



(COP 18) FORCED LABOUR

A Definitions and applicability

Forced labour is all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily. This includes work or service that is demanded as a means of repayment of debt.

Types of forced labour can include:

Bonded labour, also known as ‘debt bondage’, involves the taking of a loan or wage advance by a worker from an employer or labour recruiter, in return for which the worker pledges his or her labour and sometimes that of family members in order to repay the loan. The terms of the loan or work, however, may be such that the worker is trapped with that employer for years without being able to pay back the loan.

Indentured labour arises when a third party, often a parent or guardian, offers a worker in exchange for a sum of money. In this situation, workers must work for either a defined period of time, or until the proprietors determine that they have received fair value.

Prison labour: involuntary work performed by prisoners who have not been convicted in a court of law and whose work is not supervised by a public authority is considered forced labour. Similarly, involuntary work performed by a prisoner for the benefit of a private undertaking is also considered forced labour.

Human trafficking is 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. Human trafficking can lead to forced labour.

Source:

- *International Labour Organisation (ILO) Convention 29 – Forced or Compulsory Labour (1930)*
www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C029
- *International Labour Organisation (ILO) - Combating Forced Labour: A Handbook for Employers and Business (2008)*
www.ilo.org/sapfl/Informationresources/ILOPublications/WCMS_101171/lang--en/index.htm
- *Social Accountability International (SAI) – Social Accountability SA 8000 International Standard (2008)*
www.sa-intl.org/data/in_0001/resources/live/2008StdEnglishFinal.pdf
- *UN Protocol to Prevent, Suppress and Punish the Trafficking in Persons, especially Women and Children (2000)*
www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf

The **Forced Labour** section of the COP is applicable to all Facilities with employees.

B Issue background

Forced labour is a global problem that exists in industrialised as well as in developing countries, in formal and informal economies, in global supply chains of multinational companies as well as small and medium sized enterprises. Worldwide, at least 20.9 million people are victims of forced labour – women and men, adults and children. According to ILO estimates, the majority of the victims of forced labour are exploited by private agents.

Forced labour can take many forms. Although some is imposed by the State, the majority takes place in the private economy. Forced labour can sometimes involve physical violence or sexual abuse. Providing wages or other compensation to a worker does not necessarily mean that the labour is not forced or compulsory. Forced labour also includes situations where workers cannot leave their job without facing a penalty or a threat of penalty of any kind. The penalty could mean physical constraint or punishment, but it could also refer to other forms of abuse such as threats of deportation, restricting workers’ movements, the confiscation of passports, or the non-payment of wages that effectively binds a worker to a job or employer.

B Issue background (cont)

The following examples of forced labour might be relevant for the diamond, gold and/or platinum group metals jewellery supply chain:

- **Withholding and keeping of documentation:** Where an employer takes away identity documents and/or passports, making it difficult for an employee to leave employment. Where such documents are surrendered for security purposes, this should only be a temporary arrangement.
- **Debt-bondage:** This can arise from a pledge by a debtor of his/her personal services (or those of a person under his/her control, for example a child) as security for a debt over a period of time. Sometimes workers are allowed to gradually increase debts, such as salary advances, store credit and loans, beyond their wage capacity. This can create a continuous state of bondage over many years, where workers are earning wages only to pay off debts or the interest arising from those debts. In many cases, the value of services pledged is not reasonably assessed and/or is not fairly applied towards the settlement of the debt.
- **Compulsory work:** Forms of compulsory work can include forced overtime - where workers are unable to decline overtime without fear or threat of retaliation such as threat of dismissal - and additional labour required as punishment for participating in a strike.
- **Physical confinement:** Physically confining workers within the workplace, or unreasonable prohibitions on workers leaving factory grounds and dormitories, are infringements on workers' freedom. However it is important to clarify that restrictions during working hours in the workplace, as long as appropriate and not unreasonable, would not be considered forced labour. Also, outside working hours, some restrictions may exist for security reasons, so some assessment of the reasonableness of the restriction is similarly required.
- **Verbal or physical intimidation:** Forms of intimidation include threats of physical punishment or non-payments of salary in case of the worker leaving employment.

Migrant workers are particularly vulnerable to forced labour. They may have illegal or restricted employment status, may be economically vulnerable, and/or may be members of an ethnic group subject to discrimination. These factors can be used unfairly by coercive recruiters or labour intermediaries, who remove identity documents and threaten workers with public exposure (for example, threat of denunciation to authorities facing migrants in an irregular situation) or deportation. Faced with these threats, migrant workers may accept sub-standard conditions of work such as debt-bondage or indentured labour.

If companies have migrants in their workforce, and particularly if a third party is used to recruit them, they should know who these workers are and where they come from, and ensure that their recruitment into the workplace was completely above board and without deception or coercion. Developing a company policy to act as a guideline on recruiting migrant workers and engaging only reputable recruitment and employment agencies is also important. Other categories of vulnerable workers based on ILO estimates include women workers, indigenous peoples, as well as poor or illiterate workers, and those in geographically remote regions.

Human Trafficking

Trafficking in persons, or human trafficking, can lead to forced labour. Trafficking involves the movement of a person, sometimes across international borders but more commonly within a country, for the purpose of exploitation. In recent years, human trafficking has taken on new forms and dimensions, often linked to developments in information technology, access to transport and organised crime. It can take place in developing countries, countries in transition and industrialised market economy countries alike.

Companies can be affected by human trafficking in a number of ways. They can be directly linked to it through the recruitment, transport, harbouring, or receipt of a person for the purpose of exploitation (in other words, a trafficking victim). However businesses can also be indirectly linked to trafficking through the actions of their suppliers or business partners, including sub-contractors, labour brokers or private employment agencies. In this way, companies can be implicated if they source goods or use services that are produced or provided by trafficking victims. Recruitment agencies can play a role in increasing the risk of trafficking in global supply chains, and relationships with such agencies should be monitored.

C Key regulations

INTERNATIONAL CONVENTIONS

The right to give work freely is enshrined in Article 4 of the Universal Declaration of Human Rights (1948), which states no one shall be held in slavery or servitude.

The International Labour Organisation (ILO), a tripartite United Nations agency, has adopted two major conventions on forced labour. These are Conventions No.29 on Forced Labour (1930) and No.105 on Abolition of Forced Labour (1957). Key aspects of the definition in Convention 29 are that there is some form of menace or penalty involved and that the worker has not voluntarily agreed to work.

Conventions 29 and 105 are classified by the ILO as 'core conventions'. Additionally, the elimination of all forms of forced or compulsory labour is included in the 1998 Declaration of Fundamental Principles and Rights at Work. All ILO member countries are bound to promote and respect the principle of the Declaration, regardless of whether they have ratified the core conventions.

The growing awareness of human trafficking has resulted in the elaboration of new international and regional anti-trafficking instruments, for example the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons (2000), or "the Palermo Protocol", and the Council of Europe Convention on Action against Trafficking in Human Beings (2005). These new instruments convey a growing consensus that trafficking in persons can include, result in, or be undertaken for the purpose of forced labour, slavery and servitude. The adoption and ratification of these instruments has contributed to rapid changes in legislation and practice in many countries, and led to the adoption of new policies in this field.

NATIONAL LAW

Applicable national and local laws and regulations may exist to address trafficking, involuntary servitude, prison labour or bonded labour. It is essential to be aware of all relevant legislation and regulation in the jurisdictions of all areas of operations.

D Suggested implementation approach

The Suggested implementation approach provides general guidance for implementing the mandatory requirements of the Code of Practices. The guidance is not normative and should be seen as a starting point for information and support.

COP 18.1: NO FORCED LABOUR:

Members shall not use Forced Labour as defined in ILO Convention 29, including bonded, indentured or involuntary prison labour.

Points to consider:

- A risk assessment appropriate to the business' circumstances can help to assess where there may be a risk of forced labour and human trafficking. See the RJC Risk Assessment Toolkit for a general risk assessment template that can be used, particularly for small to medium enterprises. Alternatively Members may use their own risk assessment process. Issues to consider may include:
 - Carefully regulate the use of contractors, suppliers, agencies and labour providers. Indicators of risk include recruitment fees charged to workers, passport retention, deception in wage payment, loans offered to workers or other practices which have the potential to bind the worker to the agency.
 - Where migrant workers are employed, examine the process of recruitment to ensure that there is no form of coercion involved.
 - Check that compulsory labour is not used as punishment for a strike.
- Confirm that awareness of and responsibility for forced labour issues is part of a senior management function, such as human resources.
- Use standard employment contracts, including statutory and collectively-agreed terms, working hours and wages. Standard regular wage payments made directly to the worker cannot be supplanted by in-kind remuneration. See also [General Employment Terms](#).
- Formally prohibit the use (or threat) of violence, use (or threat) of penalties, or intimidating practices, such as bullying, by any employee or contractor. Provide a mechanism for employees to anonymously report instances of threats, violence or other infringements of policy. See also [Discipline and Grievance Procedures](#).

D Suggested implementation approach (cont)

COP 18.2: FREEDOM OF MOVEMENT:

Members shall not:

- a. Unreasonably restrict the freedom of movement of Employees in the workplace nor in on-site housing.
- b. Retain original copies of Employee personal documentation, such as identity papers.
- c. Require any form of deposit, recruitment fee, or equipment advance from Employees either directly or through recruitment agencies.
- d. Prevent Employees from terminating their employment after reasonable notice or as established by Applicable Law.

Points to consider:

- In the jewellery supply chain, security measures such as locked doors and security guards at exits may often be required to protect people and property (see guidance on Security). If there is no threat of a penalty and work is undertaken voluntarily, and workers freedom of movement is not unreasonably restricted inside and outside the workplace, this is not considered a forced labour situation.
- Access to food, water, toilets, or medical care in the workplace cannot be used as a means to maintain labour discipline.
- Unreasonable restrictions on freedom of movement are not permitted in any employer-provided housing, including both employer-operated and third-party-contracted residences.
- Keep only copies of identity documents and passports. Where the original documents are kept for security or legal purposes, this should be a temporary arrangement and with the agreement and understanding of the worker. The worker should have ready access to their documents and the right to take them back into his or her possession at any time without restriction (for example on exit from the workplace).
- Fees or deposits from employees for their recruitment are not permitted.
- Carefully consider whether loans made to employees may create situations of forced labour if employees are not able to meet the repayments (see also guidance on Remuneration). Typical indicators of risk are high rates of interest, very long repayment terms or fraud used by the employer or agency to deceive the worker or artificially inflate the debt.

COP 18.3: HUMAN TRAFFICKING:

Members, and any entity supplying labour to a Member, shall not engage in or support Human Trafficking. Members shall monitor relationships with recruitment agencies for Risks of Human Trafficking.

Points to consider:

- Particular issues Members should take into consideration when dealing with recruitment agencies are:
 - Ensure that such agencies do not engage in fraudulent practices that place workers at risk of forced labour and trafficking for labour exploitation;
 - Prevent the abuse of workers contracted by such agencies, for example by ensuring that such workers receive adequate protection in relation to wage-related matters, working hours, overtime and other working conditions;
 - Ensure that fees or costs related to recruitment are not borne by workers but by the contracting company;
 - Use only those recruitment agencies that are licensed or certified by the competent authority.

CHECK:

- Have you assessed the risks of forced labour and human trafficking in your company, direct suppliers and any recruitment agencies?
- Do your security arrangements unreasonably restrict movement via threat of penalty to workers?
- Can workers access their identity documents and passports when they need to?

D Suggested implementation approach (cont)

Q&A: FORCED LABOUR

1. If an employee has verbally or in writing provided his or her consent to work, how can there be a question of forced labour?

The formal consent of an employee does not always guarantee that the employee works out of free will. For example, where consent to work has been given under the threat of a penalty (for example, a threat of violence) there can be no “voluntary offer” by the employee. In this case, an external constraint or indirect coercion interferes with a worker’s freedom to offer him- or herself voluntarily. This constraint may result from an act of the authorities, such as a statutory instrument, or it may result from an employer’s practice, for example where migrant workers are induced by deceit, false promises and retention of identity documents or forced to remain at the disposal of an employer. Such practices are considered forced labour as defined by ILO Conventions.

2. Is the retention of personal documents during the term of employment considered forced labour?

Not necessarily. However, the retention of identity documents or other valuable personal possessions can be considered an indication of forced labour if workers are unable to access these documents at their discretion and if they feel they cannot leave employment without risking the loss of the documents. In many cases, without such documentation, the employee may not be able to obtain another job or even access certain services as a citizen.

3. Is compulsory overtime required to meet production deadlines considered forced labour?

The obligation to do overtime work is not considered forced labour if it stays within the limits permitted by national legislation or agreed to in collective agreements. This means that, according to international standards, forced labour only occurs if overtime beyond the weekly or monthly limits allowed by law is compulsory, irrespective of the reasons for such overtime. If an employer requires employees to work under such conditions, in clear violation of the law and with the threat of a penalty, forced labour may occur.

4. If I am providing full wages and benefits, can a forced labour problem ever arise?

If a person is not free to leave his or her employment under the threat of penalty this constitutes forced labour, regardless of whether you provide wages or other forms of compensation.

5. To prevent theft and protect the security of my employees and property, I hire security personnel and lock the doors of my workplace. Is this considered forced labour?

As with the retention of personal documents, locking doors can be considered an indication of forced or compulsory labour. It restricts workers’ freedom of movement and raises questions about the voluntary nature of employment. However, the important point to remember is that forced labour is characterised by the threat of a penalty and concerns work or service that is undertaken involuntarily. If there is no threat of a penalty and work is undertaken voluntarily, this is not considered forced. Similarly, posting security guards at factory exits for security reasons is not to be considered forced labour. However, the inappropriate use of security personnel could be an indication of forced labour and should therefore be avoided and treated with caution.

Source: ILO Combating Forced Labour: A Handbook for Employers and Business (2008)

E Further information

The following websites have further information on forced labour and human trafficking:

- International Labour Organisation (ILO) Convention 29 – Forced or Compulsory Labour (1930)
www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C029
- International Labour Convention (ILO) Convention 105 - Abolition of Forced Labour (1957)
www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312250:NO
- International Labour Organisation (ILO) - Combating Forced Labour: A Handbook for Employers and Business (2008)
www.ilo.org/sapfl/Informationresources/ILOPublications/WCMS_101171/lang--en/index.htm
- International Labour Organisation (ILO) - Special Action Programme to Combat Forced Labour
www.ilo.org/sapfl/lang--en/index.htm
- International Labour Organisation (ILO) – Forced Labour and Human Trafficking: a Handbook for Labour Inspectors (2008)
http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_097835.pdf
- Social Accountability International (SAI) – Social Accountability SA 8000 International Standard (2008)
www.sa-intl.org/data/n_0001/resources/live/2008StdEnglishFinal.pdf
- Social Accountability International (SAI) - SA® 8000 Abridged Guidance: 2008 Standard
www.sa-intl.org/data/n_0001/resources/live/SAI_AbridgedGuidance_SA8000_2008.pdf
- United Nations Global Initiative to Fight Human Trafficking (UNGIFT) - Human Trafficking and Business: Good Practices to Prevent and Combat Human Trafficking (2012)
www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_142722.pdf
- United Nations Global Initiative to Fight Human Trafficking (UNGIFT) - Human Trafficking and Business: An eLearning Course on How to Prevent and Combat Human Trafficking:
www.ungift.org/knowledgehub/en/tools/elearning-tool-for-the-private-sector.html
- United Nations Global Compact – Principle 4 on Forced and Compulsory Labour
www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/Principle4.html
- United Nations Protocol to Prevent, Suppress and Punish the Trafficking in Persons, especially Women and Children (2000)
www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf
- Verité - A Fair Hiring Framework for Responsible Business (2011)
www.verite.org/sites/default/files/images/Verite-Help-Wanted-A_Fair_Hiring_Framework_for_Responsible_Business.pdf
- Verité - Fair Hiring Toolkit
<http://www.verite.org/helpwanted/toolkit>