

► ILO Brief

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Restructuring for recovery and resilience in response to the COVID-19 crisis

Key points

- COVID-19 has brought tragic consequences for the health and lives of hundreds of thousands of people around the world. It has also upended economies everywhere, as businesses in various sectors have been forced to temporarily close or adapt their normal working arrangements. Some sectors have decided to stop business altogether. Around the world, enterprises are facing serious challenges to their ongoing viability.
- This brief provides guidance to companies on good practices on restructuring in response to the COVID-19 crisis, consistent with the provisions of international labour standards. It also suggests actions that employers' and workers' organizations can take to support enterprises and workers during restructuring.

Introduction

COVID-19 has brought tragic consequences for the health and lives of hundreds of thousands of people around the world. It has also upended economies everywhere, as businesses in various sectors have been forced to temporarily close to stem the spread of the virus and to adapt their normal working arrangements because of increased occupational safety and health measures, or because of other business disruptions. Some sectors have decided to stop business altogether because of the economic impact of changed consumer behaviour following government recommendations or decisions. Around the world, enterprises are facing serious challenges to their ongoing viability, and workers have been forced to stay home, many of them in temporary or partial unemployment. In countries with high levels of informality or weak social protection systems, many workers lack any income support or unemployment benefits, which risks

sending many men and women into poverty and exacerbating inequalities.

ILO estimates indicate that COVID-19 could wipe out approximately 6.7 per cent of working hours globally in the second quarter of 2020 – equivalent to 195 million full-time workers¹. Large reductions are foreseen in the Arab States (8.1 per cent, equivalent to 5 million full-time workers), Europe (7.8 per cent, or 12 million full-time workers) and Asia and the Pacific (7.2 per cent, 125 million full-time workers). Global FDI flows will drop, with a decline that could be between -30% to -40% during 2020-2021.

Governments around the world are taking swift action to support business to survive the pandemic and keep the recession as short and shallow as possible, while preserving as many jobs as possible. In times of crisis, where the challenges are systemic and the response of each firm impacts the others, the economic and social environment is particularly important. Governments,

¹ See: https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_740893/lang-en/index.htm

together with employers' and workers' organizations, should quickly implement measures to sustain enterprises through the crisis and help them to recover; and to provide social protections to workers in need². The government should consult social partner organisations when elaborating the list of "essential activities" that should remain operational during the pandemic. The government should also disseminate the most accurate and up-to-date information about relevant public health measures to enterprises and employers' and workers' organizations as efficiently, systematically and quickly as possible, so that everyone can anticipate when and at what level it might be possible to resume business activities.

Even when governments act quickly, many enterprises still face the immediate risk of going out of business and millions of workers already have lost their jobs as companies reduce or freeze their operations and orders evaporate. The uncertainty surrounding the duration of the pandemic and the decline in economic activity is likely to force many more firms to restructure to try to save their operations.

This brief provides guidance to companies on good practices on restructuring in response to the COVID-19 crisis, consistent with the provisions of international labour standards. It also suggests actions that employers' and workers' organizations can take to support enterprises and workers during restructuring.

Good practices in restructuring

Enterprises restructure for a variety of reasons, including in response to business downturns, changing nature of the business, new work methods, new technologies, new investments, mergers and acquisitions, and to reduce costs. Similarly, there are a variety of other benefits, including reviving a declining business, increasing a company's value, preparing the company for sale, gaining a competitive advantage, or positioning itself for growth – in short, to maintain business survival and success.

When restructuring results in downsizing and the loss of employment it has a direct impact on the workers who lose their jobs; and it also may negatively impact the

surrounding community. However, restructuring does not lead inevitably to layoffs or dismissals. An enterprise may be able to adapt by other means (early retirement, attrition, re-deployment or re-skilling of workers, etc.). It is foremost about examining carefully how to make the enterprise stronger and more resilient.

A well-designed restructuring could better position the company for a recovery, but a poorly-designed restructuring could adversely affect company performance by eroding morale and trust of workers and the community; and through the loss of skilled, experienced workers with vital knowledge and know-how.

Key issues to consider

Both employers and workers have an interest in ensuring the long-term viability of the enterprise and maintaining jobs and good working conditions. Labour-management cooperation, particularly through increased involvement of workers or their freely chosen representatives in the planning and execution of organizational change, is necessary for coping with the adjustment process³. The following step-by-step approach provides a framework for fostering such cooperation during the COVID-19 pandemic.

Step 1 Information & Consultation

Social dialogue is an essential element of building trust and confidence in the process. The sharing of relevant information from the government and other sources is important to ensure that all parties concerned understand the nature of the impact of the COVID-19 crisis and know about any support measures for enterprises (e.g. wage subsidies, loan guarantees, allowances for affected businesses) that may be available to help alleviate financial problems. Concerning occupational security and health (OSH) and more general health measures, bipartite safety and health committees are also important platforms for social dialogue. Employer's and workers' organizations at the sectoral, national and global level can also be an important source of information on support packages that

² See, *-Employment and Decent Work for Peace and Resilience Recommendation*, 2017 (No. 205), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R205

³ See, Joint Statement on COVID-19 by International Organisation of Employers and International Trade Union Confederation https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---actrav/documents/genericdocument/wcms_739522.pdf

have been put in place in other sectors or countries; and on innovative solutions for enterprises⁴.

Relevant information that may affect business operations should be shared with the workers or their representatives. Information provided to workers should present a true picture of the position of the enterprise—at least to the best of management’s knowledge at that point in time, appreciating how quickly circumstances are changing during the pandemic—in order to demonstrate the need for change⁵.

Consultations should follow to discuss which changes are most likely to support the needs of both the enterprise and the affected workers, and how best to implement them. Consultation involves a genuine exchange that ensures that there is an opportunity for workers or their representatives to share ideas and provide input into decisions that will affect them. Consultation should be guided by any existing collective agreements; and provide an opportunity to update them in response to the changing circumstances. Consultations can help to shape management’s decisions concerning not only employment, but also changes in operations that may significantly alter production methods or schedules.

Step 2 Identifying Options

There are a variety of changes companies can make to maintain business continuity during the COVID-19 crisis whilst seeking to minimise social costs and the impact on the workforce. The following is a non-exhaustive list of the types of measures that could be considered in order not to dismiss workers and secure wage levels.

- Exploring options for public wage subsidies or other financial assistance measures for enterprises, if offered by the local or national government, to enable the enterprise to retain as many workers as possible.
- Shifting to virtual markets, where possible, to access customers.
- Following governments’ requirements and with consideration to public health, revamping/repurposing production to address specific urgencies or shortages. It

may be possible to quickly transform production or service provision to contribute to the pandemic response, such as production of medical equipment or personal protective equipment (PPE) for healthcare providers and the general public or providing food or shelter for emergency staff.

- Internal redeployment. A rapid skills assessment of the affected workforce might assist in identifying whether workers’ skills which are not being utilized in one area could be shifted to other areas of the enterprise. Developing processes such as internal job advertising can help to promote this internal mobility.
- External redeployment. It may be possible for an employee to sign a temporary contract with another employer, during a suspension of a contract with the main employer.
- Retraining. It may be more cost effective for an enterprise to invest further in the development of the skills of workers than it would be to lay them off only to have to recruit others once the pandemic has passed and the economy picks up again. This is particularly true if, as predicted, the pandemic recurs in “waves”. There may also be government assistance to help with both the process and costs of retraining workers as an alternative to lay offs.
- The introduction of changed working patterns or an alternative work schedule including:
 - working from home where possible, with negotiated safeguards;
 - reduced hours or part-time;
 - work job sharing;
 - flexible working time arrangements e.g. changes to start and finish times and split shifts;
 - flexible leave arrangements⁶ (e.g. use of annual leave, double leave at half pay, etc.).
- Exploring options for furloughs or temporary lay-offs due to reduction of business activity, in line with applicable laws. Protections should be agreed with the workers or their representatives to ensure that workers

⁴ See, e.g., COVID-19 related website of the International Organization for Employers (IOE): <https://www.ioe-emp.o>

⁴ NB: such changes may affect unemployment benefit awards so it is advisable to check with the Office disbursing them. For further discussion and examples of these initiatives, see Rogovsky N and Schuler RS (2007) [rg/en/policy-priorities/covid-19/](https://www.ilo.org/en/policy-priorities/covid-19/)

⁵ Termination of Employment Convention, 1982 (No.158), Article 13.

⁶ NB: such changes may affect unemployment benefit awards so it is advisable to check with the Office disbursing them. For further discussion and examples of these initiatives, see Rogovsky N and Schuler RS (2007) *Socially Sensitive Enterprise Restructuring in Asia: Country Context and Examples*, ILO, Geneva, Rogovsky N (ed) (2005) op cit.

are not pressured to continue working during periods when they are not being paid.

- Exploring across the board pay cuts to avoid or minimize layoffs or dismissals. Protections should be agreed with workers or their representatives (e.g., that this measure will be put in place only for as long as absolutely necessary, that the lost wages will be repaid when the business has recovered, etc.) and conforms with national labour law.

Step 3 Implementing Changes

It is important that any necessary changes respect the requirements of national law and practice, specific measures adopted as part of the government response to COVID-19 and, where they exist, requirements contained in applicable collective agreements. In particular, the changes should be founded on objective criteria and not discriminate in any way on unfair grounds.

Involvement of workers or their representatives in the implementation is important to promote transparency, trust and commitment in the process, which in turn may facilitate the implementation. On-going engagement between management and workers or their representatives also provides a more agile foundation to refine and update the changes in light of new public health measures or economic conditions.

Step 4 Evaluation

Management, in dialogue with workers or their representatives, should periodically evaluate whether the changes implemented are meeting their objectives. This should take place as the change is being implemented, which would allow for fine-tuning or changing tack with a minimum of needless disruption to production or employment. A more in-depth evaluation should take place after implementation, to learn broader lessons that could inform future organization and planning.

Given the current impact of the pandemic and the unclear timeframe needed for economic recovery, these steps are part of a continuous process for responding to the rapidly changing public health situation and business environment.

► Checklist for employers

- As soon as possible, start a dialogue with workers and their representatives about any public health measures taken in light of the pandemic and the current and anticipated impacts on operations.
- Ensure that any response taken supports the long-term viability of the enterprise and considers the interests of the workers concerned.
- Where possible and allowed, seek out opportunities to convert production or services temporarily to meet urgent needs or tap into alternative markets and distribution channels for continued operations.
- Contact relevant local and national ministries about possible emergency programmes that could help the company to cover payment of wages and fixed operating costs.
- Share relevant information with workers and their representatives in order to understand and evaluate the issues together and generate ideas for change.
- Where changes may impact employment or conditions of work, consult on these changes collectively with workers or their representatives.
- Ensure that any agreed changes comply with applicable national laws, specific measures put in place by governments to support enterprises and protect workers during the COVID-19 crisis, collective agreements and other obligations arising from contracts, framework agreements or codes to which the enterprise has committed⁷.

What should an enterprise do when layoffs or dismissals are unavoidable?

If after consultation and consideration of all available options it is apparent that laying off workers is unavoidable, the following suggestions can help to minimize negative impacts.

⁷ For information on national legislation concerning restructuring, see, - ILO Employment Protection Legislation Database: <https://www.ilo.org/dyn/eplex/termmain.home>

Consultation at this stage involves management providing specific information to workers or their representatives, so that the process is more transparent and hence more likely to be perceived as fair and reasonable. Management should engage in dialogue with workers' or their representatives on possible measures to avert or mitigate the negative consequences of the layoffs or dismissals⁸.

As far as possible take steps to mitigate the impact of layoffs or dismissals

Management should notify the workers or their representatives about proposed job losses, the categories of workers affected, the timeframes involved and the options available to workers. Measures to avert or mitigate the negative consequences of the layoffs or dismissals may include the following⁹:

Engaging workers' representatives in the process:

- Inform workers' representatives early and directly so that they in turn can identify ways to negotiate the best terms in case of foreseen dismissal, including also ensuring that workers know about and have access to any available public schemes.

Income support:

- Pay a separation allowance or severance package to assist with the financial burden of the loss of a job.
- Introduce voluntary early retirement schemes (check whether government assistance exists for this). This could include mechanisms for phased retirement where workers commence working fewer hours in the period leading up to their retirement (part-time retirement).

Job search support:

- Inform workers' or their representatives early and directly so that they in turn can identify ways to assist and support workers whose employment will be terminated.
- Establish mechanisms for priority of rehire if or when the enterprise is able to re-engage workers.

- Provide a mechanism for workers to have their skills assessed for future employment opportunities.
- Assist displaced workers with their job search, applications or drafting of resumes.
- Make available support on interview techniques and allow workers to take time off work without deduction in pay to attend interviews.

Supporting displaced workers to start a business could include:

- Allow access to office, computer or administrative resources.
- Provide support to develop business plans and proposals.
- Lend or give equipment.
- Assist in raising start-up capital.

Termination of employment good practices¹⁰

Restructuring procedures should respect national employment legislation and applicable collective agreements. In addition, the employer could consider the following:

- Use objective criteria for selecting workers to be laid off (e.g., skills, qualifications, training experience), and clearly communicate the criteria. The criteria should be weighted according to how they correspond to the needs both of the employer and the workers.
- Avoid criteria that discriminate based on age, sex, pregnancy, carer/family responsibilities, race, marital status, disability, religion, political opinion, national extraction or social origin, temporary absence from work due to illness, absence from work during maternity leave and union membership or activity¹¹.
- Communicate the decision sensitively and directly with those workers whose jobs will be lost, bearing in mind that this is a very stressful time for these workers.

⁸ See *Termination of Employment Convention*, 1982 (No. 158), Part III, Article 13.

⁹ See *Termination of Employment Recommendation*, (No. 166).

¹⁰ *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy* (MNE Declaration), 5th edition, 2017 paras 34-36.

¹¹ *Termination of Employment Convention*, 1982 (No.158), Article 5.

Mechanisms for resolving grievances and disputes

When a grievance or dispute arises in relation to termination of employment, workers individually or collectively should be able to raise their concerns and have them dealt with in an effective manner¹².

► Checklist on termination of employment good practices

Consider lay-offs or dismissals as a last resort. Where they are required:

- Consult with workers or their representatives on the process.
- Take steps to mitigate the impact of layoffs or dismissals.
- Use objective and non-discriminatory selection criteria.
- Establish mechanisms for resolving grievances and disputes.

What workers or their representatives can do

Workers hold vital information, skills and knowledge that are an important part of any successful enterprise. During processes to manage change, any insights that workers have can help to identify and operationalize changes that can improve business continuity during this crisis. Actions that workers can take include:

Participate in Social Dialogue

Participate meaningfully in social dialogue, including negotiation where relevant, with the management of the enterprise about the impact of the crisis on company operations.

Share Information

Share information—including information on existing skills and ways in which they could be adapted—with management in order to identify areas for change that will improve continuity of the company during this crisis. Investigate and give due consideration to the information provided by management regarding the impact of the pandemic response and economic crisis on the company's operation.

Participate

Give consideration to proposals for change presented by management and develop alternative or additional proposals as needed to improve the viability of the enterprise and minimize job losses. Compare proposals with those from workers' or their representatives in other companies in the same sector or community. Consult relevant sectoral and national workers' organizations to see what good practices and innovative solutions they have identified¹³. Canvass the workforce for the types of options or responses that would be acceptable.

Implementation

Help to implement effectively the changes agreed with management and provide ongoing feedback and information about areas where further improvements could be made.

Evaluation

Participate in the evaluation process with management and use this as an opportunity to make suggestions as to how the company's long-term sustainability could be improved.

The COVID-19 crisis and the pressure on business continuity provides a new opportunity to strengthen cooperation and social dialogue for the long-term sustainability of the enterprise.

¹² MNE Declaration, paras. 65-66 and 68.

¹³ See website of the International Trade Union Confederation (ITUC) on COVID-19: <https://www.ituc-csi.org/covid-19-responses>

► **Checklist for what workers can do during changes brought about by the COVID-19 crisis**

- ▶ Participate—directly or through existing elected representatives—in a dialogue with management in the enterprise about the impact of the crisis on company operations.
- ▶ Share information and skills regarding improvements to make.
- ▶ Propose changes that promote the viability of the enterprise and protect employment while safeguarding the rights of workers.
- ▶ Help management to implement agreed changes and provide feedback.
- ▶ Be involved in the on-going evaluation of the change process.

- Provide information and advice to members on issues such as health and safety and what government measures are available to support business continuity and protect jobs and incomes.
- Work with government to develop and initiate programmes such as national job transition schemes.
- Focusing on the longer-term, engage with government in the creation of an enabling environment for sustainable enterprise development, including through the implementation and enforcement of labour and environmental standards and incentives for enterprises to operate in a responsible and sustainable way.
- Promote the enterprise-level principles for sustainable enterprises:
 - i) Social dialogue and good industrial relations;
 - ii) Human resource development;
 - iii) Conditions of work;
 - iv) Productivity, wages and shared benefits;
 - v) Corporate social responsibility;
 - vi) Corporate governance.

- Examine together any labour supply issues that may emerge.

► **Checklist for employers' and workers organizations**

- ▶ Assist in the change process using expertise and advocacy to promote innovative proposals.
- ▶ Promote tripartite and bipartite social dialogue and identify schemes supported by government that minimise worker displacement and mitigate the adverse effects of economic restructuring.
- ▶ Discuss and agree on proposals for change.
- ▶ Assist organisations to focus on the longer term.

What can employers' and workers' organizations do to help?

Representative organisations have an important role to play in promoting responsible approaches and sharing information to manage change in the context of the unique situation created by the pandemic. The [joint statement](#) by the IOE and the ITUC on COVID-19 indicates that, at the global level, employers and workers are already working together to address the crisis. In addition, employers' and workers' organizations can organize bipartite social dialogues, particularly at sectoral level; and can call for tripartite dialogues with government at national, sectoral and local levels¹⁴. Together, policy-makers and social partners can take actions to minimize worker displacement and the adverse impacts of economic restructuring.

More specifically, employers' and workers' organizations can:

- Identify means to slow the spread of the virus while minimizing the disruption to the economy.
- Engage in dialogue with government on support measures for enterprises and workers that would help mitigate the negative impacts of the pandemic.

Working with business partners to minimize job losses in their operations

The COVID-19 pandemic has disrupted a wide range of supply chains and led to operational challenges in many

¹⁴ For a discussion about the role of social partners in the design and implementation of anti-crisis measures see, Rychly, L. (2009) *Social dialogue and the design and implementation of measures in times of global financial and economic crisis*, ILO, forthcoming.

enterprises. In today's globalized economy, government measures to contain the virus and company decisions in one part of the world have an impact on other parts.

Enterprises change business partners or disengage from them for a variety of reasons, including as part of their due diligence efforts or as part of their efforts to preserve jobs within their own operations. During the current crisis, companies may face particularly difficult, and possibly competing, pressures and obligations. Efforts to support and maintain commercial ties between enterprises across countries where possible make an important contribution to sustaining business continuity and protecting workers, especially in countries with weak social security and social protection systems.

The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) provides guidance to MNEs and other enterprises on how to conduct their operations responsibly and sustainably. Its principles also guide companies in managing their commercial relationships in a sustainable way. The MNE Declaration states:

► The continued prominent role of multinational enterprises in the process of social and economic globalization renders the application of the principles of the MNE Declaration important and necessary in the context of foreign direct investment and trade, and the use of global supply chains. The parties concerned have the opportunity to use the principles of the MNE Declaration as guidelines for enhancing the positive social and labour effects of the operations and governance of multinational enterprises to achieve decent work for all, a universal goal recognized in the 2030 Agenda for Sustainable Development.

► Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, 5th edition, 2017, Introduction

Concerning restructuring, the text provides the following guidance:

► In considering changes in operations (including those resulting from mergers, take-overs or transfers of production) which would have major employment effects, multinational enterprises should provide reasonable notice of such changes to the appropriate, government authorities and representatives of the workers in their employment and their organizations so that the implications may be examined jointly in order to mitigate adverse effects to the greatest possible extent. This is particularly important in the case of the closure of an entity involving collective lay-offs or dismissals.

► Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, 5th edition, 2017, para. 34.

In general, good practices consist of:

- As part of due diligence processes, review the impact of the operational changes/restructuring of business operations on outside business partners (buyers, suppliers) and their workers and communities.
- Honour any obligations arising from existing collective agreements, commercial contracts, framework agreements and codes the enterprise has committed to, including payment of orders.
- Provide advanced notice to business partners affected by the restructuring of business operations so that they can look for other options to avoid job losses and ensure workers' protection.
- Engage in a meaningful dialogue with business partners about the impact of the change in business operations and take measures to mitigate adverse effects where possible.
- Where the restructuring of business operations is large scale and likely to have a broader impact on employment, this consultation should include discussion with government authorities about possible mitigating measures.

The important point here is to provide notice of the proposed operational changes/restructuring of business operations to business partners as early as practicable so

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that the dialogue and mitigation measures can be most effective.

▶ **Checklist for impacts of restructuring of business operations on outside business partners**

- ▶ As part of due diligence processes, review the impact of changes under consideration on those outside of the enterprise (buyers, suppliers), workers and the communities.
- ▶ Review and meet obligations arising from existing contracts, codes, commercial agreements and frameworks.
- ▶ Give reasonable notice of any proposed restructuring of business operations and enter into a dialogue with affected business partners.
- ▶ Notify and involve government where there is likely to be a major impact on employment.

Resources

- Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, 5th edition, 2017
https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_094386.pdf.
- Termination of Employment Convention, 1982, - (No. 158) and Recommendation (No.166).
- Part-Time Work Convention, 1994, - (No.175) and Recommendation (No.182).
- Employment Promotion and Protection against Unemployment Convention, 1988 (No.168) and Recommendation (No. 176).
- Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205).
- Conclusions concerning the promotion of sustainable enterprises International Labour Conference, Geneva, June 2007.
- International Organization of Employers website on covid-19: <https://www.ioe-emp.org/en/policy-priorities/covid-19/>.
- International Trade Union Confederation website on covid-19: <https://www.ituc-csi.org/covid-19-responses>.
- Rogovsky N (ed), (2005) Restructuring for corporate success: A socially sensitive approach, ILO, Geneva.
- See also ILO Helpdesk for Business on International Labour Standards – www.ilo.org/business.