

Tool 2: Monitoring the Performance of Labor Brokers – Introduction and Key Issues of Concern

This tool provides an introduction to the rationale and purpose of the labor broker assessment, who should conduct it, and an overview of what information should be gathered. It also provides some detail as to the key areas of concern in a labor broker assessment.

This tool can be used in conjunction with sets of assessment questions for **brokers**, **workers**, and **documents review** that are also found in [this section](#) of the Fair Hiring Toolkit.

INTRODUCTION

The purpose of a labor broker performance assessment is to verify whether or not the broker is performing according to the legal, ethical, and social responsibility requirements that the company has defined.

The labor broker performance assessment is a key element in the systems approach to social responsibility. Companies need visibility into how their labor brokers operate, and a way to measure broker performance against social responsibility benchmarks. Performance assessment is especially critical where the protection of migrant workers against human trafficking and forced labor is concerned.

Having an assessment procedure in place gives companies an objective basis for management decisions, and helps protect against hidden abuses. It also drives labor brokers toward performance effectiveness and continuous improvement, and toward meeting agreed upon goals related to business and social responsibility.

Verité recommends that a designated monitoring team, preferably from the human resources department, should perform the assessment. Members of the team should be knowledgeable in the company's social responsibility program and trained to conduct a thorough, objective assessment. An independent third-party auditor may, alternatively, be engaged.

Individual companies should judge the best time for assessment based on the job cycle and other considerations. Where the outsourcing of recruitment and hiring is concerned, an assessment of the labor broker should be conducted soon after the migrant workers arrive at the facility. Assessments should also be conducted prior to contract renewal or in advance of a subsequent deployment of workers. Brokers charged with aspects of on-site management should be assessed periodically. Where problems are found, follow up assessments to evaluate the success of any remediation procedures should be performed.

In essence, your assessment of the labor broker replicates the assessment process conducted of your facility by your internal auditors or by auditors contracted by customers. The actual performance assessment itself requires a process of triangulation – gathering and analyzing information from several sources. Verité recommends gathering information from all of the following sources, where possible and relevant:

- Agency management officers and personnel;
- Migrant workers;
- External stakeholders, such as government agencies accrediting labor brokers and NGOs that work with trafficking victims;
- Documents, including:
 - Business records - license, registration, etc.
 - Payroll records
 - Fees and payment records
 - Worker documentation
 - Discipline records
 - Grievance records
- Actual observations during physical inspections;

- Living and dining areas
- Offices of the broker agency.

KEY ISSUES OF CONCERN

This tool can act as a guide for a host facility, broker or a third-party monitor in assessing functional areas of broker performance that can become sources of risk and noncompliance to standards on forced labor.

This tool introduces some key issues that should be included in the labor broker assessment, including:

- Recruitment fees;
- On-Boarding, orientation and training;
- Wages and benefits;
- Loans, deposits and deductions;
- Dormitory and housing;
- Grievance mechanisms / Worker feedback and communication;
- Human treatment; and
- Document retention.

For each topic area, the need and context for screening is explained, followed by a list of information to gather, and an articulation of key red flags and risks to look out for.

In addition to the issues articulated below, you should also follow up on the issues raised during the initial broker screening, to ensure that processes have not changed and no additional risks have been introduced. Because the issue of recruitment fees is perhaps the most critical, where the risk of trafficking and forced labor is concerned, it is repeated in both sections of this Toolkit.

ASSESSMENT AREA: RECRUITMENT FEES

Why are you assessing the labor broker's policy and procedures on recruitment fees?

There is always a risk that a labor broker has charged jobseekers unauthorized or illegal fees, or has forced jobseekers to pay for services at amounts or interest rates that are excessive. In such cases, workers may be entering a situation of debt bondage or forced labor even before they set foot at your facility.

It is therefore important that you communicate clearly to your labor broker which fees can and cannot be charged jobseekers. Oversight must also be in place to ensure that the labor broker abides by these rules.

It is difficult to find hard evidence of violations to the "employers pay" standard, because such fee-charge violations rarely have a paper trail, or the paper trail is "doctored up" to hide illegal fee charges. Workers are often the only source of information regarding violations of this standard. It is important that workers have a safe means for reporting violations directly to you, and that there is a credible and well-communicated procedure to investigate and respond to such reports. It is also important to levy penalties for violations of the employer pays policy, and to reimburse workers for any fee overcharges.

What information do you need to get?

- A description of how the labor broker ensures compliance with the "employers pay" policy (e.g., the policy is included in work contracts, and sanctions are in place for noncompliance).
- A list of expenses charged to jobseekers.
- Mechanisms for jobseekers to report violations of company policy on recruitment fees.
- Procedures for refunding fee overcharges.



What are some common risks and red flags?

- ☒ There is no written commitment by the labor broker to adhere to the employers-pay policy.
- ☒ There is no effective and safe procedure for workers to report ethical violations by internal staff or subcontractors of the employers-pay policy (e.g., workers are coached to lie about fees and expenses).
- ☒ Jobseekers are charged a reservation fee and/or illegal deposits.
- ☒ Illegal fees are charged to workers for processing of deployment documentation.
- ☒ Jobseekers are charged excessive fees for mandatory skills training.
- ☒ Jobseekers are charged fees beyond market rates for broker-owned or -operated accommodations during the pre-deployment period.

ASSESSMENT AREA: ON-BOARDING, ORIENTATION AND TRAINING

Why are you assessing the on-boarding, orientation, and training of migrant workers?

By assessing the on-boarding, orientation, and training of migrant workers, you will be able to understand how workers are informed about company policies and employment conditions; how the company ensures that workers clearly understand the policies and conditions; and whether these policies and conditions are explained to workers in a language that they understand.

You also need to check if the information provided to the workers during the on-boarding process are similar to the ones they receive prior to their start of employment in the facility. It is particularly important to know whether the terms and conditions that the workers agreed to are consistent with the ones offered to them at the start of their employment, and if these terms and conditions are consistent with actual practice. Most workers will have signed a contract in their country of origin which was likely approved by their sending country authority. In most cases, these contracts are patterned after standard government contracts to expedite workers deployment abroad. However, upon arrival in the receiving country, some companies ask workers to sign supplemental agreements. These agreements often contain additional terms and conditions that can be unfavorable to workers but workers have little leverage to refuse to sign.

You also need to understand if the company also provides training programs for migrant workers and whether these are in place and are responsive to the needs of the company and the worker.

What information do you need to get?

- On-Boarding Program;
 - Schedule
 - Areas covered
 - Documentation
 - Training Materials
- Training Program;
 - Description of training programs provided by the broker or the facility
- Skills improvement training program
- Worker education and awareness training
- Legally-mandated certification and skills programs
- Language training
 - Hand-outs, worker's copy of training materials
 - Skills assessment or skills gap assessment
- Languages spoken by the workers
- Training Fees;
 - Training costs
 - Who is responsible for training costs?



- Trainers;
 - What qualifications do the trainers have?
 - Is training run by facility staff or is it outsourced?
- Worker performance review practices and procedures;
- Worker education and communication of performance review policy and procedures; and
- Skill grade/classification of workers
 - Organizational structure of facility
 - Pay structure.

What are some common risks and red flags?

- ☒ There are no clear procedures for conducting on-boarding, orientation, and training of new hires;
- ☒ Information provided to workers in on-boarding, orientation, and training practices are not consistent with company policies and procedures;
- ☒ On-boarding, orientation, and training are conducted by broker or subcontractor, which may result in inconsistent messaging and insufficient information;
- ☒ The on-boarding, orientation, and training are conducted in a language workers do not understand;
- ☒ Workers are required to sign supplemental agreements during the on-boarding process.
- ☒ Labor brokers charge training fees to workers; or
- ☒ A training bond or a condition for acquiring training that can result in workers being unable to terminate their contract freely (i.e., the worker was required to pay a bond upon hire, a portion of which was to pay for training).

ASSESSMENT AREA: COMPENSATION AND BENEFITS

Why are you assessing your company's compensation and benefits system?

The areas of compensation and benefits are closely tied to the risks of forced labor as workers can become involuntarily tied to the job due to a company's or broker's wage practices. Specific risks include underpayment of wages and unauthorized deductions and withholdings. An assessment will help you determine if workers are paid the wage rate that was promised to them; if their wages are paid in the manner that the workers agreed to; and if workers are able to terminate their employment without sacrificing pay for hours previously worked. If deductions or withholdings are made from workers' pay, an assessment will help you determine if this is a legally allowed practice and if it could result in forced labor.

What information do you need to get?

- What is the legal minimum wage applicable to the facility?;
- What are the legal requirements on wages, including overtime pay, and benefits?;
- Pay practices;
 - How are wages paid?
 - What are the forms of wage payments (cash, deposit in worker's bank account, etc.)?
 - Who has access to worker's payroll bank account?
 - Pay cycle
- Payroll period
- Pay dates (important: determine number of days lapsed from last day of payroll period to pay day)
- Pay structure;
 - What is the basic pay rate?
 - What are the overtime rates and other non-regular rates (holiday, rest day, etc.)?
 - Are any cash allowances given?



- Are any productivity incentives awarded?
- Are any bonuses
- Pay deductions;
 - Are there any legally mandated deductions (e.g. social security premiums)?
 - Other deductions
 - Is any type of savings program implemented?
- If yes, is this savings program implemented with or without the workers consent?
- Benefits;
 - Are legally mandated benefits provided?
 - Which additional benefits are provided by the company? and
- Worker Education on Wages and Benefits;
 - How are workers educated on wage calculations?
 - How are workers educated on accessing benefits?

What are some common risks and red flags?

- Underpayment or delayed payment of wages;
- Labor brokers have access to workers' bank accounts, resulting in:
 - Forced savings
 - Illegal deductions
- Workers are uninformed or misinformed about wage rates and deductions; or
- No pay slips are provided.

ASSESSMENT AREA: LOANS, DEPOSITS, AND DEDUCTIONS

Why are you assessing fees, deposits, and deductions?

Excessive or illegal fees heighten workers' vulnerability to forced labor. In order to have a clear picture of the vulnerability of your workforce to debt bondage and forced labor, you will want a full accounting of all fees, deposits and deductions to which migrant workers are subject. To determine workers' vulnerability it is important to understand the purpose, legality, and methods of levy for each of the fees, deposits, and deductions. In addition, you will need to know how workers repay these fees and whether repayment schemes restrict workers' ability to terminate their employment.

What information do you need to get?

- Fees and loans due to brokers;
 - What is the schedule of payments?
 - What are the terms of repayment?
 - What is the fee schedule or line items for the fees?
 - What out-of-pocket payments to facility or to broker is the worker required to make?
- Deposits, bonds and savings;
 - Security bond or deposit
 - Schedule of payments
 - Terms of payment
 - Terms for returning savings to workers
- Broker- or company-managed savings;
 - Where the savings are kept or deposited. If bank account, who has access? Is it an ATM account or bankbook account? Who keeps the bank book?
 - Getting workers' consent for savings
 - Do workers have access to their savings?
 - What are the terms for returning savings to workers
- Deductions;



- Penalties, fines
- Meals
- Housing
- Uniforms
- Tools
- Documentation of payments;
 - Are all pay deductions recorded in pay slips? If final deductions are taken, are they recorded? (Net pay as reflected in pay slip versus pay deposited in worker's account?)
 - Worker's copy of proof of payment.

What are some common risks and red flags?

- ☒ Workers are charged broker fees for on-site management;
- ☒ Workers are induced or encouraged to take loans from the broker or the facility at excessive interest rates or unreasonable terms of payment;
- ☒ Workers are required to lodge deposits before taking up employment, and during employment;
- ☒ Workers are ill-informed about the terms or the full amount of loans or deductions; or
- ☒ Automatic deductions for loan payments are made against workers' salary.

ASSESSMENT AREA: DORMITORY AND HOUSING

Why are you assessing housing and dormitory?

You will want to know the full details of the housing provided to migrant workers, especially if these workers have no choice but to rely on the receiving-country labor broker or the host facility to secure their housing.

You will want to check if the housing provided to workers is comfortable, safe, and secure; and whether workers can freely enter or leave the premises. You need to check the house or dormitory rules and regulations, and whether there are unreasonable restrictions on workers' freedom of movement. Inquiring about the security policy of the dormitory also alerts to safety risks. For example, pad-locking the gate from the inside after curfew hours with the key not readily accessible may result in workers getting trapped inside in case of fire.

You need to know who is managing the dormitory, what their specific functional tasks are, and if they are properly trained or equipped to fulfill the task. The related expenses, if the accommodations are not provided for free, should also be looked into. You need to know how much is charged, how payments are collected, and whether these are reasonable rates.

What information do you need to get?

- Who manages the living quarters?;
- Who bears the overhead expenses of the dormitory?;
- Rules on leaving and entering the living quarters;
- Other dormitory security procedures;
- Rules while in the dormitory;
- House-keeping practices; and
- Emergency preparedness procedures.

What are some common risks and red flags?

- ☒ Workers do not secure their housing accommodations themselves;
- ☒ Brokers or employers require workers to stay in broker-controlled or company-controlled housing facilities;



- Curfews are implemented in the dormitories, and workers are unable to enter or leave the premises freely;
- There are penalties for staying out, or for not returning to the dormitory or housing facility at a designated time;
- Gates are closed at designated times; or
- Security personnel are instructed to restrict workers from leaving or entering the dormitory or housing facility.

ASSESSMENT AREA: DISCIPLINE AND TERMINATION

Why are you assessing the facility's policy and practices on discipline and termination?

Disciplinary procedures – whether from the facility or broker -- should be based on a clear set of rules and regulations that apply to all workers, regardless of employment status, or nationality and should include the right to due process. The process for termination should be legal and fair. Migrant workers should be able to refuse overtime, for example, without fearing early termination of their contract. Further, conditions for voluntary termination of the contract should not be so prohibitive that workers are unable to leave a job.

What information do you need to get?

- What are standard rules and regulations, code of discipline?
 - Are there categories of misconduct?
- Which misconduct is subject to a series of warnings? Which is subject to immediate termination?
- Procedure for investigating reports of disciplinary violations;
 - How are workers notified of a disciplinary citation?
 - What processes are in place for workers to appeal or challenge a disciplinary action?
- Description of disciplinary action taken by management;
 - Are escalating warnings issued to workers in response to behavior or performance issues?
- Records kept on disciplinary proceedings;
- Terms and conditions to terminate contract;
 - What penalties for not completing duration of contract?
- Process for clearing resigned or terminated worker;
 - When do resigned or terminated worker get their last wages?
- Training and education;
 - How are managers and supervisors trained on disciplinary policy?
 - How are workers trained on discipline policy?

What are some common risks and red flags?

- Managers and supervisors are not adequately trained to implement the company's policy on discipline;
- Workers are not aware of the company's policy on discipline;
- Workers are not aware of performance objectives and the parameters against which they are evaluated;
- Management does not document disciplinary proceedings;
- Punitive deductions, unpaid work or forced overtime are a part of disciplinary measures; or
- There are penalties for early contract termination.



ASSESSMENT AREA: WORKER DOCUMENTATION

Why are you assessing the broker's or host facility's practices for storing and securing worker's documents?

It is critical to determine if the company or broker holds workers' original documents such as passports. Without access to such documents, workers are effectively bound to the worksite. If passports are held, they should be submitted voluntarily and workers should have unencumbered access through a clear process. The key question to consider is whether practices around worker documentation retention create situations where the workers' freedom of movement, or ability to terminate contract for reasonable cause, are restricted.

What information do you need to get?

- Documentary requirements when applying for the job;
 - Which documents are workers required to show to the facility or broker: original, government-certified, or photocopy?
 - Which documents are workers required to submit to the facility or broker: original, government-certified, or photocopy?
- Documentary requirements upon hire;
 - Which documents are workers required to submit to the facility or broker upon hire: original, government-certified, or photocopy?
 - Which original documents are held by the facility or broker? When are they handed over to the factory or broker? Where are documents stored? Who requests workers documents? What reason is given for the document retention? If used for processing of other legal papers, are they immediately returned to the worker after processing?
- Procedure and practices for filing and keeping workers' documents;
 - (If facility or broker keeps the worker's travel and work documents) What facility- or broker-provided storage systems are provided to workers to keep their travel and work documents?
 - How can workers' access their documents?
 - Do workers give their consent in submitting their documents?

What are some common risks and red flags?

- ☒ Workers are required to surrender their passports and other key documents to the broker or employer;
- ☒ Passports are taken without the workers' full and informed consent;
- ☒ Passports are taken from workers for safekeeping, and workers are made to sign a waiver indicating their consent;
- ☒ Workers are required to post a bond or pay a deposit in order to retrieve passports.
- ☒ Workers are misinformed about their right to secure their own documents; or
- ☒ Workers are not provided means to secure their own documents.

The above information can be helpful to companies as they embark on a labor broker assessment. Companies should keep these key issues of concern at the forefront of the assessment process.

