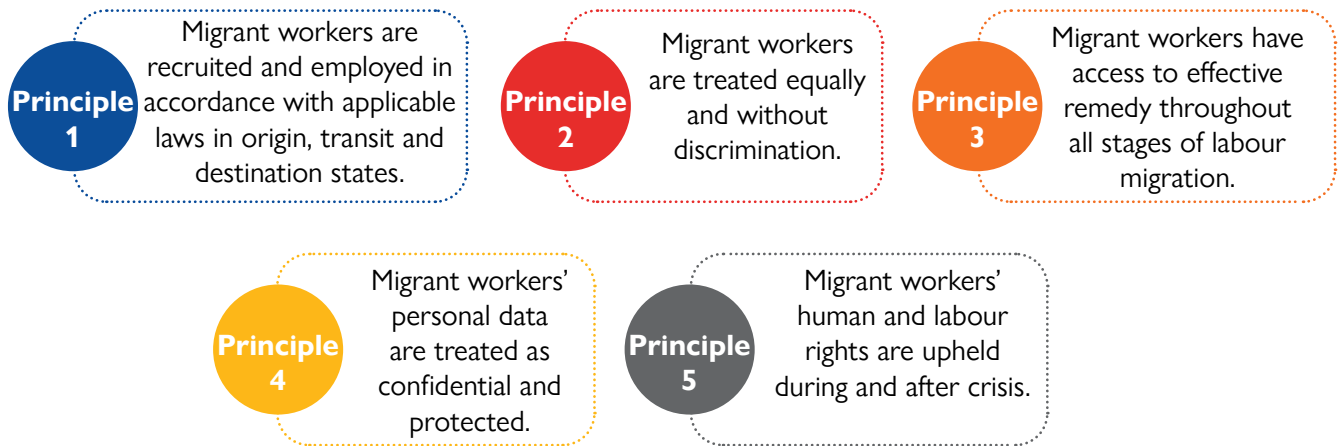
<sup>60</sup> ILO (2019). General principles and operational guidelines for fair recruitment and definition of recruitment fees and related costs. Available from: [www.ilo.org/global/topics/fair-recruitment/WCMS\\_536755](http://www.ilo.org/global/topics/fair-recruitment/WCMS_536755).

<sup>61</sup> IOM (2020). The Montreal Recommendations on Recruitment: A Road Map towards Better Regulation. Available from: [publications.iom.int/books/montreal-recommendations-recruitment-road-map-towards-better-regulation](http://publications.iom.int/books/montreal-recommendations-recruitment-road-map-towards-better-regulation).

<sup>62</sup> IRIS: Ethical Recruitment has been created by IOM and a coalition of partners from government, civil society and the private sector and is based on existing international instruments, as well as related codes and best practice from the recruitment industry. The IRIS Standard explains what fair and ethical recruitment means in practice. Available from: [www.iris.iom.int](http://www.iris.iom.int).



**Figure 13. Key overarching principles and practices that employers must uphold throughout all stages of labour migration according to IOM’s Migrant Worker Guidelines for Employers**



**3.3. Practical guidelines for employers in the garment and textile industry on fair and ethical recruitment and employment**

This section provides practical guidelines to employers for recruiting and employing international and inter-state migrant workers responsibly within their own operations. These guidelines have been developed by IOM as part of its Migrant Worker Guidelines for Employers in collaboration and consultation with its partners and stakeholders. These guidelines are informed by IOM’s extensive experience working with governments, civil society, migrant workers and the private sector, as well as by the collection of good practices of employers, labour recruiters and multinational enterprises. These guidelines are primarily for human resources (HR) and

all personnel engaging with migrant workers and can be integrated into existing company policies, procedures and practices.

Besides these guidelines, IOM is developing an Employer Guidebook on Ethical Direct Recruitment of Inter-State Migrants in the Garment Industry in India for improving the capacity of businesses in India towards fair and ethical recruitment of inter-state migrant workers. The Guidebook is especially meant for employers who directly recruit inter-state migrant workers within the garment industry and contains concrete operational guidance for strengthening fair and ethical direct recruitment, decent work and access to remedy while highlighting good practices for employers to consider and replicate. The Guidebook has also been developed with a special focus on the gender dimension in direct recruitment.

**Table 3. Guidance and principles during the recruitment and deployment phase**

Guidance	Principle
1. Screening, Contracting and Monitoring Labour Recruiters	Migrant workers are recruited directly or through ethical labour recruiters.
2. Recruitment Fees and Related Costs	Migrant workers are not charged recruitment fees and related costs throughout the entire labour migration process.
3. Transparency and Access to Accurate Information	Migrant workers have access to accurate information about all terms and conditions of migration and employment.

Guidance	Principle
4. Selection of Candidates	Migrant workers are selected based on merit, without discrimination or coercion.
5. Employment Contracts	Migrant workers voluntarily sign a written employment contract in a language they understand prior to their departure.
6. Pre-Departure and Travel	Migrant workers safely travel from their community or state of origin to their location of work.

### 3.3.1. Screening, contracting and monitoring labour recruiters

Employers can recruit migrant workers either directly or through ethical labour recruiters. In both instances, employers are responsible for the fair and ethical hiring of migrant workers. To do so, employers shall:

**Table 4. Practical guidelines for screening, contracting and monitoring labour recruiters**

1.	Where feasible, hire migrant workers directly or participate in available public employment services. For instance, Indian employers can recruit inter-state migrant workers through the DDU-GKY programme of the Ministry of Rural Development. <sup>63</sup>
2.	Conduct due diligence on all potential labour recruiters. Due diligence includes checking that labour recruiters are licensed, have no court decisions and administrative sanctions against them and adhere to fair and ethical recruitment principles. <sup>64</sup>
3.	Enter into service agreements with selected labour recruiters, requiring the labour recruiters to comply with all relevant company policies. There should be a clear protocol in case any of the involved parties breaches such policies. Where labour recruiters are involved in both states of origin and destination, the agreement should cover all three parties.
4.	Require labour recruiters to carry out their own ongoing due diligence and maintain transparency on their business partners, including sub-agents.
5.	Regularly audit labour recruiters and monitor their improvement plan to ensure continuous compliance with fair and ethical recruitment requirements.
6.	Where possible, hire local staff in the state or community of origin of the migrant worker, or work with trusted civil society organizations to provide oversight of the recruitment process.

<sup>63</sup> Ministry of Rural Development (2018). Available from: <http://ddugky.gov.in/content/employ#how-we-engage-with-employers>.

<sup>64</sup> The IRIS Standard is a global standard that defines what ethical recruitment looks like in practice for labour recruiters. It consists of seven principles, which include respect for applicable laws and international standards, prohibiting the charging of recruitment fees and costs to migrant workers and respect for transparency in employment terms and conditions.

*A verification interview can be conducted with migrant workers upon their arrival to check whether labour recruiters complied with fair and ethical recruitment practices. Questions and tips for conducting verification interviews with migrant workers are provided in Annexes 1 and 2.*

### 3.3.2. Recruitment fees and related costs

During the recruitment and deployment stage, it is also the employer’s responsibility that migrant workers are not charged any recruitment fees and related costs. Employers can do so this by undertaking the following actions:

**Table 5. Practical guidelines to ensure migrant workers are not charged recruitment fees and related costs**

1.	Make a policy commitment to implement the “Employer Pays Principle” in accordance with ILO’s definition of recruitment fees and related costs. Communicate this commitment to internal and external stakeholders, including jobseekers and labour recruiters.
2.	Include an itemized list of all recruitment fees and related costs in the service agreement with the labour recruiter.
3.	Where possible, pay recruitment fees and costs directly and avoid migrant workers fall into financial debt to secure their employment. When this commitment has not been adhered to, reimburse migrant workers within 30 days of their arrival at the workplace.
4.	Take proactive due diligence measures to prevent labour recruiters from recouping or double-charging additional recruitment fees or costs to migrant workers (for example, interviews with migrant workers upon their arrival or other means to confirm no fees or costs were charged, clearly defined sanctions for labour recruiters in the service agreement in the case of such breaches). Where such illegitimate charges are found, fully reimburse migrant workers in a timely manner.

#### What are recruitment fees and related costs?<sup>65</sup>

According to ILO, recruitment fees include:

- a. Payments for recruitment services offered by labour recruiters, whether public or private, in matching offers of and applications for employment;
- b. Payments made in the case of recruitment of workers with a view to employing them to perform work for a third party;
- c. Payments made in the case of direct recruitment by the employer;
- d. Payments required to recover recruitment fees from workers.

<sup>65</sup> ILO (2109).

Related costs are costs required to secure access to employment or placement or imposed during the recruitment process. These costs may include:

- a. Medical costs: payments for medical examinations, tests or vaccinations;
- b. Insurance costs: costs to insure the lives, health and safety of workers, including enrolment in migrant welfare funds;
- c. Costs for skills and qualification tests: costs to verify workers' language proficiency and level of skills and qualifications, as well as for location-specific credentialing, certification or licensing;
- d. Costs for training and orientation: expenses for required trainings, including on-site job orientation and pre-departure or post-arrival orientation of newly recruited workers;
- e. Equipment costs: costs for tools, uniforms, safety gear and other equipment needed to perform assigned work safely and effectively;
- f. Travel and lodging costs: expenses incurred for travel, lodging and subsistence within or across national borders in the recruitment process, including for training, interviews, consular appointments, relocation and return or repatriation;
- g. Administrative costs: application and service fees that are required for the sole purpose of fulfilling the recruitment process. These could include fees for representation and services aimed at preparing, obtaining or legalizing workers' employment contracts, identity documents, passports, visas, background checks, security and exit clearances, banking services and work and residence permits.

### What is the Employer Pays Principle?<sup>66</sup>

This principle means workers do not pay any fees or related costs for their recruitment and deployment – these costs are covered by the employer (company). The Employer Pays Principle is considered a best practice and is endorsed and promoted by an increasing number of governments and different industry groups. For instance, the Leadership Group for Responsible Recruitment, of which IKEA, Walmart and HP, among others are part, has committed to the eradication of recruitment fees being charged to workers anywhere by 2026.<sup>67</sup>

While this model may initially appear to be a more expensive option for employers and recruiters, within the context of risk management it proves to be more cost-efficient in the long term.

For example, if an unethical recruitment agency provides a worker that is not suitable for the employer, there would be additional costs for the employer in repatriating the worker, recruiting a replacement worker, and possibly even receiving fines if any law were breached.

<sup>66</sup> IRIS: Ethical Recruitment. Available from: [https://iris.iom.int/sites/g/files/tmzbdl201/files/documents/Factsheet1-Overview-of-IRIS\\_2020.pdf](https://iris.iom.int/sites/g/files/tmzbdl201/files/documents/Factsheet1-Overview-of-IRIS_2020.pdf).

<sup>67</sup> The Leadership Group for Responsible Recruitment (2021). Available from: [www.ihrb.org/employerpays/leadership-group-for-responsible-recruitment](http://www.ihrb.org/employerpays/leadership-group-for-responsible-recruitment).



### 3.3.3. Transparency and access to accurate information

When migrant workers have access to accurate information, they can make informed decisions about their migration and better prepare for their lives in

a new environment. Employers are responsible for ensuring that migrant workers have access to accurate information about all the terms and conditions of migration and employment. Employers can do so by undertaking the following actions:

**Table 6. Practical guidelines to ensure transparency and migrant workers’ access to accurate information**

1.	Check that the vacancy announcement in the state of origin of the migrant worker provides an accurate description of the terms and conditions of employment and adheres to fair and ethical recruitment principles such as non-discrimination and prohibiting the charging of recruitment fees and costs to jobseekers.
2.	Require labour recruiters to monitor the practices of any involved sub-agents and confirm that accurate and transparent information is being provided to jobseekers from the start of recruitment.
3.	<p>Prior to the interview and selection stage, conduct an interactive session for jobseekers to outline the terms and conditions of recruitment, deployment, employment, and return or onward migration in a language they can understand. It is recommended that this information session is delivered directly by a trained and competent representative of the employer. The information session may include but is not limited to the following topics:</p> <ul style="list-style-type: none"> <li>a. Working and living in the location of the worksite;</li> <li>b. Workplace and living environment;</li> <li>c. Recruitment and migration process;</li> <li>d. Terms and conditions of employment;</li> <li>e. Occupational health and safety;</li> <li>f. Grievance mechanisms.</li> </ul>

### 3.3.4. Selection of candidates

When decisions regarding the selection of workers are based on fair and objective criteria, employers can recruit people with the right skills and qualifications. Employers

are responsible for ensuring equal opportunities and that migrant workers are selected based on merit, without discrimination or coercion. Employers can do so by undertaking the following actions:

**Table 7. Practical guidelines for selection of candidates**

1.	Interview and select candidates based on the required skills and qualifications to perform the work. It is important for the employer to participate directly in the screening, interviewing and selection process to provide adequate oversight of the process and identify the candidates who are most qualified for the advertised position.
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2.	Verify that migrant workers meet the legal minimum age requirements to work in the destination where the worksite is located.
3.	Provide a written copy of the employment contract to candidates with sufficient time for review.
4.	Where additional skills or language training is needed as a condition of employment, monitor the practices of training providers to ensure effectiveness and mitigate risks of harm to migrant workers, such as additional training costs charged to the jobseekers.

### 3.3.5. Employment contracts

A written employment contract defines the main aspects of the employment relationship, proves its existence and regulates the relation between the parties. Employers are responsible for ensuring that migrant workers voluntarily sign a written employment

contract in a language they understand prior to their departure. When migrant workers understand their rights and responsibilities in the location of work, they can make informed decisions and prepare well for migration. Employers can do so by undertaking the following actions:

**Table 8. Practical guidelines for providing employment contracts**

1.	Provide migrant workers with employment contracts that include terms and conditions that are clear, accurate, simple, compliant with applicable laws and in a language the migrant workers understand.
2.	Establish a clear procedure for the selected candidates to accept the employment offer and sign their employment contract well in advance of their departure. Migrant workers are free to withdraw from the recruitment process at any point.
3.	Ensure that the initial employment contract signed by the migrant worker prior to departure is not substituted at a later stage for another employment contract with less favourable conditions to the migrant worker.

Prior to their departure, migrant workers will need to complete several steps, including passing medical tests, obtaining permits and undertaking pre-departure orientation. Pre-departure orientation programmes are designed to provide departing migrant workers with information on their rights and responsibilities as

well as on the life in the worksite’s location to ease their transition into a new environment. Employers are responsible for facilitating these steps and ensuring that migrant workers safely travel from their community or place of origin to their location of work. Employers can do so by undertaking the following actions:

**Table 9. Practical guidelines for ensuring that migrant workers safely travel from their community or place of origin to their location of work**

1.	In coordination with the labour recruiter, ensure migrant workers participate in official pre-departure orientation training in the state of origin. These orientations are typically a requirement of applicable laws and regulations and provided by public services or accredited organizations and/or service providers.
2.	In coordination with the labour recruiter, civil society organizations and trade unions, provide supplementary pre-departure training to migrant workers that includes information about their rights and obligations, travel, working and living conditions, and on how to access relevant grievance mechanisms. Additional trainings should be provided upon arrival at the workplace and accommodation.

3.	In coordination with the labour recruiter, monitor medical service providers in the state of origin (and later in the state of destination, if applicable) to ensure any required medical examinations are carried out in accordance with applicable laws and regulations. No pregnancy or human immunodeficiency virus (HIV) tests should be administered unless required by law.
4.	Ensure the labour recruiter promptly returns migrant workers' identity documents upon completion of necessary administrative steps. Labour recruiters should be required to keep written logs about their handling of migrant workers' personal documents.
5.	In coordination with the labour recruiter, make all necessary arrangements for safe travel and lodging for migrant workers, from their communities in the state of origin to their accommodation in the state of destination.
6.	Determine if labour recruiters followed fair and ethical recruitment principles by interviewing migrant workers upon their arrival. In case breaches are found, take prompt follow-up action (for instance, reimbursement of recruitment fees and costs, corrective action with recruiters).
7.	Ensure the safe return of all migrant workers who are unable to meet the entry and work requirements of the state of destination or wish to return within the initial period of their employment.

**Case study on companies in the garment and textile industry that took action to end unethical recruitment: Patagonia**

Outdoor clothing retailer Patagonia announced in its company blog in July 2015 that labour brokers in Taiwan were charging migrant workers USD 7,000 for factory jobs, creating a form of debt akin to labour exploitation. Furthermore, it continued, this was happening “in our own supply chain.”

The company went on to say that social responsibility audits in 2011 had revealed red flags that led Patagonia to commission the non-governmental organization (NGO) Verité to conduct in-depth migrant worker assessments with four Taiwanese suppliers.

Among other findings, the investigation discovered that it could take a worker two years to repay a labour broker but that most contracts last only three years, after which the worker has to return home and begin the process from scratch, again having to pay fees.

As a result, Patagonia set out to develop a new standard, introduce changes in its supply chain, repay current workers and share the new standards with other companies that want to eradicate similar practices by their suppliers.

The new migrant worker standard was developed with Verité and is intended to cover pre-hiring practices, labour contracts, wages and fees, living and working conditions, grievance procedures and repatriation. It also intended to put a stop to practices such as retaining workers’ passports.

In 2015, the company hosted a forum to explain the new standard and inform suppliers they must stop charging fees to foreign workers hired on or after 1 June 2015. The rest of the standard came into force in December that year.



Suppliers could choose to pay the fees themselves or hire workers directly without the use of brokers; they were told to repay workers. Patagonia staff also met officials from Taiwan's Ministry of Labour Workforce Development Agency, who agreed to provide training to suppliers.

The standard states that legitimate fees that can be charged to migrant workers include the cost of transportation from the worker's home directly to the recruitment centre or embarkation point and passport fees.

The standard also underscores that fees and expenses should be clearly communicated to foreign workers in a language they understand at the beginning of the recruitment process before they leave their country.

Suppliers must retain pertinent documentation on these workers for five years, in case an audit is conducted, and pay such fees directly whenever possible.

Patagonia has now applied the migrant worker standard to its entire supply chain.

The full story is available from: [www.cips.org/supply-management/analysis/2016/february/slavery-case-study-patagonia/](http://www.cips.org/supply-management/analysis/2016/february/slavery-case-study-patagonia/)

### **Case study on companies in the garment and textile industry that took action to end unethical recruitment: Malaysia-based garment factory**

In 2018, Impactt carried out an in-depth investigation at a Malaysia-based garment factory (Company X) on behalf of Company A. Based on the results of the investigation, Company A sought to bring together a Buyers' Group to drive leverage and consistency in the remediation process. A coalition of five buying companies (Buyers Group) was formed.

The factory employed a mixed-migrant workforce of over 200 workers from Bangladesh, Myanmar, Nepal, the Philippines and Sri Lanka. Investigation findings included passport retention, deceptive recruitment practices, recruitment fees, disciplinary penalties and fines and poor supervisor behaviour, amongst others.

Workers had experienced exploitation by recruitment agents, their sub-agents and government officials along the recruitment journey, and by factory management and supervisors on arrival.

In response to the findings, the Buyers Group committed to a Memorandum of Understanding (MoU) and used their collective leverage to drive changes for workers as well as to improve management practices at the factory. Supported by the Buyers' Group, Impactt worked with Company X management for 12 months to:

1. Develop a remediation plan with the factory's management. This plan was designed to address assessment findings by implementing improved policies and practices across the Company.
2. Reimburse recruitment fees to all workers and strengthen Company X's recruitment due diligence. Recruitment fees were reimbursed to all workers using the Universal Payment approach.
3. Operate a trusted helpline for workers. The helpline is available to workers in Hindi, Bengali and Indonesian languages. It has received more than 100 calls since it was launched and has been used to keep in touch with workers, gather feedback on whether they are noticing the impact of remediation activities, and assist where required.



4. Address worker-supervisor dynamics through Impactt's RESTART training programme. Built on social psychology techniques, RESTART training helps improve relationships and communication between workers, foremen, supervisors and management staff. The outcomes of the training are to improve participant's ability to communicate more positively, see others as individuals rather than numbers, and co-create mutual 'commitments' for better communication across nationalities and work levels.
5. Verify implementation of the plan. Regular verification visits showed areas of progress as well as opportunities for further improvement.

The full story is available from: [https://impacttlimited.com/wp-content/uploads/2020/02/Impactt\\_Ethical-Recruitment\\_Case-Study\\_v.8\\_Feb2020\\_Final.pdf](https://impacttlimited.com/wp-content/uploads/2020/02/Impactt_Ethical-Recruitment_Case-Study_v.8_Feb2020_Final.pdf)

### Case study: Establishing code of conduct to protect migrant workers

The Southern India Mills' Association (SIMA) is a body with over 700 members from the clothing industries in southern India. In 2019, SIMA drafted a new code of conduct according to which female employees between the ages of 16 and 19 years could not be made to work in night shifts.

An estimated 45 million workers, mostly women, are employed in India's garment and textile industry, with major hubs in the southern states of Tamil Nadu and Karnataka. However, numerous studies have shown that low pay, intimidation, sexual harassment and other abusive working conditions are common, with the standard working week often exceeding 60 hours.

The association took this step after reports of labour exploitation surfaced. This exploitation was partly caused by pressure to suppliers to deliver quickly and cheaply.

One of the main reasons SIMA took this step, according to the General-Secretary of SIMA, was to "create confidence in the mind of the global buyer that workers' needs are being taken into account" with "zero tolerance to any form of abuse,"<sup>68</sup> from recruitment to retirement.

Although the new Code of Conduct is voluntary, it contains legal provisions for practices that were already in effect in India. The Code is mainly intended to "help factories meet international labour standards as well as complying with legal requirements."<sup>69</sup>

<sup>68</sup> Al Jazeera (2019). Take teen girls off night shift, Indian factories told. Available from: [www.aljazeera.com/economy/2019/1/7/take-teen-girls-off-night-shift-indian-factories-told](http://www.aljazeera.com/economy/2019/1/7/take-teen-girls-off-night-shift-indian-factories-told).

<sup>69</sup> Ibid.



# Chapter IV

This chapter provides understanding of the rights of workers during employment, businesses' responsibilities in protecting and upholding those rights, and mechanisms to support return journeys and onward migration of migrant workers.

This chapter provides understanding of the rights of workers during employment, businesses' responsibilities in protecting and upholding those rights, and mechanisms to support return journeys and onward migration of migrant workers. It is divided into two sections:

- The first section provides an understanding of the **employment stage**, including the challenges faced by migrant workers in the garment and textile industry, the responsibilities of their employers to promote fair and ethical employment under national and international legal frameworks, and practical guidelines for employers.
- The second section provides an understanding of migrant workers' **return and onward migration**, including the challenges they face in the garment and textile industry, the responsibilities of their employers to facilitate migrant workers' safe return and onward migration under national and international legal frameworks, and practical guidelines for employers.

## 4.1. Employment stage

This is the stage when migrant workers begin their employment at the worksite in the state of destination. Employers of migrant workers are responsible for providing them with decent working conditions. If accommodation is provided by the company, employers are also responsible for providing good living conditions.

In addition, it is also the employer's responsibility to provide additional support to the migrant worker in the state of destination, such as information regarding safe accommodation, how to access social welfare and other benefits, provision for kindergarten facilities, and information about the host state/region/area for smoother adaptation. All information provided to migrant workers shall be provided in a language they can understand.

This section outlines the challenges faced by interstate migrant workers in the garment and textile industry, the responsibilities of employers based on national legislation and international standards, as well as practical guidelines for employers to promote fair, ethical and legal employment of migrant workers.

### 4.1.1. Safe, decent and respectful work environment

A safe, decent and respectful work environment means that all workers, including migrant workers, are protected from occupational accidents or diseases, discrimination and harassment. It is also an environment where their rights and entitlements are respected.

Migrant workers may be at risk of work-related accidents or diseases, especially if they are not provided with the necessary Personal Protective Equipment (PPE) for work in a factory or with adequate information about workplace safety and working and living conditions



before they start their employment in languages they can understand. In India, while laws are in place to ensure decent work, and new protective provisions have been introduced recently,<sup>70</sup> contractual or home-based migrant workers often lack access to protection due to lack of transparency, which is often the case with migrant workers in the garment and textile industry.<sup>71</sup>

In addition, migrant workers in India’s garment and textile industry may face discrimination in the workplace. In a study conducted by ILO in 2017, migrant workers in the industry reported experiencing physical, psychological and sexual abuse.<sup>72</sup> Women workers face enhanced risks due to unequal power relationships between women and men. A study conducted in Karnataka in 2018 found that 14 per cent of respondents were raped or forced to commit a sexual act, and 6 per cent experienced physical abuse.<sup>73</sup>

Key national regulations in India and international standards on ensuring migrant workers’ safe, decent and respectful work environment

In India, a national legal framework to ensure a safe, decent and respectful work environment for migrant workers in the garment and textile industry exists. These laws include but are not limited to:

- The *Occupational Safety, Health and Working Conditions Code of 2020*;
- The *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act of 2013*.

However, national legislation might not always align with international human and labour rights standards. While employers must adhere at least to applicable national legislation, they should strive to follow the higher standard to respect migrant workers’ rights.

Table 10 presents a summary of key national regulations and international standards that employers must adhere to.

**Table 10. National regulations and international standards on ensuring a safe, decent and respectful work environment**

Indicator	National Regulations in India	International Standards
Occupational Safety and Health	Under the <i>Occupational Safety, Health and Working Conditions Code of 2020</i> , every employer must ensure that the workplace is free from hazards that cause or are likely to cause injury or occupational disease to the workers. <sup>74</sup>	Under Principle 2.1 of IOM’s <i>Migrant Worker Guidelines for Employers</i> , employers must ensure that migrant workers enjoy safe, decent and respectful employment and working conditions.
Discrimination, Harassment, and Abuse	Under the <i>Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act of 2013</i> , every employer shall provide a safe working environment for workers. Employers shall treat sexual harassment as misconduct and initiate action for such misconduct. If a woman worker chooses to file a complaint in relation to sexual harassment, employers shall also provide her with assistance. <sup>75</sup>	

<sup>70</sup> Occupational Safety, Health, and Working Conditions Code 2020.

<sup>71</sup> International Dalit Solidarity Network (2019). *Bonded Labour Tainted Garments: The Exploitation of Women and Girls in India’s Home-based Garment Sector*. Available from: <https://idsn.org/portfolio-items/tainted-garments-the-exploitation-of-women-and-girls-in-indias-home-based-garment-sector/>.

<sup>72</sup> ILO (2017). *Working conditions of migrant garment workers in India*. Available from: [www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_554809.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_554809.pdf).

<sup>73</sup> Sisters for Change (2018). *Eliminating violence against women at work: Making sexual harassment laws real for Karnataka’s women garment workers*. Available from: [www.sistersforchange.org.uk/2018/06/20/eliminating-violence-against-women-at-work/](http://www.sistersforchange.org.uk/2018/06/20/eliminating-violence-against-women-at-work/).

<sup>74</sup> Chapter 3 (6) of the *Occupational Safety, Health and Working Conditions Code of 2020*. Available at: <https://legislative.gov.in/sites/default/files/A2013-14.pdf>.

<sup>75</sup> Chapter VI (19) of the *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act of 2013*.

### Practical guidelines for employers

When migrant workers move to new working and living environments, they often have limited information about many important aspects of their new lives, adversely affecting their safety. Employers are responsible for ensuring safe and ethical recruitment; they are also responsible for migrant workers' access to a safe, decent and respectful work environment. To ensure these conditions, employers must be proactive in preventing

work-related issues such as harassment; discrimination based on gender, sex, caste, class or community; dangers posed by faulty or old machinery or lack of safety provisions; absence of timely and regular work-related orientation; irregular payment of wages; and overtime work. To ensure that migrant workers enjoy safe, decent and respectful employment and working conditions, employers can carry out certain actions (Table 11).

**Table 11. Practical guidelines for employers on ensuring a safe, decent and respectful workplace**

1.	Provide comprehensive occupational safety and health training to migrant workers in a language they understand. Ensure that all relevant instructions, including technical information, are translated, easy to understand and that migrant workers have access to adequate health and safety equipment.
2.	Ensure that workplaces follow up-to-date guidance of local health authorities regarding mitigating communicable disease transmission risks in the workplace, including for COVID-19.
3.	Make a commitment from the top to demonstrate zero tolerance towards various forms of violence and harassment in the workplace to all employees, including migrant workers and managers, supervisors and business partners.
4.	Define all types of behaviour that are considered violence and harassment along with disciplinary rules and procedures in written form, including mechanisms for prompt follow-up and remediation. These rules should include gender-based violence and sexual harassment and apply to situations linked with work, including at workplaces, rest and/or eating places, sanitary facilities, during travel and/or training, through work-related communication (including social media), at employer-provided accommodation and when commuting to and from work.
5.	Provide regular training to all supervisors, managers and business partners on the principles of a respectful and intercultural work environment.
6.	Establish women's committees and safe spaces for women, including women migrant workers, and train professionals to report and investigate cases of gender-based violence and sexual harassment.
7.	Support the integration of migrant workers in the workplace and local community (for instance, through free language training, social exchanges between all employee groups, and the appointment of trained on-site coordinators who speak the language of both migrant workers and the employer).
8.	Respect migrant workers' religious and cultural identities and make appropriate facilities available for religious observance; enable access to places of worship and meals that conform with religious and cultural requirements.



#### 4.1.2. Freedom of association and collective bargaining

When migrant workers can exercise their right to freedom of association and collective bargaining, they are empowered to negotiate collectively to achieve improved working conditions and enhance their labour rights, such as health and safety at the workplace. Allowing them to do so would enhance workers' well-being as well as their productivity and loyalty to the company so that they are likely to stay longer in the job.

In India, migrant workers may not be aware of trade unions they can join. For instance, the Bangalore-based Garment and Textile Workers Union is a grassroots organization representing garment workers, most of whom are women migrants and the sole breadwinners of their households.<sup>76</sup> The Bunkar Mahasabha and the Coimbatore District Textile Workers Union<sup>77</sup> is another such organization.

Migrant workers may also be discouraged from participating in unions due to employers' negative perceptions towards them. There have been instances of employees facing suspension or loss of employment for unionizing against untenable deductions from their wages.<sup>78</sup> In addition, the fragmented nature of production means many workers have little communication with others in the supply chain, limiting their ability to undertake collective actions to address the risks they face.

A large body of international conventions such as the International Covenant on Civil and Political Rights (ICCPR), ILO's Workers' Representatives Convention, 1971 (No. 135) and ILO's Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

reiterate and reinforce the principles of freedom of association and collective bargaining. For instance, Articles 21 and 22 of the ICCPR states that the right of peaceful assembly shall be recognized and that everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of their interests.<sup>79</sup>

While the above laws place an obligation on states to facilitate these rights, businesses also have a role in ensuring that migrant workers' right to freedom of association and collective bargaining is respected. With increasing public awareness and scrutiny of businesses' global operations, businesses that fail to take their obligations seriously incur a substantial reputational risk.<sup>80</sup>

Key national regulations in India and international standards on inter-state migrant workers' freedom of association and collective bargaining

In India, national legal frameworks to ensure migrant workers' freedom of association and collective bargaining exist. These include but are not limited to:

- The *Constitution of India*;
- The *Code on Industrial Relations of 2020*.

However, national legislation might not always align with international human and labour rights standards. While employers must adhere at least to applicable national legislation, they should strive to follow the higher standard to respect migrant workers' rights.

Table 12 presents a summary of key national regulations and international standards that employers must adhere to.

<sup>76</sup> GATWU | Garment and Textile Workers Union (wordpress.com).

<sup>77</sup> List of textile and clothing trade unions - Wikipedia.

<sup>78</sup> In India's textile industry, labour unions are facing employers' wrath for demanding their rights (scroll.in).

<sup>79</sup> OHCHR. International Covenant on Civil and Political Rights. Available from: [www.ohchr.org/en/professionalinterest/pages/ccpr.aspx](http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx).

<sup>80</sup> ETI (2013). Freedom of association in company supply chain. Available from: [www.ethicaltrade.org/sites/default/files/shared\\_resources/foa\\_in\\_company\\_supply\\_chains.pdf](http://www.ethicaltrade.org/sites/default/files/shared_resources/foa_in_company_supply_chains.pdf).

**Table 12. National regulations and international standards on ensuring migrant workers' freedom of association and collective bargaining**

Indicator	National Regulations in India	International Standards
Freedom of Association and Collective Bargaining	<p>Under Article 19, the Constitution of India protects citizens' right to form associations or unions.<sup>81</sup></p> <p>In addition, the Code on Industrial Relations of 2020 sets out unfair labour practices, including that employers should not discriminate against employees based on their membership of a Trade Union or if they are exercising their right to collectively bargain.<sup>82</sup></p>	<p>Under Principle 2.2 of IOM's Migrant Worker Guidelines for Employers, employers must ensure that migrant workers are free to exercise their right to freedom of association and collective bargaining.</p>

### Practical guidelines for employers

Migrant workers may not be aware of their right to freedom of association and collective bargaining or how they can exercise this right. They may also be reluctant to exercise their right due to fear of reprimand, reprisal

or punishment. Therefore, employers are responsible for respecting and facilitating migrant workers' right to freedom of association and supporting them to exercise this right. To do so, employers can undertake the following actions (Table 13).

**Table 13. Practical guidelines for employers on ensuring migrant workers' freedom of association and collective bargaining**

1.	Inform migrant workers of their rights to join or form an association of their choice and right to collective bargaining as per applicable laws. Ensure that migrant workers are not punished, terminated, threatened, intimidated or harassed for joining a union or engaging in union activities.
2.	Enable trade unions to directly engage with migrant workers during recruitment (if possible), upon their arrival and during employment without management being present.
3.	Where applicable laws restrict the right to freedom of association of migrant workers, provide alternative ways to have a meaningful, collective dialogue with migrant workers where they can express their concerns in accordance with the law. Such alternatives could include the appointment of migrant worker representatives who genuinely represent the migrant workers and their interests. Seeking advice from local specialists on labour laws and industrial relations is recommended.

<sup>81</sup> Article 19 of the Constitution of India.

<sup>82</sup> <https://labour.gov.in/whatsnew/industrial-relations-code-2020-no-35-2020>.

### Case study on migrant worker leaders elected in Jordan garment factories

On 4 April 2019, a union election was held in the garment factories of Al-Dulayl Industrial Zone in Amman, Jordan, to develop a democratic representation for migrant workers.

The election on 22 March is the culmination of a project by the General Trade Union of Workers in Textile Garment & Clothing Industries in Jordan (JTGCU), supported by IndustriALL Global Union, to develop representative structures for migrant workers. The project was launched in November 2017 and is significant because migrant workers are not represented at the national level, with representation limited to union committees in factories.

The garment sector in Jordan employs about 69,000 workers, of which 75 per cent are women. About 16,000 are from Jordan, while 53,000 migrant workers from Bangladesh, Cambodia, China, India, Madagascar, Myanmar, Nepal, Pakistan, Sri Lanka and Syria make up the rest of the staff.

The factories produce for international brands, particularly for the United States. Uniting migrant workers in unions and establishing representation at national levels is key to addressing issues around wages, social security, health and safety, and housing.

Several workshops were held in 2018, with 168 union committee members participating. The training focused on Jordanian labour law, the collective agreement, the role of factory committees, the importance of active involvement in unions to ensure workplace protection, and IndustriALL and the global movement.

After completing the training at Al-Dulayl, elections were held, with representatives from the JTGCU and ILO present. Twenty-six workers, predominantly women, were elected, proportional to the number of workers from Bangladesh, India, Nepal, Pakistan and Sri Lanka.

Fathallah Emrani, President of the JTGCU, said:

“Since the beginning of the influx of migrant workers to Jordan to work in the garment sector, the union has raised awareness about their rights and showed them that they are not alone, that we support them, represent them and defend them. We needed to form trade union committees in the factories to represent the workers of all different nationalities so that their voices reach the ears of decision-makers. We will also give them a role in the decision-making process of the union. After the success of the election at Al-Dulayl, we look forward to completing the process in Irbid and Sahab.”

Ahmed Kamel from IndustriALL said:

“The high engagement and enthusiasm of migrant workers were visible during the election process and the training. These are key factors to achieve sustainability and strengthen migrant workers’ voices.”

Christina Hajagos-Claussen from IndustriALL said:

“In addition to the industry-wide agreement, union representation of migrant workers at the factory level is another step towards improving working and living conditions. The results clearly reflect the dominance of women workers in the industry, as they also dominated the seats.”

This story is available at [www.industriall-union.org/migrant-worker-leaders-elected-in-jordan-garment-factories](http://www.industriall-union.org/migrant-worker-leaders-elected-in-jordan-garment-factories).



### Case study on the direct representation of migrant workers in factories

*Kanchha, 47 years old, works in the cutting department. He comes from a small village of 300 inhabitants in Chitwan district in Nepal, a six-hour drive from the capital Kathmandu:*

“I came to Jordan in September 2009. Before that, I worked in a hotel in Singapore and in a small garment factory in Malaysia, and then returned to Nepal to get married.

My wife and I decided to move to Kathmandu to open a small restaurant, but the business failed almost immediately. One day, I saw a newspaper advertisement for vacancies in the garment sector in Jordan and decided to contact a recruitment agency to come here.

I plan to stay another two to three years and then go back home. I have saved enough money. I initially thought that Jordan’s salaries were higher, like those in Singapore and Malaysia.

For the past four years, I have been elected as a union member in the participation committees to represent Nepali workers within our multicultural workforce. Nepali workers recently had an issue with food. We were not getting fish because it is difficult to get and expensive in Jordan. I raised the issue with the management and worked with them to find a solution. Now, Nepali workers can have fish as a meal. This is one of our achievements.

Once I return home, I will open a chicken farm. This is quite a profitable business in my region, which is famous for its chicken soups.

My life is devoted to my two children: a girl, 10 years old, and a boy, 3 years old. I am working hard for them. I hope my efforts will give them a good future and that they will continue their studies.

We should support and encourage women working in the factories to help them achieve good results, both for them and their families.”

Full story available on: <https://betterwork.org/blog/2017/11/13/men-of-jordans-garment-sector/>

#### Exercise for participants

- Are there workers’ committees in your facility? If yes, can migrant workers join them?
- What are the roles and responsibilities of workers’ committees in your facility?
- In addition, what does your facility do to have a meaningful and collective dialogue with migrant workers?

#### 4.1.3. Payment of wages and benefits

A wage is given by the employer to the worker in return for assigned work. When workers receive fair and regular wages in accordance with the legislation on minimum wage and benefits in a timely manner, they can sustain themselves and their families. Workers are also motivated to work more and better, leading to higher productivity in the workplace.<sup>83</sup>

However, migrant workers often face inequalities regarding wages and benefits. Migrant workers may receive less pay than local workers for carrying out the same work. Women migrant workers may receive less pay than their male counterparts.<sup>84</sup> They might also face unauthorized deductions and delayed payments, putting them at risk of debt bondage.

<sup>83</sup> ILO (2013). A fair wage: A human right. Available from: [www.ilo.org/global/about-the-ilo/mission-and-objectives/features/WCMS\\_231993/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/mission-and-objectives/features/WCMS_231993/lang--en/index.htm).

<sup>84</sup> ILO (2020). The migrant pay gap: Understanding wage differences between migrants and nationals. Available from: [www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---migrant/documents/publication/wcms\\_763803.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_763803.pdf).



In addition, garment factories often pay workers by the piece, as they assume that this will generate an increase in productivity and hence profits. However, such productivity profit may be gained at the expense of working conditions. A study by ILO found that piece-rate employment could lead many workers to work long hours to earn the minimum wage, which is equivalent to performing unpaid overtime work.<sup>85</sup>

Another study by ILO found that workers in the garment and textile industry whose pay is jointly determined by hourly pay and a piece rate (described as partial piece-rate pay) are more likely to report reduced emotional and physical health compared to workers paid by the hour.<sup>86</sup>

A study by the International Dalit Solidarity Network conducted in India found that contractual and home-based workers in the garment and textile industry often receive 50 to 90 per cent less pay than the state-stipulated minimum wage. In Jaipur and its surrounding areas, women workers reported earning one fourth of the amount their men counterparts did.<sup>87</sup>

A textile mill, KPR Mills Private Limited, lost significant orders after the publication of a report titled Captured by Cotton in 2011, where it was found that the company had very poor labour practices. As a supplier to multinational brands, this revelation led to many brands cutting ties, resulting in a noticeable fall in orders and loss of jobs and revenue. The mill,

with its large numbers of women workers in the age group of 18-25 years, undertook a comprehensive monitoring and improvement exercise with the help of NGOs to regulate and improve wages, eliminate fixed-term scheme practices such as the Sumangali scheme and started paying for workers' social security. A commitment to address workers' concerns helped local interventions facilitate improvement for workers and eventually improved the reputation of the company enough to make it amongst the top 20 in the sector.<sup>88</sup>

### Key national regulations in India and international standards on migrant workers' wages and benefits

In India, a legal framework to ensure migrant workers' payment of wages and benefits exists. This framework mainly includes the Minimum Wages Act of 1948 and the Payment of Wages Act of 1936. In the recent labour laws reform, wages are covered under the Code on Wages of 2019.

However, national legislation might not always align with international human and labour rights standards. While employers must adhere at least to applicable national legislation, they should strive to follow the higher standard to respect migrant workers' rights.

Table 14 presents a summary of key national regulations and international standards that employers must adhere to.

<sup>85</sup> ILO (2014). Wages and Working Hours in the Textiles, Clothing, Leather and Footwear Industries. Available from: [www.ilo.org/wcmsp5/groups/public/@ed\\_dialogue/@sector/documents/publication/wcms\\_300463.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_dialogue/@sector/documents/publication/wcms_300463.pdf).

<sup>86</sup> ILO (2018). Piece-rate pay and working conditions in the export garment sector. Available from: [www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---dialogue/documents/publication/wcms\\_663063.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/publication/wcms_663063.pdf).

<sup>87</sup> International Dalit Solidarity Network (2019). Bonded Labour Tainted Garments: The Exploitation of Women and Girls in India's Home-based Garment Sector. Available from: <https://idsn.org/portfolio-items/tainted-garments-the-exploitation-of-women-and-girls-in-indias-home-based-garment-sector/>.

<sup>88</sup> Forced Labour in the Textile and Garment Sector in Tamil Nadu, South India, Dr Annie Delaney and Dr Tim Connor, Non-Judicial Redress Mechanisms Report, Series 13, Corporate Accountability Research, December 2016, pp. 31-32. Layout 1 ([indianet.nl](http://indianet.nl)).

**Table 14. National regulations and international standards on ensuring migrant workers' payment of wages and benefits**

Indicator	National Regulations in India	International Standards
Payment of wages and benefits	<p><i>The Code on Wages of 2019</i> provides that:</p> <ul style="list-style-type: none"> <li>• There be no discrimination among employees on the grounds of gender relating to recruitment, selection for employment or wages for the same work or work of a similar nature;</li> <li>• Workers receive no less than the minimum wage (this can be the state minimum wage, which must be the same or higher than the national minimum wage);</li> <li>• Workers receive a day of rest, overtime pay and are paid regular wages not exceeding monthly cycles.</li> <li>• Under Section 12, wherever piece-rate work is done, the minimum wage should not be less than the minimum time rate. Under Section 6 (4), the minimum rate of wages on time work basis may be fixed in accordance with any one or more of the following wage periods, namely: (i) by the hour; or (ii) by the day; or (iii) by the month.<sup>89</sup></li> </ul>	Under Principle 2.3 of IOM's Migrant Worker Guidelines for Employers, employers must ensure that migrant workers receive and retain control of fair and regular wages and benefits.
Deductions	<p>The Code on Wages of 2019 allows for deductions from wages which include fines, absence from duty, damage or loss directly attributable to employee's neglect or default towards their responsibility, house accommodation, amenities, advances/loans, taxes, social security contribution and union dues.</p> <p>Deductions cannot be over 50 per cent of the wages.</p>	
Bonuses	<p>Under the Code on Wages of 2019, every worker who works 30 days in a year should get a bonus to be calculated at the rate of 8 and one third per cent of the wages earned by the employee or 100 rupees, whichever is higher, whether or not the employer has any allocable surplus during the previous accounting year.</p>	

### Practical guidelines for employers

Migrant workers may be at risk of underpayment, late payment and unauthorized deductions. The gender pay gap in the unorganized sector often means that women

migrant workers do not receive equal wages for work of the same value. Employers are responsible for ensuring that migrant workers receive and retain control of fair and regular wages and benefits. To do so, employers should:

<sup>89</sup> Section 3(2)(b) and (c) of the Minimum Wages Act, 1948.



**Table 15. Practical guidelines for employers on ensuring migrant workers’ payment of wages and benefits**

1.	Pay equal wages to migrant and local workers for work of equal value, regardless of gender, age, nationality, migration status or other characteristics. Wages must meet the legal or industry minimum standards and reflect what is written and agreed to in the employment contract.
2.	Calculate and communicate wages in a fair and transparent manner so that migrant workers understand how they are paid.
3.	Pay migrant workers regularly, on time and directly to their nominated bank account. This bank account should be in the migrant worker’s name and not accessible to the labour recruiter or employer.
4.	Only permit wage deductions and in-kind payments that are allowed by law and have the written consent of migrant workers. In-kind payments (for instance, accommodation, transport or food) can only make up a small proportion of the overall wages, should be valued at a reasonable market rate and appropriate for the personal use and benefit of migrant workers.
5.	Prohibit the use of wage deductions or monetary fines as disciplinary measures or as a direct or indirect payment for the purpose of recouping recruitment fees and costs or retaining employment.
6.	Provide wage advances, loans and saving schemes only if allowed by law and requested by migrant workers.
7.	Ensure that all contracts with business partners, including employment agencies and sub-contractors, include provisions for paying employees on a regular, timely and fair basis (meeting minimum legal standards) consistent with the company’s policy on payment of wages and benefits.

**Exercise**

Which of the following items can be deducted from workers’ salaries according to international standards?

1. Cost of tools or equipment in case of home-based workers;
2. Cost of uniforms;
3. Social security contributions;
4. Provident fund contributions;
5. Monetary fines as disciplinary measures;
6. Monetary fines for accidentally destroying tools or equipment.





#### 4.1.4. Working and rest hours

Working excessive hours poses a danger to workers' health. Ensuring workers work voluntarily, in accordance with legal limits on working hours and with sufficient rest time, can have a positive impact on their health and safety as well as improve productivity in the workplace.

A report by ILO found that in India's garment and textile industry, hours of work are much longer than those stipulated in national and international rules. Eighty per cent of surveyed workers said a six-day working week was the norm. Some workers reported working 10 to 12 hours per day. Overtime was also very common and often involuntary, as two thirds of workers surveyed said they could not refuse to work overtime.<sup>90</sup>

#### Key national regulations in India and international standards on migrant workers' working and rest hours

The Indian national legal framework ensuring migrant workers' rights to safe and legally permissible working hours, rest days, overtime work and wages are covered

under:

- The *Minimum Wages Act of 1948*;
- The *Payment of Wages Act of 1936*;
- The *Factories Act, 1948*.

In addition, the Occupational Safety, Health and Working Conditions Code of 2020 now includes all relevant provisions related to workers' well-being, which includes their working hours and rest hours, among others.

However, national legislation might not always align with international human and labour rights standards. While employers must adhere at least to applicable national legislation, they should strive to follow the higher standard to ensure the respect of migrant workers' rights.

Table 16 presents a summary of key national regulations and international standards that employers must adhere to.

**Table 16. National regulations and international standards on ensuring migrant workers' working and rest hours**

Indicator	National Regulations in India	International Standards
Working and rest hours	<p>Under the Occupational Safety, Health and Working Conditions Code of 2020, working hours should not exceed eight hours per day and six days per week. The Code provides for one day of rest in a period of seven days.</p> <p>Overtime should be twice the rate of wages.</p> <p>Workers are entitled to one leave day for every 20 days of work following 180 workdays. In case of adolescents, there should be one leave day for every 15 days of work. When counting the 180 days, periods of lay-off, maternity leave and national holidays shall be counted.<sup>91</sup></p>	<p>Under Principle 2.4 of IOM's Migrant Worker Guidelines for Employers, employers must ensure that migrant workers work voluntarily, in accordance with legal limits on working hours and with sufficient rest time.</p>

<sup>90</sup> ILO. (2015). Insights into working conditions in India's garment industry. Available from: [www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_379775.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_379775.pdf).

<sup>91</sup> Section 32 (1), Chapter VII of the Occupational Safety, Health and Working Conditions Code of 2020.

**Practical guidelines for employers**

Migrant workers may be at risk of being overworked, which may negatively affect their health and well-being. They may also feel pressured to work overtime due to

fear of reprimand, reprisal or punishment. Employers are responsible for ensuring that migrant workers work voluntarily, in accordance with legal limits on working hours and with sufficient rest time. To do so, employers can:

**Table 17. Practical guidelines for employers on ensuring migrant workers’ working and rest hours**

1.	Ensure that migrant workers always work voluntarily, within legal limits and in line with international labour standards relating to working hours. No migrant workers are made to work overtime under threat of penalty, dismissal or denunciation to authorities. Overtime cannot be compulsory or used as a disciplinary measure or imposed for failure to meet production quotas or to earn minimum wage.
2.	Provide migrant workers with enough rest time in accordance with applicable laws and relevant international standards. Take extra-preventive measures during peak seasons or times of crisis, particularly in essential sectors.
3.	Respect migrant workers’ religious and cultural practices and plan for appropriate altered work modes during religious holidays, whenever possible.
4.	Provide migrant workers with the same leave entitlements (annual leave, public holidays, sick leave, maternity leave and other types of leave) as local workers.

**4.1.5. Access to personal documents**

Migrant workers’ access to their personal documents, such as passports, identity cards and residency permits is crucial for their safety and their ability to move freely. If their documents are withheld, they may not be able to leave their employment at their own volition, even in situations where they may be subject to abuse or exploitation. Without their personal documents, authorities are also unable to determine the identity of migrant workers and migrant workers face challenges in accessing justice.<sup>92</sup>

**Key national regulations in India and international standards on migrant workers’ access to personal documents**

While under India’s legislation, there are no provisions that prohibit the retention of workers’ personal documents, the Constitution guarantees the right of citizens to move freely throughout the territory of India.<sup>93</sup> When workers’ personal documents are withheld, their ability to move freely is restricted.

However, national legislation might not always align with international human and labour rights standards. While employers must adhere at least to applicable national legislation, they should strive to follow the higher standard to respect migrant workers’ rights.

Table 18 presents a summary of key national regulations and international standards that employers must adhere to.

<sup>92</sup> ILO (2017). Employer-migrant worker relationships in the Middle East: exploring scope for internal labour market mobility and fair migration. Available from: [www.ilo.org/beirut/publications/WCMS\\_552697/lang--en/index.htm](http://www.ilo.org/beirut/publications/WCMS_552697/lang--en/index.htm).  
<sup>93</sup> Article 19 (1) (d) of the Constitution of India 1949.

**Table 18. International standards on ensuring migrant workers’ access to personal documents**

Indicator	International Standards
Passport retention	<p>Under Principle 2.5 of IOM’s Migrant Worker Guidelines for Employers, employers must ensure that migrant workers have possession and control of their personal documents.</p> <p>Under General Principle 11 of ILO’s General Principles and Operational Guidelines for Fair Recruitment, freedom of workers to move within a country or to leave a country should be respected. Workers’ identity documents and contracts should not be confiscated, destroyed or retained.</p>

**Practical guidelines for employers**

Without access to their personal documents, migrant workers’ freedom of movement is restricted, putting them at risk of forced labour. Employers are responsible

for ensuring that migrant workers have possession and control of their personal documents. To do so, employers can:

**Table 19. Practical guidelines for employers on ensuring migrant workers’ access to personal documents**

1.	Ensure that all migrant workers have possession of their personal documents. Migrant workers must be able to access their personal documents directly and immediately without restrictions.
2.	At employer-provided accommodation (such as dormitories), provide migrant workers with an individual and secure place to store their personal documents and valuables.
3.	Only request and take possession of migrant workers’ original identity documents when required by law for administrative purposes, such as processing residency permits. Return documents immediately to migrant workers when no longer required.
4.	Obtain written consent from migrant workers when taking their personal documents and provide migrant workers with a receipt. Keep a written log that clearly outlines the purpose and date when personal identity documents were taken and returned to migrant workers.
5.	Ensure that business partners (labour recruiters, accommodation providers and others) follow the same practices.

**Case study: Including fee-charging and confiscation of passports in human rights policy commitments**

Forced labour and trafficking are playing an increasingly visible role in the codes and policies through which companies set and communicate their expectations for suppliers and service providers. Some companies now include a focus on fee-charging and confiscating of workers’ passports. The Arcadia Group, which includes Top Shop, Top Man and BHS, in partnership with Next, Plc. has developed Migrant Worker Guidelines, targeted at its own practices as well as the factories with which it does business.

The Guidelines state that employment is freely chosen; that workers are not required to lodge “deposits” or their identity papers, including passports, with their employer and are free to leave their employer after reasonable notice. The Guidelines also include clauses on non-payment of fees by migrants; that suppliers should pay all costs, including travel and other costs associated with the migration process; that no reimbursements or inducements must be received or sought from agencies; that there should be no recouping of fees paid to recruiting agencies from the worker on arrival; that suppliers must always allow the worker to retain his or her passport and keep photocopies on file and that deductions from wages not provided by national law be permitted without the express permission of the worker concerned.

Arcadia’s Code is included in the contract with its business partners and is further detailed in a Supplier Handbook and in supplier training sessions. Arcadia Group and Next Plc. sought involvement of trade union and civil society partnerships in developing the guidelines. There are many resources to help companies develop relevant and specific policies, including the Dhaka Principles for Migration with Dignity and Verite’s Fair Hiring Toolkit.

This text is an excerpt from the Institute of Human Rights and Business’ (IHRB) Fees and IDs: Tackling recruitment fees and confiscation of workers’ passports: [www.ihrb.org/pdf/2013-09-06\\_IHRB\\_Fees-and-IDs-Report.pdf](http://www.ihrb.org/pdf/2013-09-06_IHRB_Fees-and-IDs-Report.pdf)

#### 4.1.6. Freedom of movement

Company regulations that require that workers be locked up or guarded to prevent escape, without free entry or exit, are strong indicators of forced labour. In contrast, restriction of movement within prescribed limits in hazardous employment is legitimate.

In India, migrant workers, mainly women, may not be allowed to leave accommodations outside of working hours or are given a curfew. In Tamil Nadu, migrant workers reported being permitted to leave their accommodations two hours per week for reasons other than work, accompanied by a warden.<sup>94</sup>

#### Key national regulations in India and international standards on migrant workers’ freedom of movement

In India, the Constitution has provisions to ensure the freedom of movement of all citizens, including migrant workers.

However, national legislation might not always align with international human and labour rights standards. While employers must adhere at least to applicable national legislation, they should strive to follow the higher standard to respect migrant workers’ rights.

Table 20 presents a summary of key national regulations and international standards that employers must adhere to.

<sup>94</sup> ILO (2017). Working conditions of migrant garment workers in India. Available from: [www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_554809.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_554809.pdf).



**Table 20. National regulations and international standards on ensuring migrant workers' freedom of movement**

Indicator	National Regulations in India	International Standards
Freedom of movement	Subject to reasonable restrictions under Article 19 (5) of the Constitution, every person, including migrant workers, has the fundamental freedom to move freely within the Indian territory under Article 19(1) (e).	<p>Under Principle 2.6 of IOM's Migrant Worker Guidelines for Employers, employers must ensure that migrant workers enjoy freedom of movement beyond their workplace and accommodation.</p> <p>Under General Principle 11 of ILO's General Principles and Operational Guidelines for Fair Recruitment, freedom of workers to move within a country or to leave a country should be respected.</p>

### Practical guidelines for employers

Migrant workers must be able to move around freely without fear of reprimand, reprisal or punishment.

Employers are responsible for ensuring that migrant workers enjoy freedom of movement beyond their workplace and accommodation. To do so, employers can:

**Table 21. Practical guidelines for employers on ensuring migrant workers' freedom of movement**

1.	Explain and display the rules for entering and exiting the workplace and employer-provided accommodation in a language understood by migrant workers.
2.	Ensure that migrant workers can enter and exit their accommodation freely at any time of the day or night. Their freedom should not be limited by curfews, security guards or the locking of doors, even when done for their perceived safety.
3.	Ensure that workplace exits are unlocked, and that security guards and surveillance cameras do not restrict migrant workers' movement. The only exception is for occupational health and safety reasons.
4.	Allow migrant workers to choose their own means of transportation between their workplace and accommodation and within the community, except in the case of compelling security reasons. Where migrant workers live or work in remote locations, provide free-of-cost and regular transportation to support commute to and from workplaces, including immediate support during emergencies.
5.	In remote locations, provide migrant workers with regular transportation and access to stores, markets and services that are not operated by the employer or any business partners.
6.	Ensure that any products sold or services provided by employer-operated stores and services, are provided at a reasonable price to avoid overcharging of workers as means to recoup wages. Products should be of good quality and based on the needs of migrant workers (such as food preferences).
7.	Ensure that migrant workers are free to return to their state of origin during periods of annual or personal leave, or if they choose to terminate their employment early.



### 4.1.7. Living conditions

Adequate housing is a basic need, just like food and clothing, and fundamental for guaranteeing human dignity.<sup>95</sup> Living conditions impact workers’ physical and psychological well-being. Poor living conditions such as overcrowding and poor sanitation adversely affect workers’ health and ability to rest and recuperate, therefore affecting their production quality as well as their capacity for production.

In India, migrant workers face language and financial barriers when searching for housing. Consequently, they often reside in factory hostels that can be cramped, unhygienic and lack basic amenities. Those choosing to rent rooms in the city often reside in substandard housing, risking frequent and sudden evictions.<sup>96</sup>

#### Key national regulations in India and international standards on migrant workers’ living conditions

In India, a national legal framework in place to ensure migrant workers’ adequate and decent living conditions exists. These laws include but are not limited to:

1. The *Contract Labour (Regulation & Abolition) Act of 1970*;
2. The *Contract Labour (Regulation & Abolition) Central Rules of 1971*;
3. The *Inter-state Migrant Workmen’s Act of 1979*;

However, national legislation might not always align with international human and labour rights standards. While employers must adhere at least to applicable national legislation, they should strive to follow the higher standard to respect migrant workers’ rights.

Table 22 presents a summary of key national regulations and international standards that employers must adhere to.

**Table 22. National regulations and international standards in ensuring migrant workers’ adequate and decent living conditions**

Indicator	National Regulations in India	International Standards
Living conditions	<p>Adequate, suitable and separate shelters or restrooms for male, female and transgender employees and lunchroom where more than 50 workers are ordinarily employed.<sup>97</sup></p> <p>Under section 20 of the Contract Labour (Regulation and Abolition) Act, 1970, the principal employer remunerates the contractor for the services provided. Among other things, wherever the contractor does not fulfil their responsibility, the employer is responsible for providing accommodation wherever night-time work is done, replete with amenities in well-lit, ventilated, clean, comfortable and safe living spaces.</p>	<p>Under Principle 2.7 of IOM’s Migrant Worker Guidelines for Employers, employers must ensure that migrant workers have access to adequate, decent and gender-responsive living conditions.</p>

#### Practical guidelines for employers

When providing migrant workers with accommodation, workers must be able to enjoy adequate and decent housing accommodation and a suitable living

environment.<sup>98</sup> Employers are responsible for ensuring that migrant workers have access to adequate, decent and gender-responsive living conditions. To do so, employers can take the following steps:

<sup>95</sup> ILO (2019). Dormitories Inspection/Assessment Guide. Available from: <https://betterwork.org/wp-content/uploads/2020/01/Dorms-Assessment-Guide-English-2-2011.pdf>.

<sup>96</sup> ILO (2020). Roadmap for developing a policy framework for the inclusion of internal migrant workers in India. Available from: [www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new\\_delhi/documents/publication/wcms\\_763352.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/publication/wcms_763352.pdf).

<sup>97</sup> Under Section 24 (2) (3) of the OSH 2020.

<sup>98</sup> Part II, Paragraph 2 of ILO’s Workers’ Housing Recommendation, 1961 (No. 115).

**Table 23. Practical guidelines for employers on ensuring migrant workers’ access to adequate and decent living conditions**

1.	Support migrant workers in voluntarily finding their own accommodation through independent private agencies, public housing schemes or cooperatives. Migrant workers should not be forced to stay in employer-provided accommodation unless it is required by law and except in the case of compelling security reasons.
2.	Ensure that migrant workers’ accommodation is safe, hygienic, decent and comfortable, and meets all legal requirements, including relating to fire safety.
3.	Provide gender-segregated accommodation and facilities for migrant workers. Ensure that there is adequate personal space and privacy available (for instance, no security cameras at dormitories or sanitary facilities).
4.	Provide regular maintenance and on-site monitoring of accommodation that is provided by the employer and other third parties to ensure that the accommodation is clean, decently habitable and maintained in a good state of repair. The results of inspection should be recorded and be available for review.
5.	Seek ongoing feedback from migrant workers about the quality of accommodation and means to improve living conditions. Promptly follow up on any difficulties or complaints reported by migrant workers, paying attention to any differences in their needs based on gender, age, disability or other characteristics.
6.	Take measures to prevent the spread of illness or disease at accommodations including provision of sufficient living space, adequate ventilation and sufficient cooking, waste disposal and water and sanitation facilities, segregated by gender where appropriate. This includes the provision of separate facilities for sick workers and adequate hygienic facilities.

**Exercise**

If your company does not provide migrant workers with housing, how are you supporting them in finding housing? In what sort of housing do they reside?

If your company provides housing, is it aligned with the national standards? How could they align better?

**Case study: An Indian textile company’s solution to attract workers to the garment industry**

In a sleek modern office on the grounds of a textile mill built by his grandfather in 1931, Sanjay Lalbhai, scion of one of India’s oldest textile companies, is considering an experiment that could revolutionize India’s garment industry.

Lalbhai, chairman and managing director of Arvind Mills, wants to build a large garment factory with attached workers’ dormitories to help overcome the Indian textile industry’s chronic labour shortages and ramp up his company’s production from 12 million to 50 million pieces a year.





“I can’t build very large factories in India until I solve this,” Lalbhai told the Financial Times in an interview. “Workers are not available at one location. They have to come from distressed areas of India, and I have to house them in a nice way on my campus.”

An Arvind team is looking at how to design and manage dorms for between 2,000 and 4,000 workers, which would be a first for India’s textile industry. But Lalbhai is convinced that housing workers is the only way for Indian garment-makers to secure enough labour to fill the growing demand from western retailers.

“Workers are not interested in leaving hearth, home and family unless there is an economic incentive,” said Nair, managing director of Matrix Clothing, which supplies western retailers such as Macy’s and Debenhams. “If you provide subsidized housing, you may pay the same salaries, but you will increase their savings potential.”

Managing workers’ dorms in India will be challenging, given vast linguistic and cultural diversity and high sensitivity around issues of women’s security. But Lalbhai said he was determined to make it work, even if it meant the first factories with dorms would have all male workers.

This case study is an excerpt from: [www.ft.com/content/cb4ca68a-f2b7-11e2-a203-00144feabdc0](http://www.ft.com/content/cb4ca68a-f2b7-11e2-a203-00144feabdc0)

#### 4.1.8. Health care and social protection

Migrant workers can unexpectedly become ill or be injured. When migrant workers have access to social protection and health care, they can seek treatment without worrying about the cost, allowing them to stay healthy and keep working.

However, migrant workers are likely to face barriers to accessing social protection and health care. They may also be reluctant to seek medical attention because of the expense of medical care, or fear of deportation, stigmatization, language barriers or discrimination. They are also likely to not benefit from social protection and safety nets enjoyed by local workers.<sup>99</sup>

Moreover, migration usually involves a series of changes and adjustments for migrants, which could impact migrant workers’ mental well-being. Particularly during the COVID-19 pandemic, it became evident that health risks to migrant workers are much higher. Hence,

they may face elevated levels of stress and anxiety as lockdown measures were especially difficult on them, isolated far from their homes, families and support networks.<sup>100</sup>

In India, social security provisions provided by the State have income ceilings<sup>101</sup> and usually do not apply to those in the unorganized sector.<sup>102</sup> This means that an increasing number of workers are not eligible to receive social security benefits.<sup>103</sup> Migrant workers also face barriers due to lack of awareness and required domicile certificates in states.

#### Key national regulations in India and international standards on migrant workers’ access to health care and social protection

The national framework in place to ensure migrant workers’ access to health care and social protection is covered under several central legislations on social security. The Indian laws dealing with workers’ well-being include:

<sup>99</sup> IOM (2020). Guidance on Protection for Migrant Workers during the COVID-19 Pandemic. Available from: [https://www.iom.int/sites/g/files/tmzbd1486/files/default/2020\\_icc\\_guidance\\_for\\_migrant\\_workers\\_02.pdf](https://www.iom.int/sites/g/files/tmzbd1486/files/default/2020_icc_guidance_for_migrant_workers_02.pdf).

<sup>100</sup> IOM. Migrants and COVID-19: How to take care of mental health. Available from: <https://rosanjose.iom.int/en/blogs/migrants-and-covid-19-how-to-take-care-mental-health>.

<sup>101</sup> Mezzadri, A (2017). The Sweatshop Regime. Available from: [www.cambridge.org/core/books/sweatshopregime/BC69E2879A9BE9AA341C5BBA1124E99C](http://www.cambridge.org/core/books/sweatshopregime/BC69E2879A9BE9AA341C5BBA1124E99C).

<sup>102</sup> Corporate Accountability Research (2016). Forced labour in the textile and garment sector in Tamil Nadu, South India. Available from: [www.indianet.nl/pdf/ForcedLabourTextileGarment.pdf](http://www.indianet.nl/pdf/ForcedLabourTextileGarment.pdf).

<sup>103</sup> Ministry of Labour & Employment, Government of India (2017). Coverage. Available from: [www.esic.nic.in/coverage](http://www.esic.nic.in/coverage).



- The *Maternity Benefits Act of 1961 and its amendments in 2017*;
  - The *Bonded Labour System (Abolition) Act of 1976*;
  - The *Mental Healthcare Act of 2017*;
  - The *Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act of 1979*;
  - The *Unorganised Workers Social Security Act and Rules of 2008*.
- The labour law reform has provided these regulations under the Code on Social Security of 2020 (CSS). However, national legislation might not always align with international human and labour rights standards. While employers must adhere at least to applicable national legislation, they should strive to follow the higher standard to respect migrant workers' rights. Table 24 presents a summary of key national regulations and international standards that employers must adhere to.

**Table 24. National regulations and international standards on ensuring migrant workers' access to health care and social protection**

Indicator	National Regulations in India	International Standards
Health care and social protection	<p>The CSS extends social security to all employees and workers and provides the specifics of the Provident Fund Scheme, the Pension Scheme and the Insurance Scheme. Another important scheme is the Unorganised Workers' Social Security Act 2008, which provides for:</p> <ul style="list-style-type: none"> <li>• Provident Fund Scheme</li> <li>• Pension Scheme</li> <li>• Insurance Scheme</li> <li>• Accident coverage</li> </ul>	<p>Under Principle 2.8 of IOM's Migrant Worker Guidelines for Employers, employers must ensure that migrant workers have full access to health care and social protection.</p>
Maternity	<p>The CSS also provides the details of maternity benefit, which should be paid at the rate of the woman's average daily wage for a minimum period of eight weeks and a maximum period of 26 weeks, as per the 2017 amendments to Maternity Benefits Act of 1961.</p>	
Mental well-being	<p>Under the Mental Healthcare Act of 2017, every person has the right to access good quality mental health care at an affordable cost. There should be no discrimination based on gender, sex, sexual orientation, religion, culture, caste, social or political beliefs, class or disability. Treatment should be provided in a manner acceptable to persons with mental illness and their families and caregivers.</p> <p>Under Section 20, every person with mental illness has a right to live with dignity. Under Section 21, every person with mental illness shall be treated as equal to persons with physical illness in the provision of health care.</p>	

### Practical guidelines for employers

Migrant workers often experience limited access to health care and social protection. When migrant workers are unable to access these services, they may be forced to have their condition remain untreated. They may also pay excessive fees for treatment, which might require them to take loans, putting them at risk of debt accumulation, which can have far-reaching consequences.

Several migration-related stressors are identified to cause psychosocial problems among migrant workers. A migrant worker’s journey exposes them to predictable and unpredictable challenges, many of which they may not be well-equipped to handle. Starting from the

decision to migrate in the community of origin and upon arrival at the place of work and new residence, a worker must navigate social and economic barriers that exact emotional and psychological costs that are less understood, less visible and less talked about. Conditions such as insomnia, depression, anxiety and mood swings have been found to be higher amongst migrant workers.<sup>104</sup> Instances of substance abuse are also related to mental health. “This is mainly due to social and cultural discrepancies, difficulties in adapting to a new environment due to the language barrier, staying away from home for longer periods and financial issues.”<sup>105</sup>

Employers are responsible for ensuring that migrant workers have full access to health care and social protection. To do so, employers can:

**Table 25. Practical guidelines for employers on ensuring migrant workers’ access to health care and social protection**

1.	Provide migrant workers with the same emergency and preventative health services as local workers as well as access to and provision of health insurance.
2.	Provide migrant workers with access to medical services, including mental health and psychosocial support services, and applicable social security schemes and benefits.
3.	Pay for the cost of pre-departure, post-arrival and regular medical examinations that are required by law.
4.	Grant the same paid sick leave entitlements and occupational protection to migrant workers as local workers in case of illness, pregnancy or to care for dependents, without penalty or dismissal. No migrant worker should be dismissed because of temporary illness.
5.	Ensure that migrant workers are provided with free access to emergency treatment covered with appropriate compensation in case of occupational accident or injury.
6.	Treat women migrant workers who become pregnant with dignity and fairness and provide access to adequate reproductive health services. <sup>106</sup> If the work entails a significant risk to the health of the mother or her unborn child, take measures to eliminate the risk or to adapt the conditions of work. If this is not possible, transfer to lighter work at no reduction in pay or provide paid leave. No pregnant woman should be dismissed or forced to return to her state of origin unless required by applicable law.

<sup>104</sup> India’s migrant labourers suffer from depression and drug abuse — Quartz India (qz.com).

<sup>105</sup> Ibid.

<sup>106</sup> In general, women should not work in hazardous and heavy work that could affect their childbearing and nursing ability. Women should be provided with paid time for breastfeeding their child.

7.	Where the return to state of origin of pregnant women migrant workers is a legal requirement, the enterprise should establish policy and procedures that ensure access to adequate reproductive health services, payment of all outstanding wages and benefits and safe and dignified return.
8.	Provide referrals to psychosocial support and counselling programmes to promote mental health and well-being of migrant workers who may suffer from mental distress and anxiety because of separation from home, family and support networks. Assist migrant workers in maintaining close communication with their families and support networks in the state of origin and destination.

#### 4.1.9. COVID-19

The COVID-19 pandemic has dramatically impacted the recruitment and working conditions of migrant workers.

Migrant workers were already facing risks prior to the pandemic. However, the ensuing lockdowns gave rise to concerns that the pandemic has further exacerbated these vulnerabilities. Some of these concerns include:

**Table 26. Concerns faced by migrant workers during the COVID-19 pandemic**

Crowded dormitories that make physical distancing challenging to implement	Limited access to PPEs
Limited access to up-to-date information because of language barriers and isolation	Less likely to be tested due to fear of deportation
Not eligible to receive state assistance due to migration status and sector	A reduction in daily income due to closures or reduced working hours
Unable to receive unemployment or unfair dismissal payments	Broker fees to facilitate link with new employers
Unable to physically distance in the workplace, especially on labour-intensive production lines	Xenophobia and hate speech
Limitations on access to vaccination and to health services in case of illness	

Employers and businesses play a vital role in protecting migrant workers and their communities during the COVID-19 pandemic. Table 27 provides guidance to

employers on effectively responding to the impact of the COVID-19 pandemic and enhancing protections for migrant workers in their operations.

**Table 27. Practical guidelines for employers on supporting migrant workers during the COVID-19 pandemic**

1.	Maintain and reinforce effective grievance mechanisms.
2.	Ensure that migrant workers have unhindered access to internet services in dormitories.

3.	Disseminate updated information about COVID-19 and relevant company instructions to all workers in languages they understand.
4.	Provide migrant workers with access to translators who can provide updated information and support them while accessing health care.
5.	Ensure that paid sick leave in case of worker or family illness related to COVID-19.
6.	Adopt new or adapt existing occupational safety and health measures in the workplace and dormitory, and strictly follow health authority guidelines.
7.	Ensure that workplace infirmaries and medical staff are well equipped to respond to COVID-19.
8.	Support migrant workers' access to COVID-19 vaccination. If the company does not have its own vaccination programme, support migrant workers in accessing public vaccination programmes.

For more information, read COVID-19: Guidance for Employers and Business to Enhance Migrant Worker Protection during the Current Health Crisis developed by IOM's IRIS: Ethical Recruitment in English.<sup>107</sup>

## 4.2. Return and onward migration

After completing their temporary employment in the state of destination, migrant workers typically return to their community in the state of origin. Employers are responsible for facilitating the safe return of migrant workers in coordination with relevant actors, such as labour recruiters and travel agencies.

Alternatively, some migrant workers may choose to extend their employment in the state of destination, change their employer or move to another state. Employers may also be willing to rehire migrant workers at a later stage or provide referrals of migrant workers to associated companies present in the migrant workers' state of origin.

### 4.2.1. Termination of employment and change of employer

Like any worker, migrant workers terminate their employment for different reasons – to return to their state, find new employment or respond to situations of abuse. However, migrant workers may not always be free to terminate their employment due to fear of penalty or punishment.

In India, some employers use the Sumangali Scheme, a form of bonded labour, forced labour and soft trafficking, in which young women are offered a lump-sum payment at the end of their employment contract.<sup>108</sup> As such, workers are forced to continue their employment, even in situations of abuse.

### Key national regulations in India and international standards on migrant workers' termination of employment

In India, there may be local legal frameworks to ensure migrant workers' freedom to terminate their employment exist.

However, national legislation might not always align with international human and labour rights standards. While employers must adhere at least to applicable national legislation, they should strive to follow the higher standard to respect migrant workers' rights.

Table 28 presents a summary of international standards that employers must adhere to.

<sup>107</sup> IRIS (2020). COVID-19: Guidance for employers and business to enhance migrant worker protection during the current health crisis. Available from: [https://iris.iom.int/sites/g/files/tmzbd1201/files/documents/IOM-COVID19\\_Employer\\_Guidance\\_V2\\_Final%28English%29.pdf](https://iris.iom.int/sites/g/files/tmzbd1201/files/documents/IOM-COVID19_Employer_Guidance_V2_Final%28English%29.pdf).

<sup>108</sup> Mezzadri A. (2017). The Sweatshop Regime. Available from: [www.cambridge.org/core/books/sweatshopregime/BC69E2879A9BE9AA341C5BBA1124E99C](http://www.cambridge.org/core/books/sweatshopregime/BC69E2879A9BE9AA341C5BBA1124E99C).

**Table 28. International standards on ensuring migrant workers’ freedom to terminate their employment**

Indicator	International Standards
Termination of employment and change of employer	<p>Under Principle 3.1 of IOM’s Migrant Worker Guidelines for Employers, employers must ensure that migrant workers are able to terminate their employment without fear of reprisal or penalties. This principle is further explained in Table 29 below. Under Principle 3.2 of IOM’s Migrant Worker Guidelines for Employers, employers must ensure that migrant workers are free to change their employer. These principles are further explained in Table 30 below.</p> <p>Under Operational Guideline 31 of ILO’s General Principles and Operational Guidelines for Fair Recruitment, employers should respect the freedom of migrant workers to leave or change employment or to return to their countries of origin. Employers’ permission should not be required for migrant workers to terminate or change employment, or to leave the country if the worker so desires, taking into account any contractual obligations that may apply.</p>

**Practical guidelines for employers**

Migrant workers must be free to terminate employment or change their employer without justification or penalty.

Employers are responsible for ensuring that migrant workers can terminate their employment without fear of reprisal or penalties. To do so, employers can:

**Table 29. Practical guidelines for employers on ensuring migrant workers’ freedom to terminate their employment**

1.	Ensure that migrant workers understand their right to terminate their employment contract within a reasonable notice period and without justification or penalty, and with all costs associated with return paid for by the employer.
2.	Request exit interviews with migrant workers to seek feedback about their experience, noting that no justification from the workers is required for them to terminate their employment.
3.	When a migrant worker’s termination request is linked to a human rights complaint, take immediate steps to investigate and verify the allegation and provide remediation (including after return) when harm has occurred.

Employers are responsible for ensuring that migrant workers are free to change their employer. To do so, employers can:

**Table 30. Practical guidelines for employers on ensuring migrant workers’ freedom to change their employer**

1.	Respect the right of migrant workers to seek employment and change employers at the destination state, or onward migration in accordance with applicable laws and regulations and without restrictions that go beyond the law.
2.	Ensure that employment contracts and relevant orientations (during recruitment and employment) include accurate information about the migrant workers’ rights to change employers at the destination state in accordance with applicable laws, for instance after the completion of the contract and/ or a given numbers of years.

#### 4.2.2. Return to states of origin and reintegration support

Migrant workers’ return to their home community is a part of their migration journey that is often overlooked. During this stage, migrant workers are still vulnerable to risks and employers are responsible for ensuring and respecting their safety. During this stage, migrant workers are at risk as they may not receive support to travel home in a safe and orderly manner, which may put them in debt or leave them stranded in the state of destination. In some cases, migrant workers do not receive their outstanding wages and benefits prior to leaving the workplace.

After returning to their home community, migrant workers may also face difficulties when attempting to re-enter the local labour market. They may lack certification of the skills that they developed in the state of destination or their skills may not match the demand of the local labour market.

#### Practical guidelines for employers

Employers are responsible for ensuring that migrant workers return safely to their state of origin or move to another state. To do so, employers can:

**Table 31. Practical guidelines for employers on ensuring migrant workers’ safe return**

1.	Prior to migrant workers’ return to their state of origin, pay all outstanding wages, benefits and any other amount that is still owed to migrant workers.
2.	In coordination with the labour recruiter, facilitate the safe and orderly return travel of migrant workers to their communities in the state of origin, including any government-required exit or re-entry requirements, and at no cost to migrant workers.

Employers are responsible for ensuring that migrant workers return to state of origin well prepared for reintegration into their communities and local labour markets. To do so, employers can:

**Table 32. Practical guidelines for employers on supporting migrant workers’ reintegration**

1.	Seek feedback from migrant workers about their possible interest and availability to be rehired in the future (subject to satisfactory performance).
2.	Coordinate with the relevant public services of states of origin to provide migrant workers with information about return and gender-responsive reintegration support services.
3.	Collaborate with civil society organizations, trade unions, and/or labour recruiters to provide training (such as financial literacy, skills development, labour market information, migration options or counselling services) to migrant workers while they are still at the workplace to prepare them for their return and reintegration, or onward migration.
4.	Provide migrant workers with documentation that recognizes the skills and competencies they have developed during their employment.



### Case study: Empowering female workers in India's garment industry through soft skills training

Shahi is one of the largest apparel manufacturing companies in India. Under the Personal Advancement & Career Enhancement (P.A.C.E.) programme funded by Gap Inc., Shahi enrolled its female garment workers in several soft skills training courses, including communication, problem solving and decision making, time and stress management, execution excellence, general and reproductive health, water, sanitation and hygiene, financial literacy and legal literacy and social entitlements.

An impact evaluation study conducted by Good Business Lab, found that P.A.C.E. beneficiaries were more likely to save in general for their children's education and were more aspirational regarding their children's educational attainment. The findings prove that workers who are equipped with the right skills can better prepare for their future.

In addition, the study found that skills development for workers had positive business results for Shahi. P.A.C.E. beneficiaries were 11 per cent more productive than those who have not participated in the programme. Eight months into the programme, the net rate of return for Shahi through improved productivity, attendance and retention of workers was observed at 250 per cent. This reached up to 258 per cent after 20 months into the programme implementation.

Given the social and business impacts of skills development for workers, Shahi committed to training 58,000 female garment workers by 2024. To reach this goal, Shahi is certifying a pool of P.A.C.E. trainers who can speak multiple languages among their employees, to facilitate P.A.C.E. training. The goal is to build their capacity to run independent training sessions in factories and skill development training centres.

This case study is an excerpt from: <https://c4rb.org/insights/CaseStudy/PROGRESS-PACE-ShahiExports.pdf>



# Chapter V

This chapter provides an understanding of internal labour migration management systems that need to be put in place prior to hiring of migrant workers and be maintained during the processes of recruitment, employment and facilitation of return or onward migration. The chapter is divided into three sections:

- The first section provides an understanding of **policy commitment** and practical guidance for employers in establishing or strengthening policies to prevent risks of labour exploitation in their operations and supply chains.
- The second section provides an understanding of **human rights due diligence** to proactively manage potential and actual adverse human rights impacts that are caused by or linked to business operations, business relationships, products or services.
- The third section provides an understanding of **grievance mechanisms and remediation**, including its key principles, the common barriers facing migrant workers when reporting their grievances and seeking justice and practical guidelines for employers.
- The fourth section provides an understanding of **engagement with migrant workers** to build stronger employment relationships that are based on mutual respect, benefit and trust.

## 5.1. Policy commitment

All types of businesses, regardless of their size, sector, operational context, ownership and structure, have a responsibility to respect the human and labour rights of all workers in their supply chain.<sup>109</sup> One of the ways to adhere to this responsibility is by having a robust public policy commitment to demonstrate respect for migrant workers' human and labour rights through all stages of labour migration, which allows the business to set clear standards that can be understood and followed by company personnel, business partners and other parties directly linked to its operations, business relationships, products or services. When businesses make such public policy commitment, it is important that it is aligned with international standards and applicable laws.

However, businesses may not have such company policies and if they do, they may not be informed by and communicated to migrant workers. A report by the International Resources for Fairer Trade (IRTF) in 2019 found that while 60 per cent of assessed garment and textile factories in India have anti-sexual harassment policy including defined grievance channels and remediation procedures in place, little was done to

<sup>109</sup> Second pillar of the United Nations Guiding Principles on Business and Human Rights (UNGPs)

raise awareness among workers about these policies. Some of the issues identified were that details of internal committee members, the nodal officer, the district officer as well as awareness posters on sexual harassment were not posted in the factory common areas as mandated by law.<sup>110</sup>

In addition, company policies that are in place may not be inclusive of all aspects covered in international standards. For instance, IOM’s Migrant Workers Guidelines for Employers and ILO’s General Principles and Operational Guidelines for Fair Recruitment require companies to obtain policies, including but not limited

to respecting freedom of association and the right to collective bargaining, and prohibiting the charging recruitment fees and related costs, child labour, forced labour and human trafficking. Companies may not have policies on all these aspects, as typically companies only have policy commitments related to prohibiting abuse, harassment and discrimination in the workplace.

**Company policies relevant to prevent risks of labour exploitation**

According to international standards, to prevent risks of labour exploitation, the following minimum commitments must be included in company policies:

**Table 33. Minimum commitments in company policies according to IOM’s Migrant Worker Guidelines for Employers**

Respect all applicable laws and regulations in states of origin, transit and destination relating to recruitment, employment and migration	Respect equal treatment of migrant workers and nationals in employment and working conditions
Respect international human rights standards and the fundamental principles and rights at work, including prohibiting child labour, forced labour and human trafficking; respecting freedom of association and the right to collective bargaining; and prohibiting discrimination, sexual and other forms of harassment and violence	Respect freedom of movement for migrant workers, including prohibiting the withholding of personal identity documents and other property and upholding the right for termination of the employment contract
Prohibit the charging of recruitment fees and related costs to migrant workers and promote the Employer Pays Principle <sup>111</sup>	Respect transparency in employment terms and conditions, including prohibiting contract substitution
Respect access to remedy and protection for whistle-blowers	Respect duty of care to safeguard rights of migrant workers in the case of crisis and emergency

**Practical guidelines for employers**

As part of businesses’ responsibility to respect the human rights of all workers in their supply chain, they should take appropriate steps to manage potential and actual adverse human rights impacts that are caused

by or linked to their operations, business relationships, products or services through effective policies. To do so, employers can:

<sup>110</sup> International Resources for Fairer Trade (2019). A study on the ‘Implementation of the Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act 2013’ in the Garment Sector. Available from: [www.irft.org/pdf/indian\\_garment\\_industry.pdf](http://www.irft.org/pdf/indian_garment_industry.pdf)

<sup>111</sup> The Employer Pays Principle (EPP) is considered best practice and is endorsed and promoted by the Leadership Group for Responsible Recruitment. The Leadership Group consists of several MNEs including IKEA, HP, Unilever, Coca Cola, which have all committed to implementing the EPP within their operations and supply chains by 2026.

**Table 34. First step of establishing or strengthening policies to prevent risks of labour exploitation**

<b>Step 1: Establish policies to demonstrate respect for the human and labour rights of migrant workers</b>
1.1. Establish clear and written policies that respect the human and labour rights of all migrant workers regardless of their migration status and during their recruitment and deployment, employment and return or onward migration.
1.2. Involve internal and external expertise and stakeholders (including a diverse group of migrant workers and their representatives) to inform policy development, and obtain approval at the most senior level executive of the business enterprise.
1.3. Apply the policies to the enterprise’s operations and business relationships, including labour recruiters, employment agencies, suppliers and service providers (such as transport, logistics, cleaning, security).

Integrating policies into internal management systems can help ensure consistent implementation, compliance and continuous improvement over time. To do so, employers can:

**Table 35. Second step of establishing or strengthening policies to prevent risks of labour exploitation**

<b>Step 2: Integrate policies into internal management systems to ensure consistent implementation.</b>
2.1. Communicate the policies to internal and external stakeholders (including migrant workers), in languages they understand, and display the policies on the company’s website and at the workplace.
2.2. Embed the policies in operational procedures and processes and integrate them into existing and new business contracts.
2.3. Assign oversight and responsibility to relevant senior management and across appropriate departments for implementing the policies.
2.4. Provide adequate resources, orientation and periodic training to migrant workers, other employees and business partners for them to understand and apply the policies.

**Policy Mapping Exercise**

- Are your company’s policies inclusive of the minimum commitments laid out in international standards such as the Migrant Worker Guidelines for Employers (as explained in Chapter I, Section A)? Are there gaps on some issues?
- Who was consulted to inform these policies?
- How well are policies communicated, and to whom?



- How often are policies revised?
- Who revises the policies?
- Do policies reference international standards? If so, which ones?
- Is it clear who the policy is aimed at (such as third-party service providers or facility personnel)?
- Are policies signed off by your company's board?
- Is there an implementation process? Is there an enforcement process? Is there a monitoring of implementation in place?

### Case study: Effectively communicating company policies to workers, including migrant workers

A factory employing 2,000 workers faced difficulties in implementing its policies and procedures on leave/resignation and grievances. Workers did not know whom to ask or where to go for information when they had questions or wanted to make an appeal. Workers' supervisors and HR staff were also ill-informed and often unable to respond to workers' questions related to these procedures.

The factory engaged external experts to help address the issue. Through a participatory and consensus approach to solving the problem involving workers and managers, the causes of these difficulties were identified. Most policies were written in narrative form and were too long. As a result, many workers with limited education could not understand them. In addition, many supervisors could not remember or did not have the time to read the policies thoroughly.

After identifying the causes of the problem, the policies and procedures were put into a user-friendly format for easy reading and comprehension. Discussions with workers and supervisors also led to a decision to produce a booklet that itemized the contents of the policies, presented them in sections and in bullet points; and illustrated the procedures through diagrams in a step-by-step format for easy comprehension.

Four channels were used to communicate the reformatted policies and procedures:

- Training to all supervisors, co-facilitated by HR staff, ensured ownership;
- The procedures were printed on large paper and placed in areas visible to workers (such as lunch area, parking lot, bulletin boards);
- The team produced and distributed booklets on the policies and procedures;
- Supervisors organized brief sessions with workers to introduce the booklets.

Follow-up by external experts was done through factory visits, conversations with workers, and meetings with HR staff. Comprehension of the new material was also reinforced through a competition organized for workers across production lines, which included games on unscrambling the grievance procedure, naming the factory unit that handles leave applications, determining how long it takes to respond to a resignation case, identifying who is in charge of handling delays in response to grievance, etc.

Read more from [www.bsr.org/reports/Levi\\_Strauss\\_Foundation\\_Worker\\_Rights\\_Trainer\\_Resource\\_2011.pdf](http://www.bsr.org/reports/Levi_Strauss_Foundation_Worker_Rights_Trainer_Resource_2011.pdf)



## 5.2. Human rights due diligence

Another way to adhere to businesses' responsibility to respect the human and labour rights of all workers in their supply chain is carrying out human rights due diligence. Businesses should carry out such due diligence to proactively manage potential and actual adverse human rights impacts that are caused by or linked to their operations, business relationships, products or services. Human rights due diligence concerns risks to people, not risks to business. Where such risks are unattended, they can turn into serious legal, financial and reputational risks for businesses.

Managing potential and actual adverse human rights impacts is reflected in international standards, including the United Nations Guiding Principles on Business and Human Rights (UNGPs), OECD Guidelines for Multinational Enterprises and ILO's Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (ILO MNE Declaration).<sup>112</sup>

Moreover, many countries are adopting legislation that requires businesses to ensure human rights due diligence, including the EU. In March 2021, the European Parliament voted in favour of binding EU due diligence legislation, which applies to all businesses who wish to enter the EU internal market and its 450 million consumers.<sup>113</sup>

### Multi-stakeholder approach to human rights due diligence in India's garment and textile industry

In 2019, two civil society organizations – Homeworkers Worldwide and Cividep India – with support from the multi-stakeholder platform Ethical Trading Initiative, carried out human rights due diligence in Tamil Nadu involving two leather footwear facilities. The identified risks factory-based and home-based workers faced, many of whom are women, included forced labour, denial of rights to freedom of association and collective bargaining, health and safety hazards at work and excessive working hours and low wages, among several others. Home-based workers in particular lacked access to grievance mechanisms. Recommendations for the Government of India, retailers and brands and suppliers were provided to address and mitigate the risks faced by workers.<sup>114</sup>

While the implementation of the action plan and results of due diligence measures have not been reported publicly, the project stands as a good practice for multi-stakeholder collaborations aimed at human rights due diligence.

### Practical guidelines for employers

Risks faced by migrant workers may change over time. As such, due diligence must be an ongoing process, involve meaningful stakeholder engagement and be transparent to the public. Due diligence measures outlined in Tables 36 to 39 are tailored to the various labour migration process and the common challenges experienced by migrant workers. These measures should be integrated into and fill gaps in existing company systems.

**Table 36. First step of carrying out human rights' due diligence**

Step 1: Identify and assess risks to migrant workers during all labour migration stages
1.1. Conduct own research, draw on internal and/or external human rights expertise on the labour migration process and migrant workers, and undertake meaningful consultations, including engaging directly with a diverse group of migrant workers and/or their representatives to understand migration journeys from states of origin to locations of work, how and when migrant workers can be vulnerable to human and labour rights violations and which actors are involved in states of origin, transit and destination.

<sup>112</sup> [www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/documents/publication/wcms\\_559146.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/documents/publication/wcms_559146.pdf).

<sup>113</sup> [https://trade.ec.europa.eu/doclib/docs/2021/july/tradoc\\_159709.pdf](https://trade.ec.europa.eu/doclib/docs/2021/july/tradoc_159709.pdf).

<sup>114</sup> [www.homeworkersww.org.uk/resources/due-diligence-in-tamil-nadu-leather-footwear-manufacture](http://www.homeworkersww.org.uk/resources/due-diligence-in-tamil-nadu-leather-footwear-manufacture).

**Step 1: Identify and assess risks to migrant workers during all labour migration stages**

1.2. Carry out in-depth assessments to understand how own business practices and those of business partners may negatively impact migrant workers during their recruitment and deployment, employment and return. The assessments involve the following key actions:

- Mapping the enterprise’s processes, procedures, workforce data and business relationships including at states of origin (for example labour recruiters, training centres, transportation service providers, janitorial and security service providers);
- Cataloguing applicable migration-related and labour laws and regulations in origin and destination states as well as standards set out in the enterprise’s policies and requirements of customers and clients;
- Establishing and conducting a standardized and documented self-assessment process to identify risks and knowledge gaps against applicable laws and internal policies; this can be supported by external assessments of credible third parties and experts on labour migration topics;
- Identifying key business partnerships to complete a standardized assessment that is verified by supporting documentation.

1.3. Based on the information obtained, analyse and prioritize identified risks in accordance with their severity and likelihood of occurring.

1.4. Reassess risks regularly as needed (for instance changes in applicable laws and regulations, internal policy revisions, new business relationships, new recruitment cycle of migrant workers).

**Table 37. Second step of carrying out human rights due diligence**

**Step 2: Implement action plans that are fit-for-purpose to prevent and mitigate identified risks**

2.1. Develop and implement action plans that include clear targets, timeframes, resource allocation and responsibilities for preventing and mitigating identified risks to migrant workers in own operation and business relationships. Relevant actions relating to migrant workers may include:

- Supporting irregular migrant workers in accessing available regularization schemes provided by relevant government departments;
- Revising internal policies to include the prohibition of recruitment fees and related costs charged to migrant workers;
- Developing comprehensive and standardized orientations for migrant workers to understand their rights at all stages of labour migration;
- Upgrading migrant workers’ accommodations to provide healthy, safe, hygienic, decent and gender-responsive living conditions (such as in the context of COVID-19);
- Providing additional trainings to business partners on company relevant policies and good practices to address identified human rights risks of migrant workers.



**Step 2: Implement action plans that are fit-for-purpose to prevent and mitigate identified risks**

- 2.2. Use company influence to the greatest extent possible and support business partners (for example labour recruiters) to implement their own action plans to address and mitigate risks. Where they have made little or no effort to complete the action plan, have proved to be incapable of improvement, or where improvement is not feasible, consider the temporary suspension or termination of the business relationship.
- 2.3. Collaborate with trusted partners, such as relevant administrative bodies, trade unions, civil society organizations, and consular services of states of origin to develop and implement joint approaches in addressing identified risks.
- 2.4. Whenever possible, coordinate and collaborate across sectors, engage government (for example participating in policy dialogue through membership in sectoral associations), and use effective existing initiatives to prevent and mitigate systemic risks that are beyond immediate control, such as gaps in laws and regulations that create inconsistencies with the human and labour rights policies of the enterprise.

**Table 38. Third step of carrying out human rights’ due diligence**

**Step 3: Track the implementation and results of due diligence measures**

- 3.1. Put a mechanism in place to check that company policies, risk mitigation measures and action plans are being followed by employees and business partners.
- 3.2. Engage a diverse and representative group of migrant workers and their representatives at all stages of the labour migration process to understand their experience and uncover instances where company policies have not been followed by employees and/or business partners. Relevant actions relating to migrant workers may include:
  - Engaging civil society organizations to support the monitoring of the recruitment and deployment process at the states of origin;
  - Verifying directly with migrant workers upon their arrival if they have paid any recruitment fees and related costs;
  - Using technology to overcome language barriers and collect regular worker feedback on company policies and processes.
- 3.3. Conduct regular social audits and assessments of business partners to verify that the human and labour rights policies and risk mitigation measures are being implemented and adverse impacts have been prevented or mitigated.
- 3.4. Maintain accurate and transparent records of due diligence efforts, conduct regular management reviews to identify gaps and analyse ongoing performance and use lessons learned to continuously improve due diligence process, internal policies and management systems, as well as future business practices.



**Table 39. Fourth step of carrying out human rights due diligence**

Step 4: Communicate how risks are addressed
4.1. Exercise transparency and share information with internal and external stakeholders about company policies, identified risks, how the enterprise addresses and mitigates risks relating to migrant workers and the related outcomes. Take due regard for commercially sensitive information and publish relevant reports and statements (for example on the enterprises' website).
4.2. Work with relevant stakeholders including a diverse and representative group of migrant workers, business partners, expert groups to develop strategies to address persistent risks to migrant workers.

### 5.3. Access to grievance mechanisms and remediation

Access to remediation for any wrongdoings and violations experienced by workers including migrant workers at the workplace, is considered a basic human right that governments and business should always uphold. Under the third pillar of the United Nations Guiding Principles on Business and Human Rights (UNGPs), all types of businesses have a responsibility to provide an effective remedy to workers whose rights are violated.

Grievance mechanisms are any routinized, State-based or non-State-based, judicial or non-judicial process through which grievances concerning business-related human rights abuse can be raised and remedy sought.<sup>115</sup> Meanwhile, remediation is the process through which a harm is appropriately and effectively redressed.<sup>116</sup>

Migrant workers may face challenges in accessing State-based or judicial grievance mechanisms. As such, it is important that businesses provide effective enterprise-level grievance mechanisms to migrant workers as an option to resolve issues internally. However, obtaining direct remediation by the enterprise does not preclude migrant workers from accessing available regular judicial or labour administrative grievance mechanisms.

When grievance mechanisms are effective, they can present an opportunity for businesses to identify and address problems early and directly and obtain important information to continuously improve internal policies and procedures and prevent future harm from occurring.

In India, the rights of migrant workers to remediation are established under the national legal framework. Committed to ensuring that the UNGPs are respected in India, in 2018, the Ministry of Corporate Affairs published National Guidelines on Responsible Business Conduct, which encourages businesses to adopt responsible practices. These practices include establishing accessible and equitable grievance redressal mechanisms.<sup>117</sup>

In addition, the Industrial Disputes Act of 1947 requires industrial establishments employing at least 20 workers to set up an internal Grievance Redressal Committee (GRC) consisting of an equal number of representatives of workers and management for the resolution of disputes arising out of individual grievances.<sup>118</sup>

However, in a 2015 ILO report in, only 20 to 40 per cent of assessed factories had functional grievance mechanisms,<sup>119</sup> and these mechanisms often address

<sup>115</sup> OHCHR (2011). Guiding Principles on Business and Human Right. Available from: [www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](http://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf).

<sup>116</sup> IOM (2021). Operational Guidelines for Businesses on Remediation of Migrant-Workers Grievances. Available from: <https://publications.iom.int/books/operational-guidelines-businesses-remediation-migrant-worker-grievances>.

<sup>117</sup> Ministry of Corporate Affairs (2018). National Guidelines on Responsible Business Conduct. Available from: [www.mca.gov.in/Ministry/pdf/NationalGuideline\\_15032019.pdf](http://www.mca.gov.in/Ministry/pdf/NationalGuideline_15032019.pdf).

<sup>118</sup> [www.indiacode.nic.in/show-data?actid=AC\\_CEN\\_6\\_6\\_00039\\_194714\\_1517807328510&sectionId=24311&sectionno=3&orderno=4#:~:text=\(2\)%20t%20shall%20be%20the,in%20respect%20of%20such%20matters](http://www.indiacode.nic.in/show-data?actid=AC_CEN_6_6_00039_194714_1517807328510&sectionId=24311&sectionno=3&orderno=4#:~:text=(2)%20t%20shall%20be%20the,in%20respect%20of%20such%20matters).

<sup>119</sup> ILO (2015). Insights into working conditions in India's garment industry. Available from: [www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_379775.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_379775.pdf).

only minor issues, rather than structural ones. The study also found that a vast majority of interviewed workers said they would either go to their Human Resource Department or to their supervisor to raise their concerns. However, the study found that supervisors tend to discourage workers from raising their concerns. Home-based workers face even more challenges in accessing remediation, because they lack social protections and have limited access to collective bargaining.<sup>120</sup>

Moreover, many garment and textile factories report having ‘complaints boxes’ through which workers can file a complaint that is then investigated by a grievance committee with worker representatives. However, a study by Fair Wear Foundation in 2019 found that in 78 per cent of assessed factories, workers never used these boxes. The elected worker representatives in

grievance committees were also not aware of their roles and functions as representatives.<sup>121</sup>

When grievances are filed by migrant workers, they must be investigated while maintaining the confidentiality of migrant workers who wish to remain anonymous. Where harm has occurred, migrant workers must receive fair and effective remedy. Such remediation should be appropriate and proportional to the severity of the violation, adapted to the circumstances of each case, and should be decided upon together with those affected.

**What are the benefits of an effective remediation programme?**

When an effective remediation programme exists, the benefits for migrant workers and businesses are far reaching.

**Table 40. Benefits of effective remediation programme for migrant workers and businesses**

Benefits for Migrant Workers	Benefits for Businesses
There will be a transparent and accountable system for migrant workers to raise and address concerns and grievances, leading to increased access to fair resolutions and better employment conditions.	Businesses can enhance legal compliance, minimize risk and strengthen brand reputation.
Migrant workers will have an increased awareness of their rights.	Businesses can strengthen their human rights profile through early detection and resolution and consistent feedback.
There will be an instrument for the protection of migrant workers' rights.	Businesses can stay one step ahead of the evolving landscape of State regulations and public pressure regarding compliance with human rights standards and responsible business practices more generally. <sup>122</sup>
Trust between migrant workers and employers will be built, leading to an improved employer-worker relationship, which may lead to workers feeling more comfortable at the workplace, thus, increasing their efficiency.	Trust between migrant workers and employers will be built, leading to an improved employer-worker relationship, which may lead to workers staying longer in the workplace.

<sup>120</sup> ILO (2015). Insights into working conditions in India’s garment industry. Available from: [www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_379775.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_379775.pdf).

<sup>121</sup> <https://api.fairwear.org/wp-content/uploads/2019/06/CS-INDIA-2019.pdf>.

<sup>122</sup> <https://publications.iom.int/books/operational-guidelines-businesses-remediation-migrant-worker-grievances>.



As discussed above, a remediation programme can be an effective way to strengthen businesses’ human rights profile through its two key functions (Table 41).

**Table 41. Key functions of remediation**

Early Detection and Resolution	Consistent Feedback
<p>Remediation uses a dispute resolution mechanism that engages with workers to identify, investigate and resolve human rights grievances. By directly engaging with workers, remediation and monitoring allow for the early detection and resolution of an issue before it escalates.</p>	<p>While each step of the remediation process will generate important feedback to the worker and company, continued monitoring and evaluation of the grievances raised by workers and the resolutions provided is vital. Doing so provides a consistent source of feedback that can be analysed to inform – and strengthen – existing human rights compliance and due diligence programmes.</p>

**What are key principles in remediation?**

According to IOM’s Operational Guidelines for Businesses on Remediation of Human Rights Grievances, remediation has two primary goals:<sup>123</sup>

- To provide proper redress for any grievance or harm experienced by a worker;

- To provide its operator (such as a company) with ongoing information and feedback to assess and strengthen its human rights programmes.

To accomplish both goals, the key principles outlined in Table 42 must be applied.

**Table 42. Key principles of remediation**

<b>Worker Engagement</b>	Involve and engage with workers (and their representatives) and external stakeholders in the design, operation and resolution of grievances.
<b>Technology and Reporting</b>	Leverage available technology to allow workers to easily raise grievances, to facilitate tracking and monitoring of grievances, and to analyse the information resulting from the full process of remediation.
<b>Non-Retaliation</b>	Non-retaliation against workers for raising grievances; this principle should be communicated expressly to workers and to personnel within the company. Non-retaliation should be monitored.
<b>Confidentiality and Anonymity</b>	All affected individuals must be guaranteed the option of confidentiality and anonymity throughout the process.
<b>No Waivers</b>	Workers must not be required to waive any other remedy as a prerequisite for receiving a remedy.

<sup>123</sup> IOM (2021). Operational Guidelines for Businesses on Remediation of Migrant-Workers Grievances. Available from: <https://publications.iom.int/books/operational-guidelines-businesses-remediation-migrant-worker-grievances>.

<b>Access to State Remedies</b>	Workers should be educated about State-based sources for relief, including, for example, court-based solutions. Companies should also be aware of State agencies that can be called upon in cases of serious grievances.
<b>Legal Representation</b>	Where possible, workers should be given access to legal counsel to guide them through the process and remind them of their rights.
<b>Whistleblowing</b>	Offer the possibility for workers and personnel to blow the whistle on illicit activities as issues arise.
<b>Non-Discrimination</b>	Assess and investigate all grievances fairly and equally for all categories and demographics of workers, including migrant workers and women, and provide effective remedies in all cases, including, for example, through enacting policies of gender sensitivity, informed consent and individual assistance.

### Practical guidelines for employers

For grievances to be addressed early and remediated directly, businesses should establish or participate in effective enterprise-level grievance mechanisms for individuals and communities who may be adversely

impacted. Businesses should also ensure that migrant workers and their representatives have access to grievance mechanisms in a language they understand. To do so, employers can:

**Table 43. First step of ensuring migrant workers’ access to grievance mechanisms and remediation**

<b>Step 1: Establish or participate in a grievance mechanism that is accessible to migrant workers</b>	
1.1.	Operate a grievance mechanism that is legitimate, accessible, predictable, equitable, transparent and rights-compatible. <sup>124</sup> The mechanism should be based on engagement with migrant workers – especially women and groups that might be particularly vulnerable or marginalized – in its design and implementation to address the potential barriers that typically prevent use by migrant workers (for instance due to fear of retaliation or deportation, language barriers, costs to workers, lack of trust, lack of written evidence).
1.2.	Manage the grievance mechanism in-house or in partnership with other stakeholders, including trade unions and civil society organizations. Ensure that the mechanism consists of clear policies and procedures, including the scope for complaints and remediation, required languages, timelines and focal points. Provide training for focal points to screen and handle complaints, including from women migrant workers.
1.3.	Ensure that the grievance mechanism is easily accessible to migrant workers during recruitment, deployment, employment and return. This can be achieved by including information on the grievance mechanism in vacancy notes and orientations to migrant workers prior to departure, post-arrival and during employment, and through collaboration with trade unions and civil society organizations in states of origin.

<sup>124</sup> United Nations, Guiding Principles on Business and Human Rights (2011), Principle 31 on effectiveness criteria for non-judicial grievance mechanisms.



**Step 1: Establish or participate in a grievance mechanism that is accessible to migrant workers**

- 1.4. Provide multiple channels for migrant workers to learn about the grievance mechanism and lodge complaints in a language they understand. Typical grievance channels include direct communications with supervisors and human resources, telephone hotlines, SMS messaging, emails, online platforms and others.
- 1.5. Take steps to understand and connect migrant workers to other grievance mechanisms, including those run by labour recruiters, trade unions, civil society organizations and governments. Do not prevent migrant workers from accessing alternative grievance mechanisms such as state-led mechanisms, and do not engage in retaliatory practices, such as dismissing individuals who seek remedies.

**Table 44. Second step of ensuring migrant workers’ access to grievance mechanisms and remediation**

**Step 2: Provide effective and prompt remediation where harm has occurred**

- 2.1. Investigate allegations and respect the confidentiality of migrant workers who wish to remain anonymous, especially in relation to sensitive issues such as gender-based violence, sexual harassment and women’s reproductive health.
- 2.2. Where the company finds that harm has occurred, provide migrant workers with remediation that is commensurate to the violation. Such remediation can include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions, as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. Typical remediation provided to migrant workers may include but is not limited to:
  - Repaying all recruitment fees and related costs that were wrongfully charged to migrant workers;
  - Returning seized passports and other personal property to migrant workers; and
  - Organizing and paying for the safe return (including the payment of all outstanding wages and benefits) to the state of origin or supporting a change of employment where migrant workers wish to terminate their employment.
- 2.3. Consult affected migrant workers and their representatives to determine the remedy and give the possibility to appeal the outcome. Where disputes remain unresolved, use a legitimate, independent third-party mechanism, such as a labour court or alternative dispute resolution mechanisms.
- 2.4. In the event of collective disputes around general standards or rules, engage in collective bargaining or establish other forms of workplace cooperation between management and workers.

**Table 45. Third step of ensuring migrant workers’ access to grievance mechanisms and remediation**

<b>Step 3: Monitor the implementation of remediation and capture learnings for continuous improvement</b>
3.1. Confirm with the migrant workers when the remedy has been fully provided and if there have been any positive or negative outcomes (for example, better treatment or retaliatory treatment, adequate or inadequate health care or stigma). If negative outcomes are confirmed, take additional actions to address the remaining issues before the incident can be closed.
3.2. Document the grievance handling process and close the incident. The final documentation respects privacy principles and includes the receipt of grievance, investigation and resolution, and a record of acknowledgment about the established outcome signed by the affected migrant worker.
3.3. Conduct regular reviews to identify areas for improvement in the mechanism and overall management system to prevent future grievances and harms. This should include the feedback from migrant workers, trade unions, civil society, business partners and other involved stakeholders.

**Case study: Establishing an effective grievance mechanism**

A factory in Southern China needed to refresh and improve the use of its worker hotline. Previous efforts to set up a worker mailbox and other means of grievance management were received poorly for several reasons, including that workers did not know about the systems in place and that there was no understanding of what would happen after a grievance had been filed.

The factory established a committee composed of workers and management to develop the new grievance system. The group was thereafter used as a de facto platform for regular management-worker dialogue.

A group of workers and managers (25 in total) were selected to work together to analyse challenges in current systems and to map out how to develop a new system that might be effective. They were asked to create a diagram mapping the life of a complaint: how to get workers to file a grievance, what happens to a grievance when received, who addresses the grievance, and how grievances are addressed.

When the new grievance system was rolled out, fear was again that workers would not know about or use the new grievance system and like the last one, it would be underutilized and ineffective. It was then noted that the workers who had helped to design the system were additional sources of information regarding the grievance processes; the company decided to organize an election would be set up to select worker grievance committee members.

Workers needed to feel that the issues being raised through the new grievance system were being taken seriously. At the same time, the confidentiality of workers who filed complaints needed to be respected. Elected members of the Grievance Committee met regularly with the HR managers responsible for the grievance process. Without disclosing names, they used the opportunity to report on total number of complaints and average response time. In addition, where relevant, HR took the opportunity to clarify company policies related to complaints that had been lodged.

Read more from: [www.bsr.org/reports/Levi\\_Strauss\\_Foundation\\_Worker\\_Rights\\_Trainer\\_Resource\\_2011.pdf](http://www.bsr.org/reports/Levi_Strauss_Foundation_Worker_Rights_Trainer_Resource_2011.pdf)





### 5.4. Engagement with migrant workers and third parties

The close engagement with migrant workers will help build stronger employment relationships between migrant workers and employers, based on mutual respect, benefit and trust. Such relationship can lead to a more inclusive and productive working environment.

Businesses may establish or mainstream existing policies and systems in place related to human and labour rights and labour migration. Migrant workers are an important resource for employers to guide and assess the management of these policies and systems. Including a diverse and representative group of migrant workers (for example in terms of gender, nationality, ethnicity, ability or other characteristics) and engaging recognized third parties can be an effective means to address the unique vulnerabilities of migrant workers and resolve persistent challenges.

In India, several laws prescribe that factories must have committees with varying duties. For instance, the Factories Act of 1948 requires a Safety Committee to promote cooperation between workers and management in maintaining proper safety and health at work and to review periodically the measures taken in this behalf.<sup>125</sup> Similarly, the Industrial Disputes Act of 1947 requires industrial establishments that employ 100 or more workers to establish a Works Committee to promote measures for securing and preserving amity and

good relations between management and workers. The Act also requires industrial establishments employing at least 20 workers to set up an internal Grievance Redressal Committee (GRC) for the resolution of disputes arising out of individual grievances.<sup>126</sup> All committees should consist of an equal number of representatives of workers and management.

However, a Fair Wear Foundation 2019 study found that committees prescribed by law exist only on paper and do not perform their duties effectively. The elected worker representatives were not aware of the committees they belonged to and of their roles and functions as representatives; as well, documentation on the election of various committees was inconspicuous.<sup>127</sup>

If migrant worker representation in the committees is maintained, and if the management supports such committees to perform their duties effectively, the input from migrant workers provided during committee meetings can serve to inform company policies and practices, ensuring that the specific needs of migrant workers are being met.

Engaging workers of different nationalities and genders and consulting them on their issues and concerns is a good first step for employers to design and implement company policies that are responsive to workers' needs. Furthermore, to effectively engage with migrant workers, businesses can take the following steps:

**Table 46. First step of effectively engaging with migrant workers and third parties**

**Step 1: Include migrant workers in the design, implementation and monitoring of the company's policies and management systems related to human rights and labour migration**

- 1.1. Building on the provision of decent employment and working conditions, make continuous investments in building employee relationships with migrant workers that are built on respect and trust. This may involve but is not limited to the following key actions:
  - Maintaining close communication about internal policies and external developments affecting migrant workers, including changes in applicable laws and regulations and public information announcements during situations of crisis;

<sup>125</sup> [https://labour.gov.in/sites/default/files/Factories\\_Act\\_1948.pdf](https://labour.gov.in/sites/default/files/Factories_Act_1948.pdf).

<sup>126</sup> [www.indiacode.nic.in/show-data?actid=AC\\_CEN\\_6\\_6\\_00039\\_194714\\_1517807328510&sectionId=24311&sectionno=3&orderno=4#:~:text=\(2\)%20It%20shall%20be%20the,in%20respect%20of%20such%20matters.](http://www.indiacode.nic.in/show-data?actid=AC_CEN_6_6_00039_194714_1517807328510&sectionId=24311&sectionno=3&orderno=4#:~:text=(2)%20It%20shall%20be%20the,in%20respect%20of%20such%20matters.)

<sup>127</sup> <https://api.fairwear.org/wp-content/uploads/2019/06/CS-INDIA-2019.pdf>.

**Step 1: Include migrant workers in the design, implementation and monitoring of the company’s policies and management systems related to human rights and labour migration**

- Understanding the needs and challenges of migrant workers, paying attention to the different needs and experiences of different gender groups (for instance, through regular face-to-face interviews and employee satisfaction surveys) and promptly resolving the issues that have been identified;
- Providing individual and group-based incentive and reward schemes to all employees as part of the enterprise performance management (such as through wage increment, bonus payments, training and growth opportunities);
- Holding managers and supervisors accountable for the implementation of internal human and labour rights policies and procedures, for example through key performance indicators and reviews.

1.2. Proactively consult and engage migrant workers of different backgrounds (for example in terms of gender, nationality, ethnicity, ability, etc.) and their representatives in the design and implementation of relevant internal policies, due diligence processes and grievance mechanisms.

1.3. Ensure that all relevant internal policies, due diligence processes and grievance mechanisms are inclusive of the specific gender needs of migrant workers.

**Table 47. Second step of effectively engaging with migrant workers and third parties**

**Step 2: Provide effective support services to address the specific vulnerabilities of migrant workers.**

2.1.	Address existing language barriers with migrant workers systematically. Ensure that all internal policies, trainings and briefings, grievance mechanisms, employment contracts and other relevant documents can be accessed in simple and clear languages that are understood by all migrant workers. It is recommended that the enterprise uses professional translation service providers and provides free-of-cost language training for migrant workers to learn the local language.
2.2.	Establish and maintain a comprehensive information and orientation system to help migrant workers understand employment terms and conditions and their rights during life and work in the state of destination, as well as to prevent misinformation, especially during recruitment.
2.3.	Provide migrant workers with reasonable access to internet and communication services, including in dormitories, to enable unhindered contact with families and support networks.
2.4.	Support migrant workers’ participation in social activities and events available in the host community.
2.5.	Facilitate access of migrant workers to training courses addressing specific identified needs, such as to improve their financial education through management of savings and remittances.
2.6.	Make use of available communication technologies and social media to enhance communication with migrant workers, solicit worker feedback and improve available grievance mechanisms.



**Table 48. Third step of effectively engaging with migrant workers and third parties**

<b>Step 3: Collaborate with credible organizations that can help overcome persistent challenges</b>	
1.1.	Establish partnerships with credible third-party organizations, including trade unions and civil society organizations that are trusted by migrant workers. Such partnerships can help improve company policies and management systems, due diligence measures, communication with migrant workers, monitoring of recruitment practices and support during crisis situations.
1.2.	Join collaborative platforms such as sectoral and industry-level associations to benefit from access to available resource and training, to learn from best practices and to participate in policy dialogue.
1.3.	Use existing information, support and welfare services available to migrant workers (such as Migrant Resource Centres, consular services, and others).

### Case study on engaging migrant workers to solve organizational issues

A hotline operator reports grievances received from the factory every month. One specific month, most of the grievances received were about workers not being able to resign from the factory when they wanted to. The labour law provides that a worker may terminate his or her labour contract 30 days after giving notice. However, the company did not want to lose these workers because of a heavy production schedule and wanted workers to stay until the end of the year.

The factory engaged a non-governmental organization to help solve the problem. To understand the situation, the project team worked with the HR manager to ask resigning workers why they wished to leave. The HR manager then interviewed each resigning worker to understand his or her reasons and create a record so that this data can be used to design policies to retain workers.

The third-party team worked with the HR manager to identify possible solutions to reduce turnover. Factory HR staff did not want to break the law by not approving resignations; however, they still wanted the workers to stay. Finding a win-win solution was challenging.

The third-party team advised HR to engage the workers’ representatives to jointly solve the problem. This collaboration led to the following solutions: (1) different actions should be taken for different resigning reasons, and workers’ resignations should be approved; (2) when workers want to leave for personal reasons, the company should grant leave so that they can return after handling their issues.

Worker representatives noted that workers often resign because they do not see the benefits of staying. The third-party team advised that it is important to have a seniority/performance bonus system to keep the skilled workers, in addition to improving working conditions in general. The HR manager agreed and determined the benefits/costs of such a system with technical help from the project team.

Read more from: [www.bsr.org/reports/Levi\\_Strauss\\_Foundation\\_Worker\\_Rights\\_Trainer\\_Resource\\_2011.pdf](http://www.bsr.org/reports/Levi_Strauss_Foundation_Worker_Rights_Trainer_Resource_2011.pdf)

# Annexure

## Annex 1

### Questions for Verification Interviews with Migrant Workers

Upon migrant workers' arrival, a verification interview should be conducted to confirm whether they have undergone a fair and ethical recruitment process. Conducting a verification interview will allow employers

to identify areas for further validation where migrant workers employed at their facility are potentially at risk during the migration process. Based on these, employers can develop an action plan to address the risks, ensure they will not occur again, and take necessary measures to remediate or compensate migrant workers in a timely manner. Questions for conducting verification interviews with migrant workers are outlined below.

<p><b>Recruitment Fees</b></p>	<p>Please walk me in detail through the steps of the recruitment process you went through to get here. Please share steps from applying for the job in your hometown to starting work at this facility.</p> <p>If the recruiter paid an advance to cover expenses related to recruitment, did you have to repay it? If yes, please state the amount, interest rate (if applicable) and method of re-payment.</p>
<p><b>Recruitment Transparency</b></p>	<p>What kind of information did you receive during recruitment and before departing?</p> <p>When did you sign the employment contract?</p> <p>Were you provided with a copy of your employment contract?</p> <p>In which language is your employment contract available?</p> <p>Did anyone explain the contract prior to signing?</p> <p>Were there differences between the information you received before departure and the actual employment?</p> <p>Were there any special requirements/conditions to apply for this position?</p>
<p><b>Freedom of Movement</b></p>	<p>Did the recruiter/sub-agent hold on to your document at any time during recruitment? Which document, for how long and for what reason?</p> <p>Do you have free access to your personal document at any time?</p> <p>Do you have suggestions to improve your current experience in recruitment and employment?</p>

## Annex 2

### Tips for Verification Interviews with Migrant Workers

During the verification interview, employers must engage with migrant workers in a sensitive manner, which will enable more respectful and effective communication. Tips for conducting verification interviews with migrant workers are outlined below.

1.	Conduct the interview in the worker's native language.
2.	<p>Make the migrant worker feel comfortable.</p> <ul style="list-style-type: none"> <li>• Start with a friendly hello.</li> <li>• Where appropriate, ask about family, where they are from and share commonalities.</li> </ul>
3.	<p>Provide migrant workers with a safe space.</p> <ul style="list-style-type: none"> <li>• If possible, conduct interviews individually.</li> </ul>
4.	<p>Ensure consent is obtained.</p> <ul style="list-style-type: none"> <li>• You must ask the worker for their consent to participate in the interview.</li> <li>• Explain the purpose of the interview and assure the worker of the confidentiality of the discussion to prevent any misunderstandings.</li> </ul>
5.	<p>Ask the right questions.</p> <ul style="list-style-type: none"> <li>• Try and start with open-ended questions that encourage the worker to share. Do not formulate Yes/No questions.</li> <li>• Ensure that the information they provide is accurately based on their experience as opposed to guiding them to an answer.</li> </ul>
6.	Limit the number of participants in group interviews to four.
7.	Do not offer to solve problems that arise, to avoid creating false expectations.
8.	Do not make judgement, be judgmental or take it any statement personally.
9.	Conduct the interview in the worker's native language.
10.	<p>Make the migrant worker feel comfortable.</p> <ul style="list-style-type: none"> <li>• Start with a friendly hello.</li> <li>• Where appropriate, ask about family, where they are from and share commonalities.</li> </ul>
11.	<p>Provide migrant workers with a safe space.</p> <ul style="list-style-type: none"> <li>• If possible, conduct interviews individually.</li> </ul>

12.	<p>Ensure consent is obtained.</p> <ul style="list-style-type: none"> <li>• You must ask the worker for their consent to participate in the interview.</li> <li>• Explain the purpose of the interview and assure the worker of the confidentiality of the discussion to prevent any misunderstandings.</li> </ul>
13.	<p>Ask the right questions.</p> <ul style="list-style-type: none"> <li>• Try and start with open-ended questions that encourage the worker to share. Do not formulate Yes/No questions.</li> <li>• Ensure that the information they provide is accurately based on their experience as opposed to guiding them to an answer.</li> </ul>
14.	<p>Limit the number of participants in group interviews to four.</p>
15.	<p>Do not offer to solve problems that arise, to avoid creating false expectations.</p>
16.	<p>Do not make judgement, be judgmental or take it any statement personally.</p>



## Annex 3

### Employment Contract Provisions

#### What should employment contracts include?

1. Parties to the Contract
1.1. Employer's name and address
1.2. Migrant worker's personal information, including
• Full name
• Nationality
• Gender
• Date and place of birth
• Address in country of origin
• Passport number or equivalent government-issued identification number
• Emergency contact information
1.3. Recruitment agency's name and address
2. Terms and Conditions of Employment
2.1. Duration of employment
• Work start date and duration of contract (the start date of the contract should be the date of the migrant worker's arrival at the state of destination)
• Possibilities for contract extensions
• Duration of probation or trial period (if required)
2.2. Work location: Address of the usual workplace(s)
2.3. Job description
• Job title
• Description of tasks to be performed
• Obligation to seeking the written agreement of the migrant worker to change the job description and task and/or any other terms and conditions, in accordance with relevant labour departments and consular services



2.4. Wages
<ul style="list-style-type: none"> <li>Regular wage rate and minimum net pay per month for regular work hours</li> </ul>
<ul style="list-style-type: none"> <li>Wage rates for night work and holiday wage rates</li> </ul>
<ul style="list-style-type: none"> <li>Overtime rates for work performed on (a) regular working days, (b) public holidays or (c) weekly rest days</li> </ul>
<ul style="list-style-type: none"> <li>Form of payment</li> </ul>
<ul style="list-style-type: none"> <li>Method and frequency of payment, and the migrant workers' bank account(s) in states of origin and destination</li> </ul>
<ul style="list-style-type: none"> <li>Provision of a written payslip for each wage payment</li> </ul>
<ul style="list-style-type: none"> <li>Full listing of any and all legal deductions and in-kind payments including specification of the type and amount of each deduction</li> </ul>
<ul style="list-style-type: none"> <li>Description of additional benefits including medical and social insurance coverage, accident/injury insurance, leave entitlement and/or any other applicable benefits</li> </ul>
2.5. Working hours
<ul style="list-style-type: none"> <li>Work and rest days</li> </ul>
<ul style="list-style-type: none"> <li>Regular work hours and shifts</li> </ul>
<ul style="list-style-type: none"> <li>Daily rest periods</li> </ul>
<ul style="list-style-type: none"> <li>Minimum consecutive period of night rest</li> </ul>
<ul style="list-style-type: none"> <li>Anticipated overtime hours, and maximum allowable overtime hours that comply with the requirements of applicable laws and regulations</li> </ul>
<ul style="list-style-type: none"> <li>Provision that overtime is undertaken with the consent of the worker, and the right of the migrant worker to refuse overtime without fear of retaliation</li> </ul>
<ul style="list-style-type: none"> <li>Paid emergency leave</li> </ul>
<ul style="list-style-type: none"> <li>Paid annual leave</li> </ul>
<ul style="list-style-type: none"> <li>Paid sick leave</li> </ul>
<ul style="list-style-type: none"> <li>Paid public holidays</li> </ul>
<ul style="list-style-type: none"> <li>Maternity leave/paternity leave</li> </ul>



<ul style="list-style-type: none"> <li>• Parental leave</li> </ul>
<ul style="list-style-type: none"> <li>• Other leave entitlements</li> </ul>
<ul style="list-style-type: none"> <li>• Compensatory rest period if the normal period of rest is interrupted (e.g. overtime, including standby time or night work), irrespective of financial compensation</li> </ul>
<h3>3. Description of Recruitment Process</h3>
<p>3.1. Specification of steps during the recruitment process, including the pre-employment orientation, pre-departure orientation, signature of employment contracts, document processing, travel and post-arrival orientation</p>
<p>3.2. Specification of responsibilities of labour recruiters</p>
<p>3.3. Outline of all costs to be borne by the employer and the migrant worker</p>
<h3>4. Description of the Return or Change of Employer Process</h3>
<p>4.1. Specification of steps during the return process, including exit interview, payment of all outstanding wages, benefits or other amounts prior to the migrant workers' return to the state of origin</p>
<p>4.2. Specification of responsibilities of labour recruiters</p>
<p>4.3. Outline of the costs to be borne by the employer and the migrant worker</p>
<p>4.4. Conditions under which the employment contract can be terminated by the employer and the migrant workers, including notice period</p>
<p>4.5. Provisions for early termination of the employment contract by the migrant worker without penalty, including the required notice period</p>
<p>4.6. Provision on return costs in case of early termination of the employment contract by the migrant worker without required notice period</p>
<p>4.7. Disciplinary procedures and grounds for termination of contract by employer</p>
<p>4.8. Provisions for contract renewal and change of employer (as per applicable laws)</p>
<h3>5. Living Conditions and Accommodations</h3>
<p>5.1. Detailed description of living conditions, including description of provided accommodation, basic furniture and equipment</p>
<p>5.2. Outline of the costs to be borne by the employer and the migrant worker, including the rates at which costs are charged to the migrant worker</p>
<p>5.3. Rules and regulations of accommodations, including disciplinary procedures</p>

5.4. Mode of transport between home and employer facilities
5.5. Breakdown of any deductions for accommodations, meals, transportation or other services provided or offered by the employer
5.6. Details of any third-party service provider operating or involved in the provision of such services
5.7. Any other facility-specific requirements, as applicable
<b>6. Employer Policies and Procedures</b>
6.1. Prohibition of forced labour and human trafficking
6.2. Prohibition of charging recruitment fees and related costs to migrant workers
6.3. Equal treatment and safeguards against discrimination
6.4. Freedom of movement
6.5. Identity documents
6.6. Freedom of association and collective bargaining in line with applicable laws
6.7. Insurance policy and medical treatments, including yearly medical examinations required by applicable laws
6.8. Emergency protocols
6.9. Privacy and data protection <p>Any work-related medical testing, examinations or treatment can only be undertaken with the worker’s informed consent. Results from medical examinations, testing and treatment shall only be shared with the employer or any third party with the worker’s informed, prior and written consent.</p> <p>Records of migrant worker interviews are always kept confidential unless the migrant workers consent to sharing (anonymously) the information provided.</p>
6.10. Availability of grievance mechanisms, including for confidential reporting, for the entire labour migration process (recruitment and deployment, employment, return or onward migration)
<b>7. Other legal frameworks in state of destination</b>
7.1. Conditions under which entry and residence in the territory of immigration are permitted
7.2. Any other terms required by applicable laws and regulations, including those related to prohibitions on trafficking in persons











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