

GUIDANCE FOR IMPLEMENTING ETHICAL RECRUITMENT FRAMEWORKS

Based on the emerging best practice case studies, we recommend the following steps to address forced labor and slavery risks in a company's supply chains.

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1) MAP THE SUPPLY CHAIN

In order to address forced labor risks in its supply chain, a company must first assess where these risks might appear through a thorough mapping of its entire supply chain including products, services and labor. Many companies know who their 1st tier suppliers are, but forced labor is often hidden deep within the 2nd-5th tiers of a company's supply chain.

There are many tools and resources to conduct supply chain mapping — from the U.S. Department of Labor³⁴ list of goods produced with forced and/or child labor, to the U.S. Department of State Trafficking in Persons Report³⁵ that looks at country specific data, to the NGOs and consulting companies like Verité³⁶ and Sedex³⁷ that focus on supply chains. A good first step for a company is to meet internally with its relevant business units, such as social compliance/responsibility, sourcing and procurement. These divisions can map the supply chain of each product. It is helpful to follow the entire lifecycle of a product. For example, an apparel company should include material suppliers (fabric, buttons, etc.), manufacturers (cut-and-sew facilities), transportation providers, warehouses, and retail stores where its products are sold.

2) IDENTIFY AND PRIORITIZE RISKS

Once a company has mapped its supply chain, the next step is a supply chain risk assessment to determine where the risk for forced labor is the highest.

For this process, it will be useful to use external sources to understand the relative geographic and sectoral risks, like www.responsible sourcing tool.org developed by the U.S. Department of State and Verité. (See additional resources). For more precise risk assessments, it is extremely valuable to implement formal audits by independent organizations specializing in this work. Patagonia and HP both utilize these resources to ensure that they have a deep understanding of the forced labor risks in their supply chains. Focused assessments will enable a company to highlight and prioritize red-flag issues and systemic problems to be addressed. In the case of HP, the company conducted focused assess-

³⁴ <https://www.dol.gov/ilab/reports/child-labor/list-of-goods/>

³⁵ <https://www.state.gov/j/tip/rls/tiprpt>

³⁶ <https://www.verite.org/>

³⁷ <http://www.sedexglobal.com/>

ments at 16 suppliers in high risk countries and high risk suppliers in Malaysia, which led to a series of workshops with those suppliers in partnership with Verite, government representatives and other ICT companies.

Research of national and international labor laws in relevant countries is necessary, particularly in countries with a high population of migrant laborers. For example, the 32 countries that have ratified the International Labor Organization (ILO) Convention 181 Private Employment Agencies (focused on migrant labor) must take steps to prevent abuse against people placed in their territory by recruitment agencies, establish procedures to investigate complaints, and provide protection of workers' rights.³⁸ As a supplement to national law, countries with Memoranda of Understanding (MOU) with each other that set the terms and conditions for the employment of migrant laborers can contribute to lowering priority risks. There are typically government bodies or ministries that have the responsibility of overseeing labor agencies in donor countries to fulfill these MOUs. Examples include the Sri Lankan Bureau of Foreign Employment, the Philippines Overseas Employment Agency and the Bangladesh Overseas Employment & Services Limited.

3) BUILD SUPPORT OF TOP MANAGEMENT

"It was important to show [our suppliers] that the company is united behind this Standard; this is not just important to the social and environmental responsibility department, but to the entire company. Through the in-person meeting, Patagonia also made it clear to its suppliers that it would work with them to implement improvements, not just leave them alone to change the way things have been done for decades on their own." – Patagonia

It is crucial to build support at the highest level of the company. Policy development and implementation of ethical recruitment requirements expands the traditional scope of responsible sourcing to include auditing of recruitment agencies 'beyond the factory or farm'. **Senior leadership needs to be on board to meet the challenges of changing the recruitment paradigm from "worker pays" to "employer pays".**

Top management support helps a company integrate its continuous improvement approach to ethical recruitment across the entire company, aligning CSR departments with procurement departments, making it easier to send a clear message to its suppliers. In addition, when company leaders signal their commitment to the policy, it reinforces to suppliers the importance of implementing the necessary changes. For example, Patagonia's Chief Operating Officer participated in an in-person meeting with suppliers in Taiwan focused on its new Migrant Worker Employment Standard. As we are gradually uncovering more elements in a complex puzzle that contributes to the modern slavery paradigm, companies must realize that the established notion of corporate social responsibility and compliance is changing. The policies and efforts to address forced labor in the past must be reevaluated because they are no longer effective in addressing the current universe of problems.

³⁸ ILO Convention 181

4) POLICY DEVELOPMENT INCLUDING 3-PILLAR IMPLEMENTATION

A blanket prohibition of forced labor in a code of conduct is insufficient to fully address the nuanced and complex scenarios that may lead to recruitment violations across a company's global supply chain. For this reason, assessments conducted prior to implementing a policy which includes engagement of key stakeholders will help companies customize policies in response to the specific needs of each country, sector, commodity and supplier.

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The use of third party labor brokers is a widely accepted practice in the vast majority of countries where companies hire migrant workers. For this reason, in developing its policy a company must determine the level of risk it is willing to assume if and when labor brokers are used. For example, while Patagonia allows its suppliers to use labor brokers as long as they can provide evidence that they are abiding by the company's recruitment requirements, HP decided that labor brokers present too much risk and mandates that all suppliers directly hire its migrant workers. More specifically, while labor brokers can be used for recruitment purposes, once hired, the company must establish a direct contract with the employee. It is difficult to conduct due diligence on labor brokers since there could be many different types of brokers involved in the employment process of a given worker and many of these are located in a different country than the supplier. The company will have to factor these complications into its decision on a policy related to labor brokers. However, due diligence on labor brokers has to be covered by an audit.



Migrant worker living conditions.

Workers often request overtime to get out of debt so their consent masks a possible problem. It's a major flaw in the process with auditors not recognizing the problem right away and just assuming that if overtime is consensual, then there is no need to look for violations.

When it comes to assessment of overtime, often auditors find that workers work much overtime and rarely think this is a sign of possible debt bondage, as they just ask if the worker consented to the overtime. Workers often request overtime to get out of debt so their consent masks a possible problem. It's a major flaw in the process with auditors not recognizing the problem right away and just assuming that if overtime is consensual, then there is no need to look for violations.

Policies that are made public and easily found on a company website and that clearly set forth a company's values and expectations for its suppliers is what ultimately communicates a company's stance on the issue to the public, its shareholders and its supplier base. For example, TCCC, HP and Patagonia have made their policies transparent, including the guidance documents created for their suppliers and available for other companies to use as well.

3-Pillar+ Implementation

ICCR recommends that companies adopt and implement the three main elements of an ethical recruitment policy: No Fees, contracts in the worker's language, and no withholding of personal documents.

- **No Fees:** Based on the case studies, it is clear that the prohibition of fees is the most difficult aspect of this policy to implement because recruiting workers, especially foreign migrant workers, does come with some cost. Until recently this cost has been borne by the workers and their families alone, but now suppliers and some companies are stepping up to alleviate this burden on the workers.

The Issara Institute has published a comprehensive brief summarizing the debate on recruitment fees and a comparative approach to fee reimbursement taken by EICC and Patagonia. The "employer pays"³⁹ model for recruitment is the goal to be achieved in the near term. Implementing the model needs to address the responsibilities of companies, suppliers and governments.

- **Contracts:** Risk is significantly mitigated when contracts accurately represent the terms of employment and workers are aware in advance of their rights and their employers' obligations. These contracts should specifically outline terms of service including wages, overtime, and working and living conditions. A good practice is to develop an orientation that includes explaining the terms of the contract and the context of the workplace. Companies have created videos that can be shown to workers at the time of hiring. These videos depict the city and factory where workers will work, their accommodations, the production floor, and shopping areas around their dormitories. Companies may also introduce workers to the local culture so that they may become sensitized to their new host country.

Companies are encouraged to provide suppliers with sample language for contracts so they are clear about what should be included. Further, to ensure that workers understand the contract, in addition to proving the contract in the languages of workers, it is beneficial for the supplier to hire an HR staff person fluent in these languages who can help answer any questions about the terms of the contract.

³⁹ <https://www.ihrb.org/focus-areas/migrant-workers/employer-pays>



Thai work permits.

Suppliers need to provide a safe, private space, such as lockers, for workers to store their documents in their living spaces.

- **Accessibility of Personal Documents:** Finally, while suppliers and even workers may resist, suppliers need to provide a safe, private space, such as lockers, for workers to store their documents in their living spaces. Suppliers may need to provide training to convey to migrant workers the value of these documents and the need to safeguard them, as indicated in the Patagonia case study.

Although individual lockers for workers is ideal, it may not always be feasible on site. One source witnessed facilities that kept passports and other important documents in a communal safe that only a security guard and/or employer has access to, but with written letters of consent from the workers themselves. Employers may do this for safe keeping in the event of fire or other risks. If this service is being offered to employees, this should be stipulated in their contracts and workers' documents must be accessible on demand in a timely manner.

Migrant Worker Infrastructure:

Our 3-pillar approach outlines a basic set of requirements to combat forced labor and human trafficking. However, companies that hire migrant workers directly or indirectly need to reach beyond the basic requirements to ensure that their operations are free from human rights violations by implementing:

- independent grievance systems;*
- guaranteed repatriation of workers stranded in a foreign land;*
- basic housing standards; and,*
- freedom of association rights.

(*Is required by the Executive Order/FAR)

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5) BUYER-SUPPLIER RELATIONSHIP BUILDING

Many of the best practices we surveyed cite good and long-standing relationships with suppliers as a key to successful communication of expectations and effective implementation of an ethical recruitment policy. Knowing suppliers and their capacity as well as their subcontractors' capacity to take on orders using an already existing workforce are vital to understanding the risks of forced labor in extended supply chains. A supplier may accept a contract without having the personnel to produce the product in time. This can lead to the hiring of temporary workers, or kicking the work to unauthorized sub-contractors, which raises the potential risk of forced labor. Performing productivity calculations and watching where a product is being produced are additional considerations when mapping a supply chain.

6) APPROPRIATE SUPPLIER SUPPORT

Since the actual policy implementation falls on the suppliers, companies are strongly urged to provide their suppliers with as much practical support as possible, including but not limited to in-person training, webinars and, importantly the financial resources required to implement the policy. Patagonia and HP both found it valuable to bring suppliers together for an in-person workshop to share best practices and challenges. TCCC has built supplier support by organizing supplier trainings with peer companies through AIM-PROGRESS in the Middle East, Turkey and Thailand to date. Issues related to forced labor tend to be systemic, and it is important to recognize that a single company will not have the power to change the entire system; collaboration with parties up and down the chain will be critical to achieving goals. Both buyers and suppliers should consider dedicated staff that will be responsible for overseeing specific parts of the process.



Worker interviews in progress.

Direct hiring of workers where possible is the emerging best practice which, as HP determined, helps mitigate the risk of hiring workers through recruitment agents. The company's direct hire policy was phased in over a period of months and HP provided a guidance document that includes how to identify, screen and select ethical recruitment agents. CP Foods and Thai Union have taken the approach of hiring directly through a vetted agent located in the home country of foreign migrant workers.

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When it comes to retroactively reimbursing recruitment fees to workers, any selected model of reimbursement can significantly increase the cost of recruitment to the supplier. For this reason, companies are encouraged to provide some financial support to their suppliers to help them to implement this part of the policy. Patagonia's phased, cost-sharing approach is a useful way to show suppliers that companies will share the responsibilities presented by an ethical recruitment commitment. However, it is equally important to be clear that suppliers are expected to ultimately be able to recruit workers without the charging of fees, and that any future costs as a consequence of ensuring this principle will be the suppliers' responsibility.

Importantly, a CSR team cannot communicate to suppliers that they will be supported in paying recruitment fees if the procurement team is pressuring them to reduce prices and lead times. This unfairly prejudices suppliers. Ongoing communications and alignment, both within companies and across the supply chain, will help avoid these issues and foster a positive attitude towards policy implementation.

7) TRANSPARENT COMMUNICATION

Once a company has achieved internal alignment on its ethical recruitment policy throughout its supply chain, the next step is to communicate these expectations to suppliers. It is especially important to present a united front across all departments that interact with suppliers to eliminate any confusion about expectations. Direct communication with suppliers is the most effective form of communication, as Patagonia demonstrated when it rolled out its Standard. This enables a company to answer suppliers' questions and address challenges directly. Many of the practices that are linked to forced labor are commonly accepted practices in certain areas, so the change will not necessarily be easy or quick. It is important to provide suppliers with the necessary support to make these changes.

Further, as with all company policies and codes, once adopted, it is critical that any ethical recruitment policy be made accessible to the public via the company's website.

8) STAKEHOLDER COLLABORATION

It is critical to address forced labor in global supply chains collectively, through industry associations and cross-industry collaborations. The issue is extremely complicated, and is influenced by economic factors, societal norms and local laws. One company or one supplier cannot make significant changes to these practices alone. Once a company decides on a course of action it has to engage with external stakeholders including government, NGOs, worker organizations, unions, international organizations, investors and other brands to address the issue from multiple levels. For example, TCCC is engaged in the development and implementation of a sector-wide approach to changing the recruitment system through the Consumer Goods Forum's Forced Labor Initiative and a founding member of the Leadership Group for Responsible Recruitment, a cross-sectoral approach.

Additionally, once migrant workers are found in a supply chain, companies are advised to contact the labor attachés of embassies and consulates of these respective countries to address workers' grievances in the host country. This governmental resource may provide additional information on how to mitigate risks of forced labor in the host country.

CONCLUSION

The companies presented in this study have all taken leadership positions in forging and implementing ethical recruitment policies in their respective industries. While they are at different stages of implementing this policy, it is important to share these experiences to highlight the best emerging practices and challenges they are facing in the process, to help other companies and suppliers along the path. Our common goal is to eliminate unethical hiring practices and the burden of recruitment fees on vulnerable workers which may lead to egregious human rights violations that place companies at risk.

Even though the lessons learned from these case studies are industry-specific, they have global implications that are relevant for a variety of stakeholders, particularly for companies in the early stages of developing an ethical recruitment policy. We are enormously grateful for all the companies featured in our case studies as the insights gleaned from each provide invaluable learning as companies and industries grapple with ethical recruitment challenges. What is clear is that the global recruitment industry and its many risks have become a focal point for many companies with extended supply chains. We are hopeful this resource will help companies address the challenges of ethical recruitment in a strategic, targeted way that will have meaningful impact on the global recruitment system, and will help improve the lives of the millions of people trapped in forced labor around the world.