

FORCED LABOR

MANAGEMENT SYSTEMS APPROACH:

This chapter provides guidance on how to develop and implement management systems related to Forced Labor.

DEFINITIONS

Forced labor is defined by the International Labour Organization (ILO) as “all work or service which is exacted from any person under the menace of any penalty and for which the person has not offered himself or herself voluntarily.”

The terms “offered voluntarily” refer to the free and informed consent of a worker to take a job and his or her freedom to leave at any time. This is not the case for example when an employer or recruiter makes false promises so that a worker take a job he or she would not otherwise have accepted.

Recruitment Agents, also known as private employment agencies or labor brokers, including sub-agents; are third-party service providers involved in the recruitment, selection, hiring, transportation, and, in some cases, management of migrant workers.

Recruitment agents operate in both the sending and receiving countries. Receiving country agents typically work with sending country agents in the country of origin or residence of migrant workers to identify and recruit potential job candidates.

3) Trafficking in human beings: Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children defines trafficking in persons as follows:

(a) Trafficking in persons shall mean 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. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

Migrant workers are workers who migrate from their country of origin or permanent residence to obtain employment at the Supplier’s facility. This includes domestic and overseas migration.

Penalties include both actual and threats of physical violence, withholding of identify documents, denunciation to authorities, wage withholding and indebtedness.

Human trafficking³

is bringing workers into a situation of exploitation through a series of actions, including deceptive recruitment and coercion.

Debt-bondage or indebtedness, is when workers should continue to work to repay a debt to a labor broker, their employer, or another third-party, typically because of recruitment fees or loans.

EXAMPLES OF ISSUES SUPPLIERS MAY ENCOUNTER

- Workers pay fees to recruitment agents or sub-agents, often resulting in significant indebtedness.
- Worker identity documents, such as passports, are withheld by labor brokers or employers, limiting their ability to move about freely or quit their jobs.
- Upon arrival in the destination country, workers are asked to sign new contracts that may be for a different job, with lower wages and benefits.
- Workers are automatically enrolled in mandatory savings programs and their money is not available to them until completion of the employment control.
- Foreign migrants and contract workers often work for lower pay and benefits than local regular workers performing the same jobs.

USE A MANAGEMENT SYSTEMS APPROACH TO ADDRESS COMMON RISKS

Implementing the following management system elements may enable suppliers to ensure workers are ethically recruited and help to meet the expectations contained in the Mars Supplier Code of Conduct:

- A clear and detailed [policy](#) prohibiting forced and bonded labor.
- [Procedures and accountability](#) for establishing and maintaining compliance with laws and regulations related to forced labor and the Mars Code of Conduct.
- [Training](#) for management and workers on the forced labor policy and procedures on ethical recruitment.
- [Documentation](#) of procedures to track whether job seekers or employees are charged recruitment and placement fees and the amount of the fees.
- Ways to [monitor](#) that workers have entered into their employment contract voluntarily and are free to quit without penalty upon giving reasonable notice.
- Periodic [senior level review](#) of how effectively the overall system is performing

The following sections provide a list of system processes, starting with policies that form the foundation of Planning.

POLICIES

Supplier's company policies may include:

- Workers will not be charged recruitment or placement fees by the supplier to obtain a job. All such fees will be paid by the employer.

- The supplier will only engage recruitment agents with a history of ethical recruitment and a commitment to the supplier's policy requirements.
- All workers will be provided complete and accurate terms and conditions of employment before being asked to sign an employment contract.
- There will be no contract substitution and any changes in contract terms will be to the advantage of the worker.
- Workers will be in possession of their passports and will be provided individual, secure storage facilities.
- Workers will be free to terminate their employment at any time without penalty upon giving reasonable notice.
- Workers will not be required to make monetary deposits or to participate in mandatory savings programs.
- Wages will be paid in full and on time.
- There will be no unreasonable restrictions in employee movement from the workplace or accommodation when not working.
- Migrant workers found to be victims of trafficking or provided with fraudulent immigration documents will be provided with access to remedy to the extent allowed by law.
- On a case by case basis, workers who are found to have paid fees that constrain their ability to freely choose employment as part of the recruitment process will have those fees reimbursed.

PROCEDURES

The following procedures are examples of practices which if implemented can assist a supplier in deploying the policies noted above:

- Recruitment procedures that ensure:
 - Job advertisements describe positions accurately and state the policy related to fees.
 - Job candidates are given a complete and accurate description of the terms and conditions of employment both verbally and in writing.
 - Employment contracts are in a language the worker understands and is provided for review before signing.
 - Workers do not make deposits or post bonds in order to obtain the job.
 - Procedure to screen all recruitment agents for their recruitment practices, regulatory compliance history, and both willingness and ability to meet the supplier's policy before engaging them.
- Formal service agreements with recruitment agencies and labor contractors that workers do not pay any fees that would place them in conditions of Forced Labor.
- Workers are in possession of their identity documents at all times and that the agent, broker or employer retains them only as long as needed to obtain or renew required documentation, such as visas and work permits.
- Process to ensure that workers are free to return home during paid leave or for family emergencies without penalty.

COMMUNICATION & TRAINING

To ensure that policies and procedures are followed, suppliers should assign responsibilities for implementation and train responsible staff on their roles. Examples of such practices include:

- Provide initial and periodic training for recruitment and hiring staff and those that manage recruitment agents and labor contractors on the supplier's policies and procedures, and legal requirements on forced labor prevention.
- Newly hired migrant workers should receive a thorough pre-departure training related to their contract terms, information about where they will be living and working, and their legal rights and responsibilities.
- All newly hired workers should receive a new hire orientation covering the supplier's workplace policies and procedures – including those addressing forced labor.
- Communicate the supplier's forced labor policy to any third parties that provide recruitment services on the supplier's behalf.
- Display supplier policy and local laws and regulations on forced labor in the language(s) that all workers understand.
- Communicate the supplier's forced labor policy and performance requirements to on-site contractors and service providers.

DOCUMENTATION & RECORDS

Key procedures should be documented whenever possible to ensure they are followed consistently. The following are examples of such practices:

- Copies of migrant worker personal identification documents, work permits and visas, medical certificates and any other documents and records required by law.
- Copies of signed employment contracts for all workers.
- Service agreements with recruitment agencies and labor contractors.
- A roster of all foreign migrant and local contract workers.
- Records of recruitment agent and labor contractor screening assessments and records of ongoing monitoring of their performance against the supplier's forced labor requirements.
- Records of worker grievance reports and how they were investigated and resolved.
- Records of self-assessments and other evaluations of conformance to the supplier's forced labor policies and procedures and compliance with applicable legal requirements.

MONITORING

To evaluate and improve the effectiveness of the program, it is recommended that suppliers routinely evaluate how well their policies

and procedures are being implemented. Monitoring can take the following forms:

- Establish and track simple KPIs to measure program effectiveness on an ongoing basis, such as the number of new migrant workers required to pay excessive recruitment fees or the percentage of new hires who understand their employment agreement.
- Regular verification of the validity and completeness of migrant worker immigration and work documents to verify that procedures are being properly followed by internal staff and third-party recruitment agents and labor brokers. This process should be part of the routine evaluation of recruitment agent performance.
- Conversations with recruitment staff members to ensure they understand and effectively implement the supplier's forced labor prevention requirements.
- Interviews with all new contract workers and newly arrived migrant workers to determine if the supplier's standards were met throughout the recruitment, selection and hiring process.
- Assess the frequency and nature of contract and migrant worker complaints and grievances related to their treatment during the hiring process, in the workplace, and in supplier-provided or arranged accommodation and transport.
- Regular evaluations of the performance of recruitment agents and labor contractors in meeting supplier forced labor prevention requirements.
- Perform periodic interviews or surveys of migrant and contract workers.

CORRECTIVE ACTION & SYSTEM REVIEW

For continuous improvement of procedures, supplier should undertake immediate corrective and preventive actions, as well as periodic system reviews. This process may include:

- Conducting root cause analysis of any issues uncovered during monitoring.
- Setting improvement targets and developing both corrective and preventive actions (modified procedures) to address each identified root cause.

- Assigning task owners, milestones, and final completion dates.
- Monitoring that changes in procedures have been made and that they produced the desired result.
- Conducting ongoing periodic senior management reviews for overall system effectiveness.

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