



Good Practice Guide: Global Migration

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Purpose and Scope

This document provides policy guidance on all key international labor migration areas for international companies, employers, and contractors. This collection of what BSR considers “good practice” is not an auditable standard and is not a substitute for company codes of conduct. This document will evolve as the dialogue on international labor migration evolves. In some areas, there are multiple options that reflect multiple informed viewpoints. This document does, however, aim to *inform* employer and multinational customer codes of conduct. This is applicable for all contractors (e.g., employers), and their subcontractors or contractors (each a “contractor,” collectively, “contractors”).

This document incorporates international standards, current company codes of conduct, and BSR and partner knowledge of the issues. It also is aligned with the Migrant Worker Management Toolkit that provides detailed guidance on areas related to migrant workers. The two tools used in tandem guide companies on both policies and practices related to migrant workers.

This document was developed in collaboration with three BSR ILM Focus Group members: Apple, Inc., Hewlett-Packard Company, and JC Penney Corporation, Inc. The focus group members provided guidance and input, but this document does not directly represent their respective codes of conduct or company standards nor does it serve as a substitute for their respective standards relating to migrant workers.

The document has also undergone an extensive review with input from numerous stakeholders from international organizations, civil society, additional multinational companies, employers, employer associations, and trade unions.

Legal Status

The contractor should be able to determine and document the legal status and contract terms of all migrant workers. Using illegal migrant workers is prohibited. Any illegal migrant employees hired knowingly by a contractor or because of inadequate hiring practices are entitled to repatriation.

Workers' Rights

NONDISCRIMINATION

Contractors should ensure equal treatment of migrant workers without discrimination on the basis of nationality, race, language, religion or conviction, political or other opinion, sex, age, economic position, marital status, pregnancy or health status (e.g. HIV positive), sexual orientation, with respect to the following matters:

- » Remuneration for work of equal value
- » Conditions of work, including hours of work, rest periods, annual holidays with pay, overtime arrangements, and other regulations concerning employment
- » Membership of trade unions, exercise of trade union rights and eligibility for office in trade unions and in labor-management relations bodies, including bodies representing workers, and enjoyment of the benefits of collective bargaining
- » Security of employment
- » Conditions of life, including housing and the benefits of recreational, educational, and health facilities
- » Hygiene, safety, and medical assistance

- » Rights to social security measures and welfare facilities and benefits provided in connection with employment, unless expressly prohibited by applicable laws
- » Employment taxes, dues, or contributions payable with respect to the persons employed, unless exempted by applicable laws
- » Advancement in accordance with their individual character, experience, ability, and diligence

However, some applicable laws and regulations do distinguish between the treatment of migrant workers and of local workers. Such laws should be addressed transparently in consultation with the customer.

FREEDOM OF CULTURAL AND RELIGIOUS IDENTITY

Contractors should respect the cultural identity of migrant workers, and should not prevent them from maintaining cultural links with their state of origin, or impair their freedom to have or to adopt a religion or belief of their choice.

RIGHT TO JOIN TRADE UNIONS

Migrant workers have the right to take part in meetings and activities of trade unions and of any other associations established in accordance with law, with a view to protecting their economic, social, cultural, and other interests, subject only to the rules of the organization concerned. Migrant workers may seek the aid and assistance of any trade union or other association. No restrictions may be placed on the exercise of these rights other than those prescribed by applicable law.

Recruitment

Contractors should have a policy and clearly defined and transparent procedures for managing the recruitment of migrant workers. Forms of direct recruitment involving the contractor's human resources staff and prospective workers in the sending country minimize the role of the sending country labor agent, thereby controlling costs and minimizing risks for both the contractor and worker. In adhering to local laws, contractors should always use government-registered or legally licensed recruitment agencies when available in the sending country. Use of unlicensed agencies should be strictly prohibited.

RECRUITMENT AGENCIES

The contractor should recruit workers exclusively through government-licensed recruitment agencies.

The contractor should sign a clear contract with the recruitment agency that will form the basis for due diligence and audits. The contractor should conduct pre-selection due diligence and regular audits of any recruitment agencies or other subagents (agents subcontracted by recruitment agencies to improve access to workers) involved in hiring and placing migrant workers, in both sending and receiving countries, to ensure that recruitment agencies and other agents comply with applicable laws and regulations. The contract should outline some of the following:

- » Recruitment fees a worker will be charged
- » A clear breakdown of costs associated with travel, medical, obtainment of travel documentation/passport, and other items the worker is responsible for
- » Use of subagents: Because they are likely to charge workers excessive fees, it is not advisable to use these agents, who are subcontracted by recruitment agencies to improve access to workers. However, in some cases, the use of sub-agents by recruitment agencies is unavoidable.

The contractor should notify the customer if it detects any violations, and immediately seek to correct the violations, prevent future violations, or terminate the relationship. The contractor (including its employees, representatives, and subcontractors) should not accept any reimbursements, kickbacks, gifts or other compensation from any recruitment agency or other person involved in the recruiting process.

CONTRACTS

All migrant workers should receive a written employment contract that is enforceable, clear, and in a language the migrant worker understands.

The contractor should deliver the employment contract to the migrant worker prior to departure, and with adequate time for the migrant to review all provisions before signing. The migrant worker and the contractor should review and sign the contract directly, unless otherwise expressly required by national law. The contractor should not impose any additional terms or requirements on the worker after the employment contract is signed unless expressly required by national law or with informed and written consent of the worker. In such instances, the worker should be informed of amendments and/or additional terms before the amendments are formalized in the worker's contract.

Contract substitution at any point in the duration of the workers' employment should be prohibited, unless different, more favorable contract terms are added by the employer with the worker's knowledge and written consent. Please refer to section 11 regarding contract termination.

The individual employment contract should contain all necessary information:

- » Worker's full name, date and place of birth, and passport number or equivalent identification
- » Worker emergency contact information
- » Contract duration and conditions of renewal
- » Nature of the work and the place it is to be performed
- » The occupational category in which the worker is placed
- » Clearly defined regular, overtime, and holiday wage rates, including maximum allowable overtime hours consistent with local laws and customer codes of conduct
- » Medium for wage payment
- » Expected regular working hours, overtime hours, frequency of rest days, and holidays, and an estimate of the minimum net pay a worker can expect to receive per month
- » Bonuses, indemnities, and allowances, if any, and descriptions of non-cash compensation and work-related benefits including medical and social insurance benefits and sick, emergency, and annual leave
- » Conditions under which and extent to which the contractor may be authorized to make any deductions from remuneration
- » Description of living conditions, including any applicable costs for food and accommodation, and details about any curfews
- » No terms barring workers' rights to organize or engage in collective bargaining, subject to applicable laws and regulations
- » As applicable, a clear breakdown of costs the worker is responsible for versus what the employer is responsible for - costs associated with travel, medical, travel documentation, and other associated items
- » The grounds on which a contract may be prematurely terminated

- » The period of reasonable notice for employment contract termination by the worker, not to exceed one month

FEES

The issue of recruitment fees continues to be an issue heavily debated among stakeholders. It is a complex issue globally, and there is no single benchmark or “best practice.” This document provides examples of multiple practices pertaining to this issue, and BSR believes that through constructive dialogue and engagement, “good practice” will continue to evolve in this area.

Example 1

In line with International Labour Organization (ILO) standards, migrant workers should not bear fees or other charges for recruitment and placement directly or indirectly. The contractor is responsible for paying all legally allowed (in the sending or receiving country) fees associated with employment as a cost of doing business, including recruitment agency or placement service fees, inbound and outbound international airfare, transportation costs in the receiving country, visas, levies, health or background checks, document processing fees, orientation or skills training fees, translation services, or insurance.

Example 2

In many countries, workers bear a legally stipulated amount for recruitment or placement fees. In this instance, one practice employed by customers and contractors is: *Fees and associated costs that workers bear directly or indirectly should not exceed an amount equivalent to one month of the worker’s stated salary. This fee should include, but is not limited to, recruitment agency or placement service fees, inbound and outbound international airfare, transportation costs in the receiving country, visas, levies, health or background checks, document processing fees, orientation or skills training fees, translation services, or insurance.*

In some instances, the one-month maximum has been applied effectively by customers and contractors, limiting the financial liability for both the contractor and worker.

Example 3

In some instances, it is not possible for a contractor operating in multiple countries to establish a single cap, or limit, on recruitment fees, based on the variance in national laws and market norms governing recruitment fees. In this instance, the following approach can be employed: Fees and associated costs borne directly and/or indirectly by migrant workers should not exceed a “reasonable amount,” in line with applicable local laws in both the sending and receiving countries.

In instances where fees are admissible, the contractor should monitor fees regularly through worker interviews and by auditing labor agents on a quarterly basis. Sending country labor agents should also be required to sign a contract that clearly stipulates workers should not be charged in excess of the contractually agreed amount. If labor agents are found to be in violation of these terms, their contract should be terminated immediately.

WAGE WITHHOLDING

Wage withholding is an area where there is ongoing debate among stakeholders. The document highlights two practices intended to eliminate or minimize any improper or excessive wage deductions from migrant workers. The appropriate practice will ultimately depend on the operational context.

Example 1

The contractor should not back charge, accept reimbursement from, or withhold wages from any migrant worker to recover any fees paid by the contractor in the

recruitment or hiring of said worker in any form such as wage deductions, garnishments, “levies,” “deposits,” or “guarantee monies.”

Example 2

If some of the legally allowable worker fees/costs are borne by the contractor during recruitment, the contractor may deduct wages, garnishments, “levies,” “deposits,” or “guarantee monies” with the workers’ written consent until the costs are recovered. This may be done if the practice is in line with applicable local laws. Once the recruitment costs borne by the contractor are recovered by the contractor, this withholding should cease immediately.

Orientation and Training

Prior to departure, the contractor should inform migrant workers about the contract process, employment terms and conditions, receiving country living conditions, workplace conditions, rights and responsibilities, and job skills required. Upon arrival, as a baseline step, the contractor should determine what, if any, orientation and training the migrant worker has received from the recruitment agency, and ensure that all migrant workers receive post-arrival orientation on any of the topics not addressed during pre-departure orientation. Repeating the information post-arrival will help workers remember it.

The following topics should be addressed during the orientations:

Pre-departure	Post-Arrival
<ul style="list-style-type: none"> » Living conditions and, if applicable, dormitory rules » Contract orientation, including employment terms (hours and remuneration) » Required job skills and initial job orientation » Legal rights and responsibilities » Medical examination¹ 	<ul style="list-style-type: none"> » Basic job training » Occupational health and safety » Working hours and production requirements » Workplace policies, rules, disciplinary systems, and communications systems » Grievance channels and processes » Basic local language skills » Receiving country culture and common practices » Safe sex, reproductive health, and HIV/AIDS prevention » Awareness and prevention skills related to most relevant diseases » As applicable, briefing on medical examination before it is administered

The appropriate time for each topic to be addressed will vary, but this list serves as a general guide for contractors.

¹ A certificate of medical examination is often required by the receiving country prior to entry into the country or issuance of the work permit.

Training related to these topics should take place after arrival, before workers formally begin employment. Migrant workers should be paid their regular wage for time spent in training, which should be no shorter than one full day. Training should include visual and auditory teaching styles, and include distribution of materials to workers for reference after the training.

Training should be delivered in a language the migrant understands. Migrant workers should also receive the worker handbook and any factory regulations in a language they understand. Furthermore, signs, symbols, and other indicators related to health and safety hazards should be marked so that migrants can understand them.

Factories are encouraged to employ an on-site migrant employee coordinator conversant in the languages of the migrant employees and factory management. Additionally, training supervisors on the sending country language and culture of workers would improve workplace communication.

Wages and Benefits

The contractor must pay the same *minimum* wage to migrant workers as domestic workers in the same job category or industrial standard. Common bonuses, overtime premiums, and other core forms of remuneration should be made available to migrants and domestic workers equally. All wages and benefits must be paid directly to the worker on a regular basis, and wage calculation, pay slips, and overtime slips must be given to migrant workers in a language they can understand. Wage calculations during “downtime” or “stop production” because of the factory production schedule should comply with applicable local law or regulations. Any savings accounts must be in the name of the worker, and the worker must have access to the account at his or her discretion. Neither the contractor nor the employment agency should have direct control of or access to worker bank accounts other than to deposit wages.

DEPOSITS AND WAGE WITHHOLDING

Deposits from workers are prohibited unless required by applicable laws and regulations. In the event of a legally required deposit, the contractor should ensure that a receipt is provided for any deposits made by workers and that such deposits are returned in full to the worker expeditiously, but in no case later than one month after eligibility as specified in the employment contract.

Contractors should not withhold wages from migrant workers through a mandatory savings program to collect “guarantee monies,” “recruitment fee recovery,” or any other type of wage withholding scheme. Contractors may withhold wages with a workers’ documented consent for savings purposes, but this policy must be accompanied by clear “worker written consent” provisions and also explicitly state that worker access to wages will be granted at any time. Withholding without worker consent and nonpayment of wages indicates lack of consent to work, which is an element of forced labor.

Document Holding

Migrant workers should not be required to surrender original identity documents (such as passports or travel or residency permits) to the contractor. Contractor should retain *only copies* of worker identity documents and work visas or permits in the worker’s file, unless required by applicable laws or regulations. Workers should keep originals.

If migrant workers specifically ask the contractor to hold their documents for safekeeping, or if document retention is required by applicable laws and regulations, the contractor should develop relevant written procedures and designate an accountable individual to ensure that workers have access to

identity documents immediately upon the employee's request, and without restrictions. The contractor should notify workers of these procedures and the name of the accountable individual during post-arrival orientation or before the procedures are enacted. The contractor should never be permitted to destroy the passport or equivalent document of a migrant worker or a member of his or her family.

Living Conditions

Working and living conditions of migrant workers must be in keeping with the standards of fitness, safety, health, and principles of human dignity, and no less favorable than the conditions for domestic workers if the latter are also housed in dormitory settings.

HOUSING AND DORMITORIES

The contractor should ensure that migrant workers and, if applicable, their families, have hygienic and suitable housing. Where the contractor has dormitories, migrant workers should be able to choose whether to live in them. The contractor should provide the worker information about accommodation and transport options to and from the factory prior to the worker's departure from the sending country. Other customer code of conduct provisions related to housing apply to all migrant workers.

FOOD

Migrant workers should receive the same treatment with regard to availability and quality of food as domestic workers. Factory, dormitory, and other facility canteens should take into account any dietary needs, including health requirements and cultural expectations, of migrant workers in meal planning.

HEALTH

When migrant workers are ill or injured, the contractor should ensure that they receive proper medical attention and can see a nurse or doctor with whom they can communicate or are accompanied by a translator. The contractor should ensure that access to quality healthcare is not cost prohibitive for the worker.

The contractor should support active, healthy lifestyles for migrant workers by:

- » Providing access to sport facilities, either by creating facilities on-site, or by facilitating transportation to municipal facilities
- » Providing access to internal recreation options, such as a recreation room with a TV, pool table, table tennis, and reading space or library
- » Participating in local sports activities and other outings and activities for workers, and encouraging workers to join through prizes, competitions, and rewards

The contractor should pay special attention to the mental health and well-being of migrant workers, and establish support mechanisms, especially for new migrants. Partnering with local NGOs, health service centers, and migrant worker community groups gives the contractor a network of resources to draw on for more serious cases relating to the mental health of migrant workers.

Health Testing

Health testing for newly arrived workers is mandatory in some receiving countries as part of national public health policy. However, unless explicitly required by applicable local laws and regulations, migrant workers should not be held to a health standard or testing requirements different from that of local workers. If health testing is required by law or by the contractor's health policy, workers should be fully briefed on the nature of and reason for the testing in advance. They should be provided with the full test results and necessary consultation by

medical personnel post-testing to comprehend the results. Workers should also not be charged for any medical tests performed. Workers should be provided counseling as necessary following testing, especially if a worker tests positive for a particular condition.

Lastly, all health results and information should be kept strictly confidential by human resources management. There should be one established and known information gateway for workers' health information. The contractor should not share this information publicly to prevent factory management from discriminating against or treating workers unfairly. However, the worker should be granted access to his health records upon request.

SECURITY OUTSIDE FACILITY PREMISES

The contractor should maintain good communications with local police or public security regarding the presence of migrant workers in the facility and local community, to avoid any unnecessary detention or harassment of migrant workers by the local authorities. The contractor should communicate with, and provide guidelines to, workers on how to react if they are stopped by police and clarify how the contractor will support them if they run into any difficulties. Some contractors have adopted the practice of issuing migrant workers special identity cards that demonstrate to the satisfaction of local police that they are legal workers employed by the contractor.

The contractor should also ensure that through training, orientation, and ongoing education programs that workers are aware of their rights and responsibilities in the receiving country, including legal rights and socio-cultural norms.

Leaves

Migrant workers should be eligible for paid leave in accordance with applicable laws and regulation and the customer code of conduct. If local labor law does not specify days of paid leave, migrant workers should be entitled to the same annual leave benefit as domestic workers. Migrant workers should be permitted to return to their home country during paid leave, without fear of termination or other retribution.

Grievance Procedures

The contractor should provide avenues within the facility for migrant workers to lodge complaints and seek remedy without fear of discrimination, intimidation, or retaliation, including mechanisms to report violations anonymously. The contractor should ensure that workers can raise concerns without financial penalty (e.g., payment for phone services). The contractor should also have procedures in place to regularly review and address such reports.

Below are two sample practices that can help ensure proper grievance procedures are in place:

Example 1

A migrant worker committee can be established inside the factory to promote equitable representation of migrant workers concerning grievance issues. This committee can represent all nationalities in the factory. Representatives can be voted on annually by the workers, and be responsible for representing workers in the grievance and mediation process. This mechanism can help eliminate some of the apprehension that characterizes the grievance process, in part because of language difficulties and cultural differences between local and migrant workers. Maintaining anonymity can be very important, and this mechanism provides such anonymity.

Example 2

Worker representation can also be established at the dormitory level. Workers can elect floor and dormitory leaders responsible for fielding complaints. These elected leaders are then responsible for delivering complaints to the appropriate body in the factory (migrant worker committee, complaints committee, etc.).

Furthermore, the contractor should not prevent migrant workers from lodging complaints externally with the relevant body, or seeking assistance, recourse, or protection from the consular or diplomatic authorities of their home country.

Termination and Repatriation

TERMINATION

The contractor must honor contracts with migrant workers and not use false reasons to terminate a worker prematurely. The contractor must not terminate a contract for any discriminatory reasons. (as defined in section 3 part A, Nondiscrimination) Likewise, the migrant worker must not resign for false reasons. The reasons for termination by either the contractor or the worker must be formally documented to ensure it is fair to both parties.

Employment contracts should specify a period of reasonable notice for employment contract termination, not to exceed one month. Penalties should *not* be assessed if reasonable notice is given prior to early termination. Any penalties or consequences for early termination without adequate notice should be specified in the employment contract and should not exceed the equivalent of one month of the worker's anticipated monthly net wages.

A worker may terminate his or her contract in the event of serious ill health (as certified by an independent doctor), and in accordance with applicable laws and regulations. A worker may also terminate the contract prematurely if on arrival at the place of employment, the worker determines that the contractual terms and conditions of employment have changed from the terms and conditions originally agreed upon in the signed contract, without the prior informed consent of the worker, a practice known as "contract substitution." There must be no financial penalty for the worker if the contract is terminated under these circumstances.

Migrant workers should have the same right to just termination of the contract as local workers, in accordance with applicable local laws and regulations. The worker must have access to all savings, and the contractor should pay for the cost of the worker's return airfare to the sending country as part of the repatriation process unless otherwise stipulated by applicable laws.

FINAL WAGES

Upon termination of employment, the migrant worker should receive all outstanding remuneration, including wages, bonus and overtime pay, or other benefits for work performed, including severance payments normally due, prior to repatriation. This payment should happen in accordance with local labor laws.

REPATRIATION

Upon completion of a migrant worker's employment contract or upon such worker's termination of employment with reasonable notice, the contractor will pay for the cost of the worker's return airfare to the sending country, unless otherwise stipulated by applicable laws.

Definitions

applicable laws and regulations: Governing laws, regulations, and authorized agency guidance in both the sending and receiving countries.

contractor: Contractor, factory, employer, vendors, or any person or entity that provides goods and services to the customer or to another person or entity for use in the customer's products.

customer: Multi-national brand, buyer of goods.

domestic worker: An individual whose nationality or country of origin is the same as that of the country in which the contractor's facility is located.

illegal migrant employee: A foreign worker who is not legally authorized to work within the receiving country.

migrant worker (migrant): A person who is to be engaged, is engaged, or has been engaged in a remunerated activity in a state of which he or she is not a citizen.

monthly net wages: The amount equivalent to one month's expected wages for a worker, including anticipated overtime hours. This monthly amount should not exceed the amount of wages based on a 60-hour workweek, including regular and overtime hours after deductions.

receiving country: A state where the migrant worker is to be engaged, is engaged or has been engaged in a remunerated activity at the contractor's facility.

recruitment: The engagement of a person in one territory on behalf of an employer in another territory. Or the giving of an undertaking to a person in one territory to provide him with employment in another territory, including seeking for and selecting would-be emigrants and the preparation for their departure.

recruitment agencies: A fee-charging employment agency that carries out, under contract, and in exchange for financial compensation, operations on behalf of the contractor, to ease or speed up access to employment procurement or career progression by filling a vacancy.

sending country: The state of which the migrant worker is a national.

subagent: A labor agent subcontracted by the recruitment agency to recruit workers, often not employed by the recruitment agency, and used to ease or speed up access to employment procurement.

Annex I: Reference Documents

Section	Reference Documents
1. Workers' Rights A. Nondiscrimination B. Freedom of Cultural and Religious Identity C. Right to Join Trade Unions	<ul style="list-style-type: none"> » UN Multilateral Framework on Migrant Labour: 8.4.4 » UN Convention on Protection of Migrant Workers: Articles 7, 26, and 31 » ILO C143: Article 10 » ILO R151: Sections 1 and 2 » ILO R86: Article 17 » The ILO Constitution » The ILO Declaration on Fundamental Principles and Rights at Work, 1998 » The Freedom of Association and Right to Organization Convention, 1948 (No. 87) and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98)
2. Recruitment A. Recruitment Agencies B. Contracts C. Fees	<ul style="list-style-type: none"> » ILO C181: Articles 7 » ILO Multilateral Framework on Migrant Labour: 13.3, 13.4, and 13.7 » UN Convention on Protection of Migrant Workers: Article 25 » ILO C97: Article 6 » ILO C97 Annex 1: Article 5 » ILO R86: Article 22
3. Wages and Benefits A. Deposits and Wage Withholding	<ul style="list-style-type: none"> » ILO 143: Article 8 » ILO C29 » ILO Multilateral Framework on Migrant Labour: Section 9.11 » UN Convention on Protection of Migrant Workers: Article 4 » ILO C97: Article 9
4. Document Holding	<ul style="list-style-type: none"> » ILO C29 » ILO Multilateral Framework on Migrant Labour » UN Convention on Protection of Migrant Workers: Articles 15, 21, and 39
5. Leaves	<ul style="list-style-type: none"> » ILO R151: Section 17
6. Grievance Procedures	<ul style="list-style-type: none"> » ILO Multilateral Framework on Migrant Labour: 10.5 » ILO 143: Article 9 » UN Convention on Protection of Migrant Workers: Article 23
7. Termination and Repatriation A. Termination B. Final Wages C. Repatriation	<ul style="list-style-type: none"> » ILO Multilateral Framework on Migrant Labour: 9.5 » ILO R86: Article 26 » UN Convention on Protection of Migrant Workers: Article 32

	» ILO R151: Article 34
8. Definitions	» UN Convention on Protection of Migrant Workers » ILO C97: Article 11 » ILO C96: Article 1