



International
Labour
Organization

GLOBAL BUSINESS
NETWORK ON
FORCED LABOUR



FREQUENTLY ASKED QUESTIONS

MEF-BRIDGE-ILO GBNFL online workshops on forced labour and fair recruitment for Malaysian businesses in export manufacturing and plantations sectors

During the course of three workshops held on April 16, 20 and 21, 2021, participants had the opportunity to pose questions to the presenters. The questions asked are answered in further detail below.

1. Isolation and restriction of movement

1.1 Are restrictions of movement, such as requiring to do home quarantine, during the pandemic considered an indicator of forced labour?

“Emergency” is defined as “a sudden and usually unforeseen event that calls for immediate measures to minimize its adverse consequences”. The UN Policy brief on COVID-19 highlights that emergency and security measures, if needed, must be temporary, proportional and aimed at protecting people. Movement restrictions and quarantine requirements during this pandemic that are in line with this - temporary, proportional and aimed at protecting people - are not considered indicators of forced labour. Movement restrictions should be aligned to government policies and Standard Operating Procedures, and not solely based on what the employer decides to do. The employer should also communicate to the workers the situation, why it is happening and the government policy that needs to be followed. Aside from making sure that other forced labour indicators are not present, employers should also ensure that their quarantined workers have access to telephones, or internet that would enable them to contact people from outside the quarantine facility.

2. Overtime

2.1 What is the ILO standard for overtime?

Kindly see this [ILO Helpdesk on overtime](#).

The ILO Committee of Experts on the Application of Conventions and Recommendations has emphasized in its 1984 Global Survey on working time that undue facilitation of overtime “by allowing relatively high maximums, could in the most egregious cases tend to defeat the ILO Recommendation’s objective of a social standard of a 40-hour week and make irrelevant the provisions as to normal working hours”. ILO advised the Malaysian government to examine the existing limit on overtime of 104 hours per month under the Employment (Limitation of Overtime Work) Regulations 1980 (Revised 1983), and consider the possibility of reducing that limit in light of above.



2.2 What is the reasonable working hours per week according to the national law?

According to the Malaysian Employment Act 1955 section 60A (1), an employee shall not be required under his employment contract to work:

- more than eight hours in one day,
- in excess of a spread over period of the hours in one day;6
- more than 48 hours in one week.

However, under subsection 60A(1A) the Director General may on the written application of an employer and if there are special circumstances, grant permission to the employer to enter into an employment contract with any one or more of his employees or with any class, category or description of his employees, requiring them to work in excess of the limits mentioned in paragraph 6.

In addition, based on subsection 60A(2), an employee may be required by his employer to work in excess of the limits mentioned in paragraph 6 and to work on a rest day, in the case of –

- Accident, actual or threatened, in or with respect to his place of work;
- Work, the performance of which is essential to the life of the community;
- Work essential for the defence or security of Malaysia;
- Urgent work to be done to machinery or plant;
- An interruption of work which it was impossible to foresee; or
- Work to be performed by employees in any industrial undertaking essential to the economy of Malaysia or any essential service as defined in the Industrial Relations Act 1967."

2.3 What if the workers volunteered to do overtime work in excess of national laws as the workers want the extra income, will that be considered as forced labour?

This should not be allowed. A factory's overtime policy should comply with national law and applicable collective agreements. An employer that allows an employee to work beyond the prescribed limit without the approval of the Director general of Labour commits an offence and on conviction may be imposed with a fine of up to RM10,000 per offence.

3. Non-conducive working and living conditions

3,1 Does the recently revised "Employees Minimum Standards Housing, Accommodations and Amenities Act 1990" (Act 446) apply to oil palm plantations?

Yes, the original law applies to plantations already. With the amendment, it is extended to every sector. It is applicable to Peninsular Malaysia and the Federal Territory of Labuan. A further amendment was made through the Emergency (Employees' Minimum Standards of Housing, Accommodations and Amenities) (Amendment) Ordinance 2021 in February 2021, which makes Act 446 applicable throughout Malaysia.



4. Penalties

4.1 Is a cash fine/ penalty for wrongdoing or non-compliance by worker legally allowed after a due inquiry?

An employer is not legally allowed to impose a cash fine/ penalty for misconduct committed by an employee.

Section 14 of Employment Act states that:

“(1) An employer may, on the grounds of misconduct inconsistent with the fulfilment of the express or implied conditions of his service, after due inquiry --

- dismiss without notice the employee;
- downgrade the employee; or
- impose any other lesser punishment as he deems just and fit, and where a punishment of suspension without wages is imposed, it shall not exceed a period of two weeks.

(2) For the purposes of an inquiry under subsection (1), the employer may suspend the employee from work for a period not exceeding two weeks but shall pay him not less than half his wages for such period:

Provided that if inquiry does not disclose any misconduct on the part of the employee the employer shall forthwith restore to the employee the full amount of wages so withheld.

(3) An employee may terminate his contract of service with his employer without notice where he or his dependants are immediately threatened by danger to the person by violence or disease such as such employee did not by his contract of service undertake to run.”

There are many ways to deal with non-compliance (particularly for OSH issues). For example, employers should continually reinforce the importance of regulations which are in place for worker’s safety and health and counsel workers accordingly.

5. Social compliance / certification

5.1 Is there any possibilities that the employment regulations be complemented with certification such as the Malaysian Sustainable Palm Oil?

According to ILO standards, labour inspection is a public function, though employers and industries are encouraged to monitor and improve their own working conditions, including through private compliance initiatives (PCIs).

These so-called PCIs, which include private labour auditing, cannot replace the mandate or powers of public labour inspection systems, which alone can make legally enforceable findings of labour law violations. For their part, private initiatives should operate in accordance with applicable national labour laws as well as principles contained in international labour standards, most notably the ILO Declaration on Fundamental Principles and Rights at Work, which includes prohibitions of forced labour. It is important to ensure compliance before and after the audits. This reinforces the importance of having sustained programmes on



awareness raising and capacity building for workers and company supervisors and officers, joint worker-employer committees, good grievance mechanisms, as well as company due diligence checks on recruitment agencies and their suppliers, among others.

The ILO also highlights the importance of strong national laws, institutions, sound industrial relations and effective social dialogue systems for promoting and protecting the rights of workers. Governments should adopt adequate labour legislation that respects the Fundamental Principles and Rights at Work, including forced labour, and promotes labour protection measures. They should also ensure that these laws are enforced, through robust systems of labour inspection.

5.2 Does ILO have a checklist on compliance to help employers to conduct self-audit?

Yes. Please see:

- [Appendix 5 of MEF-ILO Business responsibility on preventing and addressing forced labour in Malaysia: A must-read guide for employers](#)
- [Eliminating and Preventing Forced Labour: Checkpoints \(PDF version\)](#)

6. Recruitment fees

6.1 Should the cost on passport application paid by the employer as this seems like a personal property?

As per [ILO guidelines](#), related costs of recruitment, such as passport application fees, should not be paid by workers, unless it is an exception duly authorised by the competent authority after consulting with the most representative workers and employers organizations. For example, it may be observed that Ethiopia, which has ratified ILO Convention 181 on Private Employment Agencies, has included passport application fees as an item to be paid by workers and reported it to the ILO.

Specifically, according to the ILO's [General Principles and Operational Guidelines for Fair Recruitment](#) (please see page 29 for the full context):

“12. When initiated by an employer, labour recruiter or an agent acting on behalf of those parties; required to secure access to employment or placement; or imposed during the recruitment process, the following costs should be considered related to the recruitment process:”

“vii. 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.”

It may also be noted that the Responsible Business Alliance includes new passport issuance or renewal as a cost item not to be paid by workers. However passport replacement cost due to employee loss or fault can be paid by worker.



6.2 What is the best approach to manage remediation of recruitment fees as well implementing robust migrant recruitment as company implements fair recruitment policies?

The company should draw up a policy, strategy and action plan to apply due diligence in its labour supply chain and to ensure that it is working only with ethical and fair recruiters. This policy and strategy should be guided by the ILO General Principles and Operational Guidelines for Fair Recruitment and ILO projects can provide feed-back on the development of such policies and plans.

With respect to remediation of recruitment fees and related costs, that is when prevention and due diligence has not taken place or not resulted in the desired outcome, action should be taken to reimburse costs. There are challenges however when receipts or a paper trail have not or could not be kept but expenses incurred. The ILO has not developed guidance on remediation, but can provide information on what have been company practices or provide names of organizations that work in the area.

6.3 What should we do for any sort of fees paid to source agent or recruiter without our prior knowledge or agreement ?

It is important for employers to map and understand their recruitment chain from country of origin all the way to Malaysia. Ask your agent questions about their country of origin partner agencies and recruiters and their practices to avoid surprises in relation to fees. Always only deal with licenced agencies both in Malaysia and in countries of origin. Identify ethical and fair recruitment agencies – that is those that do not charge fees to workers. A few do exist. Explore different recruitment options – direct recruitment where this permitted; recruitment through public placement agencies.

6.4 How do Malaysian employers address issues beyond their control which are inherent in the home country of the workers?

Malaysian employers need to do due diligence to know their recruitment chain and only deal with licensed and reputable agencies both in countries of origin and destination. (As above.)

6.5 We have had customers' social compliance audits where the workers tell the auditors that they are being charged or put into debt by the recruiter. But upon checking with the agent, these are monies loaned to the workers for their travel expenses from their home town to the city for the recruitment process i.e. housing stay, transport cost. How is this treated?

Recruitment fees or related costs should not be collected from workers directly or indirectly by any recruiters involved in the recruitment process. Loans to cover costs related to recruitment is an indirect way of collecting payments from workers, and are therefore prohibited under the ILO's General principles and operational guidelines for fair recruitment.

6.6 Is there any time frame for reimbursement?

Please see above. Reimbursement should be made as soon as possible.



References

MEF-ILO business tools on addressing forced labour. Available:

- https://www.ilo.org/asia/publications/WCMS_711519/lang--en/index.htm
- https://www.ilo.org/asia/publications/WCMS_717944/lang--en/index.htm

Indicators of forced labour. Available:

- https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf

Business Helpdesk. Available :

- https://www.ilo.org/empent/areas/business-helpdesk/WCMS_DOC_ENT_HLP_FL_EN/lang--en/index.htm
- Q&As on business and working time: https://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS_DOC_ENT_HLP_TIM_FAQ_EN/lang--en/index.htm

Other resources:

- <http://malaysia.justgood.work/>
- <https://impacttlimited.com/standards-for-repayment-of-migrant-worker-recruitment-fees-and-related-costs/>
- <https://www.ethicaltrade.org/resources/access-to-remedy-practical-guidance-companies>
- <https://flbusiness.network/>
- <https://www.mef.org.my/Home.aspx>
- https://www.ilo.org/asia/projects/WCMS_595869/lang--en/index.htm

About the webinar organizers

Malaysian Employers Federation

The Malaysian Employers Federation (MEF) is the central organisation of private sector employers in Malaysia recognised nationally, regionally and internationally. Established in 1959, it promotes and safeguards the rights and interests of employers. MEF provides a forum for consultation and discussion among members on matters of common interest and seeks for the adoption of sound principles and practices of human resource and industrial relations through information, advice, research and information, training and other activities.

ILO's Global Business Network on Forced Labour

The ILO GBNFL brings together the ILO with businesses of all sizes and sectors, and their networks, from around the globe to eradicate forced labour.

Operating across all sectors, and geographies, ILO GBNFL members work to engage smaller enterprises, develop actionable resources and tools, and devise local solutions that help shape national frameworks to create lasting change.



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