Tool 4: Conducting Interviews with Migrant Workers

This tool is designed as a set of sample interview topics for company social auditors to consider when conducting targeted migrant and foreign contract worker interviews. It is consistent with the code provisions and benchmarks provided in Section 1 of the Toolkit and complementary to the management and labor broker interview topics provided elsewhere in this section. Companies can use this tool to help shape their own worker interview questionnaires, thus improving their auditors' ability to identify possible cases of abuse or broker-induced forced labor at company facilities.

RECRUITMENT AND HIRING

There are many stages in the recruitment and hiring process for migrant workers, and there may be many labor brokers involved along the way. It is important for the auditor to discuss the recruitment and hiring process with migrant workers in order to better understand the process, actors, and circumstances involved in placing them at the facility. With every new broker's involvement, another door is opened to the potential for abuse and malpractice. It is also important to discuss labor broker and facility orientation procedures to determine whether migrant workers are aware of key policies and procedures in the workplace and terms and condition of work before they start their job.

Here are some of the issues an auditor may wish to discuss with migrant workers:

- How many labor brokers were involved in migrant workers' recruitment in the country of origin?
- What is the name and address of each labor broker or agency involved in the country of origin?
- At the time of recruitment, was the worker given accurate details about the job location, contract duration, anticipated earnings, working and employment conditions on the job, and living conditions?
- Did the worker participate in a pre-departure orientation?
- If yes, what did that orientation include? Did it review:
  - ☑ Contractual obligations;
  - ☑ Terms and conditions of work;
  - ☑ Rights and responsibilities on the job, and those of your employer;
  - ☑ Living conditions;
  - ☑ Company policies; and/or
  - ☑ Grievance mechanisms that are in place for the worker on the job?
- Upon arrival in the destination country, did the worker:
  - ☑ Receive accommodation;
  - ☑ Receive an orientation session at the facility;
  - ☑ Undergo a medical examination; and/or
  - ☑ Open a bank account?
- Did the worker receive orientation on the facility's personnel policies? If yes, what was addressed during the orientation?
  - ☑ Personnel policies;
  - ☑ Regular wages and hours;
  - ☑ Vacations, sick and personal leave;
  - ☑ Overtime hours and rates;
  - ☑ Grievance procedures;
  - ☑ Health and safety policies;
  - ☑ Benefits and deductions;
  - ☑ Discipline and termination; and/or
  - ☑ Harassment and abuse.

- Was the worker given a copy of the facility personnel policies or employee handbook? If yes, was this handbook written in a language that the worker understands?
- Are the facility policies, procedures and work instructions communicated to workers in language they understand?

RECRUITMENT FEES AND EXPENSES

In assessing risk factors for debt bondage of migrant workers, it is essential to obtain a thorough picture of all expenses incurred by the migrant worker in obtaining the job overseas, as well as the manner in which the worker financed these fees. Fees are referred to in various ways and serve various functions. The questions below will help you determine the full array of fees and expenses that migrant workers may have incurred in obtaining their job abroad, and the terms of any financing arrangements into with the worker may have entered. The auditor should be sure that the following issues are included in any assessment:

- Did the worker pay a service, placement, or recruitment fee to the recruitment agency in the sending country? If yes, how much was this fee? Did the worker pay a fee to an individual or sub-agent of the agency? If yes, how much was this fee?
- Did the worker pay a reservation or commitment fee? If yes, how much was this fee? Is the amount refundable and, if yes, when is it refunded? If no, is the amount deducted from the total cost of the recruitment fees charged to the worker?
- Did the labor broker provide the worker with a written itemized breakdown of the fees and expenses paid? If yes, what did the fees and expenses cover? How much was each fee or expense?
- Who arranged for the processing of the worker's required travel documents, such as work permit, visa, and passport? Was a fee charged for this service? If so, how much was this fee?
- Did the worker pay fees for any of the following:
  - ☑ To register for a skills test or certification;
  - ☑ For language-training;
  - ☑ For medical or physical examination; and/or
  - ☑ For a pre-departure briefing?
- How much did the worker pay for travel costs (airfare or another mode of travel)? Was this cost included in service or recruitment fees charged by the labor broker, or paid directly to a travel agency? Will return travel be paid by the employer or worker?
- Was the worker required to pay a labor broker's fee in the receiving country? If yes, how much was this fee? Was it paid up-front, or is it deducted from the worker's salary?
- Did the worker pay a deposit or bond of any kind, such as a surety bond? If yes, how much did the worker pay? What was this deposit or bond for? To whom was it paid?
- Was the worker required to pay any sort of levy or tax to obtain the job? If yes, how much and to whom?
- Were any fees, expenses, levies, deposits or bonds charged to the worker paid up-front, or are these deducted from his or her pay?
- Did the worker have to borrow any money to pay for recruitment fees and expenses? If yes, how much was borrowed? From whom did the money come? Is there an associated interest rate and, if yes, how much is this? How does the worker repay the loan? What is the repayment schedule?

CONTRACTS OF EMPLOYMENT

Formal and signed contracts of employment between the worker and facility or labor broker are legally binding agreements and a pre-requisite to providing employment protection to migrant or foreign contract workers. They are a cornerstone to monitoring social compliance and essential to clarifying the employment relationship and its terms and conditions. For auditors, when assessing the recruitment and hiring of migrant workers, it is necessary not only to examine copies of these contracts to determine wage levels and other entitlements under the contract; it is also necessary to understand how and when the contract was signed, and under what conditions. Consider discussing these issues with workers as an important part of your own worker interviews:

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- Did the worker sign an employment contract for the job? If yes, with whom was the contract signed: the facility or the labor broker?
- Were the terms of the employment contract explained to the worker? If yes, who explained these terms to the worker? Does the worker fully understand the terms and conditions of the contract? If no, what parts are not understood?
- When and whre was the contract signed (e.g. prior to departure or upon arrival at the facility)?
- In what language is the contract written and does the worker understand that language?
- Was the worker given a copy of the contract to review prior to signing? Once signed, was he or she given a copy of the signed contract?
- Did the worker have to sign two sets of employment contracts? If yes, were both sets the same in content and, if no, how were they different? Were these differences explained to the worker, and what was the reason given?
- Are the details contained in the worker's employment contract consistent with the details that were provided at the time of recruitment? If not, what has changed?
- Are the actual terms and conditions on the job consistent with those that are described in the employment contract?
- Was the worker's original contract amended in any way following signature? If yes, do these amendments improve or worsen the worker's employment conditions? Were these amendments made with the worker's prior knowledge and informed, written consent?
- Was the worker pressured or threatened in any way into accepting the job or any of the terms included in the employment contract?
- Under what conditions can the contract be renewed?

DOCUMENT RETENTION

Confiscating or withholding personal documents can be a form of coercion that leaves migrant workers highly vulnerable to forced labor. When labor brokers or brand or supplier facilities take away workers' passports, residency or work permits, personal identity documents, or even ATM cards, this not only limits their freedom of movement and personal freedom; it effectively binds them to that employer or labor broker, restricting their ability to terminate employment or leave the job without the threat of losing this valuable property. In many cases, it also means that the worker is not able to take up a new job, access social benefits to which they may be entitled and is vulnerable to deportation or detention by immigration authorities. It is essential that auditor address these issues in their interviews with migrant workers:

- Did the worker submit any original copies of government-issued identification, passports or work permits to the facility or receiving country labor broker? If yes, what was submitted (e.g., passport, residency permit, work authorization, identity documents, ATM or bank card, or other travel documents, for example the return portion of travel tickets)? What was the reason for this?
- Are personal documents withheld due to legal requirements or did the worker request that the facility or labor broker hold them?
  - ☑ Do workers have free and unhindered access to their documents?
  - ☑ What is the procedure for getting the documents back?
  - ☑ Are workers given an exact copy of the document when it is not in their possession?
  - ☑ Does the facility or labor broker nominate a responsible person to ensure that workers have free access to their documents upon demand?
  - ☑ Were workers given advanced notice of these requirements and procedures?
  - ☑ Have workers ever encountered lengthy or otherwise burdensome prerequisites when accessing their passport or other personal documentation?
- Do workers have free access to a locked, secure storage space for their personal documents and valuables?

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DEPOSITS

So-called “security deposits” or “runaway insurance” are sometimes used by labor brokers or employers to limit migrant workers’ ability to terminate employment and find a new job. This “fee” is typically paid up-front at the time of recruitment, and is kept until the contract has been fulfilled. If the worker terminates their employment prior to the contract’s end date, they run the risk of losing their money. Auditors should be aware of this abuse, and discuss it directly with workers. Here are some of the issues an auditor may want to consider:

- Did the worker pay a deposit or bond of any kind during the recruitment process?
- Has a fee or bond been paid by workers at any other time during the employment relationship?
- If yes is answered to either of these questions:
  - ☑ How much was the fee paid?
  - ☑ To whom was it paid?
  - ☑ When does the worker expect to get the deposit back?
  - ☑ What are the conditions under which the amount is returned?

WAGES AND WAGE DEDUCTIONS

Auditing wage and salary payments can be one of the most complex and challenging aspects of a social audit. This is no less the case when assessing wage conditions facing migrant and foreign contract workers who are highly vulnerable to debt bondage resulting from withheld wage payments, excessive deductions from wages, or fraudulent practices with regard to advances and loans provided by the facility or labor broker. To address this complexity and establish a clear picture of migrant worker wage conditions, auditors may wish to consider discussing the following with workers:

- Who pays migrant workers’ wages? Are they paid by the facility or the labor broker?
- How are workers paid (e.g. hourly, daily or piece rate; in cash, check or direct deposit), and are they paid at the same rate as local workers?
- Do workers receive their pay on time? Have wage payments, or any portion of wages, ever been delayed or withheld? If yes, what were the circumstances of this?
- Do workers receive a pay slip or wage statement on payday? If yes, is this pay slip in a language they understand, and does it clearly indicate wage calculations and any deductions that are made from the worker’s salary?
- Are any deductions made from the worker’s salary? If yes, how much is deducted and what for (e.g. meals, transportation, lodging, utilities, uniform, tools, other)? Are these deductions made with the worker’s knowledge and consent? Are workers requested to sign a document to authorize the deduction(s)?
- Do workers ever receive wages in the form of non-cash or “in-kind” payments? If yes, what percentage of the wage has been paid in this way?
- Has the worker ever received an advance on his or her wages or a loan from the facility or labor broker? If yes, what were the terms of this loan, including the interest rate and financing period? Have the terms of the loan ever been changed without the worker’s consent?
- Does the worker participate in a savings program sponsored by the labor broker or facility? If yes, is this program voluntary? Do workers sign a written consent form to authorize deductions for voluntary savings? Where are workers’ savings kept? If savings are kept in a bank, do workers have free access to their bank account? When do workers get their savings back? Have workers experienced any difficulties in accessing their savings or getting them back?
- Is there anyone else, apart from the worker, who has access to his or her bank account, for example through an ATM card or power of attorney? Has the worker ever authorized another person to access their account to make a withdrawal? If yes, who else has such access?
- Does the facility or labor broker limit in any way the worker’s freedom to dispose of their wages as they see fit?

COMPULSORY OR INVOLUNTARY OVERTIME

Compulsory overtime is a key form of forced labor that all workers can be subject to, not only migrant and foreign contract workers. However, the latter may be at greater risk of this abuse because of their heightened vulnerability, and the many

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pressure points that brand or supplier facilities, or labor brokers, may have to exploit their vulnerability. Addressing this issue should be central to all worker interviews; it is even more important for discussions with migrant workers.

- How often do workers have to work overtime, and for what reasons?
- Is overtime at the facility always voluntary? If no, what are the circumstances involving involuntary overtime?
- Are workers free to refuse overtime without threat or fear of punishment? What happens if a worker refuses to work overtime?
- Are workers given advance notice by the facility or labor broker when overtime is required?

FREEDOM OF MOVEMENT AND PERSONAL FREEDOM

Restrictions on freedom of movement for migrant workers can exist in the workplace or in dormitories where they live. They can result from facility or labor broker policies; rules and regulations governing worker residences; the legal, regulatory or security environment; cultural norms or considerations; active threats, intimidation and harassment by a manager, labor broker, or security guard; and deceptive or hidden forms of coercion such as passport confiscation, which is addressed above. Some forms of restriction can be considered reasonable, such as policies relating to workplace discipline; while others are wholly unreasonable and highly abusive. To make sense of this complex issue, here are some of the topics that auditors may wish to discuss with workers concerning their freedom of movement and personal freedom:

- Are there any restrictions on migrant workers' freedom of movement in the workplace during working hours? If yes, what are these restrictions? Are they reasonable? Do security personnel ever restrict workers' freedom of movement in the workplace for reasons other than workplace security?
- Are workers ever restricted from or monitored when using the toilet facilities? Are they free to get drinking water whenever they wish?
- Are workers free to perform religious obligations without restriction?
- Are workers free to leave the workplace immediately after their shift? Are they able to get permission to leave the factory during work hours under reasonable circumstances? What is the procedure for requesting this permission (e.g. how many signatures are required to request a gate pass)?
- If workers live in a dormitory provided or operated by the facility or labor broker, are they required to live there as a condition of recruitment or continued employment? Are workers free to leave the dormitory and reside elsewhere? Are they free to come and go as they please during non-working hours? If not, what are the restrictions on freedom of movement, and are they reasonable? Does the dormitory have a curfew? Are there any dormitory rules and regulations that unreasonably restrict workers' personal freedom?

WORKPLACE DISCIPLINE

Disciplinary measures and, in particular, the penalty of dismissal and repatriation can be abused to threaten, take advantage of, and apply pressure on migrant workers. While some measures may be justified in reacting to misconduct, disciplinary measure should not result in compulsory labor or an obligation to work. It is important for the auditor to discuss disciplinary measures and determine that they are fair, objective, transparent, and communicated to workers in language they understand. Here are some of the issues auditors may wish to discuss:

- What steps are taken for disciplining a worker?
- What types of misconduct carry the penalty of dismissal and repatriation?
- Is there a clear process that includes investigation before workers are terminated and repatriated?
- Do workers feel that disciplinary practices are fair?
- Are workers subject to punitive fines or deductions as a disciplinary measure?
- Do deductions for tardiness or time missed ever exceed the wage equivalent of the time missed?
- Do disciplinary measures ever involve forced or compulsory work as punishment for an workplace infraction?
- Are workers ever forced to sign a letter of resignation?

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THREAT OF VIOLENCE AND INTIMIDATION

Harassment, intimidation, and threats or use of violence can take many forms in the workplace or in facility - or labor broker-operated residences. They can be perpetrated by a supervisor, facility manager, broker representative, dormitory manager, security guard, or even a fellow worker at almost any stage of the employment relationship, including recruitment and hiring. The aim may be to frighten the worker or pressure them into accepting certain terms and conditions of employment or living conditions; or it may be to force them to work overtime or perform hazardous or life-threatening tasks. Whatever the case, there should be a zero tolerance policy in place to prevent such behavior, and migrant workers are a key potential source of information in determining facility or broker compliance with that policy. Auditors should consider discussing the following:

- Have workers ever been subject to or witnessed verbal abuse, psychological harassment, intimidation, physical abuse, or sexual harassment? If yes, what happened, when and where did it happen, and who was involved? Is this abuse on-going? Was the incident(s) reported to facility management or the labor broker? What actions were taken to correct the abuse?
- Are workers aware of facility policies and procedures for dealing with harassment and abuse complaints (e.g. reporting, investigation, follow-up, and sanctions)?
- Does the facility conduct regular anti-harassment and abuse training for workers?

WORKER COMMUNICATION AND GRIEVANCE PROCEDURE

An effective complaints mechanism and grievance procedure in the workplace that allows migrant workers to confidentially raise issues about labor broker or facility practices or the conditions they face in the workplace or dormitory is an important element in taking corrective action against abuse and exploitation. It is a key first step in remediating existing problems, and doing so at the level where problems exist. However, in many cases, grievance procedures may not even exists; they may not be effective, trusted or used by migrant workers; or they may only apply to the facility and not to labor brokers, where significant forms of abuse may occur. In this case, it is important for auditors to investigate fully, and discuss with workers the options they have available to them to raise questions and complaints.

- How are issues or complaints from migrant workers brought to the attention of the facility or labor broker?
- Is there a representative who receives and processes complaints? If yes, what is the position of this representative? Does this person speak the language of migrant workers? Are workers comfortable bringing their complaints to this person?
- Is there a mechanism in place for workers to raise a grievance with someone other than their direct supervisor?
- Is there an anonymous procedure to report grievances? What means are in place to protect the identity of the worker reporting the grievance?
- Are the responses to grievances and actions taken to address them communicated to workers? If so, what is the main method of communication?
- Do workers feel that complaints and grievance procedures are effective?
- Are workers free to join or form a trade union? Has the facility done anything, including interference or penalties, to prevent workers from joining or forming a union?

TERMINATION OF EMPLOYMENT

The ability of migrant workers to terminate employment at any time without penalty and with reasonable notice is central to ensuring that they work in a free employment relationship. In speaking with migrants, auditors may wish to probe this issue, and seek to identify whether any limitations exist that prevent workers from terminating their contracts before they are finished.

- Are migrant workers free to resign from their position without penalty prior to the end of their contract? If no, what are the penalties they face? Who pays for migrant workers' return travel if they quit before their contract expires?
- What is the required notice period for terminating a contract?

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- If the worker participates in a voluntary savings program facilitated by the employer or labor broker, does he or she have free access to all savings and monies owed at the time of contract termination?

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