LABOUR ISSUES IN CSR:

EXAMPLES FROM THE ILO HELPDESK FOR BUSINESS Q&A

International Labour Organization

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Foreword

The International Labour Office Helpdesk for Business on International Labour Standards provides a one-stop shop for understanding the ILO's approach to socially responsible labour practices. The service is available free of charge to managers and workers, as well as workers' and employers' organizations. Its primary audience are the people who deal with day-to-day company operations and supply chain management, and who develop company policies shaping those operations, particularly concerning respect for workers' rights. The service is strictly confidential.

The Helpdesk deals with questions relating to international labour standards and draws on guidance provided by the ILO Declaration of Fundamental Principles and Rights at Work, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) and a range of other declarations, conclusions, guidelines, tools and other instruments. The Helpdesk addresses how these instruments might guide company operations and is the entry point for companies to access the whole range of ILO expertise concerning protection of workers' rights, sustainable enterprise development, conditions of work and social safety nets, industrial relations, etc.

The Helpdesk provides guidance only. It does not assess company compliance or endorse any companies or initiatives, nor does it provide information on national labour laws or national industrial relations practices. (For country-specific information, please consult national labour ministries and national employers' and workers' organizations.)

The Helpdesk draws on the jurisprudence of ILO supervisory bodies such as the Committee of Experts on the Application of Conventions and Recommendations and the Committee on Freedom of Association as it relates to company operations. That makes it easier for business, trade unions and other non-specialists to understand the guidance. Replies are prepared by a multi-disciplinary team, ensuring that users receive a comprehensive response.

The Helpdesk can provide many responses within a day or two. Replies to more complex questions may take longer. The Helpdesk aims to provide a reply to all enquiries within two weeks.

Many of the questions received and their replies are transformed into Q&A so that

other users can also benefit, not only by the answer but also from learning more about particular issues companies and workers are facing which they might wish to also address in their operations. Confidentiality is preserved by removing any information which could identify where the question came from, and if not possible, the question and reply are not made publicly available.

More than half a million users have visited the ILO Helpdesk for Business web site (English, French, Spanish) since its creation in 2010; and mirror sites have been developed in German, Chinese and Japanese. Web pages are organized by topic and are regularly updated with ILO publications, tools and resources relevant to business.

The Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) is the point of reference for the ILO's work on CSR and responsible business. The MNE Declaration is the most detailed instrument available to guide companies concerning economic and social development and decent work. The UN Guiding Principles on Business and Human Rights, the OECD MNE Guidelines, the principles of the UN Global Compact and codes of many multi-stakeholder and industry initiatives use the international labour standards as their main reference point for labour-related CSR issues. Company managers and workers' organizations using the UN Guiding Principles on Business and Human Rights, the OECD MNE Guidelines or engaged in an initiative are welcome to use the Helpdesk to find out more about the principles contained in referenced international labour standards.

This booklet was produced at the suggestion of users, to make the Helpdesk Q&A more widely accessible, particularly to those who lack consistent and reliable internet access. We hope you will find the ILO Helpdesk for Business useful and look forward to answering any questions you may have.

The ILO Helpdesk for Business team

http://www.ilo.org/business

Labour Issues in CSR

Table of Contents

ILO Helpdesk for Business on International Labour Standards

Q&As on business and general policies

Question: How do Organizations, in a country that has ratified an International Labour Organization (ILO) Convention, report compliance with the ILO standards and conventions? Does the level of compliance depend on whether it is operating from its registered/head office or a branch office in a particular country? Is there a list of the conventions ratified and the standards that are followed by all the member States? If so, how can I gain access to the same? How can I know of the violations/ infractions/ disobediences/ non-observances by various organizations that may be operating from the member States?

Answer: The ILO supervisory bodies consist of the Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the Conference Committee on the Application of Standards (CAS). These bodies currently review government reports on the application of ratified conventions every two years for priority conventions (concerning the fundamental principles and rights at work and employment) and every five years for all other conventions; however, for a variety of reasons, a government may be requested to report more frequently, particularly on the fundamental conventions.

Representation and complaint procedures can also be initiated against States that fail to comply with conventions they have ratified.

A special procedure—the Committee on Freedom of Association (CFA)—reviews complaints concerning violations of freedom of association, whether or not a member State has ratified the relevant conventions.

Regarding question 1, ILO does not monitor compliance of organizations operating in a country. Member States which have ratified a particular convention report on whether they have established the requisite mechanisms for giving effect to the provisions of the convention, through national legislation or collective bargaining agreements and national labour administration, in particular labour inspection and the courts.

For instance, a member State which has ratified the minimum Wage Fixing Machinery Convention, 1928 (No. 26) would report whether it has established a tripartite consultation body, what factors it takes into account in establishing the minimum wage, how often the minimum wage is adjusted and whether it keeps pace with inflation, what legislation mandates that enterprises pay at least the minimum wage, what percentage of the workforce receives at least the minimum wage, etc.

Member States do not report on specific organizations' compliance with the established minimum wage.

A complaint received by the CFA may contain allegations concerning specific company practices concerning freedom of association. Please note, however, that this is a complaints-based mechanism and thus wholly dependent upon the filing of a complaint which is in any event brought against governments, and not employers'. This is because under the ILO supervisory machinery the government is the party responsible for ensuring that the standards and principles are applied in practice.

The ILO maintains a database of ratifications, organized by convention and by country; and a database of decisions concerning freedom of association. You can also find out more about what the Committee of Experts has said about a particular member State's compliance with a ratified convention, using the "universal query form".

The relevant national labour administration may be able to provide you with information on violations of national labour law; however, this would not necessarily indicate compliance with international labour standards (ILS) if the country has not ratified or does not comply with the relevant ILS.

As an employer, an enterprise in any country can be encouraged to take part in national processes through local organizations of employers', and through these organizations it may be able to raise concerns about breaches of labour standards at the national level. Through international employer organizations these concerns may be pursued at the international level.

You may also find useful the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration). The MNE Declaration is a non-binding instrument which contains recommendations on how enterprises should apply principles deriving from ILO Conventions and Recommendations. The objective of the MNE Declaration is to encourage the positive contribution that multinationals can make to economic and social progress and to minimize and resolve the difficulties to which their various operations may give rise. The MNE Declaration provides guidelines on how enterprises should apply principles deriving from ILS concerning employment, training, conditions of work and life, and industrial relations. The principles of the MNE Declaration are intended to guide multinational enterprises (whether they are of public, mixed or private ownership), governments, and the organizations of employers' and workers' in home countries as well as in host countries.

Question: Where can I find information on national labour laws?

Answer: The ILO maintains a database of national legislation called NATLEX. It is searchable by country and by subject.

Question: Is there any decision by ILO, legally binding document or recommendation

which defines what in fact is an MNE? What are the conditions which must be fulfilled by the enterprise so it can be treated as multinational?

Answer: "Multinational enterprises include enterprises, whether they are of public, mixed or private ownership, which own or control production, distribution, services or other facilities outside the country in which they are based. The degree of autonomy of entities within multinational enterprises in relation to each other varies widely from one such enterprise to another, depending on the nature of the links between such entities and their fields of activity and having regard to the great diversity in the form of ownership, in the size, in the nature and location of the operations of the enterprises concerned". See, Paragraph 6 of the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.

Question: Is it possible to sign up as endorsing your convention statements? Saves a lot of work for tendering where this is becoming a requirement.

Answer: Only States can be members of the ILO and ratify its conventions. However, enterprises such as cooperatives can refer to ILO instruments in their social policies, including their codes of conduct and similar social responsibility initiatives. The ILO adopted an international instrument aiming at encouraging the positive contribution of enterprises to economic and social progress and at minimizing and resolving the difficulties to which their various operations may give rise. The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) sets out the principles in the field of employment, training, conditions of work and life and industrial relations which governments, employers', workers' organizations and enterprises are recommended to observe on a voluntary basis.

Question: I have been assigned to develop the first code of conduct of the company I am working for. I have been reading codes from other companies and some are referring to your organization. I was wondering if that is acceptable or if we should have a membership before we can refer to you?

Answer: Only States can be members of the ILO. Every member State is represented at the ILO in a tripartite manner (by the Government and the most representative employers' and workers' organizations of the country). Individual enterprises cannot become members of the ILO, but are represented by the employers' organizations. Enterprises refer to ILO instruments in their policies on responsible business behaviour, including code of conducts and similar corporate social responsibility initiatives, as well as in bipartite agreements with trade unions, including International Framework Agreements.

Question: In a call for tenders, we have specified that the company awarded the contract should be in compliance with core labour standards. Most of the companies submitting tenders have stated that they are in compliance. What can we do to verify those claims?

Answer: We welcome the efforts of your municipality to help promote respect for workers' rights in your procurement practices. At the same time, we appreciate the challenges this may pose when most of the employment takes place outside of your municipality and country and therefore you are dependent on other sources of information on how the fundamental principles and rights at work (FPRW), often referred to as core labour standards are being implemented in the operations of the MNEs submitting tenders.

There are several actions we can suggest. First, your municipality could take steps to ensure a shared understanding of the FPRW. You also could include provisions for reporting on measures taken to ensure respect for the FPRW. In developing these provisions, you may wish to engage in social dialogue with the relevant employers' and workers' organizations at the local and national level, as well as the relevant trade unions operating at the global sectoral level, to seek their views on what could be done to strengthen the oversight of company claims of compliance with the FPRW.

You may wish to get in touch with other municipalities which have also committed to applying the FPRW in their procurement processes, to learn from their experiences. You may wish also to check the following sites, which are very active on responsible public procurement at the local government level:

- http://www.procuraplus.org/
- http://www.respiro-project.eu/

Question: A company operates in countries which have not ratified ILO conventions. The company respects the local law and as a consequence does not respect ILO conventions related to freedom of association (for instance in China) or discrimination against women (for instance in Oman sultanate). If the company cannot engage in dialogue with government, to what extent can it be considered as a breach of ILO conventions? What should the company do?

Answer: Companies should "obey national laws and regulations, give due consideration to local practices and respect relevant international standards." ILO MNE Declaration, paragraph 8. In many situations, national law may not be in line with ILS, but does not actually block a company from respecting the principles contained in ILS and the MNE Declaration. For instance, a law may allow employing persons as young as 12 years of age but not impede a company from setting its own internal policy to not hire anyone below 15 years of age.

In other cases, national law may act as a genuine barrier to respecting the principles contained in ILS. In situations where the law or its implementation is genuinely in conflict with international norms of behaviour, companies may consider seeking to influence relevant organizations and authorities to remedy the conflict. National employers' organizations may be able to help. A list of national federations can be found here: http://www.ioe-emp.org/en/member-federations/index.html.

Where it is not possible for a company to influence change, and where not following these norms would have significant consequences, it may wish to consider, as feasible and appropriate, reviewing the nature of operations within that jurisdiction.

Question: We are interested in choosing a standard [for certification] which follows your regulations the best, and which is the most reliable. Can you recommend any? Or give any information on who to contact regarding this matter?

Answer: ILO does not deal with certification schemes, and therefore cannot answer your specific question. However, we can provide some general guidance which we hope will be helpful.

1. Address a broad range of labour standards. The ILO MNE Declaration identifies principles underlying ILS that can be used by companies. A one-page overview is attached for your convenience, and the link to the full text is here:
https://www.ilo.org/empent/areas/mne-declaration/lang--en/index.htm

2. Respect national legislation and adhere to collective bargaining agreements.

3. Promote and use social dialogue. Social dialogue can lead to a better understanding of problem and solutions. Social dialogue can be an important means to advance and protect workers' interests and promote sustainable enterprise development. Dialogue improves transparency and helps to build a shared understanding of the meaning and importance of workers' rights. Social dialogue requires independent parties. This means that worker representative must be freely chosen in accordance with law or by trade unions that represent the workers concerned.

Discussions are also important between buyers and suppliers, to better understand suppliers' needs and constraints. Suppliers are under pressure due to short lead times, frequent or last minute changes in an order; buyer expectations to improve quality and shorten delivery times while simultaneously cutting costs, etc.

4. Providing support for correcting problems uncovered. Multinationals should consider ways to provide suppliers, both management and workers, guidance and support to take needed corrective action to protect workers' rights.

5. Harmonizing with, and supporting the development of, the public labour inspection system. Although Corporate social responsibility (CSR) can be a useful compliment, ILO is concerned to ensure that private initiatives do not replace public labour inspection systems. Private initiatives should operate in harmony with the public labour administration and do nothing to undermine it, and should cooperate with the public authorities and national employers' and workers' organizations. Any private inspection systems should be under the supervision of the public labour inspection `system.

6. Considering impact for workers and costs to suppliers. There is a growing body of literature which casts doubt on the effectiveness and efficiency of private initiatives to protect workers' rights, at least as they are currently conducted. Often it is difficult to identify any significant and sustained benefit to the workers.

There is also a growing concern about the costs to suppliers, in terms of both expense and disruption to operations. These resources might be better spent improving working conditions or strengthening public labour inspection.

You may also wish to consult with the relevant national employers' and workers' organizations, both in your home country and in the countries where your products are made, about which approaches and initiatives in their view are most effective.

Lastly, we have a set of guidelines concerning labour inspection which were negotiated at the international level. Although specific to the forestry sector, it may give you a good indication of the areas ILO thinks are important for protecting workers' rights, and some suggestions on good practice on checking compliance, including both public inspection and private approaches.

Question: One of our customers asked us if our company is committed to respect ILS. To date, we respect the labour code of the country, but the ILO Conventions and Recommendations have they all been ratified and are they held to account by the national law? If this is not the case, which ones are not?

Answer: The application of ILS is regularly reviewed by the oversight bodies of the ILO, the CEACR and the CAS of the International Labour Conference (ILC).

Member States which have ratified a convention are required to report periodically on the measures put in place to implement the provisions of the conventions through national legislation, collective agreement or national labour administration labour, especially labour inspection. The list of ratifications by Convention and country is available.

To learn more about what the expert panel said about the compliance of national law with the provisions of a specific agreement has been ratified, use the universal search form.

You can also consult the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. The statement is non-binding instrument which contains recommendations on how companies should apply principles deriving from conventions and ILO recommendations. The aim of the declaration is to encourage the positive contribution multinational enterprises to economic and social progress and to minimize and resolve difficulties which their various operations may give rise. The statement provides guidance on how companies should apply principles deriving from ILS concerning employment, training, conditions of work and life, and industrial

relations. The Declaration principles guiding multinational companies (whether public, private or mixed ownership), the countries of origin as well as the governments of the host countries and the organizations of employers' and workers'.

Question: I would like to know about the international standards that protect workers and how the employer participates in the implementation of these, what are the penalties if these rules are not apply fully. I would appreciate if you can send me information or recommend me a book to consult.

Answer: The subjects covered by ILS are the following:

- Freedom of association
- Collective bargaining
- Forced labour
- Child labour
- Equal opportunity and treatment
- Tripartite consultation
- Labour administration
- Labour inspection
- Employment policy
- Employment promotion
- Orientation and professional training
- Job security
- Social policy
- Wages
- Working time
- Security and health at work
- Social security
- Maternity protection
- Migrant workers
- Seafarers
- Fishermen
- Dockworkers
- Indigenous and tribal peoples
- Other specific categories of workers

For a brief description of ILS on each of these issues, we recommend reading the following guidance: "Rules of the Game: a brief introduction to ILS (Revised edition 2014)". See Chapter 3; on the role of organizations of employers' and workers' in the system of regular monitoring of these standards, see page 100.

Question: Is there any international labour norm that regulates how to use documents and electronic signatures in the field of work?

Answer: There is no international labour norm that regulates exhaustively the

value of documents and electronic signatures in the field of work.

Nevertheless, certain international labour norms that regulate specific subjects address, at least indirectly, this subject. The CEACR of the ILO has maintained in the General Survey on Protection of Wages of 2003 that payment of wages by direct electronic transfer to a bank account or by money order is compatible with the Protection of Wages Convention of 1949 (No. 95) as long as its 5th article is complied with.

Furthermore, the Private Employment Agencies Recommendation of 1997 (No. 188) includes the following recommendations:

11. Private employment agencies should be prohibited from recording, in files or registers, personal data which are not required for judging the aptitude of applicants for jobs for which they are being or could be considered.

12. (a) Private employment agencies should store the personal data of a worker only for so long as it is justified by the specific purposes for which they have been collected, or so long as the worker wishes to remain on a list of potential job candidates.

(b) Measures should be taken to ensure that workers have access to all their personal data as processed by automated or electronic systems, or kept in a manual file. These measures should include the right of workers to obtain and examine a copy of any such data and the right to demand that incorrect or incomplete data be deleted or corrected.

(c) Unless directly relevant to the requirements of a particular occupation and with the express permission of the worker concerned, private employment agencies should not require, maintain or use information on the medical status of a worker, or use such information to determine the suitability of a worker for employment. The Seafarers' Identity Documents Convention (Revised) of 2003 (No. 185) also requires member States to keep in electronic format certain information. As an example of this, paragraph 1 of article 4 therein provides that "Each Member shall ensure that a record of each seafarers' identity document issued, suspended or withdrawn by it is stored in an electronic database. The necessary measures shall be taken to secure the database from interference or unauthorized access".

About the MNE declaration

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About the MNE declaration

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Answer: As a voluntary tool, the MNE Declaration Dispute Procedure is promotional in nature. The procedure is used to interpret the provisions of the Declaration when needed to resolve a disagreement on their meaning, arising from an actual situation, between parties to whom the Declaration is commended.

Of 21 requests received, five cases have been the subjects of decisions by the Governing Body. Two were submitted by a government, and three by international organizations of workers on behalf of representative national affiliates. Four of the cases were found receivable, two unanimously (GB. 229/13/13 and GB.239/14/24/appendix) and the other two by majority decisions (GB.272/6 and preceding documents on which the discussion is based and GB.264/MNE/2). The fifth case was declared non-receivable, GB.254/MNE/4/6, and did not reach the interpretation stage. In four cases, substantive interpretations have been issued.

One case concerned paid leave for a union official to attend training on safety and health and three concerned collective dismissal.

Q&As on business and child labour

Question: I am trying to figure out why the basic minimum age is set at 15 or 14. What would be the consequences of setting a global policy with a basic minimum age at 16?

Answer: The company should respect the minimum age set by law, normally 15 but in some countries it is set at 14 and others at 16. If the minimum age set by the national law is below either 15 in developed countries or 14 in developing countries, the company should apply the minimum of 15, or exceptionally 14 for developing countries. (See, Minimum Age Convention, 1973 (No. 138), Article 2) The age of 18 should be applied if and where the work or tasks in question are considered as hazardous—defined as work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children. (See, ILO Worst Forms of Child Labour Convention, 1999 (No. 182), Article 3d [2]). Furthermore, the age of 18 could also be imposed for a specific post if it can be considered as an inherent requirement of the job.

In any other circumstances, a minimum age of 16 would be discriminatory. Discrimination at work includes any "distinction, exclusion or preference… which has the effect of nullifying or impairing equality of opportunity or treatment in employment or

occupation." (See, Discrimination (Employment and Occupation) Convention, 1958 (No. 111), Article 1(1). Discrimination occurs when a person is treated less favourably than others because of characteristics that are not closely related to the inherent requirements of the job or when the same condition, treatment or criterion results in a disproportionately harsh impact on some persons.

The provision of work opportunities for adolescents under adequate conditions, rather than excluding them entirely from employment opportunities, is one of the effective measures to eliminate child labour, including its worst forms. Companies can play an important role in promoting youth employment by providing non-hazardous decent work opportunities to young people between the minimum age and 16. Companies are encouraged to increase employment opportunities and standards, taking into account the employment policies and objectives of the government; in many countries, increasing youth employment is a central policy goal. See, ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, paragraph 16.

Question: Do you have any document that we can use for suppliers to sign, which says that they guarantee that they don´t use child labour?

Answer: The ILO does not provide documents for enterprises to sign. The ILO approach to eliminating child labour is a more systemic approach which promotes collaboration between buyers, suppliers, employers' and workers' organization and the community.

Company policies to prevent child labour and ensure that children go to school

Question: What can our company do to prevent child labour?

Answer: In general terms, child labour is work performed at too early an age which deprives a child of the chance to obtain an education or damages a child's development.

Enterprises should contribute to the "effective abolition of child labour" and to "take immediate and effective measures within their own competence to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency," (see Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, paragraph 36) including forced labour or slavery-like practices, including child trafficking and child soldiers, the use of children in sexual exploitation or in illicit activities, and designated hazardous work.

The minimum working age is usually set by the national legislation, and must be respected. According to international standards, it is at least 15, which is typically the age when compulsory schooling ends. Exceptions may be permitted for work done in the context of training or for light work from 13 years of age that does not affect schooling. In developing countries, the prescribed minimum age may be set at 14 years generally and at 12 years for light work. However, some countries (for example, Brazil, China and

Kenya) chose to set the minimum age at 16 years on their own initiative.

Nobody under the age of 18 years should be engaged in hazardous work—work that is damaging to a child's physical, social, mental, psychological and spiritual development—regardless of the level of development of the country. Efforts to eliminate the worst forms of child labour should not be used to justify other forms of child labour.

Action to eliminate the worst forms of child labour should give special attention to the needs of girls and the young child.

Not all work by a person under the age of 18 is child labour. It depends both on the age and on the types and conditions of work. Child labour should not be confused with "youth employment"; as from the minimum working age, young people should be introduced to decent work, but still need protection from hazardous work and other worst forms of child labour. There are also flexibilities for "light work", which is permissible as from 13 (or 12) years of age by school-going children if authorized and monitored by the relevant authorities.

Companies sourcing in specific industry sectors with geographically distant supply chains need to be particularly vigilant. Part of conducting due diligence should include review of ILO and other research to be aware of sectors prone to child labour problems in areas where a company operates.`

Particular actions companies can take to eliminate child labour in the workplace include:

- Adhere to minimum age provisions of national labour laws and regulations and, where national law is insufficient, take account of international standards.
- Use adequate and verifiable mechanisms for age verification upon recruitment.
- Maintain accurate and up-to-date records of all employees.
- When children below the legal working age are found in the workplace, take measures to remove them from work.
- To the extent possible, help the child removed from workplace and his/her family to access adequate services and viable alternatives.
- Exercise influence on subcontractors, suppliers and other business partners to combat child labour.
- Consider ways to build the capacity of business partners to combat child labour, such as the provision of training and incentives.
- Fix the wage level for the adult employees so that they can support their families without depending on children's earning.

Companies may also wish to contribute, where possible, to broader community efforts to eliminate child labour and help children removed from work to have access to quality education and social protection, including:

- Work in partnership with other companies, sectoral associations and employers' organizations to develop an industry-wide approach to address the issue, and build bridges with stakeholders such as workers' organizations, law enforcement authorities, labour inspectorates and others.
- Establish or participate in a task force or committee on child labour in your representative employers' organization at local, state or national level. Support development of a National Action Plan against child labour as part of key policy and institutional mechanisms to combat forced labour at national level.
- Within your sphere of influence, participate in prevention and re-integration programmes for former child labourers by providing education, skills development and job training opportunities.
- Where possible, participate in national and international programmes, including media campaigns, and co-ordinate with local and national authorities, workers' organizations and others.

Information on monitoring concerning child labour can be found in Eliminating Child Labour. Guide Two: How employers' can eliminate child labour, pages 47-48.

Question: What kind of incentives can a company use in order to prevent child labour? And how can a company ensure that children go to school?

Answer: There are three types of action a company can take: provide financial incentives, raise awareness of the importance of school attendance among staff, and participate in collective action.

1. Help address the root cause of child labour—poverty. The most important incentive is to pay adult workers decent wages that enable them to send their children to school. The company should ensure payment of the legal minimum wage. It should consider paying above the minimum wage where the minimum is not sufficient. However, paying a higher wage may not be feasible for a particular company without the worker's ability to improve his or her skills and productivity. Other types of financial incentives a company may wish to consider include:

- providing school grants for employees' children;
- paying bonuses for employees' children completing certain education levels;
- establishing day care at the work place or near to it to avoid younger children not enrolling in school and instead starting work; and
- providing after-school recreational facilities for children so they have a place to do homework and play which will keep them out of work.

While combating child labour is a universal goal, appropriate incentives for a particular

company to use in order to prevent child labour will depend a lot on the national situation. The incentives should be designed to suit the needs of both the companies and their workers. A dialogue with workers and their representatives on how best to structure incentives would insure the most effective approach.

2. Raise awareness. A company can play a very important role in raising awareness of the value of education. Generally, economic incentives should always go hand in hand with sensitization to make sure the incentive has the intended effect of keeping children in school and out of labour.

3. Joining efforts. Although companies can take action individually, child labour is an issue which is most effectively addressed collectively. National employers' and workers' organizations may be able to provide suggestions and guidance about what incentives are most appropriate in the local context. And a company may find that by acting through an employers' organization and in cooperation with workers' organizations, many of the suggestions listed above which may not be financially feasible for each individual company to provide could be provided jointly.

Furthermore, companies acting in cooperation with others will be more effective in advocating for the government to assume its responsibilities for combating child labour. Some areas for potential collective advocacy for government action include:

- free compulsory schooling in national legislation.
- appropriate training opportunities for teachers.
- the construction of additional classrooms.
- the recruitment of additional qualified teachers especially in the rural areas.
- the provision of funds for non-formal educational opportunities for school drop-outs and other vulnerable children, particularly in the rural areas; bursary schemes for children orphaned by HIV/AIDs.
- skills training programmes for children withdrawn from the streets.
- effective enforcement of child labour laws and child labour monitoring.

Additionally companies managing supply chains could take steps to put in place a due diligence process and where child labour is found, work with suppliers to eliminate child labour.

Question: We found children aged 13-14 working at three factories and we are experiencing a lot of difficulties when looking for training centres in which to place them. The nearest training centre is about 6 hours away. What is the suggestion of the ILO in such situation?

Answer: In circumstances where there is a lack of good schooling or vocational training options, good practice elsewhere has been to continue to pay the wages until the children are of legal age to work, then rehiring them in appropriate (non-hazardous for below 18 year olds) work. Apprenticeships in accordance with relevant legislation

can also be a good option. Can the factories engage the children in clerical or other non-hazardous work as apprentices?

In reacting to the problem it would be important to understand Bangladesh law, including minimum age for entry into work, any provisions for light work and the hazardous work list of occupations prohibited for under-18s.

In other instances, companies have hired parents or adult members of the household, resulting in increased household income and reducing the need for children to work. It sounds like the children in this case are with their families, which is a major advantage in promoting that they have real alternatives to child labour. If the factories can provide work for the parents with adequate wages, the pressure on the children to work would be much less and the leverage with the parents, who are attending daily or weekly meetings with the human resources department, would be much increased (attendance at school or vocational training also could be monitored in these meetings). The buyers should consider sharing any costs associated with this (and with support for remediation for the affected children) as it may increase operating costs of the factories, at least in the short-term.

Finally, it would also be important to strengthen preventive measures in the supply chain or else the problem is likely to recur, which is why remediation is so challenging.

Question: In a visit to a customer we saw children around 10 years old were serving coffee and doing lighter assembly work in the production. What should we tell the customer, if anything?

Answer: Companies are encouraged to work within their spheres of influence. Enterprises are responsible for their own workplaces, but they also can have an influence beyond it. They can encourage or even help business partners to reduce child labour; they can work with other organizations to create awareness; they can support broader programmes to improve education facilities for children and so on.

Therefore, you may wish to point out to your customer the growing realization that child labour is becoming an important issue for all businesses everywhere and companies need to be proactive rather than reactive. Being proactive in finding solutions means that the enterprise will avoid bad publicity in the media, fines by the government and dictates by buyers. In addition, the removal of children from work takes time and planning. Being proactive means an enterprise stands a better chance of planning this process carefully.

Child labour situation in a specific country or region

Question: Where can I find information on the situation of child labour in a specific country?

Answer: A new ILO database NORMLEX provides information on what conventions a

country has ratified. You can also find "Country Profiles" as well as the Comments on the country by the ILO supervisory bodies. The website also provides links to national legislation.

Information on the extent, characteristics and determinants of child labour at the global as well as country and sectoral level is provided by the ILO's Statistical Information and Monitoring Programme on Child Labour (SIMPOC).

In addition, the national employers' and workers' organizations may be a useful source of information on child labour issues in the country.

Question: In the ILO Conventions on Child Labour, according to which criteria a country is considered to be a "developing country"?

Answer: A "developing country" is considered to be "a Member whose economy and educational facilities are insufficiently developed" (see Minimum Age Convention, (No. 138), 1973, Article 2, paragraph 4). Countries determine for themselves whether they qualify to make use of this provision to set the minimum age for work at 14 years of age instead of 15. Only in one instance, in the case of Argentina, was the government specifically requested to indicate why.

It is important to note that many developing countries have not made use of this provision, and instead apply the minimum age of 15 years, or set a higher minimum age of 16 years.

Nobody under the age of 18 years should be engaged in hazardous work—work that is damaging to a child's physical, social, mental, psychological and spiritual development—regardless of the level of development of the country (see, Minimum Age Convention, 1973 (No.138) Article 3; and Worst Forms of Child Labour Convention, 1999 (No. 182), Articles 2, 3(d) and 4).

Question: Information regarding the situation of Child Labour in Latin America, and the actions that are being taken by companies to get involved in its prevention and elimination.

Answer: A summary of the situation in the region and the actions of the International Programme on the Elimination of Child Labour (IPEC) is available.

Birth certificates and verification of workers' age

Question: We are aware that in some countries birth certificates are either not available or falsified. Are there suggested approaches for verifying worker age?

Answer: To verify the age of workers', "employers' should keep and make available to

the competent authority registers or other documents indicating the names and ages or dates of birth, duly certified wherever possible, not only of children and young persons employed by them but also of those receiving vocational orientation or training in their undertakings" (see, Article 9(3) of Convention No. 138 (1973), concerning the employers' obligation to keep registers of young workers under 18).

When there are no birth certificates to verify age or where falsified documents are easily obtained, the following suggestions may be helpful (see, Eliminating Child Labour: Guides for Employers', ILO, Geneva, 2007):

- a medical examination prior to employment may help to indicate the person's true age and also to verify the physical aptitude for the work. Care should always be taken to respect the person's right to privacy.

- cross-checking multiple written documents and affidavits can help identify false documentation.

- Employers' can hold interviews with employees and applicants who appear to be below the minimum age required for work to obtain further information.

- school enrolment certificates can be a good source of information.

Local indicators may also be helpful in countries where the challenge is that the worker may not know the precise year in which he or she was born. For example, in some Asian countries children do not know their precise year of birth but they know the animal year (Year of the Monkey, etc.). A person might know that their birth is related to some major historical event, such as independence or the start or end of a war, or a significant anniversary. You may wish to check what are some local key events or means of marking time in the country of operation which you could use in interviews with workers where you may have doubts about their age.

Question: If an official certificate states that the person is at least 18 years old but the employee says that s/he was provided a new certificate and is actually less than 18 years of age, should the company consider the employee under 18 or shall the company go by the official though false certificate?

Answer: The Minimum Age Recommendation, 1973 (No. 146), which supplements the Minimum Age Convention, 1973 (No. 138) states in paragraph 16(a) that "the public authorities should maintain an effective system of birth registration, which should include the issue of birth certificates." This means the authorities should ensure a proper system of birth certificates which provides the correct date of birth.

If a company has reason to believe that the age indicated on a certificate is false, it should not be used as the basis for determining the age of the person for employment. A document issued by the local authority indicating a false date of birth does not justify employment of an under-age child. If the local authorities are not sensitive to the problem, there might be room for private entities to raise awareness with the authorities about the need for reliable birth certificates and to collaborate with local organizations concerned with tackling child labour.

Marriage of girls and child labour

Question: If the national law considers girls as young as 12 who marry to be adults and thus of working age, is this considered to be child labour? Our question relates to the agricultural sector.

Answer: The fact that a girl as young as 12 is married and therefore considered under national law to be an adult does not make child labour any less harmful to her. Convention No. 138 sets the minimum age for entering into work at 15 and exceptionally at 14. Convention No. 182 requires the protection of all children under the age of 18 from hazardous work and other worst forms of child labour. Action to eliminate the worst forms of child labour should give special attention to the needs of the young girl child.

The ILO MNE Declaration encourages enterprises to "obey the national laws and regulations, give due consideration to local practices" but also to "respect relevant international standards." Concerning child labour, the MNE Declaration also calls on enterprises to contribute to the "effective abolition of child labour" and to "take immediate and effective measures within their own competence to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency."

Child labour is work which deprives a child of the chance to obtain an education. The worst forms of child labour damage a child's physical, social, mental, psychological and spiritual development because it is work performed at too early an age.

Apprenticeships and child labour

Question: Are apprentices under 18 (but above 14) allowed to work in a night shift? Could a company employ 17-year olds in night shifts to support youth employment if they are on a government defined apprentice programme?

Answer: If the national law or regulations prohibit the engagement of under-18 at night, that rule has to be adhered to. In the absence of applicable national rules, the following may guide the business.

ILS generally prohibit engaging workers under 18 years of age to work at night. However, an exception may be made to allow 16 and 17 year olds to undertak e night work as part of an apprenticeship programme under the following limited circumstances:

- The apprenticeship programme should be authorized by the competent authority.
- The young person should be granted a rest period of at least thirteen consecutive hours between two working periods.
- The young person should be given an appropriate specific instruction or training regarding the work prior to being engaged at night.
- Measures should be taken to safeguard and supervise the conditions of the apprenticeship, including the work at night.

Young people below the age of 16 should never be engaged in night work, even as apprentices.

The provisions are balancing two considerations. On the one hand, young workers whose bodies are still developing are more vulnerable to the potential harm caused by working at night; are at greater risk of accidents; and are more vulnerable to the risks involved in travelling in the dark to the work site. On the other hand, many jobs require night work; therefore, a complete prohibition against apprenticeships and vocational training opportunities involving night work would deny young people an important opportunity.

Question: Does ILO have some general experiences and recommendations concerning apprenticeships for us to use when clarifying our child labour requirements to our suppliers?

Answer: ILS state that measures should be taken to safeguard and supervise the conditions in which children and young persons undergo vocational orientation and training within undertakings, training institutions and schools for vocational or technical education.

Special attention should be given to the provision of fair remuneration and its protection, bearing in mind the principle of “equal pay for equal work” meaning work of a similar nature which meets the same requirements as to quantity and quality of work as that of other workers.

In practice, it is not uncommon that national minimum wage laws or regulations exclude apprentices from coverage, and the CEACRs has confirmed that this practice may be consistent with the Minimum Wage Fixing Convention. In these cases there are usually clear definitions of what it means to be an “apprentice”, including limitations of the apprenticeship period and specific obligations of the employers’ in terms of ensuring training; and, in so-called “dual systems”, time off to attend courses in training centres.

Question: Do the same protections apply also to interns, trainees and student workers who are at and above 18 years, as for those interns, trainees and student who are below 18 years?

Answer: The special protections afforded by the Minimum Age Convention, Article 3(3), include full protection of the young apprentice's health, safety and morals within an apprenticeship scheme subject to government regulation and oversight. These protections apply to young persons between 16 and 18 years of age undertaking apprenticeships involving hazardous work.

Interns, trainees and student workers who are at or above the age of 18 years are adults who should be afforded the same protections for their safety and well-being as other adults being trained to undertake the same type of hazardous work.

Child labour and youth employment

Question: A company is committed not to recruit people below 18 years old. But the company operates in States where people below 18 have the right to work. Can it be considered as a breach to ILO Conventions related to discrimination? What should be the right position for the company?

Answer: DDiscrimination at work includes any "distinction, exclusion or preference … which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation" (Discrimination (Employment and Occupation) Convention, 1958 (No. 111), Article 1(1)) Discrimination occurs when a person is treated less favourably than others because of characteristics that are not closely related to the inherent requirements of the job or when the same condition, treatment or criterion results in a disproportionately harsh impact on some persons. Discrimination based on age often occurs and hence safeguards against such discrimination are encouraged (See, ILO General Survey on Equality in Employment and Occupation, 1996, paragraph 243).

The provision of work opportunities for adolescents under adequate conditions, rather than excluding them entirely from employment opportunities, is one of the effective measures to eliminate child labour, including its worst forms. Companies can play an important role in promoting youth employment by providing non-hazardous decent work opportunities to young people between the minimum age and 18. Companies are encouraged to increase employment opportunities and standards, taking into account the employment policies and objectives of the government (see ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, paragraph 16); in many countries, increasing youth employment is a central policy goal.

The company should respect the minimum age set by law, normally 15 but in some countries it is set at 14 and others at 16. If the minimum age set by the national law is below this level (the age of 15 in developed countries or 14 in developing countries), the company should apply the minimum of 15, or exceptionally 14 for developing countries (See, ILO Minimum Age Convention, 1973 (No. 138)).

The age of 18 should be applied if and where the work or tasks in question are considered as hazardous—defined as work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children—or as any other worst form of child labour (see, ILO Worst Forms of Child Labour Convention, 1999 (No. 182)).

Furthermore, the age of 18 could also be imposed for a The age of 18 should be applied if and where the work or tasks in question are considered as hazardous—defined as work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children—or as any other worst form of child labour.[5] Furthermore, the age of 18 could also be imposed for a specific post if it can be considered as an inherent requirement of the job. In any other circumstances, this limitation would be discriminatory.

Question: What is the ILO's labour standard on working hours and overtime for young persons (under 18 years old but above 16 years old)?

Answer: Measures should be taken to ensure that the conditions in which young persons under the age of 18 years are employed are supervised closely. This includes:

- "strict limitation of the hours spent at work in a day and in a week, and the prohibition of overtime, so as to allow enough time for education and training (including the time needed for homework related thereto), for rest during the day and for leisure activities;" and

- "the granting, without possibility of exception save in genuine emergency, of a minimum consecutive period of 12 hours' night rest, and of customary weekly rest days."

In determining whether work is hazardous, consideration should be given to whether it is performed "under particularly difficult conditions such as work for long hours." The minimum age for hazardous work is 18 years of age.

Q&As on business and collective bargaining

How can companies uphold the right to collective bargaining?

Question: Why is collective bargaining important for business?

Answer: Collective bargaining is a constructive forum for addressing working conditions and terms of employment and relations between employers' and workers', or their respective organizations. It is often more effective and more flexible than state regulation. It can help in anticipating potential problems and can advance peaceful mechanisms for dealing with them; and finding solutions that take into account the priorities and needs

of both employers' and workers'. Sound collective bargaining benefits both management and workers, and the peace and stability it promotes benefit society more generally. Collective bargaining can be an important governance institution – it is a means of increasing the consent of the governed by involving them in the decisions that affect them directly.

Collective bargaining is a voluntary process used to determine terms and conditions of work and regulate relations between employers', workers' and their organizations, leading to the conclusion of a collective agreement. Collective bargaining has the advantage that it settles issues through dialogue and consensus rather than through conflict and confrontation.

Freedom of association and the exercise of collective bargaining provide opportunities for constructive rather than confrontational dialogue, and this harnesses energy to focus on solutions that result in benefits to the enterprise, its stakeholders, and society at large.

Question: Why is it important for parties in the labour relationship to negotiate an agreement as part of the process of collective bargaining?

Answer: A High Level Tripartite Meeting in 2009 identified numerous important benefits of collective bargaining. For the enterprise:

- The process of collective bargaining allows the interests of both workers' and employers' to be voiced, for common interests to be identified, different interests to be balanced against one another and trade-offs to be negotiated. For example, in respect of working time, collective bargaining has been used in some countries to balance worker interests for work/ life balance with employer interests for flexible working time schedules and a reduction in the cost of overtime. The result of engaging in a process of bargaining in good faith is that the outcomes of collective negotiations are more likely to be perceived as fair and are more equitable than those arrived at through individual bargaining or unilateral contracting. This has positive benefits for enterprises in terms of worker commitment, stability and productivity; and for workers in terms of improved wages and working conditions.

- Through collective bargaining, workers tend to receive a greater share of productivity gains as wages. This can in turn promote cooperation and increase productivity in the enterprise and contribute to higher demand in the economy.

- Collective bargaining improves the labour relations climate by providing an institutionalised and agreed way of managing conflict. Collective agreements may include peace clauses during the duration of a collective agreement and set out grievance procedures for addressing grievances. This can provide for more stable and sound labour relations.

- Collective bargaining gives legitimacy to the rules regulating labour relations. Where the terms and conditions of work and of employment have been negotiated, they are more likely to be complied with.

- Collective bargaining allows the parties to tailor a collective agreement governing the employment relationship to their particular industry or enterprise. It also allows parties to solve problems that may be specific to their industry or workplace. Parties are known to negotiate agreements that may facilitate adaptability of the enterprise during a downturn or the introduction of technological and organizational change in a manner that protects workers against risk and delivers the results desired.

Question: How can companies uphold the right to collective bargaining?

Answer: Companies can take action at various levels:

In the workplace:

- Provide worker representatives with appropriate facilities to assist in the development of effective collective agreement. This may include affording workers' representatives the necessary time off work, without loss of pay or social and fringe benefits, for carrying out their representative functions or for attending trade union meetings.

- Recognize representative organizations for the purpose of collective bargaining. The right of workers to form or join organizations in order to bargain collectively cannot be realised if the employer refuses to recognise the trade union or to engage in collective bargaining.

- Provide information needed for meaningful bargaining. This information should enable workers' representatives to obtain a true and fair view of the performance of the enterprise.

At the bargaining table:

- Provide trade union representatives with access to real decision makers for collective bargaining.

- Bargain in good faith. Collective bargaining can only function effectively if it is conducted in good faith by both parties.

- Address any problem-solving or other needs of interest to workers and management, including restructuring and training, redundancy procedures, safety and health issues, grievance and dispute settlement procedures, and disciplinary rules.

In the community of operation:

- Take steps to improve the climate in labour-management relations, especially in those countries without an adequate institutional and legal framework for recognizing trade unions and for collective bargaining.

Question: With regard to the Principle of "promotion of collective bargaining", do companies have the responsibility to promote collective bargaining or to respect it? How pro-active does a company have to be in promoting the principle? Is it enough to engage in collective bargaining when the workers request it; or must a company also promote collective bargaining among its workers and in its supply chain?

Answer: The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy ("MNE Declaration") states that companies "should contribute to the realization of the ILO Declaration of Fundamental Principles and Rights at Work (FPRW) and its Follow-up, adopted in 1998" (ILO MNE Declaration, paragraph 8). The FPRW address the importance of respect for freedom of association and the right to collective bargaining, as well as the other "core labour standards" regarding child labour, forced labour and non-discrimination. Companies "should also honour commitments which they have freely entered into, in conformity with the national law and accepted international obligations," (ibid). Encouraging recognition of the right of collective bargaining in the supply chain can be an effective means of contributing to the realization of the 1998 Declaration.

In the chapter on Industrial Relations, the ILO MNE Declaration explains further the importance of negotiation between the representatives of the enterprise management and representatives of the workers for the regulation of wages and the terms and conditions of employment through collective agreements: "Workers employed by multinational enterprises should have the right, in accordance with national law and practice, to have representative organizations of their own choosing recognized for the purpose of collective bargaining." (ILO MNE Declaration, paragraph 49)

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The element of good faith is an important aspect in collective bargaining processes. Bargaining in good faith aims at reaching mutually acceptable collective agreements. Where agreement is not reached, dispute settlement procedures ranging from conciliation through mediation to arbitration may be used.

The ILO MNE Declaration is rooted in ILS and reflects the international consensus of workers', employers' and governments' concerning principles applicable to both MNEs and national enterprises, and is considered good practice for all (ILO MNE Declaration, Article 11).

Governments are responsible for protecting the right to bargain collectively: "Measures appropriate to national conditions should be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers' or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements" (see, ILO MNE Declaration, paragraph 50).

Mature system of industrial relations

Question: Can you provide guidance on setting up a protocol for relations between management and workers, more specifically the elements and mechanisms required for a mature system of industrial relations.

Answer: The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy ("the ILO MNE Declaration") provides companies with a very useful framework for development of a mature system of industrial relations.

The MNE Declaration is rooted in ILS and reflects the international consensus of workers, employers' and governments' in areas such as employment, training, conditions of work and life and industrial relations.

The principles contained in the MNE Declaration are applicable to both MNEs and national enterprises, and reflect good practice for all (ILO MNE Declaration, Article 11).

The section of the MNE Declaration on industrial relations sets out the five elements of a mature industrial relations system:

- 1. the importance of recognizing freedom of association and the right to organize;
- 2. the promotion of collective bargaining;
- 3. consultation and communication;
- 4. procedures to examine and resolve grievances; and
- 5. procedures to settle industrial disputes.

Each of these areas is further developed below.

1. The importance of recognizing freedom of association and the right to organize Workers employed in enterprises should, without distinction, have the right to establish and join organizations of their own choosing without interference by either the employer or management, nor by any government authorities (ILO Convention concerning Freedom of Association and Protection of the Right to Organize, 1948 (No. 87), Article 2).

The right to freedom of association for workers also includes protection from acts of discrimination against them associated with their participation in their union (see ILO Convention concerning the Application of the Principles of the Right to Organize and to Bargain Collectively, 1949 (No. 98), Article 1(1)).

Representatives of workers should not be hindered from meeting for consultation and the exchange of views, provided that the functions of the enterprise are not prejudiced (ILO MNE Declaration, Article 47).

Workers' representatives should also be provided facilities to enable them to carry out their functions promptly and efficiently, taking into account the size and capabilities of the undertaking concerned (Workers' Representatives Recommendation, 1971 (No. 143), paragraph 9).

2. The promotion of collective bargaining

Consistent with national law and practice, measures should be taken to allow for voluntary negotiation between the representatives of the enterprise and representatives of workers for the regulation of wages and the terms and conditions of employment through collective agreements (ILO MNE Declaration, Article 50; ILO Convention No. 98, Article 4).

Workers have the right to choose their representative for the purpose of collective bargaining (ILO MNE Declaration, Article 49). In order to facilitate genuine participation in the bargaining process facilities should be provided to the workers' representatives in order that preparations for bargaining can be made (ILO MNE Declaration, Article 51; ILO Convention concerning the Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking, 1971 (No. 135)).

To ensure negotiations are meaningful they should be conducted with representatives of the enterprise who have the authority to take decisions on the matters under negotiation (ILO MNE Declaration, Article 52).

No intimidation or threats should be used during the process of negotiation.

Workers' representatives should be provided with the information required for meaningful negotiations, including such information that allows them to obtain a true and fair view of the performance of the enterprise (ILO MNE Declaration, Article 55; Recommendation concerning Communications between Management and Workers within the Undertaking, 1967 (No. 129).

Collective agreements should include a mechanism for the settlement of disputes arising about their interpretation or application and for ensuring mutually respected rights and Responsibilities (ILO MNE Declaration, Article 54; ILO Convention No. 135, Article 2).

3. Consultation and communication

A mechanism should be agreed between employers' and workers' and their representatives that provides for regular consultation on matters of mutual concern (ILO MNE Declaration, Article 57).

Consultation should not be considered as a substitute for collective bargaining.

Consultation includes a genuine exchange of ideas and information that ensures that there is an opportunity for workers and their representatives to influence the decisions being made within the organization, particularly where any proposal may affect employment (ILO Termination of Employment Convention (No. 158) and ILO Recommendation (No. 166), 1982)).

Any communications policy should be adapted to the size, composition and interests of the work force (ILO Communications between Management and Workers within the Undertaking Recommendation, 1967 (No. 129)).

Communications should be genuine, regular and two-way:

- (a) between representatives of management (head of the company, department chief, foreman, etc.) and the workers; and
- (b) between the head of the company, the director of personnel or any other representative of top management and trade union representatives or such other persons as may, under national law or practice, or under collective agreements, represent the workers at company level.

Where the management desires to transmit information through workers' representatives, these representatives should be given the means to communicate such information rapidly and completely to the workers concerned.

The information to be communicated and its presentation should be determined with a view to mutual understanding in regard to the problems posed by the complexity of the company's activities.

The information to be given by management should, as far as possible, include all matters of interest to the workers relating to the operation and future prospects of the undertaking and to the present and future situation of the workers, in so far as disclosure of the information will not cause damage to the parties.

Concerning the content of communication, management should make available information regarding (ILO Recommendation No. 129, paragraph 15(2)):

- (a) general conditions of employment, including engagement, transfer and termination of employment;
- (b) job descriptions and the place of particular jobs within the structure of the undertaking;
- (c) possibilities of training and prospects of advancement within the undertaking;
- (d) general working conditions;
- (e) occupational safety and health regulations and instructions for the prevention of accidents and occupational diseases;
- (f) procedures for the examination of grievances as well as the rules and practices governing their operation and the conditions for having recourse to them;
- (g) personnel welfare services (medical care, health, canteens, housing, leisure, savings and banking facilities, etc.);
- (h) social security or social assistance schemes in the undertaking;
- (i) the regulations of national social security schemes to which the workers are subject by virtue of their employment in the undertaking;
- (j) the general situation of the undertaking and prospects or plans for its future development;
- (k) the explanation of decisions which are likely to affect directly or indirectly the situation of workers in the undertaking; and
- (l) methods of consultation and discussion and of co-operation between management and its representatives on the one hand and the workers and their representatives on the other.

In the case of a question which has been the subject of negotiations between the employer and the workers or forms part of a collective agreement the information should make express reference to that.

4. Procedures to examine and resolve grievances (ILO MNE Declaration, Article 59).
The right of workers to raise grievance or concerns should be respected.

A worker should be able to raise a grievance without suffering any prejudice.

A procedure should be established for raising grievances. The procedure should seek to resolve disputes quickly and at the lowest possible level within the enterprise with the opportunity to appeal to higher levels if the matter remains unresolved.

Further details about the establishment and operation of grievance procedures can be found in the Examination of Grievances Recommendation, 1967 (No. 130).

5. Procedures to settle industrial disputes
Enterprises should join with representatives of organizations of workers to establish voluntary conciliation and arbitration procedures to assist in the prevention and settlement of industrial disputes between employers' and workers' (ILO MNE Declaration, Article 59).

The above five elements provide the framework for the establishment of a mature system of industrial relations.

A climate of mutual understanding and confidence within the enterprise is favourable both to the efficient operation of the undertaking and to the aspirations of the workers (ILO Recommendation No. 129, paragraph 2). Adherence to these principles cited in the ILO MNE Declaration will help to ensure the industrial relations system accords with ILS.

Lastly, suppliers may find it very useful to engage with their national employers' and workers' organizations, which can provide much more detailed information on industrial relations work in the countries in which they are operating.

Question: What does it mean to bargain in "good faith"?

Answer: Collective bargaining should be carried out voluntarily, freely and in good faith. The parties are free to engage in bargaining and there should be no interference from the authorities in their decisions to do so. The principle of good faith implies that the parties make every effort to reach an agreement, conduct genuine and constructive negotiations, avoid unjustified delays in negotiations, respect agreements concluded and applied in good faith, and give sufficient time to discuss and settle collective disputes. In the case of multinational enterprises, such companies should not threaten to transfer the whole or part of an operating unit from the country concerned in order to unfairly influence negotiations.

Question: Does the employer have to recognise and negotiate with each union that wants to organise my workers?

Answer: The right of workers to establish or join organizations of their own choosing in full freedom implies the effective possibility of forming organizations independent of those which may already exist. According to the ILO's CFA, this includes the right of workers to create more than one workers' organization per enterprise.

Furthermore, the voluntary negotiation of collective agreements is a fundamental aspect of freedom of association that includes the obligation to negotiate in good faith for the maintenance of harmonious labour relations. Both employers' and trade unions should bargain in good faith and make every effort to reach an agreement; genuine and constructive negotiations are a necessary component to establish and maintain a relationship of confidence between the parties.

However, the existence of freedom of association does not necessarily mean that there is automatic recognition of unions for bargaining purposes. Especially in systems where there is a multiplicity of trade unions, there is a need for predetermined objective criteria operative within the industrial relations system to decide when and how a union should be recognised for collective bargaining.

In some systems, this is determined on the basis of a union needing not less than a specific percentage of the company's workers in its membership. This may be decided by referendum in the workplace, or by an outside certifying authority, such as a labour department or an independent statutory body.

Question: At what level(s) should collective bargaining take place?

Answer: Collective bargaining can take place at the enterprise level, at the sectoral or industry level, and at the national or central level. It is up to the parties themselves to decide at what level they want to bargain. According to the ILO's CFA, the determination of the bargaining level is essentially a matter to be left to the discretion of the parties.

Scope of collective bargaining

Question: Do the ILS provide guidance on whether wages should be the subject of negotiations? Do you have an overview of best practices by multinational enterprises in this matter?

Answer: The ILO CFA has concluded that wages, benefits and allowances may be subject to collective bargaining (ILO Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Fifth (revised) edition, ILO, Geneva, 2006. See paragraph 913).

Concerning good practices for MNEs, the ILO MNE Declaration provides the following recommendations: "When multinational enterprises operate in developing countries, where comparable employers' may not exist, they should provide the best possible wages, benefits and conditions of work, within the framework of government policies. These should be related to the economic position of the enterprise, but should be at least adequate to satisfy basic needs of the workers and their families" (ILO MNE Declaration, paragraph 34).

The ILO MNE Declaration encourages home and host governments to promote collective bargaining between MNEs and their workers: "Governments, especially in developing countries, should endeavour to adopt suitable measures to ensure that lower income groups and less developed areas benefit as much as possible from the activities of multinational enterprises." (ILO MNE Declaration, paragraph 35). The MNE Declaration also provides that "measures appropriate to national conditions should be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers' or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements" (ILO MNE Declaration, paragraph 50).

Question: Does the involvement of workers representatives in corporate restructuring/sale processes fall within the scope of collective bargaining agreements?

Answer: Yes. Collective bargaining is about establishing the terms and conditions of work, including restructuring. The specific terms of any collective bargaining agreement are matters for the negotiating parties. It is common to include provisions concerning processes for consultation, the provision of information and the involvement of workers and their representatives in discussion where a company is considering change that is likely to have an effect on workers, their conditions of employment or their employment generally. This link provides a comparative table of statutory requirement to consult workers' representatives on collective dismissals: /public/english/dialogue/ifpdial/info/termination/downloads/table4.pdf

Question: What subjects can be covered by collective bargaining?

Answer: Collective bargaining is a voluntary process and must be carried out freely and in good faith. It can extend to all terms and conditions of work and employment, and may regulate the relations between employers' and workers' as well as between the organizations of employers' and workers'. It is for the parties engaged in collective bargaining to decide what will be covered by their negotiations. Some of the subjects of collective bargaining identified by the ILO's CFA include: wages, benefits and allowances, workingtime, annual leave, selection criteria in case of redundancy, the coverage of collective agreement, and granting of trade union facilities.

However, strict limitations on the subject matter of negotiations may be possible in the case of economic stabilisation policies imposed by a government, for example on wage rates. In this case, the restriction should be imposed as an exceptional measure and only to the extent that it is necessary.

Question: What information should be shared with workers representatives for negotiations and collective bargaining?

Answer: The following list provides examples of information that management should share:

- General conditions of employment, including engagement, transfer and termination of employment.
- Job descriptions and the place of particular jobs within the structure of the company.
- Possibilities of training and prospects of advancement.
- General working conditions.
- Occupational safety and health regulations and instructions for the prevention of accidents and occupational diseases.
- Procedures for the examination of grievances as well as the rules and practices governing their operation and the conditions for having recourse to them.
- Personnel welfare services such as medical care, canteens, and housing.
- Social security or social assistance schemes.
- Regulations of national social security schemes to which the workers are subject.
- Explanation of decisions which are likely to affect directly or indirectly the situation of workers.
- Methods of consultation, discussion and co-operation between management and workers.

Rights to strike

Question: Do ILO standards include the right to strike?

Answer: The right to strike is not expressly mentioned in ILO Convention No. 87. However, ILO supervisory bodies, including the CFA, have frequently stated that the right to strike is a fundamental right of workers and the principal means by which they may legitimately promote and defend their economic and social interests.

The right to strike, however, is not absolute. Legislation may set forth the conditions for the exercise of this right, for example in requirements for a vote to strike, strike notice, prior conciliation procedures, or mediation. Moreover, restrictions on the right to strike may be applied as far as the following categories of workers are concerned and in the following situations:

- In case of acute national crisis.
- For members of the armed and the police forces.

- For the public servants exercising their authority on behalf of the State.
- For workers that are employed in the essential public utilities, such as those whose interruption might endanger the life, security and safety of the whole population or part of it. For instance hospitals, the electrical supply system, the water supply system, the telephone network system and flight controllers provide essential services.

Question: How do I know if my company is considered an "essential service", and if it is, what are the rights of workers to strike?

Answer: The ILO jurisprudence has defined a service as essential if the interruption of the service would endanger the life, personal safety or health of the whole or part of the population (see The Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, paragraph 576).

The following may be considered to be essential services[2]:

- the hospital sector
- electricity services
- water supply services
- the telephone service
- the police and the armed forces
- the fire-fighting services
- public or private prison services
- the provision of food to pupils of school age and the cleaning of schools
- air traffic control

It is important to consult national legislation because what constitutes essential services depends to a large extent on the particular circumstances prevailing in a country (ibid, paragraph 582). Governments can prohibit strikes in essential services (ibid, paragraph 576), although certain categories of workers within these services, such as gardeners maintaining hospital grounds, should still have the right to strike if their particular functions are non-essential (ibid paragraph 593).

The following normally do not constitute essential services (ibid, paragraph 587):

- radio and television
- the petroleum sector
- ports
- banking
- computer services for the collection of excise duties and taxes
- department stores and pleasure parks
- the metal and mining sectors
- transport generally
- airline pilots

- production, transport and distribution of fuel
- railway services
- metropolitan transport
- postal services32
- refuse collection services
- refrigeration enterprises
- hotel services
- construction
- automobile manufacturing
- agricultural activities, the supply and distribution of foodstuffs
- the Mint
- the government printing service and the state alcohol, salt and tobacco monopolies
- the education sector
- mineral water bottling company

However, a non-essential service such as refuse collection may become essential if a strike lasts beyond a certain time or extends beyond a certain scope, thus endangering the life, personal safety or health of the whole or part of the population (ibid, paragraph 582).

The establishment of minimum services during a strike is also permitted where public services are deemed to be of fundamental importance (ibid, paragraph 606) such as urban transport or ferry services.

Governments should consult the relevant employers' and workers' organizations when determining minimum services and the minimum number of workers needed to provide them in order to ensure that the scope of the minimum service does not result in the strike becoming ineffective in practice because of its limited impact (ibid, paragraph 612). Any disagreement in the determination of those minimum services should be settled by an independent body and not by the ministry of labour or the ministry or (public) enterprise concerned (ibid, paragraph 613).

In the event workers are prohibited from exercising the right to strike or restricted in exercising this right, adequate, impartial and speedy conciliation and arbitration proceedings should be in place which involve the parties concerned at every stage and in which the awards, once made, are fully and promptly implemented (ibid, paragraph 596).

Carry-over rights of collective bargaining agreements

Question: Is there an ILO Convention addressing whether the rights of the trade union under a collective agreement remain in force for a specific period when a company is closed, sold or privatized?

Answer: There are no ILS that speak specifically to this question.

However, the jurisprudence concerning freedom of association and collective bargaining specifies that "the closing of an enterprise should not in itself result in the extinction of the obligations resulting from the collective agreement, in particular as regards compensation in the case of dismissal" (ibid, paragraph 1059).

Most countries have legislation or regulations covering the continued recognition of the trade union and whether any existing collective bargaining agreements would remain in force in case of closure or transfer of ownership. National practice may provide for some flexibility in application, taking into consideration the conditions surrounding transfer of ownership, such as bankruptcy.

The national employers' and workers' organizations in the particular country concerned may be a good source for further information on national law and practice.

Q&As on business, discrimination and equality

Discrimination in employment and occupation: general description and bases for discrimination

Question: What does the term "discrimination in employment and occupation" mean?

Answer: "Discrimination in employment and occupation" refers to practices that have the effect of placing certain individuals in a position of subordination or disadvantage in the labour market or the workplace because of their race, colour, religion, sex, political opinion, national extraction, social origin or any other attribute which bears no relation to the job to be performed.

Discriminatory practices can be direct or indirect. Direct discrimination arises when an explicit distinction, preference or exclusion is made on one or more grounds. For example, a job advertisement for "men only" would constitute direct discrimination.

Indirect discrimination refers to situations, measures or practices that are apparently neutral but which in fact have a negative impact on persons from a certain group. The latter type of discrimination, because of its more hidden nature, is the most difficult to tackle.

Equality of opportunity and treatment allows all individuals to fully develop their talents and skills according to their aspirations and preferences, and to enjoy equal access to employment as well as equal working conditions.

To achieve full freedom from discrimination in employment and occupation, the mere removal of discriminatory practices does not suffice. It is also necessary to promote equality of opportunity and treatment in the workplace at all stages of the employment relationship, including recruitment, retention, promotion and termination practices, remuneration, access to vocational training and skills development.

Question: What are the prohibited bases of discrimination in employment?

Answer: Bases of discrimination identified and prohibited in various ILS (e.g. Discrimination (Employment and Occupation) Convention, 1958 (No. 111), Article 1(a)) include: :

Distinctions based on race and/or colour are largely rooted in social and economic factors that do not have any objective basis. They commonly involve discrimination against an ethnic group or indigenous or tribal population.

Sex discrimination includes distinctions made on the basis of biological characteristics and functions that distinguish men and women; and on the basis of social differences between men and women. Physical distinctions include any job specifications which are not essential to carrying out the prescribed duties, e.g., minimum height or weight requirements which do not impact job performance. Social distinctions include civil status, marital status, family situation and maternity (for further details see Maternity Protection Convention, 2000 (No. 183) and Recommendation (No. 191); and Workers with Family Responsibilities Convention, 1981 (No. 156) and Recommendation (No. 165)). Women are most commonly affected by discrimination based on sex, especially in the case of indirect discrimination.

Religious discrimination includes distinctions made on the basis of expression of religious beliefs or membership in a religious group. This also includes discrimination against people who do not ascribe to a particular religious belief or are atheists. Although discrimination on the basis of religious beliefs should not be permitted, there may be legitimate bases for imposing requirements in the workplace which restrict the worker's freedom to practice a particular religion. For instance, a religion may prohibit work on a day different from the day of rest established by law or custom; a religion may require a special type of clothing which may not be compatible with safety equipment; a religion may prescribe dietary restrictions or daily routines during work hours which may be difficult for the establishment to fully accommodate; or an employment position may require an oath incompatible with a religious belief or practice. In these cases the worker's right to practice fully his or her faith or belief at the workplace needs to be weighed against the need to meet genuine requirements inherent in the job or operational requirements.

Discrimination based on political opinion includes membership in a political party; expressed political, socio-political, or moral attitudes; or civic commitment. Workers

should be protected against discrimination in employment based on activities expressing their political views; but this protection does not extend to politically motivated acts of violence.

National extraction includes distinctions made on the basis of a person's place of birth, ancestry or foreign origin; for instance, national or linguistic minorities, nationals who have acquired their citizenship by naturalization, and/or descendants of foreign immigrants.

Social origin includes social class, socio-occupational category and caste. Social origin may be used to deny certain groups of people access to various categories of jobs or limit them to certain types of activities. Discrimination based on social origin denies the victim the possibility to move from one class or social category to another. For instance, in some parts of the world, certain "castes" are considered to be inferior and therefore confined to the most menial jobs.

Age is also a prohibited basis of discrimination. Older workers are often liable to encounter difficulties in employment and occupation because of prejudices about their capacities and willingness to learn; a tendency to discount their experiences; and market pressures to hire younger workers who are often cheaper to employ (see Older Workers Recommendation, 1980 (No. 162).

Younger workers under the age of 25 may also face discrimination. Biased treatment against younger workers can take many forms, including overrepresentation in casual jobs with lower benefits, training opportunities and career prospects; payment of lower entry wages even in low skilled jobs where such a wage differential is difficult to justify on grounds of lower productivity; and longer probation periods and much greater reliance on flexible forms of contract (see Equality at work: tackling the challenges. Global report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, ILO, Geneva, 2007. Page 38).

HIV/AIDS status: Persons living with HIV/AIDS often suffer discrimination in the workplace and the community. There should be no discrimination or stigmatization of workers on the basis of real or perceived HIV status. HIV/AIDS screening should not be required of job applicants or persons in employment. HIV infection is not a valid ground for termination of employment. Persons with HIV-related illnesses should be able to work for as long as medically fit in appropriate conditions (see ILO Code of Practice on HIV/AIDS and the World of Work).

Disability: Worldwide, approximately 800 million people of working age have a disability. While many are successfully employed and fully integrated into society, as a group, persons with disabilities often face disproportionate poverty and unemployment. In this context, non-discrimination also includes taking positive steps where feasible to accommodate particular workplace needs that workers with disabilities may have (Vocational Rehabilitation and Employment (Disabled Persons) Convention (No. 159) and Recommendation (No. 168); United Nations Convention on the Rights of Persons with Disabilities).

Sexual orientation: Men and women workers may suffer from discrimination if they are known or believed to be lesbian, gay, bisexual or transgender; and may be subjected to verbal, psychological and physical intimidation or violence from the employer, supervisor or other workers (Equality at work: Tackling the challenges, pages 42-43).

Workers with family responsibilities: Current trends in working time in industrialized, developing and transition economies alike are putting increased pressure on workers with family responsibilities. "Family responsibilities" includes care of children and any other dependents (Equality at work: Tackling the challenges, page 77). The definition of persons constituting "family" may be broad andcould be formulated after consultation with the workers concerned or their representatives.

Workers who have family responsibilities are often discriminated against in hiring, job assignment, access to training and promotion. Enterprises should avoid discriminating against workers with family responsibilities. While having regard to operational needs, enterprises are encouraged to avoid excessively long hours, unpredictable overtime that makes it difficult to plan for care of family members and scheduling work on traditional days of rest.

Trade union membership or activities: All workers have the right to form and join trade unions, and to participate as members or leaders in trade union activities (Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), Article 2; Right to Organise and Collective Bargaining Convention, 1949 (No. 98), Article 1) and should not be discriminated against for lawfully exercising this right.

Other bases: More generally, discrimination at work includes any "distinction, exclusion or preference … which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation" (Discrimination (Employment and Occupation) Convention, 1958 (No. 111), Article 1(b)).

Workers should be selected only on the basis of their ability to do the job. Enterprises are encouraged to review their hiring and other employment practices for potential bases of discrimination which may result in treating some jobseekers or workers less favourably than others because of characteristics that are not related to the person's competencies or the inherent requirements of the job.

Question: Is there any distinction which is not considered discriminatory?

Answer: Distinctions based on skills or efforts are legitimate.

Disparities in remuneration that reflect differences in years of education or the number of hours worked are acceptable.

Enterprise compliance with government policies designed to correct historical patterns of discrimination and thereby to extend equality of opportunity and treatment in employment does not constitute discrimination.

Special measures of protection or assistance provided by national law, such as the ones concerning health and maternity, are also important provisions which do not constitute discrimination.

Giving effect to the principle of equal treatment may require special measures and the accommodation of differences, for instance concerning people with disabilities.

Question: A company wants to recruit a worker for a job that requires physical strength. This job cannot be adapted, so as a consequence the company does not want to receive applications from older people, persons of smaller builds, women or disabled persons. To what extent can this recruitment practice be considered a breach of ILO conventions related to discrimination? How can a company respect ILO principles related to discrimination without putting at risk the health and safety of its workers?

Answer: Any distinction, exclusion or preference in respect of a particular job based on inherent requirements is not considered to be discrimination" (see Discrimination (Employment and Occupation) Convention, 1958 (No. 111), Article 1.2.). However, this exception should be interpreted restrictively.

The ILO CEACR explains: "When qualifications are required for a particular job, it may not be simple to distinguish between what does and what does not constitute discrimination. It is often difficult to draw the line between bona fide requirements for a job and the use of certain criteria to exclude certain categories of workers" (General Survey on Equality in Employment and Occupation, 1996, ILO Geneva, paragraph 118).

Any distinctions should be determined on an objective basis and should take account of individual capacities, not perceptions of the capacity of particular groups. Technological advances have made many jobs perfectly accessible to people of smaller builds, including women. Power steering has made it possible for women to drive trucks; automated platforms, forklifts, etc. have made it possible to employ both women and men of smaller stature.

So in many cases the issue is more persistent biases than requirements of the job; and all workers, regardless of size or sex, need safety provisions. This is reflected, for instance, in the

new draft Code on Safety and Health in Agriculture that makes no distinction based on sex or physical stature of the worker.

Question: Is the use of polygraphs by companies for recruitment purposes considered a violation of ILS and international human rights standards?

Answer: The ILO Code on Protection of Workers' Personal Data states that "polygraphs, truth verification equipment or any other similar testing procedure should not be used" " (see ILO Code on Protection of Workers' Personal Data).

Question: Does giving preferential treatment in hiring indigenous populations in a community in which the company is operating constitute discrimination?

Answer: Discrimination at work includes any "distinction, exclusion or preference … which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation."[1] Discrimination occurs when a person is treated less favourably than others because of characteristics that are not related to the person's competencies or the inherent requirements of the job.

Enterprises should respect the principle of non-discrimination throughout their operations. Enterprises should make qualifications, skill and experience the basis for the recruitment, placement, training and advancement of their staff at all levels (see ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, (revised 2006), paragraph 22), and encourage and support suppliers to do likewise.

Enterprise compliance with government policies designed to extend equality of opportunity and treatment in employment does not constitute discrimination.

The Indigenous and Tribal Peoples Convention, 1989 (No. 169) encourages governments to ensure that indigenous peoples benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population and assist them to eliminate socio-economic gaps that may exist between indigenous and other members of the national community. (Article 2.2).

Question: Where can discrimination occur in the workplace?

Answer: Discrimination may occur before hiring, on the job or upon leaving. At the enterprise level, it can occur in the following areas:

- recruitment
- remuneration
- entitlements

- hours of work and rest
- paid holidays
- maternity protection
- security of tenure
- job assignments
- performance assessment and promotion
- training opportunities
- job prospects
- occupational safety and health
- termination of employment (see Recommendation No. 111 Discrimination (Employment and Occupation) Recommendation, 1958).

Discrimination does not have to be intentional and often managers and workers in a company are surprised at discriminatory practices they uncover when they start to look for them.

Discrimination can be direct or indirect. Indirect discrimination refers to apparently neutral practices that in fact result in unequal treatment of people with certain characteristics (see ILO, ABC of Women worker's rights and gender equality, 2nd Edition. Geneva 2007). For instance, organizing training courses after work late in the day may exclude workers who may be interested in attending them but cannot do so because of their family responsibilities. Workers who receive less training are likely to be disadvantaged in subsequent job assignments and promotion prospect.

Advantages of a diverse workforce

Question: What are the advantages of a diverse workplace?

Answer: In increasingly competitive environments, many companies need to find new methods to improve efficiency and take advantage of all available resources.

In an age of globalized production, enterprises are now likely to have staff with diverse backgrounds, often from different countries, coming into contact with one another. Companies with a culture of equality of opportunity will have an easier time managing diverse work teams.

Globalization of markets means that companies with workers from different backgrounds in terms of gender, race, ethnicity, religion, national origin, age, disabilities, HIV/AIDS status, etc. will be in a better position to anticipate customers' diverse expectations and needs.

Changing workforce demographics also are forcing organizations to review and revise long-held beliefs and policies concerning the people who work in these organizations.

Non-discriminatory practices are increasingly recognized as an important managerial tool to increase efficiency and productivity.

Most importantly, treating workers fairly is a human right which all companies are expected to respect.

Company policies and programmes should recognize and value the different backgrounds of employees and seek to attract and retain the best qualified workers and place equality of opportunity at the heart of their human resources management.

Question: Has a positive link been demonstrated between equality in the workplace and good business performance?

Answer: It is generally accepted that there is a positive link between equality at the workplace and good business performance. The specific effects of non-discriminatory employment practices on productivity and performance which have been identified (see, Corporate Success through People, Rogovsky and Sims, 2002) support the propositions that:

- equal opportunity practices improve productivity;
- equal opportunity practices have a greater positive impact on productivity in those enterprises where discriminated groups form a higher proportion of the workforce;
- more active equal opportunity policies have a greater positive effect on productivity as:
    - labour is more efficiently allocated, increasing the quality of human capital and motivation, which improves organizational efficiency;
    - there is a better match between individuals and jobs when more objective and systematic criteria are used for selection; and
    - members of the discriminated groups are more highly motivated due to: (a) better career prospects; (b) increased sense of fairness; (c) more rewarding assignments and opportunities for creativity; (d) staff turnover is lower (particularly among discriminated groups); and (e) a less stressful work environment leads to better health, morale and dignity.

There is evidence of a higher impact on productivity when equal employment opportunity practices are complemented by employee participation.

Development of a corporate non-discrimination and equality policy

Question: How do you incorporate the principle of non-discrimination in policies at the workplace, especially in Human Resources measures?

Answer: Companies are encouraged to eliminate discrimination in the employment through the following measures:

- Make a strong commitment from the top. When the most senior management assumes responsibility for equal employment issues and demonstrate a commitment to diversity, they send a strong signal to other managers, supervisors and workers.

- Conduct an assessment to determine if discrimination is taking place within the enterprise, for example using a self-assessment questionnaire.

- Set up an enterprise policy establishing clear procedures on non-discrimination and equal opportunities; and communicate it both internally and externally.

- Provide training at all levels of the organization, in particular for those involved in recruitment and selection, as well as supervisors and managers, to help raise awareness and encourage people to take action against discrimination.

- Support on-going sensitization campaigns to combat stereotypes.

- Set measurable goals and specific timeframes to achieve objectives.

- Monitor and quantify progress to identify exactly what improvements have been made.

- Modify work organization and distribution of tasks as necessary to avoid negative effects on the treatment and advancement of particular groups of workers. This includes measures to allow workers to balance work and family responsibilities.

- Ensure equal opportunity for skills development, including scheduling to allow maximum participation;

- Address complaints, handle appeals and provide recourse to employees in cases where discrimination is identified;

- Encourage efforts in the community to build a climate of equal access to opportunities (e.g. adult education programmes and the support of health and childcare services).

Question: What is the role of workers in non-discrimination at the workplace?

Answer: Workers, through their representatives, can be management's strongest ally in combating discrimination. Enterprises should consider setting up bipartite bodies involvingworkers' freely chosen representatives, to determine priority areas and strategies, and to counter bias in the workplace. Involvement of workers' representatives in tackling discrimination at work will ensure that they are committed to the goals.

Question: How does the national non-discrimination law relate to the ILS on non-discrimination?

Answer: The above guidance is provided based on ILS. When developing a non-discrimination and equality policy, it is advisable to consult the national law on non-discrimination. National employers' and workers' organizations may be a good source of information on national law, regulation and collective bargaining agreements pertaining to non-discrimination law and practice.

Sexual harassment in the workplace

Question: How does sexual harassment relate to discrimination?

Answer: Discrimination based on sex also includes sexual harassment. Sexual harassment in employment involves untoward actions that:

- are justly perceived as a condition of employment or precondition for employment;
- influence decisions affecting job assignment, opportunities for promotion, etc.; or
- affect job performance.

Actions which may constitute sexual harassment include:

- any insults or inappropriate remarks, jokes, insinuations or comments on a person's dress, physique, age, family situation, etc.;
- a condescending or paternalistic attitude with sexual implications undermining dignity;
- any unwelcome invitation or request, implicit or explicit, whether or not accom panied by threats;
- any lascivious look or other gesture associated with sexuality; or
- any unnecessary physical contact such as touching, caresses, pinching or assault.

Sexual harassment is a particularly pernicious form of discrimination requiring a zero tolerance approach.

Discrimination in remuneration

Question: We hear a lot about pay differences between women and men. What does

equal pay for work of equal value mean? What measures can the employer put in place to improve this imbalance?

Answer: The principle of non-discrimination in respect of employment and occupation includes the principle of equal remuneration for men and women who produce work of equal value (see ILO Equal Remuneration Convention (No. 100)). The principle of equal pay for work of equal value means that rates and types of remuneration should be based not on an employee's sex but on an objective evaluation of the work performed.

Equal remuneration is a fundamental right of women and men workers.

Nonetheless, pay differential between the sexes persists; on average worldwide, women's income per hour is about 75 per cent of that of men. There are several reasons for this gender pay gap. Women are under-represented within higher paying sectors and larger enterprises which tend to pay more. They are under-represented in higher-paid jobs within companies; jobs where women workers are dominant often are classified at lowerlevels, resulting in lower pay. Women also are under-represented in enterprises with trade unions. Women are highly concentrated in "flexible" work such as part-time, piece-rate or temporary work, which are poorly paid; and they work fewer overtime hours than men. Discrimination with respect to promotion in employment also is an important factor.

The principle of equality pertains to all the elements of remuneration, including salary or ordinary wage and other basic fees and benefits, directly or indirectly paid, in money or in kind.

This principle can be implemented by some practical measures (for detailed guidance, see Promoting equity. Gender-neutral job evaluation for equal pay: a step by-step guide. ILO, Geneva. 2008):

- Job classification systems and pay structures should be based on objective criteria (education, skills and experience required) irrespective of the sex of the workers concerned.

- Any reference to a particular sex should be eliminated in all remuneration criteria, and in collective agreements, pay and bonus systems, salary schedules, benefit schemes, medical coverage and other fringe benefits.

- Any remuneration system or structure which has the effect of grouping members of a particular sex in a specific job classification and salary level should be reviewed and adjusted to ensure that other workers are not performing work of equal value in a different job classification and salary level.

- Corrective measures should be taken whenever a situation of unequal remuneration is discovered.

- Special training programmes could be organized to inform staff, particularly supervisors and managers, of the need to pay employees on the basis of the value of the work and not on who is performing the work.

- Separate negotiations on equal remuneration should be conducted between management, employees' representatives and the women workers affected by the existing unequal job classification or pay structure of a particular workplace.

- Part-time and hourly employees should be compensated in all types of remuneration on an equal basis with full-time employees, proportional to the number of hours they work.

- The value of work should be based only on the work components, responsibilities, skills, efforts, working conditions and main results.

Question: Could you kindly explain the definition of inherent requirements of the job?

Answer: Any distinction, exclusion or preference in respect of a particular job based on inherent requirements is not considered to be discrimination. However, this exception should be interpreted restrictively. The ILOs CEACR explains: "When qualifications are required for a particular job, it may not be simple to distinguish between what does and what does not constitute discrimination. It is often difficult to draw the line between bona fide requirements for a job and the use of certain criteria to exclude certain categories of workers" (see, General Survey on Equality in Employment and Occupation, 1996, ILO Geneva, paragraph 118.)

Any distinctions should be determined on an objective basis and should take account of individual capacities, not perceptions of the capacity of particular groups. Technological advances have made many jobs perfectly accessible to women. Power steering has made it possible for women to drive trucks; automated platforms, forklifts, etc. have made it possible to employ both women and men of smaller stature.

So in many cases, the issue is more persistent biases than requirements of the job; and all workers, regardless of size or sex, need safety provisions. This is reflected, for instance, in the new draft Code on Safety and Health in Agriculture makes no distinction based on sex or physical stature of the worker.

Question: Is it a discriminatory act to investigate a potential worker when he or she applies for a job? What I mean is it a discriminatory act for a company that will hire a worker to investigate if the information provided by the worker in the application is truthful?

Answer: It is necessary to make a distinction between the two questions that were asked. The first one can be interpreted as a question about the person, in this case about the applicant, while the second can be interpreted as a verification of the information provided by the applicant in its job application.

It depends on the information that is asked and verified. Information such as professional titles or diplomas, work experience in a company or institution, age or calling the previous employer to verify if in fact the applicant worked in that organization, the period and tasks (all of which is in any case shown in the applicant's CV) can be verified; but not personal matters (such as political or union affiliation, etc.).

In the first case, national law will determine what is and is not permitted when investigating the application for a job. There are countries that prohibit this kind of investigation and other that accept it under certain conditions, therefore a thorough exam of national legislation must be conducted before initiating an investigation over an applicant.

Something that is also very important to bear in mind is what concerns the equality of opportunities in the selection and hiring processes, and the equal access to various occupations. This means that all applicants must be treated equally and if one measure is applied to one applicant, then it must be applied to all applicants in the same way. Please check "Time for equality at work. Global report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work. Report of the Director-General, 2003".

Question: Is discrimination against transgender job applicants consistent with labour standards?

Answer: ILS do not actually address the question of transgender workers specifically. However, the general provisions on non-discrimination may be of use in your discussions with management on this issue.

Discrimination at work includes any "distinction, exclusion or preference … which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation." Discrimination (Employment and Occupation) Convention, 1958 (No. 111), Article 1(1) Discrimination occurs when a person is treated less favourably than others because of characteristics that are not related to the person's competencies or the inherent requirements of the job. Gender identity is not normally related to a person's competencies or the inherent requirements of the job. Enterprises should make qualifications, skill and experience the only basis for the recruitment, placement, training and advancement of their staff at all levels, and encourage and support suppliers to do likewise.

Q&As on business and employment promotion

Youth employment

Question: Could a company employ 17-year olds in night shifts to support youth employment if they are on a government defined apprentice programme?

Answer: ILS generally prohibit engaging workers under 18 years of age to work at night. However, an exception may be made to allow 16 and 17-year olds to undertake night work as part of an apprenticeship programme under the following limited circumstances:

- The apprenticeship programme should be authorized by the competent authority.
- The young person should be granted a rest period of at least thirteen consecutive hours between two working periods.
- Measures should be taken to safeguard and supervise the conditions of the apprenticeship.
- Young people below the age of 16 should never be engaged in night work, even as apprentices.

The provisions are balancing two considerations. On the one hand, young workers whose bodies are still developing are more vulnerable to the potential harm caused by working at night; are at greater risk of accidents; and are more vulnerable to the risks involved in travelling in the dark to the work sight. On the other hand, many jobs require night work; therefore, a complete prohibition against apprenticeships and vocational training opportunities involving night work would deny young people an important opportunity.

Q&As on employment relationship and labour contracts

Question: What are the minimum elements that need to be contractually agreed in an employment contract? Are there any ILO standards or recommendations on the minimum content of an employment contract?

Answer: ILO Conventions do not specify matters to be included in employment contracts. However, Standard A2.1 of the Maritime Labour Convention, 2006 provides guidance on minimum provisions for seafarers' employment agreements and the Domestic Workers' Convention, 2013 (No. 189), Article 7, provides similar guidance in respect to domestic workers. These instruments might be useful for you as a guide for provisions of employment contracts more generally.

The provisions include the following:

MLC 2006	Domestic Workers' Convention, 2013
	The period of probation or trial period, if applicable.
The capacity in which the seafarer is to be employed.	The type of work to be performed.
The amount of the wage.	The remuneration, method of calculation and periodicity of payments.
	The normal hours of work and daily and weekly rest periods.
The amount of paid annual leave.	The amount of paid annual leave.
	The provision of food and accommodation, if applicable.
The conditions entitling either party to terminate the contract, as well as the required notice period, which shall not be less for the shipowner than for the seafarer.	The terms and conditions relating to the termination of employment, including any period of notice by either the domestic worker or the employer.
The health and social security protection benefits to be provided to the seafarer by the shipowner.	The terms of repatriation, if applicable.

Question: What are the norms and international conventions on disguised employment relationships?

Answer: Several international instruments address the issue of employment relation and in particular the disguised employment relationship. Firstly we can find the Employment

Relationship Recommendation of 2006 (No. 198) (hereinafter "the recommendation"), adopted by the ILC in 2006. Paragraphs 4(b), 5, 11 and 13 of the recommendation are particularly relevant to the issue of disguised employment relationship.

Furthermore, States should take into account ILS related issues when designing and implementing, according to the recommendation, its policies for the protection of workers in an employment relationship. See "The Employment Relationship: An Annotated Guide to ILO Recommendation No. 198, International Labour Office (2007)" and national legislation on the employment relationship.

Q&As on business and forced labour

What is forced labour?

Forced or compulsory labour is any work or service that is exacted from any person under the menace or threat of a penalty, and which the person has not entered into of his or her own free will (Forced Labour Convention, 1930 (No. 29), Article 2).

Forced labour is a violation of the basic human right to work in freedom and freely choose one's work.

Two elements characterise forced or compulsory labour:

- Threat of penalty. The penalty may consist in a penal sanction, such as arrest or jail, or in the suppression of rights or privileges, such as the refusal to pay wages or forbidding a worker from travelling freely. Threats of retaliation may be realized in different forms, from the most blatant, which include the use of violence, physical obligations or even death threats, to the more subtle, often psychological, such as the threat to denounce an illegal worker to the authorities.

- Work or service undertaken involuntarily. Deciding whether work is performed voluntarily often involves looking at external and indirect pressures, such as the withholding of part of a worker's salary as part repayment of a loan, or the absence of wages or remuneration, or the seizure of the worker's identity documents. The principle that all work relationships should be founded on the mutual consent of the contracting parties implies that both may leave the work relationship at any moment, subject to giving reasonable notice in accordance with national law or a collective agreement. If the worker cannot withdraw his/her consent, without fear of suffering a penalty, the work may be considered to be forced labour, starting from the moment he or she has been denied the right to stop working.

Business contribution to the elimination of forced labour

Question: What companies can do to prevent forced labour?

Answer: Business can play an important role in the elimination of forced labour. In particular, companies can:

- Ensure that workers always have free access to their documentation, including passports, identity papers and travel documents;

- Have a clear and transparent company policy, setting out the measures taken to prevent forced labour and trafficking. Clarify that the policy applies to all enterprises involved in a company's product and supply chains;

- Monitor carefully the agencies that provide contract labour, especially across borders, blacklisting those known to have withheld documents of workers to prevent them freely leaving if they so choose.

More detailed guidance on how to prevent or eliminate forced labour can be found in Combating forced labour: A handbook for employers' and business, ILO, Geneva, 2008.

Use of prison labour

Question: When is it okay to use prison labour?

Answer: The use of prison labour is addressed in the Forced Labour Convention (No. 29), 1930.

Forced labour is work undertaken involuntarily under threat of a menace or penalty.

The requirement of free consent also applies to prisoners. A company engaging prison labour should ensure that if a prisoner refuses the work offered there is no menace of any penalty, such as loss of privileges or an unfavourable assessment of behaviour which could jeopardize any reduction in his or her sentence.

A good indication of whether prisoners freely consent to work is whether the conditions of employment approximate those of a free labour relationship. Indicators include the following:

- Each worker receives and signs a standardized consent form from the enterprise indicating that they agree to work. The form indicates the wages and conditions of work.

- The conditions of work the enterprise offers are similar to work outside the prison, namely:

- Wages are comparable to those of free workers with similar skills and experience in the relevant industry or occupation, taking into account factors such as productivity levels and any costs the enterprise incurs for prison security supervision of the workers.

- Wages are paid directly to workers. Workers receive clear and detailed wage slips showing hours worked, wages earned and any deductions authorized by law for food and lodging.

- The daily working hours are in accordance with the law.

- Safety and health measures respect the law.

- Workers are included in the social security scheme for accident and health coverage.

- Workers obtain benefits such as learning new skills and the opportunity to work cooperatively in a controlled environment enabling them to develop team skills.

- Workers have the possibility of continuing work of the same type upon release.

- Workers may withdraw their consent at any time, subject only to reasonable notice requirements.

All of these factors should be taken as a whole when considering whether the consent to work has been freely given. Formal, preferably written, consent should be attained by each individual prisoner before engaging him or her to work.

Practical application of these provisions may be difficult and require verification to ensure that abuse does not occur.

Locking in workers

Question: Is it okay to lock workers inside premises for the night to ensure that they are not stealing or does this constitute forced labour?

Answer: TThis situation is dealing with the restriction of movement of the persons concerned, which is related to the abuse of their position of vulnerability. If coupled with other means of coercion (e.g. threat or use of force), this situation may be interpreted as definitely excluding voluntary offer or consent. Even if no coercion is involved, workers should not be locked in enterprises. The ILO advocates taking a “zero tolerance” approach to confinement at the workplace (see Combating forced labour: A handbook for employers’ and business ILO, Geneva, 2008, p. 8).

Furthermore, locking workers in a factory is clearly contrary to occupational health and safety principles. If there is an accident it may raise civil liability for personal injury. Locking workers in a factory may also constitute under national law a criminal offence or civil tort of false imprisonment.

While it is legitimate for a company to take steps to secure its property, alternative means should be explored.

The national employers' and workers' organizations may have useful suggestions about effective alternative approaches; and may be able to provide helpful information on forced labour issues more generally.

Passport retention of workers

Question: Is it okay for a company to withhold the passports of migrant workers working in their factory?

Answer: Forced or compulsory labour is any work or service that is exacted from any person under the menace or threat of a penalty, and which the person has not entered into of his or her own free will (see Forced Labour Convention, 1930 (No. 29), Article 2).

Forced labour is a violation of the basic human right to work in freedom and freely choose one's work.

Two elements characterise forced or compulsory labour: threat of penalty and work or service undertaken involuntarily.

The key element in many situations of forced labour is coercion—forcing people to work when they do not freely consent. Migrant workers may be coerced through withholding of their passports or identity documents. The employer may be holding the workers' identity documents for safekeeping. In such cases, the workers must have access at all times to the documents, and there should be no constraints on the ability of the worker to leave the enterprise.

Question: What should our supplier do if the Immigration Authority is withholding the passports of migrant workers for extended periods of time?

Answer: Retaining the identity documents of migrant workers does not, of itself, constitute forced labour. Nonetheless, depriving workers of their passports or identity documents restricts their freedom of movement and consequently increases their risk of becoming victims of forced labour. Therefore, the confiscation of passports or other identity documents of migrant workers is considered to constitute an abusive practice, whether undertaken by an employer, recruitment agency or the government.

You may wish to consider encouraging your supplier to request on behalf of their workers that the passports be returned. If the government denies the request, the supplier could seek support from the national employers' and workers' organizations to raise concerns with the government.

Question: In a free trade zone, an employer stores the passports of the migrant workers. The workers have access to their passports but only when accompanied by a senior company official, as the employer indicates that they are responsible for the workers and that the workers cannot leave the country without the permission of employer. Is this practice in line with ILS?

Answer: Migrant workers should have the right to leave the country without the permission of the employer.*

As a basic principle, documents should stay in the possession of the migrant worker. If passports or travel documents are stored by the employer, this can only be done in exceptional circumstances and for reasons of safekeeping. Furthermore, they may be stored by the employer only upon the request and with the consent of the worker, which should be genuine.

If the employer is holding the workers' identity documents, the workers must have access at all times to the documents, and there should be no constraints on the ability of the workers to leave the enterprise. The fact that migrant workers requesting their passports should be accompanied by a senior company official raises questions about the actual possibility of the worker to access his or her passport in practice. A migrant worker should have access to his or her passport for whatever reason and not only for reasons of visa extension.

ILO promotes as good practice the establishment of private lockers to which only migrant workers have access. In the ILO Better Work Programme many employers' have already set up such lockers and the experience has been very positive.

The national employers' organization of the country concerned may provide further information. The International Organization of Employers (IOE) provides the full list of national employers' organizations.

The International Trade Union Confederation has a migrant workers network in numerous countries and may also be a further source of information.

* The preamble of the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) affirms "the right of everyone to leave any country [...] as set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights".

Question: How should we respond to a situation with a supplier where workers can have access to their passport 24 hours per day but they must be accompanied by a senior management person for reasons of visa etc.

Answer: Migrant workers should have the right to leave the country without the permission of the employer. As a basic principle, documents should stay in the possession of the migrant worker.

If passports or travel documents are stored by the employer, this can only be in exceptional circumstances and for reasons of safekeeping. Furthermore, they may be stored by the employer only upon the request and with the consent of the worker, which should be genuine.

If the employer is holding the workers' identity documents, the workers must have access at all times to the documents, and there should be no constraints on the ability of the workers to leave the enterprise. The fact that migrant workers requesting their passports should be accompanied by a senior company official raises questions about the actual possibility of the worker to access his or her passport in practice. A migrant worker should have access to his or her passport for whatever reason and not only for reasons of visa extension.

Question: Are there conditions under which it is acceptable for workers' passports (or other identity documents needed for freedom of movement) to be held by a worker representative (e.g. union official)? What if the worker signs a release or otherwise indicates through interviews that they "prefer" to have their identify papers held by others?

Answer: The worker must have access to his or her identity documents at all times, this includes cases where the worker representative is holding the identity papers. You may wish instead to consider providing each worker with a secure place, such as a locker, where he or she can keep these documents.

Question: How should we deal with the situation where a migrant worker wishing to return to her/his home country is required to make a cash deposit to protect the employer who has paid the annual levy for the foreign worker?

Answer: Deciding whether work is performed voluntarily often involves looking at external and indirect pressures. Withholding part of a worker's salary as a deposit would constitute such a pressure.

Even if the employer has paid the levy for the foreign worker, requiring repayment of the levy attributable to the unfulfilled part of the contract should not be allowed, as no fees or costs for recruitment should be charged directly or indirectly, in whole or in part, to the workers. See, Private Employment Agencies Convention, 1997 (No. 181), Art 7.1.

Question: Does the following constitute forced labour: fee paid to recruiting agent (workers have indebted themselves to relatives, neighbours and even bank loan with guarantee on their house); additional deposit to agent, to be paid back after one year?

Answer: The key element in many situations of forced labour is coercion—forcing people to work when they do not freely consent. Migrant workers may be coerced through debt and other forms of bondage caused by high recruitment or transportation fees imposed on the worker. The requirement to post a deposit also acts to compel the worker to stay. Both practices could be considered as evidence of forced labour.

Question: Under what conditions is it okay to require a deposit from the worker for uniforms?

Answer: In general, withholding and non-payment of wages, including for a sizable deposit, constitutes a restriction which may prevent the workers from leaving if they change their minds. However, deposits of a reasonable amount do not constitute forced labour if the workers are informed of the conditions for return of the deposit, and that the deposit is indeed refunded once they have fulfilled these conditions. In the case of a deposit required for a uniform, the worker should be made aware that should they choose to leave the deposit will be refunded to them upon returning the uniform. Any other requirements, such as that the uniform be returned in reasonable condition, should be clearly indicated and applied in a manner which does not deter workers from leaving if they so desire.

A deposit which is not returned when the worker leaves is not a deposit but a requirement that the worker pay for his or her uniform. Such deductions from workers' wages are an issue of protection of wages. "Appropriate measures should be taken to limit deductions from wages in respect of tools, materials or equipment supplied by the employer to cases in which such deductions:

(a) are a recognised custom of the trade or occupation concerned;
(b) are provided for by collective agreement or arbitration award; or
(c) are otherwise authorised by a procedure recognised by national laws or regulations" and not simply company policy.

If the above conditions are met, then it would be acceptable for the worker to be required to pay for his or her uniform and it should be made clear to the workers that the uniforms are their property.

Question: A facility has a policy requiring its employees to provide advance notice of resignation beyond what is legally required; if an employee resigns sooner than the amount of time specified in the policy, the company will deduct a certain percentage of the employee's wages. Employees that are terminated by the facility during the probationary period are not paid their wages for the days worked. Employees that resign by their own choice during their probationary period are not paid their wages for the

days worked. Is this okay?

Answer: Notice requirements are balancing the right of workers to leave employment when they so desire with the right of the employer to a reasonable period of time to identify a replacement worker. Notice requirements are set by national law, as it is for the government, ideally in consultation with the workers' and employers' organizations, to determine the appropriate balance between these competing rights. Workers and companies both should abide by the notification provisions in national law. Any penalties imposed on workers for failure to give the legally required minimum notice should be set according to national law, which company policy should respect.

The probationary period is providing the employer and worker a period of time for either or both sides to determine if the worker is suitable for the job, and if the job is suitable for the worker. If either decides that the fit between worker and job is not right, they are free to stop the working relationship at any time during this period, subject to notice provisions, and should not incur a penalty for exercising this right. Withholding wages that the worker has earned when the employer exercises this right is not forced labour (e.g., Forced or Compulsory Labour Convention (No. 29); Abolition of Forced Labour Convention (No. 105). However, it is inconsistent with provisions on protection of wages, Protection of Wages Convention (No. 95) and Recommendation (No. 85), 1949. Workers should be remunerated for days worked, regardless of whether the employer choses to terminate the employment relationship. Withholding wages to deter or penalize a worker for exercising his or her right to terminate the employment relationship is coercive, and contradicts the purpose of a probationary period.

Subsistence conditions of work

Question: Is it considered forced labour when workers receive only accommodation and food?

Answer: Forced labour is work undertaken involuntarily under threat of a penalty. A company should verify that no coercion or threat is involved; that the in-kind payments do not arise from debt bondage; and that the workers concerned are free to leave their employment.

Payments in-kind in the form of goods or services should not create a state of dependency of the worker on the employer (see Combating Forced Labour: A handbook for employers' and business, ILO, Geneva, 2008, page 3). Safeguards and legislative protection are needed against the risk of abuse. The labour laws in many countries specify the maximum proportion of the wages that may be paid in kind; this usually varies from 20 to 40 per cent. An amount reaching 50 per cent in kind may not be reasonable as it unduly diminishes the cash remuneration which is necessary for the maintenance of the worker and his family (See, Protection of Wages Convention (No. 95), 1949, General Survey of the reports concerning the Protection of Wages Convention (No. 95) and the Protection of Wages Recommendation (No. 85), 1949, paragraph 117).

Although payment only in kind does not, in itself, constitute forced labour, such payments make workers more dependent and vulnerable and therefore create a risk that these workers may end up in a situation of forced labour.

Compulsory overtime

Question: Does compulsory overtime constitute forced labour?

Answer: The imposition of overtime does not constitute forced labour as long as it is within the limits permitted by national legislation or collective agreements. Above those limits, it is appropriate to examine the circumstances in which a link arises between an obligation to perform overtime work and the protection against forced labour (see General Survey concerning the Forced Labour Convention, 1930 (No. 29) and the Abolition of Forced Labour Convention, 1957 (No. 105), 2007, paragraph 132).

Although workers may in theory be able to refuse to work beyond normal working hours, their vulnerability means that in practice they may have no choice and are obliged to do so in order to earn the minimum wage or keep their jobs, or both. In cases in which work or service is imposed by exploiting the worker's vulnerability, under the menace of a penalty, dismissal or payment of wages below the minimum level, such exploitation ceases to be merely a matter of poor conditions of employment; it becomes one of imposing work under the menace of a penalty which calls for protection of the workers.

Question: If factory rules and regulations contain a mandatory overtime policy, what are the circumstances under which this would or would not be considered forced labour?

Answer: A factory's overtime policy should comply with national law and applicable collective agreements. The obligation to do overtime work is not considered forced l abour if it stays within the limits permitted by national legislation or specified in relevant collective agreements. Forced labour occurs if overtime exceeds the weekly or monthly limits allowed by law and is made compulsory by threats of a penalty, irrespective of the reasons for such overtime.

Any threats of fines for refusing to work overtime which effectively deter workers from declining to work overtime beyond legal limits would also be of concern. If the workers perceive a company policy of issuing fines for not working overtime exceeding legal limits as such a threat, this could be considered forced labour. Furthermore, the ILO CEACR has noted that in some cases the menace may be more subtle. Fear of dismissal may drive employees to work overtime beyond what is allowed by national law; in

other cases, workers may feel obliged to work above the legal maximum because this is the only way they can earn the minimum wage (for example, where remuneration is based on productivity targets). In these cases, although in theory workers may be able to refuse to work, their vulnerability may mean that they have no choice and are therefore obliged to do so in order to earn the minimum wage or keep their jobs, or both. This then becomes a situation of imposing work under the menace of a penalty and can be considered forced labour.

Exploitation

Question: What is the ILO definition of exploitation and what benchmarks exist?

Answer: The ILO has used the term "exploitation" only in limited circumstances where the potential victims are particularly vulnerable because of criminal activity involved (trafficking and commercial sexual exploitation); their outsider status (indigenous peoples) their foreign status (migrant workers); or the circumstances of their employment make them particularly vulnerable.

In the context of an international instrument on trafficking in persons, the United Nations has defined exploitation as follows: "Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs" (see UN Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against transnational organized crime (Palermo Protocol), Article 3).

The ILO CEACR referenced this definition as an appropriate way to link the Palermo Protocol and the Forced Labour Convention, 1930 (No. 29).[2] In the same report, the Committee of Experts also stated:

"In certain cases, the Committee has considered it appropriate to examine the links between an obligation to perform overtime work and protection against the imposition of forced labour. Exploitation of the vulnerability of workers who are facing a menace of dismissal or forced to work beyond normal working hours to attain productivity targets so that they can earn the minimum wage, limits the workers' liberty and right to refuse work imposed on them under the menace of a penalty. The Committee has considered that, in certain situations, an obligation to perform overtime work may constitute an infringement of [the Forced Labour] Convention No. 29." (Ibid, paragraph 206).

Additionally, the Committee of Experts noted that "The Migration for Employment Convention (Revised), 1949 (No. 97), contains provisions aiming at the assistance to migrants for employment, in particular through the establishment of free services to provide them with various kinds of assistance and accurate information. In addition, it requires ratifying States to take all appropriate steps against misleading propagandarelating to emigration and immigration (Articles 2 and 3). These provisions may be viewed in the

context, as preventing of conditions conducive to trafficking in persons for the purpose of exploitation" (Ibid, paragraph 18). As observed by the ILO Director General in his 2005 global report, A Global Alliance against Forced Labour, the link between the Palermo Protocol and the Forced Labour Convention pose conceptual challenges, as well as challenges for law enforcement.

"They introduce into international law the concept of exploitation – broken down broadly into labour and sexual exploitation – regarding which there has been limited juridical precedent. And they require States Parties, several of which have hitherto adopted anti-trafficking laws which cover only the sexual exploitation of women and children, to adopt or amend their laws in order to have a broader concept of trafficking and exploitation".

As observed in the Director General's 2009 global report on forced labour, The Cost of Coercion, "The recent focus on the concept of "exploitation" has generated some keen debates, as to how it can be captured as a specific offence, how to determine the gravity of the offence, and how it can be punished. Moreover, the lessons of experience point to a very thin dividing line between coerced and non-coerced exploitation. While the ILO definition of forced labour places much emphasis on the involuntariness of the work or service relationship, the Palermo Protocol and the subsequent policy debates have emphasized the means by which initial consent can be negated, through different forms of deception along the path to the employment relationship as well as within it" (The Cost of Coercion, paragraph 41).

Contracts

Question: An employee works without having yet signed his contract, or is working with a contract but without understanding the contract because he/she cannot read or cannot understand the language in which the contract is written. To what extent can this situation be considered as a breach to ILO conventions related to forced labour? In order to avoid forced labour, do companies have the obligation to translate the contract in an understandable language for the worker?

Answer: All workers should have written contracts, in a language that they can easily understand, specifying their rights with regard to payment of wages, overtime, retention of identity documents, and other issues related to preventing forced labour.

Work on off-shore sites

Question: An employee works on an offshore site (e.g. oil platform). Its work contract mentions a length of stay without possibilities of early departures. The worker wants to leave his job but cannot technically leave the site. There is no threat of penalty, the worker has accepted the contract voluntarily but there is an obvious restriction of movement. To what extent can it be considered as a breach to ILO Conventions related to forced labour?

Answer: Forced or compulsory labour is any work or service that is provided by a person under the menace or threat of a penalty, and where that person does not work voluntarily (see Forced Labour Convention, 1930 (No. 29), Article 2).

The principle that all work relationships should be founded on the mutual consent of the contracting parties implies that both may leave the work relationship at any moment, subject to giving reasonable notice in accordance with national law or a collective agreement. If the worker cannot withdraw his/her consent, without fear of suffering a penalty, the work may be considered to be forced labour, starting from the moment he or she has been denied the right to stop working.

Restriction of freedom of movement could constitute a bar to leaving the work relationship, raising the question of voluntariness. However, in the case of an offshore site there is a valid technical reason for limiting movement for a reasonable period. It is important, though, that workers are fully informed in advance of this condition of the contract; and that the duration of stays on the platform are of reasonable length.

[1] Forced Labour Convention, 1930 (No. 29), Article 2.

Question: A factory fines workers for taking unapproved leave or for not meeting minimum quality standards. Under what circumstances would a policy on fines be inconsistent with the Forced Labour Convention(s)?

Answer: Fines for violations of facility rules such as quality standards and unexcused absences are not an issue of forced labour as they do not relate to whether a worker is being coerced into working, although they may raise issues regarding other principles of ILS, including protection of wages.

Question: Some of our sites/companies are offering loan to employee as part of our employee care programme. To make sure the good initiative does not turn into something negative, we are looking at forming a policy to avoid incidents that would be regarded as bonded labour, obstruction to freedom of movement and that the instalment payments result in the daily wage falls below minimum wage.

Answer: The policy should clarify that wage advances and loans to employees should not be used as a means to bind workers to employment. Advances and loans should

not exceed the limits prescribed by national law. Deductions from wages made for the repayment of a loan should not exceed the limits prescribed by national law. Workers should be informed of the terms and conditions surrounding the granting and repayment of advances and loans.

Question: Do you have any suggestions for companies on how to prevent human trafficking?

Answer: The UN Global Initiative to Fight Human Trafficking, which ILO participates in, has produced a guide "Human Trafficking and Business".

Question: I am looking for any information you might have on repayment/retention schemes for professional technical training. What would be reasonable amounts to have to repay and what would be key indicators to ask for information on to detect if the training, the repayment process or fees is excessive?

Answer: The question of the reimbursement of training fees has been addressed by the CEACR under the issue of freedom of workers to leave their employment. When workers receive training from their employer or from the State, they can be under an obligation to serve for a certain period of time. In these cases, the supervisory bodies request Governments to ensure that workers can nevertheless leave their employment within a reasonable period which is proportional to the duration of the training received, or following the proportional reimbursement of the costs of the training incurred.

The supervisory bodies have never established indicators, amounts or percentage that could be considered acceptable regarding the repayment of training fees by workers. The CEACR has never given guidance on the amount of the reimbursement or what could be considered proportionate. It has principally examined this issue in the public sector, and due to the specificities of each national context, it has followed a case by case approach when requesting information from the Governments.

For example, in a country where pursuant to legislation, the resignation of a member of the armed forces who has received a scholarship can only be accepted after: (i) ten years of service if the scholarship has lasted longer than one year; and (ii) resignation can be accepted in case of reimbursement only if the person concerned refunds an amount double to that of the expenses incurred by the State, the CEACR has pointed out that those who have benefited from a scholarship should also have the right to leave the service within a reasonable period that is proportional to the length of the studies financed by the State, or through reimbursement of the actual costs incurred by the State. In another country, the CEACR drew the Government's attention to the fact that "the repayment of large sums within a short period may prevent graduates from withdrawing from compulsory service, which, in practice, could be tantamount to imposing service by law, which is contrary to the Convention".

Q&As on business and freedom of association

Freedom of association: General

Question: What are the main international standards on freedom of association and the right to collective bargaining?

Answer: The fundamental international standards on freedom of association and collective bargaining are the Freedom of Association and Protection of the Right to Organise Convention (No. 87) and the Right to Organise and Collective Bargaining Convention (No. 98). Other international standards concerning these rights and freedoms include the Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking Convention (No. 135); the Recommendation on Workers' Representatives (No. 143); and the Collective Bargaining Recommendation (No. 163).

International standards concerning social dialogue include the Consultation and Cooperation between Employers' and Workers' at the Level of the Undertaking Recommendation (No. 94) and the Communications between Management and Workers' within the Undertaking Recommendation (No. 129). Moreover, a majority of ILO Conventions and Recommendations include provisions that support social dialogue by requiring consultation with representative employers' and workers' organizations.

Question: Why is freedom of association important?

Answer: In addition to being a right, freedom of association enables workers' and employers' to join together to protect better not only their own economic interests but also their civil freedoms such as the right to life, to security, to integrity, and to personal and collective freedom. As an integral part of democracy, this principle is crucial in order to realize all other fundamental principles and rights at work.

Businesses face many uncertainties in this rapidly changing global market. Establishing genuine dialogue with freely chosen workers' representatives enables both workers' and employers' to understand each other's problems better and find ways to resolve them. Security of representation is a foundation for building trust on both sides. Freedom of association and the exercise of collective bargaining provide opportunities for constructive dialogue and resolution of conflict, and this harnesses energy to focus on solutions that result in benefits to the enterprise and to society at large. The meaning of freedom of association has been defined to a greater extent than any other right by the ILO supervisory machinery. In many, but not all cases, these decisions are useful to employers' in order to understand them.

Question: What can companies do to respect freedom of association at the workplace?

Answer: International instruments identify a number of things that companies can do

to respect freedom of association and the right to collective bargaining:

- Do not interfere with an employee's decision to associate. Recognise that all workers are free to form and/or join a trade union of their choice.

- No anti-union discrimination. Ensure that company policies, procedures and practices do not discriminate against individuals because of their views on trade unions or for their trade union activities.

- Do not interfere with the activities of workers' representatives while they carry out their functions in ways that are not disruptive to regular company operations.

Question: What can companies do to uphold freedom of association?

Answer: Companies can take action at different levels:

In the workplace:

- Respect the right of all workers to form and join a trade union of their choice without fear of intimidation or reprisal, in accordance with national law.

- Put in place non-discriminatory policies and procedures with respect to trade union organization, union membership and activity in such areas as applications for employment and decisions on advancement, dismissal or transfer.

- Provide worker representatives with appropriate facilities to assist in the development of effective collective agreement.

In the community of operation:

- Take into account the role and function of the representative national employers' organizations.

- Take steps to improve the climate in labour-management relations, especially in those countries without an adequate institutional and legal framework for recognizing trade unions and for collective bargaining.

Question: A company engages a consultancy firm that claims to assist companies, "staying union free through preventive programmes as well as counter recognition and union organising campaigns." At the consultancy's advice the company engaged in a range of activities to dissuade workers from voting in favour of recognising a trade union in the workplace. Is the consultancy firm breaching ILO standards and/or the ILO MNE Declaration, and if so how?

Answer: A worker should be free to establish and join the workers' organization of his

or her own choosing without previous authorisation (see Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), Article 2). This right is not incompatible with the reasonable exercise by the employer of the right of expression.

The employer should not prevent, prohibit or interfere in the exercise of workers' right to organize; nor should he or her make any direct or indirect threat, create an atmosphere of intimidation or fear or adopt reprisals linked with it. "Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment (…);"(Right to Organize and Collective Bargaining Convention, 1949 (No. 98), Article 1(1)) "workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment (…)" (see Convention No. 98, Article 2, 1).

The ILO CFA has indicated that "acts of harassment and intimidation carried out against workers by reason of trade union membership or legitimate trade union activities, while not necessarily prejudicing workers in their employment, may discourage them from joining organizations of their own choosing, thereby violating their right to organize"(see Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Fifth (revised) edition, 2006, ILO, paragraph 786).

The ILO Declaration of Tripartite Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) states that "organizations representing multinational enterprises or the workers in their employment should enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration"(ILO MNE Declaration, paragraph 43). Therefore, any agent engaged by an MNE also is encouraged to refrain from interference with the workers' right to organize.

Question: What does it mean that workers' and employers' may "freely exercise their right to organize"?

Answer: Freedom of association is a fundamental human right. It implies a respect for the right of employers' and workers' to freely and voluntarily establish and join organizations of their own choice and means that these organizations have the right to carry out their activities in full freedom and without interference. Employers' should not interfere in the workers' decision to associate, or discriminate against the workers' or their representative. The government should not interfere in the right of either workers' or employers' to form associations. Workers' and employers' have the right to join organizations at the national, sectoral and international levels, and their organizations have the right to affiliate at any level. Workers' and employers' or her own choosing without previous authorisation (see General Survey on Freedom of association and collective bargaining: Right of workers' and employers' to establish and join organizations, 1994, paragraph 102). This right is not incompatible with the reasonable exercise by the employer of the right of expression.

Non-Interference

Question: What constitutes "interference" in the context of freedom of association?

Answer: Interference is any act designed to promote the establishment of workers' organizations under the domination of employers' or employers' organizations, or to support workers' organizations by financial or other means, with the object of placing them under the control of employers' or their organizations. ILO Convention No. 98 concerning the Right to Organise and Collective Bargaining includes protection against anti-union discrimination and interference. Protection from employers' interference includes all stages of the employment relationship, from hiring to termination.

Question: What constitutes anti-union discrimination?

Answer: ILO Convention No. 98 includes protection against anti-union discrimination. Anti-union discrimination includes any action that makes a worker's employment dependent on giving up union membership or not joining a union. It also includes actions that cause the dismissal or prejudice a worker because of union membership or participation in union activities.

Question: Can an employer fire a worker's representative?

Answer: A worker cannot be fired for his or her trade union or worker representative activities carried out in accordance with the law or in conformity with collective agreements or other jointly agreed arrangements. However a worker's representative may be fired on other grounds, where justified, provided procedural safeguards are in place to protect against wrongful dismissal based on trade union activities. In some countries, it is necessary to get permission from the labour ministry before dismissing union leaders or candidates for union leadership.

Union security clauses

Question: A company has two trade unions, one for junior staff and one for senior staff. The company's policy for junior staff is automatic enrolment in the company trade union and deduction of fees from the salary. The company does not have the same policy for the senior staff trade union. Is this company practice compatible with the right to freedom of association?

Answer: The CEACR has explained the following (from General Survey on Freedom of association and collective bargaining: Right of workers' and employers' to establish and join organizations, 1994, paragraph 102):

In other countries, the law allows "union security" clauses in collective agreements or arbitration awards which make trade union membership or payment of union dues

compulsory, sometimes by making them subject to certain conditions or prohibiting certain types of arrangements. These clauses may specify that an employer can recruit only workers who are members of trade unions and who must remain union members in order to keep their job (closed shop). In other cases the employer may recruit the workers he chooses, but these must then join a trade union within a specified period (union shop). They may also require all workers, whether or not they are members of trade unions, to pay union dues or contributions, without making union membership a condition of employment (agency shop), or oblige the employer, in accordance with the principle of preferential treatment, to give preference to unionized workers in respect of recruitment and other matters. These clauses are compatible with the Convention provided, however, that they are the result of free negotiation between workers' organizations and employers'.

In the case of multiple trade unions there is no require ment that the mechanism for enrolment be the same for all unions. Therefore it is not considered unequal treatment to have a union shop for junior staff and not for senior staff.

Facilities

Question: Must an employer allow a union or worker's representative to hold meetings on company premises during working time?

Answer: The ILS do encourage employers' to make facilities available for workers to meet. Such meetings should not disrupt regular company operations, and management may require that the meetings are held outside of working hours.

Practices such as allowing the collection of union dues on company premises, posting of trade union notices, distribution of union documents, and provision of office space, have proven to help build good relations between management and workers, provided that they are not used as a way for the company to exercise indirect control.

Legal barriers to respecting freedom of association

Question: What can a company do when the law prohibits full recognition of the right to freedom of association, such as concerning migrant workers who are forbidden from joining trade unions?

Answer: The ILO has noted that the "restrictions on the right to organize of certain categories of workers, such as migrant workers…. , domestic workers …., workers in export processing zones (EPZs) ……., workers in the public service ….., agricultural

workers ….. , or workers in the informal economy …. are not compatible with the realization of [the] principle and right" [of freedom of association] (see Review of annual report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, 2008, GB.301/3, paragraph 36).

There are two possible levels from which the company in this situation might choose to take action:

1. encouraging and supporting suppliers to respect workers' rights to the fullest extent permitted under national law;

2. in association with other employers', encouraging the government to amend the law to bring it into line with the relevant ILS (Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), Article 2).

1. Encouraging and supporting suppliers

The company could have a dialogue with the supplier about why the company values respect for the right of freedom of association; and why it is also important and beneficial for the supplier to respect the right of workers to organize to the full extent permitted by law. The company could provide assistance to the supplier to find ways to allow the migrant workers to collectively express their concerns and have a dialogue with the supplier at the enterprise level which is at the same time consistent with national law.

For instance, collective bargaining does not necessarily require a trade union representative, only that the appointed representatives be genuinely representative of the workers and their interests. The supplier might under national law still be able to bargain collectively with workers' representatives even if there is no trade union representation of migrant workers allowed under national law. A local industrial relations specialist who knows the national labour law may be able to provide more specific advice.

2. Encouraging the Government to amend the law

Effective and respectful dialogue at the workplace is often a valuable practice for everybody concerned and may lead to mutually agreed solutions. Such dialogue normally does not violate any law. However, it does not in itself satisfy the requirement to respect the right to freedom of association. Forming and belonging to their own independent organizations are core to the fundamental right to freedom of association of workers and employers', and the ILO promotes respect for this in all member States. The ILO also promotes compliance with national law. When there is a conflict, ILO encourages employer and worker organizations to engage in dialogue with the Government on how to bring the law into conformity with the fundamental principles and rights at work. Not being allowed to form unions would be a serious breach of freedom of association, and the ILO would encourage States with legislation preventing workers from enjoying that right to change the law.

The company subsidiary operating in the country in question may wish to consider becoming involved with the local employers' organization, to engage in dialogue with the government about why, from an employer's perspective, it is important to respect freedom of association for all workers, including migrant workers. This process could help substantially to further encourage the government to bring the law into line with ILS concerning freedom of association.

Question: Are there any ILO Conventions concerning the rights of union representatives and their access to the workplace?

Answer: The CFA has specifically stated that access of "trade union representatives to workplaces should be guaranteed, with due respect for the rights of property and management, so that trade unions can communicate with workers in order to apprise them of the potential advantages of unionization." (§199 (a), affaire No. 1523 (Etats-Unis), 284ème rapport du Comité) Furthermore, "[t]rade union representatives who are not employed in the undertaking but whose trade union has members employed therein should be granted access to the undertaking. The granting of such facilities should not impair the efficient operation of the undertaking concerned." [See, Freedom of Association, Digest of Decisions, 5th ed., 2006, paragraphs 1102 -1103 and 1106; 336th Report of the CFA, 2005, paragraph 58; Workers' Representatives Recommendation, 1971 (No. 143), Part IV, paragraphs 9.3 et 17].

Question: What is a worker's representative?

Answer: Article 3 of the Workers' Representatives Convention, 1971 (No. 135) defines workers' representatives as "persons who are recognised as such under national law or practice, whether they are:

(a) Trade union representatives, namely, representatives designated or elected by trade unions or by members of such unions; or

(b) Elected representatives, namely, representatives who are freely elected by the workers of the undertaking in accordance with provisions of national laws or regulations or of collective agreements and whose functions do not include activities which are recognised as the exclusive prerogative of trade unions in the country concerned."

Question: Do I have to let workers' representatives have time off for union business? Do I have to pay them?

Answer: To fully respect the right to collective bargaining, enterprises should provide facilities to workers' representatives as may be necessary to assist in the development of effective collective agreements. This may include affording workers' representatives the necessary time off work, without loss of pay or social and fringe benefits, for carrying out their representative functions or for attending trade union meetings, training courses, and congresses. See, Workers' Representatives Recommendation, 1971 (No. 143).

Government role

Question: What is the responsibility of government to protect freedom of association?

Answer: To realise the principle of freedom of association and the right to collective bargaining in practice requires a legal basis which guarantees that these rights are enforced. It also requires an enabling institutional framework, which can be tripartite, between the employers' and workers' organizations, or combinations of both. Individuals who wish to exercise their rights to have their voice heard also must be protected from discrimination. And employers' and workers' organizations must accept each other as partners for solving joint problems and dealing with mutual challenges.

Governments have the responsibility for ensuring that the legal and institutional frameworks exist and function properly. They should also help to promote a culture of mutual acceptance and cooperation.

Where governments do not honour their international obligations, efforts should be made to improve legislation and governance. In the absence of legislation that conforms to ILS, employers' and trade unions should make every effort to respect the principles, at least in countries where honouring them is not specifically prohibited. In countries in which legislation protects rights, but implementation is poor due to inadequate enforcement, employers' should, nevertheless, obey the law.

Q&As on indigenous peoples

Question: Please explain what means and tools (approach) should implement an MNE in the oil and gas sector in situations where the rights covered by the ILO Indigenous and Tribal Peoples Convention of 1989 (No. 169) are not protected by the State. For example, the failure of the government to comply with the following articles:

15.1. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.

14.1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be

taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.

14.2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.

Answer: The CEACR has explained, in practice, what it means the provision on request:

The Committee recalls that it has for years referred to the need to establish institutional mechanisms for consultation and participation.

[The right of consultation] should be carried out in advance, it does not end with mere information, should be a genuine dialogue between the parties with the aim of reaching an agreement and it must be carried out in good faith, within a procedure in which the parties truest and that includes the representative authorities of indigenous peoples...

[The right of indigenous peoples] to be consulted whenever measures which may affect them directly flows directly from the Convention, whether or not it has been reflected in a specific national legislative text. The Commission considers that the establishment of effective mechanisms for consultation and contributes to preventing and resolving conflicts through dialogue and reduce social tensions. The Committee recalls that to establish this mechanism as well as to all particular query, it is essential that there is a climate of mutual trust. The Commission also stresses that the obligation to ensure that indigenous peoples be consulted in accordance with the convention rests with the Government (see General Observation, 2010). Also it emphasizes that the provisions of the convention on consultation should be read in conjunction with Article 7 [of the Indigenous and Tribal Peoples Convention of 1989 (C169)] in which the right of indigenous peoples to decide their own development priorities and participate in the formulation, implementation and evaluation of plans and programmes which may affect them directly was enshrined.

This text comes from a case involving the construction of a cement plant and a mine in Guatemala.

In another observation on the construction of a hydroelectric plant in Brazil, the CEACR clarifies that “a simple briefing cannot be considered to comply with the provisions of the convention and affected communities should be involved even in the preparation of environmental impact studies. Likewise, indigenous peoples affected by the oil and gas extraction should be involved in discussions since the beginning of the project, including the development of impact studies.” See also “Understanding the Indigenous and Tribal People Convention, 1989 (No. 169)”. Although aimed primarily at governments,this tool incorporates certain information relevant to companies.

Question: Just as the term "community" has a definition, I wonder what the real meaning of "tribal" is, and what characteristics must a group meet to be considered tribal.

Answer: Article 1(a) of the Indigenous and Tribal Peoples Convention of 1989 (No. 169) states that the convention applies to "tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations".

The second paragraph of Article 1 adds that "Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply".

More information is available in "Understanding the Indigenous and Tribal People Convention, 1989 (No. 169)".

Q&As on industrial relations

Industrial relations

Question: Does a worker have the right to appeal a decision to discipline? (cross-posted under wages)

Answer: The ILS refer to the issue you raise in the context of potential punishments. In cases where the disciplinary procedure results in deductions from wages, the CEACR, discussing the Protection of Wages Convention, has noted that in countries that authorize disciplinary deductions from wages, the national legislation also contains provisions guaranteeing the procedural fairness of the disciplinary action such as requiring written notification of the worker or recognizing the right to lodge an appeal.

In cases resulting in termination of employment, workers should have the right to appeal, within a reasonable amount of time, against that termination to an impartial body, such as a court, labour tribunal, arbitration committee or arbitrator.

There are no specific provisions of ILS concerning an internal appeal to a higher level of management.

More generally, any worker should have the right to submit a grievance without suffering prejudicial consequences, and to have it examined according to appropriate procedures. A perceived unfair disciplinary proceeding could constitute a grievance if it concerns the employer-worker relationship or is likely to affect the conditions of employment of one or more workers in the enterprise, if the situation appears to be contrary to the provisions of a collective agreement, individual employment contract, national laws or other rules.

Q&As on business and occupational safety and health (OSH)

Company level OSH management system

Question: We are currently developing an OSH management system for our company. What are the elements and processes we need to bear in mind?

Answer: Safety and health in the workplace is a shared responsibility. Employers' should provide workers with safety-related information and training in order to make sure that they have understood the risks involved and the relevance of the safety measures taken, including the use of personal protective equipment (PPE). Workers in turn should apply the safety measures, including the use of PPE. Both managers and workers should accord highest priority to the principle of prevention.

The ILO advocates the following elements of an effective OSH management system (See, Guidelines on occupational safety and health management systems ILO-OSH, section 3.1-3.2):

1. The employer, in consultation with workers and their representatives, should set out in writing an OSH policy, which should be:

- specific to the organization and appropriate to its size and the nature of its activities;
- concise, clearly written, dated and made effective by the signature or endorsement of the employer or the most senior accountable person in the organization;
- communicated and readily accessible to all persons at their place of work;
- reviewed for continuing suitability; and
- made available to relevant external interested parties, as appropriate.

2. The OSH policy should include, as a minimum, the following key principles and objectives to which the organization is committed:

- protecting the safety and health of all members of the organization by preventing work-related injuries, ill health, diseases and incidents;
- complying with relevant OSH national laws and regulations, voluntary programmes, collective agreements on OSH and other requirements to which the organization subscribes;
- ensuring that workers and their representatives are consulted and encouraged to participate actively in all elements of the OSH management system; and
- continually improving the performance of the OSH management system.

3. Worker participation is an essential element of an effective OSH management system. The employer should ensure that workers and their safety and health representatives are consulted, informed and trained on all aspects of OSH, including emergency arrangements, associated with their work.

The employer should make arrangements for workers and their safety and health representatives to have the time and resources to participate actively in the processes of organizing, planning and implementation, evaluation and action for improvement of the OSH management system. The employer should ensure, as appropriate, the establishment and efficient functioning of a safety and health committee and the recognition of workers' safety and health representatives, in accordance with national laws and practice.

A health and safety policy implemented at the enterprise level should be applied consistently in order to be effective.

Personal protective equipment (PPE)

Question: Must a company accommodate religious beliefs which hinder wearing of PPE (beards which interfere with safety masks, head coverings which prevent wearing of safety helmets, etc.)?

Answer: Religious discrimination includes distinctions made on the basis of expression of religious beliefs or membership in a religious group. Although discrimination on the basis of religious beliefs should not be permitted, there may be legitimate bases for imposing requirements in the workplace which restrict the worker's freedom to practice a particular religion.

A religion may require a special type of clothing which may not be compatible with PPE. In such cases the worker's right to practice fully his or her faith or belief at the workplace needs to be weighed against the need to meet genuine safety requirements.

Enterprises are encouraged to make reasonable efforts to accommodate particular religious customs. Workers, in particular through their representatives, should be consulted on possible steps which could be taken to accommodate religious practices. National employers' and workers' organizations may have further suggestions and guidance on PPE and accommodation of local religious customs.

Question: Is it acceptable practice for a company to fire a worker on the spot without a second warning for failure to wear PPE?

Answer: A worker should not be fired for misconduct that under national law or practice would justify termination only if repeated on one or more occasions, unless the employer has given the worker appropriate written warning (see Termination of Employment Recommendation, 1982 (No. 166), paragraph 7). While an employee may be validly dismissed for his/her misconduct, such as the violation of work rules related to safety and health, steps should be taken to ensure that employees are aware of their obligations and the consequences of violating the work rules.

The immediate firing of workers for not wearing his or her PPE indicates that the company does not have a clear understanding of how OSH should be managed effectively within an enterprise. A positive commitment to OSH brings great benefits to the workers and the well-being of them and their families; and to the enterprise in terms of productivity and sustainability. Good safety and health is good business and must be a concern for all parties involved.

Safety and health in the workplace is a shared responsibility. Employers' should provide workers with safety-related information and training in order to make sure that they have understood the risks involved and the relevance of the safety measures taken, including the use of PPE. Workers in turn should apply the safety measures, including the use of PPE. Both managers and workers should accord highest priority to the principle of prevention.*

Worker participation is also an essential element of the OSH management system. The employer should ensure that workers and their safety and health representatives are consulted, informed and trained on all aspects of OSH, including emergency arrangements, associated with their work. The employer should make arrangements for workers and their safety and health representatives to have the time and resources to participate actively in the processes of organizing, planning and implementation, evaluation and action for improvement of the OSH management system. The employer should ensure, as appropriate, the establishment and efficient functioning of a safety and health committee and the recognition of workers' safety and health representatives, in accordance with national laws and practice.

National employers' and workers' organizations may have further suggestions and guidance to support the company in developing an effective and appropriate OSH management system.

* During the discussions concerning adoption of the Promotional Framework for Occupational Safety and Health Convention, (No. 187) and Recommendation (No. 197), 2006 it was emphasized that "Employers' and workers' should all actively participate in securing a safe and healthy working environment through a system of defined rights, responsibilities and duties, and the principle of prevention should be accorded the highest priority."

Question: Is it acceptable that the workers must pay themselves for their personal safety equipment?

Answer: Companies are urged to maintain the highest standards of safety and health, in conformity with national requirements (see ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, (MNE Declaration), paragraph 38). A key first step is promoting within the enterprise a culture of prevention where the right to a safe and healthy working environment is respected and where employers'

and workers' actively participate in securing a safe and healthy working environment (Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), Article 1(d)). Policies should seek foremost to prevent accidents and injury to health by minimising, to the extent reasonably practicable, the causes of hazards inherent in the working environment (see Occupational Safety and Health Convention, 1981 (No. 155), Article 4(2)).

Adequate protective clothing and protective equipment are also important for prevention. They should be provided wherever necessary (C. 155, Article 16(3)) free of charge to the workers (C. 155, Article 21).

Workers and their representatives should be provided adequate information on safety measures to be taken and given appropriate training (C. 155, Articles 19 (c) and (d), C. 170, Article 15).

Locking in workers

Question: Is it okay to lock workers inside for the night in order to make sure that the workers are not stealing?

Answer: Workers should not be locked in enterprises. The ILO advocates taking a "zero tolerance" approach to confinement at the workplace (Combating forced labour: A handbook for employers' and business, page 8).

Furthermore, locking workers in a factory is clearly contrary to occupational health and safety principles. If there is an accident it may result in civil liability for personal injury. Locking workers in a factory may also constitute under national law a criminal offence or civil tort of false imprisonment.

While it is legitimate for a company to take steps to secure its property, alternative means should be explored.

The national employers' and workers' organizations may have useful suggestions about effective alternative approaches.

OSH culture of prevention

Question: What does ILO consider to be the key elements of an OSH system?

Answer: Companies are urged to maintain the highest standards of safety and health, in conformity with national requirements (see ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, (MNE Declaration), paragraph 3).

A key element is promoting a culture of prevention within the enterprise where the right to a safe and healthy working environment is respected and where employers' and workers' actively participate in securing a safe and healthy working environment (see Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), Article 1(d)). Policies should seek foremost to prevent accidents and injury to health by minimizing, to the extent reasonably practicable, the causes of hazards inherent in the working environment (see Occupational Safety and Health Convention, 1981 (No. 155), Article 4(2)).

Chemical, physical and biological substances and agents under the control of the company should not pose a risk to the health of workers when the appropriate measures of protection are taken. Machinery, equipment and processes should be safe and without risk to health (C. 155, Article 16(1)).

Adequate protective clothing and protective equipment are also important for prevention. They should be provided wherever necessary (C. 155, Article 16(3)) free of charge to the workers (C. 155, Article 21).

Efforts should be made to adapt machinery, equipment, working time, and organization of work and work processes to the physical and mental capacities of the workers (C. 155, Article 5b). Adaptations should take into account gender differences. Pregnant or breastfeeding women should not be required to perform work that might be prejudicial to the health of either the mother or child (Maternity Protection Convention, 2000 (No. 183), Article).

Measures should be put in place to deal with emergencies and accidents, including adequate first-aid arrangements (C. 155, Article 18).

Companies should establish and apply procedures for the recording and notification of dangerous occurrences and occupational accidents and diseases. Companies should play a leading role in examination of the causes of industrial safety and health hazards and in the application of resulting improvements within the enterprise (MNE Declaration, paragraph 38).

Workers, including through their representatives, have an important role to play in preventing hazards (C. 155, Article 19(a) and (b) and cooperation between management and workers is essential (C. 155, Article 20; C. 170, Article 16). Companies should make available to the representatives of workers in the enterprise information on the safety and health standards relevant to their local operations. They should make known any special hazards and related protective measures associated with new products and processes (ILO MNE Declaration, paragraph 38). Workers and their representatives

should be provided adequate information on safety measures to be taken and given appropriate training (C. 155, Article 19 (c) and (d); C. 170, Article 15).

Workers or their representatives should be allowed to consult workers' organizations about such information provided they do not disclose commercial secrets. They also should be allowed to bring in outside technical advisors, provided management agrees (C. 155, Article 19(c) and (e)). A worker should report to the immediate supervisor any situation which he or she has reasonable justification to believe presents an imminent and serious danger. The worker has the right to refuse to resume work until the employer has taken any remedial action required to remove the imminent and serious danger to life or health (C. 155, Article 19(f)).

Where appropriate, companies are encouraged to incorporate matters relating to safety and health in agreements with workers' representatives (ILO MNE Declaration, paragraph 40).

Whenever two or more undertakings engage in activities simultaneously at one workplace, they should collaborate in ensuring hazards are minimized (C. 155, Article 17).

At the national level, companies should cooperate fully with the competent safety and health authorities, representatives of the workers' and employers' organizations and established safety and health organizations (ILO MNE Declaration, paragraph 40).

At the international level, companies should cooperate in preparation and adoption of international safety and health standards (ILO MNE Declaration, paragraph 39).

Exposure to hazardous substances

Question: Are there ILO instruments to guide companies on preventing the exposure of its workers to carcinogens?

Answer: Special measures regarding chemicals include the labelling or marking of all chemicals used at work so as to indicate their identity (C. 170, Article 7(1)). Hazardous chemicals should be labelled so that the workers can easily understand their classification, the hazards they present and the safety precautions to be observed (C. 170, Article 7(2)). Chemical data sheets should be made available to workers and their representatives (see C. 170, Article 10(1)).

Management should ensure that workers are not exposed to chemicals to an extent which exceeds exposure limits or other exposure criteria for the evaluation and control of the working environment established by the competent authority, or by a body approved or recognized by the competent authority, in accordance with national or international standards.

They should also assess the exposure of workers to hazardous chemicals and monitor and record the exposure of workers. These records should be made accessible to the workers and their representatives (C. 170, Article 12). Companies should establish an appropriate system for keeping and maintaining records for an appropriate period of time (C. 139, Article 3).

Companies should take special measures concerning carcinogenic substances or agents and make every effort to replace carcinogenic substances or agents with those which are non-carcinogenic or less harmful (Occupational Cancer Convention, 1974 (No. 139), Article 2(1)). Specific measures should be taken for the prevention and control of asbestos (C. 162, Article 3).

The number of workers exposed and the duration and degree of such exposure should be reduced to the minimum compatible with safety (ibid, Article 2(2)). Workers who have been exposed or are likely to be exposed to carcinogenic substances or agents should be provided with all relevant information on the dangers involved and measures to be taken (Ibid, Article 4).

Workers should be provided with medical examinations or biological or other tests or investigations during the period of employment and thereafter as needed to evaluate their exposure and supervise their state of health in relation to the occupational hazards (ibid, Article 5). If qualified medical advice recommends, the worker or workers in question should be removed from exposure (Radiation Protection Convention, 1960 (No. 115), Article 14), and provided alternative employment or other means to maintain their income (C. 115, Footnote 20; General Observation 1992, paragraph 32; C. 162, paragraph 21(3)).

The minimum age for hazardous work involving exposure to substances, agents or processes which could damage health should be 18 years (Worst Forms of Child Labour Recommendation, 1999 (No. 190), Part II, paragraph 3(d)).

Uranium radiation protection

Question: Which ILS can be referenced when setting requirements for international nuclear fuel suppliers regarding uranium mining?

Answer: For detailed guidance on good practices you may wish to consult the International Basic Safety Standards for Protection against Ionizing Radiation and for the Safety of Radiation Sources (BSS). The BSS were published in 1996 and jointly sponsored by ILO, Food and Agriculture Organization of the United Nations (FAO), International Atomic Energy Agency (IAEA), Organisation for Economic Co-operation and Development/ Nuclear Energy Agency (OECD/NEA), Pan American Health Organization (PAHO) and World Health Organization (WHO). Specific requirements regarding uranium mining and nuclear fuel suppliers are included in the BSS.

The BSS provide a worldwide basis for harmonized radiation protection standards that complement and are promoted on the basis of the ILO Radiation Protection Convention (No. 115) and Recommendation (No. 114). The BSS are also part of the IAEA safety standards and the IAEA has been promoting these standards through its technical cooperation Model Project on Upgrading Radiation Protection Infrastructure in more than 100 countries.

To help member States to apply the requirements in the BSS, the IAEA and ILO have prepared the following safety guides and other guidance documents which are applicable to uranium mining which can provide you with more detailed safety specifications:

- Occupational radiation protection in the mining and processing of raw materials: Safety guide, Safety Standards Series No. RS-G-1.6 (Vienna, 2004). Jointly sponsored by the IAEA and ILO.

- Occupational radiation protection: Safety guide, Safety Standards Series No. RS-G-1.1 (Vienna, 1999). Jointly sponsored by the IAEA and ILO.

- Assessment of occupational exposure due to intakes of radionuclides: Safety guide, Safety Standards Series No. RS-G-1.2 (Vienna, 1999). Jointly sponsored by the IAEA and ILO.

- Assessment of occupational exposure due to external sources of radiation: Safety guide, Safety Standards Series No. RS-G-1.3 (Vienna, 1999). Jointly sponsored by the IAEA and ILO.

Safety supervisors at construction sites

Question: How many safety supervisors are required at a high rise building construction site?

Answer: Employers are encouraged to "provide such supervision as will ensure that workers perform their work with due regard to their safety and health" (see ILO Code of Practice on Safety and Health in Construction, 1992, Section 2.2.7). There is no prescribed number of safety supervisors, as this is not the only element that counts. The competencies of those supervisors and assigning clear responsibilities and authority play an equally important role.

Every construction company of any size should appoint a safety officer or officers—a properly qualified person (or persons) whose special and main responsibility is the promotion of safety and health (ILO Safety, health and welfare on construction sites: A training manual, 1995, Section 2.2.1).

In addition, first level supervisors (also referred to as "foreman", "chargehand", or "ganger") with clear responsibilities are fundamental to safety in construction. They also have a role in safety over their particular group of workers, and, as a minimum, each company represented on site should have such supervisors. Supervisors are responsible for ensuring that (Training manual, Section 2.2.1):

- working conditions and equipment are safe;
- workplace safety is regularly inspected;
- workers have been adequately trained for the job they are expected to do;
- workplace safety measures are implemented;
- the best solutions are adopted using available resources and skills; and
- necessary personal protective equipment is available and used.

Each supervisor requires the direct support of site management (Training manual, Section 2.2.2). Supervisors should possess adequate qualifications, such as suitable training and sufficient knowledge, experience and skill for the safe performance of the specific work (Safety and Health in Construction Convention, 1988 (No. 167), Article 2(f)).

When two or more employers' undertake activities simultaneously at one construction site the principal contractor, who has actual control over or primary responsibility for the overall construction site activities, should be responsible for coordinating and ensuring compliance with the prescribed safety and health measures. If the principle contractor is not present at the site, he or she should nominate a competent person or body to ensure coordination and compliance (an overall safety supervisor or safety coordinator). However, each employer remains responsible for the application of the

prescribed safety measures in respect of the workers under his or her authority. All employers' or self-employed persons operating simultaneously at the site have a duty to cooperate (C. 167, Article 8).

Another group of people which can also be thought of as "supervisors" in a looser sense are the OSH representatives appointed by workers and trade unions to represent them. It has been shown over and over again that where there are worker safety representatives work is safer. Their role cannot be over-emphasized (See, "The role of worker representation and consultation in managing health and safety in the construction industry," pp. 19-23 for a discussion of the empirical evidence). A safe construction site requires regular inspection and remedial measures. The training of workers enables them to recognize the risks involved and how they can overcome them. Workers should be shown the safe way of getting a job done (Training manual, Section 2.2.2). Employers' should establish committees with representatives of workers and management or make other suitable arrangements consistent with national laws and regulations for the participation of workers in ensuring safe working conditions (Code of practice, Section 2.2.3).

In summary, on any site where there are two or more contractors at any one time, as is the case in any high rise building site, there has to be an overall safety coordinator/ supervisor. Individual contractors would be responsible, under the supervision of the coordinator, for ensuring the safety and health of their workers and any sub-contracted firms for which they are responsible. Their responsibilities include provision of information, training, site induction (if this has not been carried out by the principal contractor), etc. There has to be two-way coordination between the overall coordinator, the principal contractor and other contractors on site. Whether other safety supervisors are needed on-site depends on many considerations:

- the size and complexity of the worksite;
- the number of other companies working on site, all or some of which may have safety supervisors of their own (present either all of the time or part of the time if also responsible for other sites);
- what has been required by the risk assessment (assuming one has been done), e.g.;
- the assessment might call for the presence of safety supervisors at certain areas and times;
- the presence and competence of individual company supervisors (foremen);
- the presence and level of development of a safety culture; and
- the level of engagement of trade union safety representatives.

National employers' and workers' organizations are also a very important source of information on national law, regulation and collective bargaining agreements pertaining to safety requirements at construction sites.

Question: I would like to know if there are standards for personal protective equipment against accidents with snakes for workers of fruit plantations?

Answer: The ILO Code of practice on Safety and Health in Agriculture includes guidance on personal protective equipment for agricultural workers. Although not specifically addressing snake bite prevention, the Code does recommend high boots or safety footwear which is slip-resistance with shin-guards (espinilleras) and knee protection when work. Medical services in the plantation should have antidotes for those snakes, serpents or spiders that are poisonous and endemic in the area.

More general guidance can be found in the Safety and Health in Agriculture Convention, 2001 (No. 184) and Recommendation, 2001 (No. 192) which provide a comprehensive approach to preventive measures in agriculture, including preventive measures against contact with wild or poisonous animals.

Question: What are the requirements for providing chairs to cashiers/tellers?

Answer: The Hygiene (Commerce and Offices) Convention, 1964 (No. 120) provides that sufficient and suitable seats should be supplied for workers and workers should be given reasonable opportunities of using them.

Question: I would like to request information about ILO norms and regulations that apply to people working for airlines (flight attendants or air steward, and pilots). I am interested in knowing if there is a norm concerning the type of tasks they perform due to the high altitude, the radiation and pressurization, and whether there exist applicable norms over the time they can and should work in this activity.

Answer: The Radiation Protection Convention of 1960 (No. 115), and the Radiation Protection Recommendation of 1960 (No. 114), establish the appropriate measures to achieve an effective protection of all workers from ionising radiations, from the point of view of their health and safety.

The Employment Injury Benefits Convention of 1964 [Schedule I amended in 1980] (No. 121), and the ILO List of Occupational Diseases (revised 2010), are also applicable to the protection of flight attendants or air steward, and pilots.

The “Radiation protection of workers (ionising radiations)” publication of 1987 provides guidance to all activities that involve workers being exposed to ionising radiations in the work place, including flight attendants or air steward, and pilots.

More detailed information can be found in “Radiation protection and safety of radiation sources: International basic safety standards – Interim edition”, jointly sponsored by FAO, AEA, ILO, OECD/NEA, PAHO and WHO.

Question: I wanted to ask you what is according to the norms, the minimum space that an office worker must have in a corporate building. Where can I find that norm to print it?

Answer: The Hygiene (Commerce and Offices) Recommendation of 1964 (No. 120) specifies in its section VII, Working Space the following:

26. (a) All workplaces should be so laid out and work-stations so arranged that there is no harmful effect on the health of the worker.

(b) Each worker should have sufficient unobstructed working space to perform his work without risk to his health.

27. The competent authority should specify-- (a) the floor area to be provided in enclosed premises for each worker regularly working there;

(b) the minimum unobstructed volume of space to be provided in enclosed premises for each worker regularly working there; and

(c) the minimum height of new enclosed premises in which work is to be regularly performed.

Question: Is it still safe for a 70-year old man to work offshore, in the Persian Gulf,humidity sometimes 100 per cent, temperature from 30 to 40 degrees Celsius?

Answer: Two general principles of the safety and health provisions of ILS are: (a) hazards inherent in the working environment should be minimized, so far as reasonably practicable; and (b) the work should be adapted to the physical and mental capabilities of the workers. If older workers need special accommodations it should be provided.

Question: I would like to know how to make a plan for labour risks prevention and for protection and health promotion measures for workers in agriculture.

Answer: The main international labour norms about health and safety in agriculture are the Safety and Health in Agriculture Convention of 2001 (No. 184), and Recommendation of 2001 (No. 192). There is also a new Code of Practice on Safety and Health in Agriculture.

Question: Our workers work in teams of four to lift 90 kg bags and place it vertically on the shoulder of a worker who carries it to the vehicle to be loaded. We would like to know the maximum allowable weight to be handled safely by a worker as per ILO

standards or what are the ILO guidelines to determine the maximum?

Answer: A worker should not be required or permitted to engage in the manual transport of a load likely to jeopardise his or her health or safety. The maximum permissible weight is 55 kg for an adult male, and substantially less for young worker and women. (See, Maximum Weight Convention (No. 127) and Maximum Weight Recommendation (No. 128), paragraph 14). Companies are encouraged to use suitable technical devices as much as possible (Article 7(2) of the Convention).

The Code of practice on safety and health in agriculture provides further guidance. Workers who handle (lift, carry and position) heavy objects (weighing in excess of 23 kg) at rates exceeding three times per minute for more than two hours are at risk of experiencing lower back injury, generalized fatigue and possibly heat stress due to the combination of the weight of the object, the manner, frequency and duration of the task, and other environmental influences such as working in direct sunlight, near heat sources such as electric generators, air compressors, internal combustion engines, etc. The assessment of the health impact of the transportation of loads by an individual worker concerns not only the weight, but other factors, including the initial and sustained forces, the distance from body to object being lifted (sagittal plane), the different lift positions (floor to knuckle height, knuckle to shoulder height, etc.), the task frequency and worker's gender (see paragraphs 9.2.1.5 and 9.2.2.1).

The International Ergonomics Association and the ILO published the Ergonomic Checkpoints in Agriculture which provides guidance on carrying heavy weights (see checkpoint 7). See also, Maximum weights in load lifting and carrying (ILO OSH Series No. 59).

Question: According to your standards, would you please be able to tell me if a firm based of 8-12 people needs a Health and Safety Officer, or if a fire warden and a first aider is enough?

Answer: The principles of the ILS concerning safety and health do not directly address your question; but they do provide some general guidelines which may be of use.

The principles encourage "at the level of the workplace, the establishment of safety and health policies and joint safety and health committees and the designation of workers' occupational safety and health representatives, in accordance with national law and practice." See, Promotional Framework for Occupational Safety and Health Recommendation, 2006 (No. 197), paragraph 5(f).

In practice, a specific threshold number of employed workers is generally used in most countries to trigger the requirement for the establishment of a safety and health committee (typically 20 employees). For smaller workplaces (5-19 workers), some countries require the appointment of a safety representative who will have basic knowledge on OSH focusing on prevention.

The important point is to have someone who is adequately trained to ensure an effective system for hazard identification, risk assessment, preparation and implementation of safety programmes. In particular, the person should be adequately trained in all relevant aspects of OSH risk prevention. The principles also stress the importance of dialogue and cooperation at the level of the enterprise, regardless of the number of employees. See, Guidelines on occupational safety and health management systems ILO-OSH (2001).

Question: Is portable x-ray equipment technically appropriate for an occupational medical examination, or should I keep on using a fixed x-ray?

Answer: The competent authorities in each country determine the type of x-ray equipment that can be used for chest x-ray examinations as well as for medical care. In several countries, both Digital Radiography (DR) and Computed Radiography (CR) are utilized for these types of examinations. If the portable ones have DR equipment that has been certified by the competent national authorities as appropriate for chest x-ray examinations, such units can be used in addition to the chest x-ray examinations (CR or DR) with fixed x-ray equipment in medical institutions.

The reference to the definitions of technical terms, as well as information relevant to digital radiography can be found in Chapter 6 of the "Guidelines for the use of the ILO International Classification of Radiographs of Pneumoconioses, Revised edition 2011".

Q&As on business and employment security

Employment relationship

Question: What guidance is provided in ILO standards to determine who is an employee?

Answer: The ILS recognize the importance of establishing an employment relationship for protecting workers' rights. Such determination should be guided primarily by the facts relating to the performance and the remuneration of the work, notwithstanding how the relationship is characterized in any arrangement, contractual or otherwise. Specific "indicators of the existence of an employment relationship might include the following elements.

(a) the fact that the work:

- is carried out according to the instructions and under the control of another party;
- involves the integration of the worker in the organization of the enterprise;
- is performed solely or mainly for the benefit of another person;
- must be carried out personally by the worker;
- is carried out within specific working hours or at a workplace specified or agreed by the party requesting the work;
- is of a particular duration and has a certain continuity;
- requires the worker's availability; or

- involves the provision of tools, materials and machinery by the party requesting the work.

(b) periodic payment of remuneration to the worker; the fact that such remuneration constitutes the worker's sole or principal source of income; provision of payment in kind, such as food, lodging or transport; recognition of entitlements such as weekly rest and annual holidays; payment by the party requesting the work for travel undertaken by the worker in order to carry out the work; or absence of financial risk for the worker" (see Employment Relationship Recommendation, 2006 (No. 198), paragraph 13).

The determination of the existence of such a relationship should be guided primarily by the facts relating to the performance of work and the remuneration of the worker, notwithstanding how the relationship is characterized in any contrary arrangement, contractual or otherwise, that may have been agreed between the parties (R. 198, paragraph 9).

Termination of employment

Question: What are valid reasons for dismissal of a worker?

Answer: According to the ILO Termination of Employment Convention, 1982 (No. 158), the employment of a worker should not be terminated unless there is a valid reason for such termination connected with the worker's capacity or conduct; or based on the operational requirements of the undertaking, establishment or service.

Reasons which are not considered as valid include: race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, natural extraction or social origin, union membership or participation in union activities, filing of a complaint against an employer, or temporary absence from work due to illness.

A worker should not be dismissed for misconduct which under national law or practice would justify termination only if repeated on one or more occasions, unless the worker received prior written warnings (see Termination of Employment Recommendation, 1982 (No. 166), paragraph 7).

The worker should be given notice in writing of the decision to terminate his or her employment (R. 166, paragraph 12).

A worker whose employment is to be terminated should be given a reasonable period of notice or compensation in lieu thereof, unless he or she is guilty of serious misconduct (see Convention concerning Termination of Employment, 1982 (No. 158), Article 11).

An individual worker dismissed on grounds of misconduct should have the right to defend himself or herself against any allegations made before termination, unless the employer cannot reasonably be expected to provide this opportunity (C. 158, Article 7). The worker should be entitled to be assisted by another person (R. 166, paragraph 9).

Helping business to put international labour prinsiples into practice A worker should have the right to appeal to an impartial body such as a court or arbitration committee, unless the dismissal was previously authorized by a competent authority (C. 158, Article 8(1)). The burden of proving the existence of a valid reason should rest on the employer. Alternatively or additionally, the impartial body should be empowered to reach a conclusion based on the evidence provided by the parties according to national law and practice (C. 158, Article 9(2)).

In cases of collective dismissals, enterprises should provide reasonable notice to the appropriate government authorities and representatives of workers in their employment and their organizations so that implications may be examined jointly in order to mitigate adverse effects to the greatest possible extent (ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, 5th revision (2017), paragraph 26).

Question: Is it okay to fire a worker on the spot, without a second warning, for failure to wear personal protective equipment?

Answer: A worker should not be fired for misconduct that under national law or practice would justify termination only if repeated on one or more occasions. An employer should give the worker appropriate written warning before firing the worker (see Termination of Employment Recommendation, 1982 (No. 166), paragraph 7).

Question: Isit okay for a company to dismiss a worker while on leave recovering from eye surgery?

Answer: Workers should be protected from arbitrary dismissal (see ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, 4th revision (2006), paragraph 27), i.e., dismissal without a valid reason related to the competence or conduct of the worker (C. 158, Article 4). Dismissal should not be based on temporary illness or injury (C. 158, Article 6).

Question: Is it okay for a company to dismiss a pregnant worker if she has been let go for other reasons and her pregnancy was not known at the time?

Answer: A worker may be dismissed during her pregnancy only if the dismissal is based on a valid reason related to the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service (see Termination of Employment Convention, 1982 (No. 158), Article 5(d) and Maternity Protection Convention, 2000 (No. 183), Article 4). Pregnancy itself is not a valid ground for dismissal*. The burden of proving that the reasons for dismissal are unrelated to pregnancy should rest on the employer (C. 183, Article 8(1)).

The ILO Maternity Protection webpage can provide further information as well as access to the legal database on maternity protection.

* Maternity Protection Convention, 2000 (No. 183), Article 8(1) states: "It shall be unlawful for an employer to terminate the employment of a woman during her pregnancy or absence on leave referred to in Articles 4 or 5 or during a period following her return to work to be prescribed by national laws or regulations, except on grounds unrelated to the pregnancy or birth of the child and its consequences or nursing."

Question: When a company is bought up, what is the standard on severance pay due from the old company to the following groups: staff that will be employed by the new company and staff that will lose their jobs?

Answer: A worker whose employment has been terminated should be entitled to one of the following: a severance allowance or other separation benefits; a benefit from unemployment insurance or other social security benefit or assistance; or a combination of allowance and benefit (C. 158, Article 12). Which means of providing for the workers who have lost their employment are appropriate for a specific situation depends on national law.

If a severance allowance or separation benefit is paid, the amount of benefit should be based on length of service and the level of wages, and paid directly by the employer or by a fund constituted by employers' contributions (see, Termination of Employment Convention, 1982 (No. 158), Article 12).

Workers whose employment is transferred rather than terminated fall outside these provisions and need not receive any severance allowance from the previous owner of the operations.

Question: Does a worker have the right to request one month's payment when the employer ends the contract and what is the length of notice required?

Answer: The Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) is the ILO normative instrument addressed specifically to enterprises. The MNE Declaration encourages enterprises to "obey the national laws and regulations, give due consideration to local practices and respect relevant international standards" (see ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, paragraph 8).

Concerning notice, Paragraph 26 of the MNE Declaration states: 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.

This paragraph is referring to changes where "major employment effects are anticipated"*. If the dismissal was individual, it does not likely fall into this category. The ILS concerning termination of employment provide further guidance for companies. An individual worker whose employment is to be terminated is entitled to a reasonable period of notice or compensation in lieu thereof, unless the worker is guilty of serious misconduct (see, Termination of Employment Convention, 1982 (No. 158), Article 11). The government, in consultation with the national employers' and workers' organizations, is responsible for specifying in national law what constitutes reasonable notice.

Concerning severance pay, the MNE Declaration states that governments, in cooperation with multinational as well as national enterprises, should provide some form of income protection for workers whose employment has been terminated (Ibid, paragraph 28). ILS provide that a worker whose employment has been terminated should be entitled to one of the following, depending on what is specified in national law: a severance allowance or other separation benefits; a benefit from unemployment insurance or other social security benefit or assistance; or a combination of allowance and benefit (see, Termination of Employment Convention, 1982 (No. 158), Article 12).

If a severance allowance or separation benefit is paid, the amount of benefit should be based on length of service and the level of wages, and paid directly by the employer or by a fund constituted by employers' contributions (ibid).

* The MNE Declaration cites the Termination of Employment Recommendation, 1963 (No. 119), which provides in paragraph 7(1): "A worker whose employment is to be terminated should be entitled to a reasonable period of notice of compensation in lieu thereof." This Recommendation has been superseded by the Termination of Employment Convention, 1982 (No. 158) and Termination of Employment Recommendation, 1982 (No. 166).

Responsible restructuring

Question: In ILO's view how, if at all, should a company involve the trade union in restructuring or sale of a company?

Answer: A priority in restructuring or sale processes is to maintain any company as a sustainable enterprise able to conduct its business effectively and employ people under decent working conditions (for a discussion of the factors conducive to promoting sustainable enterprises and the practices of sustainable enterprises, see Conclusions concerning the promotion of sustainable enterprises, ILC, June 2007). This objective is a shared concern of employers' and workers'.

Labour-management cooperation, particularly through involvement of workers and their representatives in the planning and execution of organizational change, is also recognized as important for successful adjustment processes (Restructuring For Corporate Success: A Socially Sensitive Approach, Rogovsky, N . (ed), ILO, Geneva, 2005).
When considering changes in operations that have major employment effects a company should give reasonable notice of the change to representatives of the workers in their employment and their organizations.*

Reasonable notice is considered to be "as early as possible" (see Termination of Employment Recommendation (No. 119), paragraph 13(1)) to provide sufficient time for the company, the appropriate government authorities and representatives of the workers to examine jointly the implications in order to mitigate adverse effects to the greatest possible extent (Termination of Employment Convention (No. 158), Article 13). It is important to provide workers' representatives information as early as possible to ensure that consultation can take place on measures to avert or minimize any terminations and on measures to mitigate any adverse consequences.

Once the information is provided, the opportunity for consultation with workers' representatives on ways to mitigate impacts should also be as early as possible, following the requirements set out in national law and practice (C. 158, Article 13(1)(b).).

* MNE Declaration, paragraph 26: "In considering changes in operations (including those resulting from mergers, takeovers 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." The *Termination of Employment Recommendation, 19 82, (No. 166)* paragraph 20(1) and (2) encourages enterprises to "consult the workers' representatives concerned as early as possible" and to "supply them in good time with all relevant information on the major changes contemplated and the effects they are likely to have."

Question: Does the ILO have any reference to best practices in relation to responsible restructuring?

Answer: In terms of good practice the following steps provide a useful guide and are drawn from the relevant standards:

- Step 1: Starting a dialogue between the company, its workers and their representatives about the need for change is an important first step. This can help to stimulate ideas about changes that can be made and can also assist in alleviating fears or concerns that distract and impact on the capacity to perform effectively.

- Step 2: Sharing relevant information ensures that everyone understands the issues involved. This should present a true picture of the company's position in order to explain the need for change (see, Convention No. 158, Article 13).

- Step 3: Where change is proposed as a response to downturn or negative economic circumstances it is important to consider long term scenarios rather than short term crisis responses. Creating a dialogue with workers and their representatives about the options can assist in identifying a range of alternatives*.

- Step 4: The implementation of change should accord with the requirements of national law and practice. In particular the implementation should be responsible, founded on objective criteria and not discriminate in any way on unfair grounds.

- Step 5: The evaluation of the change as it is being introduced and after it is completed is an important aspect, to learn from what has occurred and to review whether objectives have been met.

If after consultation and consideration of other options it is apparent that laying off workers is required as part of the change process there are some additional steps that can be taken to ensure this is done responsibly:

- Consult with the workers and their representatives about proposed job losses. This consultation should include the provision of all relevant information[3], and include the consideration of measures (as far as practicable) to avert or mitigate the negative consequences of the layoffs, the timeframes involved and the options available to employees.

- Take steps to mitigate the impact of layoffs. For further details about matters related to consultation on major changes, measures to avert or minimize terminations and mitigating the effects of termination, see Recommendation No. 166.

- Ensure that termination practices are fair and observe national employment legislation, collective agreements and other relevant industrial instruments that provide for termination of employment, redundancies and layoffs.

- Ensure there is a mechanism for resolving grievances and disputes. Where any concern or grievance arises an individual employee or collective of employees should be able to raise this concern and have it dealt with in an effective manner and without fear of prejudice or reprisals (MNE Declaration, paragraphs 58 and 59).

Additional guidance on protecting the rights of workers when termination is required includes:

- Set objective criteria about how the organization will select the employees to be laid off in advance and document this.

- Selection criteria should be weighted appropriately and should correspond to the business needs of the employer.

- It is preferable that the criteria be capable of being objectively assessed (such as skills, qualifications, training experience).

- The criteria must not discriminate on invalid or unfair grounds including age, sex, pregnancy, career/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 activity (Termination of Employment Convention (No. 158), Article 5).

- Communication on the decision to lay off workers should be done sensitively and directly with those workers who will be losing their job.

* 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 and Restructuring For Corporate Success: A Socially Sensitive Approach, Rogovsky, N. (ed), ILO, Geneva, 2005.
** Relevant information includes the reasons for termination contemplated, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out. Termination of Employment Convention

Short-term contracts

Question: Does ILO have any instruments addressing the use of consecutive short-term contracts for an extended period in order to avoid paying social benefits due to workers with contracts of longer duration?

Answer: The The MNE Declaration states that "enterprises, through active manpower planning, should endeavour to provide stable employment for their employees and should observe freely negotiated obligations concerning employment stability and social security." They should also "strive to assume a leading role in promoting security of employment" (Ibid, paragraph 25).
The MNE Declaration moreover recommends that "enterprise activities should be in harmony with the development priorities and social aims and structure of the country in which they operate." (Ibid, paragraph 10).

Question: I am an employee working in a Multinational Company. They would like to force me to go to early retirement, I need your advice.

Answer: Voluntary early retirement which is freely chosen is compatible with ILS [see Social Security (Minimum Standards) Convention, 1952 (No. 102), Part V; Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128)]. Compelling a worker to retire early against his or her wishes, which may result in a lower pension, is not consistent with the provisions of these instruments. Wherever possible, measures should be taken to ensure that retirement is voluntary (Older Worker's Recommendation (No. 162), 1982, paragraph 21). Arbitrary dismissal procedures should be avoided [See, MNE Declaration, paragraph 27 and Termination of Employment Recommendation (No. 119)].

Question: A facility has a policy requiring its employees to provide advance notice of resignation beyond what is legally required; if an employee resigns sooner than the amount of time specified in the policy, the company will deduct a certain percentage of the employee's wages. Employees that are terminated by the facility during the probationary period are not paid their wages for the days worked. Employees that resign by their own choice during their probationary period are not paid their wages for the days worked. Is this okay?

Answer: Notice requirements are balancing the right of workers to leave employment when they so desire with the right of the employer to a reasonable

period of time to identify a replacement worker. Notice requirements are set by national law, as it is for the government, ideally in consultation with the workers' and employers' organizations, to determine the appropriate balance between these competing rights. Workers and companies both should abide by the notification provisions in national law. Any penalties imposed on workers for failure to give the legally required minimum notice should be set according to national law, which company policy should respect.

The probationary period is providing the employer and worker a period of time for either or both sides to determine if the worker is suitable for the job, and if the job is suitable for the worker. If either decides that the fit between worker and job is not right, they are free to stop the working relationship at any time during this period, subject to notice provisions, and should not incur a penalty for exercising this right. Withholding wages that the worker has earned when the employer exercises this right is not forced labour (e.g., Forced or Compulsory Labour Convention (No. 29); Abolition of Forced Labour Convention (No. 105). However, it is inconsistent with provisions on protection of wages, Protection of Wages Convention (No. 95) and Recommendation (No. 85), 1949. Workers should be remunerated for days worked, regardless of whether the employer choses to terminate the employment relationship. Withholding wages to deter or penalize a worker for exercising his or her right to terminate the employment relationship is coercive, and contradicts the purpose of a probationary period.

Question: I was dismissed for harassment. What is the procedure for firing a part time and full time employee?

Answer: In case of termination of employment on grounds not related to the economic situation of the enterprise the only permitted grounds for dismissal are the capacity or conduct of the individual.

A worker should not be dismissed for misconduct which under national law or practice would justify termination only if repeated on one or more occasions, unless the worker received prior written warnings. Harassment and mobbing usually is considered to be sufficiently serious to not require prior warning, but you should check the provisions under national law.

An employee should be provided an opportunity to defend himself or herself against the allegations made before termination, unless the employer cannot reasonably be expected to provide this opportunity. The worker should be entitled to be assisted by another person when defending himself or herself.

A worker should have the right to appeal to an impartial body such as a court or arbitration committee, unless the dismissal was previously authorized by a competent authority.

The burden of proving the existence of a valid reason should rest on the employer.

Alternatively or additionally, the impartial body should be empowered to reach a

conclusion based on the evidence provided by the parties according to national law and practice.

Question: Can a company dismiss a pregnant woman at any moment? What are the medical benefits to which she would be entitled if she is not a national of the country where she is employed?

Answer: A worker should not be dismissed during pregnancy, maternity leave or when nursing a child. See, Maternity Protection Convention, 2000 (No. 183), Article 8. Exceptions may however be permitted for reasons unrelated to maternity where effective safeguards against discriminatory dismissals, such as those relating to the burden of proof, are in place. The prohibition of dismissal under the older Maternity Protection Convention, 1919 (No. 3) and Maternity Protection Convention (Revised), 1952 (No. 103) was limited to maternity leave but these instruments authorized no dismissal whatever the cause during that period.

This protection should apply to all women, including non-nationals. (See, Article 2 of Convention No. 3 and Article 1 of Convention No. 183).

The medical benefits to which she is entitled depend on national law and practice but should include prenatal, childbirth and postnatal care, as well as hospitalization care when necessary. [See Article 6 (7) of Convention No. 183. The Social Protection Floors Recommendation, 2012 (No. 202) also states that social protection floors should include access to maternity care and basic income security during maternity].

Question: I would like to request clarification regarding the protections for a pregnant mother under the Maternity Protection Convention of 1919 (No. 3).

Answer: A female worker cannot be fired during her pregnancy, while maternity leave or during breastfeeding. See, Maternity Protection Convention of 2000 (No. 183), Article 8. Exceptions can nevertheless be allowed for reasons not related to maternity where effective mechanisms against dismissals for discriminatory reasons are in place, such as those regarding the burden of proof. The prohibition to dismiss under the previously mentioned Maternity Protection Convention of 1919 (No. 3) and the Maternity Protection Convention (Revised) of 1952 (No. 103), were limited to maternity leave, but these instruments did not authorize the dismissal for any reason during this period.

The protection must be applicable to all women, including those who are not country nationals [Article 2 of the Maternity Protection Convention of 1919 (No. 3), and Article 1 of the Maternity Protection Convention of 2000 (No. 183)].

The medical assistance that women have the right to receive must be set by national law and practice, but they must include assistance during pregnancy, delivery and postnatal, as well as hospitalization when needed (Article 6.7 of the Maternity Protection Convention of 2000 (No. 183)). [The Social Protection Floors Recommendation of 2012 (No. 202)

also indicates that basic safeguards regarding social security must include assistance to maternity and basic income security in case of maternity].

Private placement agencies

Question: My company frequently relies on local placement agencies for filling temporary gaps in staffing. Could you please tell me what we should be looking for to ensure protection of these workers' rights?

Answer: The MNE Declaration states that "enterprises, through active manpower planning, should endeavour to provide stable employment for their employees and should observe freely negotiated obligations concerning employment stability and social security." They should also "strive to assume a leading role in promoting security of employment".

The provisions for protection of the rights of workers engaged by private placement agencies for temporary work assignments in companies are contained in the Private Placement Agencies Convention (No. 181) and Private Placement Agencies Recommendation (No. 188), 1997. The following lists the principles contained in these instruments which your company may wish to verify before engaging a local temporary placement agency. Some provisions, such as occupational safety and health and protection against abusive treatment of workers, are also within the direct control of the user enterprise.

Workers should have a written contract of employment with the placement agency specifying their terms and conditions of employment and should be informed of their conditions of employment before they begin an assignment (R. 188, paragraph 5).

Workers should not be charged any fees or costs, either directly or indirectly, except as provided by national law for certain categories of workers or types of services provided (C. 181, Article 7).

Workers should not be subject to discrimination on the basis of race, colour, sex, religion, political opinion, national extraction, social origin, or any other form of discrimination covered by national law and practice, such as age or disability (C. 181, Article 5). However, placement agencies are encouraged to promote equality in employment through affirmative action programmes (R. 188, paragraph 10).

Workers should be informed of the respective responsibilities of the private employment agency, as defined in national law.

Workers should have adequate protection in relation to:

- freedom of association
- collective bargaining
- minimum wages, working time and other working conditions

- statutory social security benefits
- access to training
- occupational safety and health
- compensation in case of occupational accidents or diseases
- compensation in case of insolvency and protection of workers claims
- maternity protection and benefits, and parental protection and benefits (C. 181, Articles 11 and 12)

Workers should not be exposed to unacceptable hazards or risks or subjected to abuse or discriminatory treatment of any kind (R. 188, paragraph 8(a)).

Workers employed by private placement agencies have the right to protection of their personal data and their privacy. Data kept should be limited to matters related to the qualifications and professional experience of the workers concerned and any other directly relevant information (C. 181, Article 6).

Migrant workers should be provided protection adequate to prevent abuses (C. 181, Article 8). Migrant workers should be informed, as far as possible in their own language or in a language with which they are familiar, of the nature of the position offered and the applicable terms and conditions of employment (R. 188, paragraph 8(b)).

Child labour should not be used (C. 181, Article 9).

Temporary workers should not be engaged to replace workers who are on strike (R. 188, paragraph 6).

Workers should not be prohibited from accepting permanent employment with the user Enterprise (R. 188, paragraph 15).

The above guidance is provided based on ILS. It is advisable to consult relevant national labour standards. National employers' and workers' organizations may also be a good source of information on national law, regulation and collective bargaining agreements pertaining to non-discrimination law and practice.

Q&As on social protection

Social protection

Question: A supplier deducts the legally mandated worker contributions for legally mandated worker insurance. However the supplier employs many migrant workers who will not be able receive the social benefits based on what they pay. From an ILO perspective, what is the appropriate course of action of the supplier in this case?

Answer: The company should obey the law, including laws requiring them to collect and forward the workers' social security contributions. This should be done in a transparent manner and workers should be aware of their rights within the social security system.

The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) stresses the importance of all the parties concerned to respect the sovereign rights of States, obey the national laws and regulations, give due consideration to local practices and respect relevant international standards. This includes legal obligations concerning social security.

Deducting workers' legally mandated contributions to social security schemes from their wages is also consistent with the provisions of ILS, provided that the workers are informed of the amounts deducted.

If the social security scheme is comprehensive, the migrant worker will benefit directly from many of the provisions, such as medical care, sickness benefit, unemployment benefit and maternity benefit. Concerning pension benefits, a mechanism may exist for the migrant worker returning to his or her country of emigration to receive back his or her pension contribution or to have the pension benefit paid abroad. Similar schemes may exist for internal migrants returning to their home province. This is an issue of government administration of the social security scheme, beyond the ability of a particular company to address. See, Equality of Treatment (Social Security) Convention, 1962 (No. 118). See also Protection of Wages Convention, 1949 (No. 95).

Question: We run into some cases where a person is retired and gets his retirement pay. After retirement, the person continues to work in a factory. The management of the factory has not put the individual on the payroll because if they had done it a percentage of his/her pension will be taken away. The worker can get treatment at the hospital for free like all retirees. Is working after retirement allowed? Is it allowed to work without being put on payroll? In the event of an accident at work, is it sufficient that the retiree can go to the hospital for free?"

Answer: There are no restrictions of principle to work after retirement under ILO standards. However, national laws or regulations may provide restrictions.

As far as the pension is concerned, the ILO Social Security Convention 1952 (No. 102)

provides that the benefit of a person otherwise entitled to it may be suspended if such person is engaged in any prescribed gainful activity or the benefit may be reduced where the earnings of the beneficiary exceed a prescribed amount.

Companies should maintain adequate payroll records in an approved form and manner according to national laws and regulations. See, Protection of Wages Convention, 1949 (No. 95). Giving work to a retiree without putting him or her on the payroll could be illegal for an enterprise if there are no legal ways provided in the law of doing so. Several countries have adopted laws punishing the failure of companies to declare workers and illegal employment, particularly in relation to social security and tax fraud. In some cases, workers who are willingly in violation of these laws risk both civil and penal sanctions. A benefit to which a person protected would otherwise be entitled may be suspended where the person concerned has made a fraudulent claim.

The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) stresses the importance of all the parties concerned to obey the national laws and regulations, give due consideration to local practices and respect relevant international standards. This includes legal obligations concerning social security.

Concerning the question of medical coverage, the fact that the worker can access free treatment at the hospital for retirees may not necessarily be sufficient in terms of protection as it may not cover work accidents or it may not cover long-term care as a result of a work accident.

Q&As on temporary workers

Temporary Workers

Question: In our forestry operations, our policy is to give work to as many people in the surrounding communities as possible. Therefore, we hire lots of people for short periods of time (around 20). What are your standards, guidelines, suggestions in this type of situation concerning contracts, PPE, insurances and age for work?

Answer: All workers should have contracts, even those engaged for only 20 days. ILS protect all workers equally and do not set different conditions for workers with short-term contracts, including conditions regarding:

- Working time: maximum hours of work permitted, minimum rest periods required during the day, as well as the weekly day(s) of rest required should be the same for workers hired for short periods as for other workers.

- Safety and Health: Adequate PPE, and training on why and how to use the PPE and maintain it properly, must be provided even for workers engaged for short periods as forestry is one of the most dangerous occupations. It is the responsibility of

management to devise a system for ensuring the PPE is returned in adequate condition. The ILO MNE Declaration (paragraph 40) also encourages companies to "cooperate fully with the competent safety and health authorities, the representatives of the workers and their organizations, and established safety and health organizations. Where appropriate, matters relating to safety and health should be incorporated in agreements with the representatives of the workers and their organizations."

- Insurances: Workers, including those engaged for short periods of time, should also be provided social protections as prescribed by law; in particular, they should be ensured against accidents at work.

- Minimum age for work: The situation described would be consistent with ILS if the work is not hazardous. What constitutes hazardous work may vary from country to country, as the relevant ILO Conventions require ratifying countries to adopt "hazardous work lists". In determining what work would be acceptable for 16 and 17 year olds, we would recommend referring to ILO Recommendation 190. It is important to note that even work that by its nature may not be considered hazardous, such as planting, may be hazardous if it is done for long hours or in other conditions (such as night work) that would make it hazardous. If the work takes place in logging camps especially it would be important to assess such conditions of work. It is also important to note that if the minimum age for entry into work (non-hazardous) in the country is 15, not 16, the policy of restricting young workers to only non-hazardous activities should apply to 15-18 year olds, to ensure that 15 year olds are not discriminated against.

The ILO MNE Declaration encourages companies to provide stable employment for their employees and observe freely negotiated obligations concerning employment stability and social security, and to assume a leading role in promoting security of employment, particularly in countries where the discontinuation of operations is likely to accentuate long-term unemployment (See, MNE Declaration, paragraphs 13-20). Providing more stable employment would likely reduce challenges around many of the issues raised regarding the costs associated with providing written contracts and PPE, insuring workers, etc.

The MNE Declaration also encourages companies to invest in skills development of their workforce, both directly and through participation in government training programmes.

Q&As on training

Training

Question: I would like to know is there any ILO Convention related to Right of Employees for Continuous Training and Development both in the organized as well as unorganized sector.

Answer: The Human Resources Development Convention, 1975 (No. 142) and Recommendation, 2004 (No. 195) addresses continuous training and development. Article 1 (5) of Convention No. 142 states that "the policies and programmes shall encourage and enable all persons, on an equal basis and without any discrimination whatsoever, to develop and use their capabilities for work in their own best interests and in accordance with their own aspirations," including workers in the informal economy. The Recommendation also encourages human resources development, education, training and lifelong learning policies which "address the challenge of transforming activities in the informal economy into decent work fully integrated into mainstream economic life; policies and programmes should be developed with the aim of creating decent jobs and opportunities for education and training, as well as validating prior learning and skills gained to assist workers and employers' to move into the formal economy".

In addition, the Paid Educational Leave Convention, 1974 (No. 140) requires ratifying states to formulate and apply a policy designed to promote the granting of paid educational leave for the purpose of training at any level, general, social and civic education, and trade union education. The Rural Workers' Organisations Recommendation, 1975 (No. 149) highlights the importance of education and training for this specific group of workers.

The Skills for Employment Global Public-Private Knowledge Sharing Platform provides ideas and information on how companies can contribute to skills development for all of their workers.

Q&As on business, wages and benefits

Wage-setting process

Question: Do ILS provide that wages should be a subject of negotiations?

Answer: Collective bargaining is a voluntary process used to determine terms and conditions of work and regulate relations between employers', workers' and their organizations, leading to a collective agreement.*

Collective bargaining is a fundamental right (See, ILO Declaration of Fundamental Principles and Rights at Work, 1998, paragraph 2(a)).

The ILO CFA has concluded that wages, benefits and allowances may be subject to collective bargaining (C. 181, Article 5).

Collective bargaining can take place at the enterprise level, at the sector or industry level, and at the national or regional level. It is up to the parties themselves to decide at what level they want to bargain. ILO standards and principles regarding collective bargaining emphasises the voluntary nature of collective bargaining, and so there should be no compulsion to bargain, or legal barrier to bargain, at any specific level of the economy.

A refusal by a union or employer(s) to bargain at a specific level is not an infringement of freedom of association.

*Several ILO conventions set out a framework for collective bargaining in practice: the Right to Organise and Collective Bargaining Convention, 1949 (C. 98) (see particularly Article 4); the Freedom of Association and Protection of the Right to Organise Convention, 1948 (C. 87); the Workers' Representatives Convention, 1971 (C. 135); and the Collective Bargaining Recommendation, 1981 (R. 143).

Question: What does ILO consider to be good practice concerning wages and collective bargaining?

Answer: The MNE Declaration gives guidance on good practice concerning wage setting. *"When multinational enterprises operate in developing countries, where comparable employers' may not exist, they should provide the best possible wages, benefits and conditions of work, within the framework of government policies. These should be related to the economic position of the enterprise, but should be at least adequate to satisfy basic needs of the workers and their families" (*ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, paragraph 34).

The MNE Declaration encourages home and host governments to promote collective bargaining between MNEs and their workers: "Governments, especially in developing countries, should endeavour to adopt suitable measures to ensure that lower income groups and less developed areas benefit as much as possible from the activities of multinational enterprises" (ibid, paragraph 35). And "measures appropriate to national conditions should be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers' or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements," (Ibid, paragraph 50).

Basic safeguards of wages

Question: According to ILO standards, is there a maximum portion of the wage that can be variable (conditioned on output)?

Answer: The ILS do not set a particular means for calculating payment. The purpose is to allow flexibility in establishing and calculating wages, subject to the following basic safeguards to protect workers from abusive practices:

Adequacy of wage: The minimum wage paid (whether a fixed wage or piece rate) should be adequate to meet the needs of workers and their families (see Minimum Wage Fixing Convention, 1970 (No. 131), Article 3(a)), taking into account, as far as possible and appropriate in relation to national practice and conditions:

- the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups;
- economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment (Convention No. 131, Article 3); and
- changes in the cost of living and other economic conditions (Recommendation No. 135, paragraphs 3 and 11).

ILO has not specified what reference points to use in determining whether a minimum wage is adequate for meeting the basic needs of a worker and his or her family. Instead, the ILO advocates social dialogue, in particular collective bargaining, for determining wages at sector level and tripartite consultations for setting minimum wages nationally or extending collective bargaining agreements.

The Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) is the ILO normative instrument addressed specifically to enterprises. Concerning wages, ILO guidance to enterprises encourages multinational enterprises to ensure that wages are sufficient to meet the needs of the worker and his or her family. Specifically, MNEs should provide wages and benefits "not less favourable" than those offered by "comparable employers' in the country concerned"(Ibid, paragraph 33). If no comparable employers' exist, companies should "provide the best possible wages, benefits and conditions of work, within the framework of government policies. These should be related to the economic position of the enterprise, but should be at least adequate to satisfy basic needs of the workers and their families" (ibid, paragraph 34). In addition, the MNE Declaration stresses the valuable role of collective bargaining in determining conditions of employment.*

Payment in legal tender, made directly to the worker: Wages payable in money should be paid only in legal tender and paid directly to the worker. Payment should not be made in the form of promissory notes, vouchers or coupons (C. 110, Articles 26 and 28). Workers must be free to dispose of their earnings as they choose, although voluntary thrift may be encouraged. If permitted by national laws or regulations, collective agreements or arbitration awards, wages may be partially paid in the form of allowances in kind where payment in the form of such allowances is customary or desirable, provided that they are appropriate and beneficial. The value of any payment in kind should be assessed at reasonable market prices (C. 110, Article 27).

Transparency of payment calculation: Payments should be transparent, showing clearly the gross wages, any deductions taken and for what purpose, and net wages due. Deductions from wages should occur only if prescribed by national laws or regulations or fixed by collective agreement or arbitration award. Deductions for loss or damage to goods should be made only in cases where it has been proven that the worker is responsible (R. 110, paragraph 25). Workers should be informed in writing of any deductions made (C. 110, Articles 31 and 32). No deductions should be made for the purpose of obtaining or retaining employment, paid either to the employer or an intermediary

Regularity of payment: Wages should be paid regularly. In case of piece rate payment systems payments should be not less than twice a month. Adequate records should be kept (C. 110, Articles 33 and 35; R. 110, paragraphs 9-18). Upon the termination of a contract of employment, the worker should be paid a final settlement of all wages due within a reasonable period of time having regard to the terms of the contract (C. 110, Article 34).

Equal pay for work of equal value: Rates of remuneration should ensure equal remuneration for men and women workers for work of equal value (R. 110, paragraph 27; see also Equal Remuneration Convention, 1951 (No. 100)).

Limits and conditions for deductions for provision of commodities or services by the undertaking: Any commodities sold or services provided by the undertaking should be provided at a reasonable price. Stores established and services operated by the employer should not be operated for the purpose of securing a profit but for the benefit of the workers concerned. There should be no coercion involved in the purchase of goods or services (C. 110, Article 30).

* “Measures appropriate to national conditions should be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers’ and employers’ organizations and workers’ organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements.” *MNE Declaration*, paragraph 50.

Question: An employee has to buy stationery or personal protective equipment needed in the course of work, because there is no proper procurement or finance department setup to do this. The employee has to pay for the item first then claim back from the company and sometimes the reimbursement takes a long time. Is this practice okay?

Answer: If the amount of money needed for the purchase is substantial, and the delay in reimbursing the worker poses difficulties for the worker in meeting the basic needs of his or her family, the practice may not be consistent with the principles of the relevant ILS. The system should not disrupt regular payment of wages and should be clearly explained to the worker.

Relevant ILS:
Minimum Wage Fixing Convention, 1970 (No. 131)
Minimum Wage Fixing Recommendation, 1970 (No. 135)

Other normative instruments:
ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, paragraph 33.

Minimum wage/Living wage

Question: What is ILO's view on how to calculate a "living wage"?

Answer: The *ILO* ILO Constitution refers in the Preamble to the "provision of an adequate living wage." The 1944 Declaration of Philadelphia concerning the aims and purposes of the ILO emphasizes the need for "policies in regard to wages and earnings, hours and other conditions of work calculated to ensure a just share of the fruits of progress to all and a minimum living wage to all employed and in need of such protection".* This principle was affirmed most recently in the ILO Declaration on Social Justice for a Fair Globalization, adopted in 2008.

The notion of a living wage, although not the phrase itself, is found in the Minimum Wage Fixing Convention, which speaks of "the needs of workers and their families" (Minimum Wage Fixing Convention, 1970 (No. 131), Article 3(a)). The CEACR has explained that "the establishment of a minimum wage system is often portrayed as a means for ensuring that workers (and in some cases, their families) will receive a basic minimum which will enable them to meet their needs (and those of their families); hence the frequent use of the term 'minimum living wage'. Efforts to implement such a concept imply an attitude or a policy which aims at improving the material situation of workers and guaranteeing them a basic minimum standard of living which is compatible with human dignity or is sufficient to cover the basic needs of workers. Such a policy is in line with the International Covenant on Economic, Social and Cultural Rights as regards every person's right to receive remuneration equivalent at least to a wage which makes it possible for workers and their families to lead a decent life" (General Survey on minimum wages, 1992, paragraph 33).

The Minimum Wage Fixing Recommendation expressly states that it should constitute one element in a policy designed to overcome poverty and to ensure the satisfaction of the needs of all workers and their families (see Minimum Wage Fixing Recommendation No. 135, paragraph 1). It also provides that the fundamental purpose of minimum wage fixing should be to give wage earners necessary social protection as regards minimum permissible levels of wages (ibid, paragraph 2).

The CEACR has also noted that *"the minimum wage implies that such a wage must be sufficient for the subsistence needs of workers and their families. Thus, the meeting of subsistence needs are both a criterion of minimum wage fixing and one of the objectives of the Convention. Nevertheless, the needs of workers and their families cannot be considered in a vacuum; they must be viewed in relation to the country's level of economic and social*

development" (General Survey, paragraph 281). Other factors to be taken into consideration, as far as possible and appropriate in relation to national practice and conditions, include*:*

- the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups;

- economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment (Convention No. 131, Article 3).

- changes in the cost of living and other economic conditions (Recommendation No. 135, paragraphs 3 and 11).

The purpose of a minimum wage is to provide workers protections where there is no extended and effective means of fixing wages across various sectors, in particular through collective bargaining (Convention No. 131, Article 1(1)). Consequently, ILO has not specified what reference points a government might use (often referred to as a "basket of goods") in determining whether a minimum wage is adequate for meeting the basic needs of a worker and his or her family. Instead, the ILO advocates social dialogue, in particular collective bargaining, for determining wages at sectoral level and tripartite consultations for setting minimum wages or extension of collective bargaining agreements.

The Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) encourages enterprises to "obey the national laws and regulations, give due consideration to local practices and respect relevant international standards" (ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, paragraph 8).

Specifically concerning wages, the MNE Declaration also encourages multinational enterprises to ensure that wages are sufficient to meet the needs of the worker and his or her family. Specifically, MNEs should provide wages and benefits "not less favourable" than those offered by "comparable employers' in the country concerned" (ibid, paragraph 33). If no comparable employers exist, companies should "provide the best possible wages, benefits and conditions of work, within the framework of government policies. These should be related to the economic position of the enterprise, but should be at least adequate to satisfy basic needs of the workers and their families" (ibid, paragraph 34).

In addition, the MNE Declaration stresses the valuable role of collective bargaining in determining conditions of employment.**

To learn more about minimum wages in practice, you can consult the ILO Minimum Wage Database. This database includes statistics for over 100 countries on the level of minimum wages in absolute terms as well as relative to both GDP per capita and average wages,

*ILO Declaration of Philadelphia, Part III, paragraph (d). This principle is also found in the United Nations Universal Declaration of Human Rights: "Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection." (Article 23.3) and "[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, medical care, necessary social services, and the right to security" (Article 25.1).
whenever available. It also includes information on the institutional aspects of minimum wage systems, including the type and degree of involvement of social partners.

** "Measures appropriate to national conditions should be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers' and employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements." MNE Declaration, paragraph 50.

Payment in-kind

Question: Is it okay if workers receive accommodation and food, but no cash payment for their work?

Answer: Payment in kind should not fully replace cash remuneration. The labour laws in many countries specify the maximum proportion of the wages that may be paid in kind; this usually varies from 20 to 40 per cent. An amount reaching 50 per cent in kind unduly diminishes the cash remuneration which is necessary for the maintenance of the worker and his family (see Protection of Wages, paragraph 117).

Furthermore, within the maximum percentage allowed by law, the following further safeguards should apply (see Protection of Wages Convention, 1949 (No. 95), Article 4; Protection of Wages, ILO, Geneva, 2003, paragraph 92):

- when authorized under national laws or regulations, collective agreements or arbitration awards;
- where the allowances offered in lieu of money are fairly valued and meet the personal and family needs of the worker; and
- when no payment is made in the form of liquor or drugs.

Because payment in kind makes workers more dependent and vulnerable, there is a risk that improper forms of payment may lead to situations of forced labour. Payments "in-kind" in the form of goods or services should not create a state of dependency of the worker on the employer (see, Combating forced labour: A handbook for employers' and business, ILO, Geneva, 2008).

Disciplinary deductions from wages

Question: Is there is an ILS on disciplinary deductions from wages?

Answer: ILS are silent on the issue of whether it is permissible to make disciplinary deductions from wages.* The CEACR has noted that in many countries the imposition of disciplinary penalties by way of wage deductions is formally prohibited. In countries that authorize disciplinary deductions from wages, the national legislation also contains provisions guaranteeing the procedural fairness of the disciplinary action such as requiring written notification of the worker or recognizing the right to lodge an appeal (see ILO General Survey on Protection of Wages (2003), paragraphs 242 and 244).

The CEACR also has noted that the labour standards concerning protection of wages establish three main principles (See, ILO General Survey on Protection of Wages (2003), paragraphs 295-297):

1. Deductions of any type, to be lawful, need an appropriate legal basis—national laws or regulations, collective agreements or arbitration awards; individual agreement is not sufficient.

2. All authorized deductions must be limited so that the net amount of wages received by workers should in all cases be sufficient to ensure a decent living income for themselves and their families.

3. All relevant information regarding the grounds on which and the extent to which wages may be subject to deductions must be communicated in advance to the workers concerned so as to avoid any unexpected decrease in their remuneration which would compromise their ability to support themselves and their household. The preferable means is appropriate references in their contracts of employment or the permanent display of the relevant laws, regulations and internal regulations at the workplace, and in any event by means which ensure that workers have advance notice of the nature and extent of all possible deductions, and are aware of their rights concerning procedural safeguards set out in national law.

*Relevant ILS concerning deductions include the Protection of Wages Convention, 1949 (No. 95) and the Protection of Wages Recommendation, 1949 (No. 85). Paragraphs 2 and 3 of Recommendation No. 85 deal only with deductions from wages for the reimbursement of damages caused by bad or negligent work or for damage to materials or to the property of the employer, and deductions in payment for the use of materials, tools and equipment supplied by the employer.

Compensation for night work

Question: Does night work require payment of higher wages?

Answer: Article 8 of the *Night Work Convention* (No.171) provides that compensation for night workers in the form of working time (i.e. shorter schedules or longer breaks), pay (i.e. night work premium) or similar benefits shall recognize the nature of night work. Paragraphs 8 and 9 of the *Night Work Recommendation* (No. 178) elaborate on financial compensation. ILO instruments recognize that night work must carry an extra compensation, preferably but not necessarily in the form of higher wages.

Question: A factory fines workers for taking unapproved leave or for not meeting minimum quality standards. Under what circumstances would a policy on fines be inconsistent with the Forced Labour Convention(s)?

Answer: Fines for violations of facility rules such as quality standards and unexcused absences are not an issue of forced labour as they do not relate to whether a worker is being coerced into working, although they may raise issues regarding other principles of ILS, including protection of wages.

Question: What are the different international regulations/standards on the intervals of salary payment e.g. monthly, bi-weekly, etc. and the corresponding day(s) of the month the payment is actually made to the employee?

Answer: The recommended maximum interval depends on how the wages are calculated. The Protection of Wages Recommendation, 1949 (No. 85) provides the following guidance:

4. The maximum intervals for the payment of wages should ensure that wages are paid--

(a) not less often than twice a month at intervals not exceeding sixteen days in the case of workers whose wages are calculated by the hour, day or week; and

(b) not less often than once a month in the case of employed persons whose remuneration is fixed on a monthly or annual basis.

5. (1) In the case of workers whose wages are calculated on a piece-work or output basis, the maximum intervals for the payment of wages should, so far as possible, be so fixed as to ensure that wages are paid not less often than twice a month at intervals not exceeding 16 days.

(2) In the case of workers employed to perform a task the completion of which requires more than a fortnight, and in respect of whom intervals for the payment of wages are not otherwise fixed by collective agreement or arbitration award, appropriate measures should be taken to ensure--

(a) that payments are made on account, not less often than twice a month at intervals not exceeding sixteen days, in proportion to the amount of work completed; and

(b) that final settlement is made within a fortnight of the completion of the task.

For information on national law provisions, please see our Working Conditions Laws Database.

Question: Is there any provision in ILS regarding the treatment of the recruitment fees?

Answer: Deductions of any type from wages, to be lawful, need an appropriate legal basis—national laws or regulations, collective agreements or arbitration awards. Individual agreement is not sufficient.

The general principle which companies are encouraged to follow is that workers should not be charged directly or indirectly, in whole or in part, any fees or costs for employment placement services. However, some exceptions are allowed in national law: "in the interest of the workers concerned, and after consulting the most representative organizations of employers' and workers', the competent authority may authorize exceptions... in respect of certain categories of workers, as well as specified types of services provided by private employment agencies". (Private Employment Agencies Convention, 1997 (No. 181), Article 7, C. 181) Therefore, it is important to consult national legislation on whether placement fees may be charged to workers.

However, Article 9 of the Protection of Wages Convention provides that any deduction from wages with a view to ensuring a direct or indirect payment for the purpose of obtaining or retaining employment, made by a worker to an employer or his representative or to any intermediary (such as a labour contractor or recruiter) must be prohibited.

In other words, direct payment by the worker for the services of a private placement agency are permitted, but without involving any deduction from wages, in those countries where the operation of fee-charging employment agencies is permitted under national laws or regulations.

All relevant information regarding the grounds on which and the extent to which wages may be subject to deductions must be communicated in advance to the workers concerned so as to avoid any unexpected decrease in their remuneration which would compromise their ability to support themselves and their household. The preferable means is appropriate references in their contracts of employment or the permanent display of the relevant laws, regulations and internal regulations at the workplace, and in any event by means which ensure that workers have advance notice of the deductions for placement services, and are aware of their rights concerning procedural safeguards set out in national law.

Question: If an employee's payment is delayed by one week is this considered forced labour? Or is there a maximum window (two weeks, one month, etc.) by which time an

employee must be paid and it would not be considered forced labour?

Answer: If the delayed payment of wages is not systematic and not intended to control the worker (e.g. it may be caused by a temporary cash transfer problem, for example), this would not be forced labour.

Forced or compulsory labour is any work or service that is provided by a person under the menace or threat of a penalty and where that person does not work voluntarily.

Refusal to pay wages may constitute a penalty and delayed payment of wages is a possible indicator of a forced labour situation. For instance, the CEACR has expressed "concern about the vulnerable situation of migrant workers, including migrant domestic workers, who are often subjected to abusive employer practices, such as retention of passports, non-payment of wages, deprivation of liberty, and physical and sexual abuse, which cause their employment to be transformed into situations that could amount to forced labour".

In its examination of the application of Forced Labour Convention, 1930 (No. 29) by ratifying countries, the CEACR has referred to the non-payment of wages, or delayed payment of wages, only when this practice was accompanied by an element of coercion and/or threat. In most of the cases examined, the situations related to the manipulation of wages by the employers' which led to a situation of indebtedness of workers who found themselves in a vulnerable situation.

A longer delay in payment of wages would be a stronger indicator, as it is more likely to create or aggravate a situation of vulnerability. The temporal dimension of non-payment and its impact on the freedom of workers to leave the employment may vary depending on the level of salary, country, institutional safeguards or other factors. There is no set length of delay which would automatically constitute forced labour.

Question: Under what conditions is it okay to require a deposit from the worker for uniforms?

Answer: In general, withholding and non-payment of wages, including for a sizable deposit, constitutes a restriction which may prevent the workers from leaving if they change their minds. However, deposits of a reasonable amount do not constitute forced labour if the workers are informed of the conditions for return of the deposit, and that the deposit is indeed refunded once they have fulfilled these conditions. In the case of a deposit required for a uniform, the worker should be made aware that should they choose to leave the deposit will be refunded to them upon returning the uniform. Any other requirements, such as that the uniform be returned in reasonable condition, should be clearly indicated and applied in a manner which does not deter workers from leaving if they so desire.

A deposit which is not returned when the worker leaves is not a deposit but a requirement that the worker pay for his or her uniform. Such deductions from workers' wages are an issue of protection of wages. "Appropriate measures should be taken to limit deductions

from wages in respect of tools, materials or equipment supplied by the employer to cases in which such deductions--

(a) are a recognised custom of the trade or occupation concerned; or

(b) are provided for by collective agreement or arbitration award; or

(c) are otherwise authorised by a procedure recognised by national laws or regulations" and not simply company policy.

If the above conditions are met, then it would be acceptable for the worker to be required to pay for his or her uniform and it should be made clear to the workers that the uniforms are their property.

Question: Is there is an ILS on disciplinary deductions from wages?

Answer: ILS are silent on the issue of whether it is permissible to make disciplinary deductions from wages. The CEACR has noted that in many countries the imposition of disciplinary penalties by way of wage deductions is formally prohibited. In countries that authorize disciplinary deductions from wages, the national legislation also contains provisions guaranteeing the procedural fairness of the disciplinary action such as requiring written notification of the worker or recognizing the right to lodge an appeal.

The Committee of Experts also has noted that the labour standards concerning protection of wages establish three main principles. First, deductions of any type, to be lawful, need an appropriate legal basis—national laws or regulations, collective agreements or arbitration awards; individual agreement is not sufficient. Second, all authorized deductions must be limited so that the net amount of wages received by workers should in all cases be sufficient to ensure a decent living income for themselves and their families.

Lastly, all relevant information regarding the grounds on which and the extent to which wages may be subject to deductions must be communicated in advance to the workers concerned so as to avoid any unexpected decrease in their remuneration which would compromise their ability to support themselves and their household. The preferable means is appropriate references in their contracts of employment or the permanent display of the relevant laws, regulations and internal regulations at the workplace, and in any event by means which ensure that workers have advance notice of the nature and extent of all possible deductions, and are aware of their rights concerning procedural safeguards set out in national law.

Question: A factory fines workers for taking unapproved leave or for not meeting minimum quality standards. Under what circumstances would a policy on fines be inconsistent with ILS?

Answer: The key principles in protection of wages include the following:

1. Deductions of any type, to be lawful, need an appropriate legal basis—national laws or regulations, collective agreements or arbitration awards; individual agreement is not sufficient, nor is unilateral imposition through a company policy.

2. All authorized deductions must be limited so that the net amount of wages received by workers should in all cases be sufficient to ensure a decent living income for themselves and their families.

3. All relevant information regarding the grounds on which and the extent to which wages may be subject to deductions must be communicated in advance to the workers concerned so as to avoid any unexpected decrease in their remuneration which would compromise their ability to support themselves and their household. The preferable means is appropriate references in their contracts of employment or the permanent display of the relevant laws, regulations and internal regulations at the workplace, and in any event by means which ensure that workers have advance notice of the nature and extent of all possible deductions, and are aware of their rights concerning procedural safeguards set out in national law. See Protection of Wages Convention (No. 95) and Recommendation (No. 85), 1949.

Question: Does a worker have the right to appeal a decision to discipline?

Answer: The relevant ILS depend on the specific potential punishment.

In cases where the disciplinary procedure results in deductions from wages, the CEACR, discussing the Protection of Wages Convention, has noted that in countries that authorize disciplinary deductions from wages, the national legislation also contains provisions guaranteeing the procedural fairness of the disciplinary action such as requiring written notification of the worker or recognizing the right to lodge an appeal.

In cases resulting in termination of employment, workers should have the right to appeal, within a reasonable amount of time, against that termination to an impartial body, such as a court, labour tribunal, arbitration committee or arbitrator.

More generally, any worker should have the right to submit a grievance without suffering prejudicial consequences, and to have it examined according to appropriate procedures. A perceived unfair disciplinary proceeding could constitute a grievance if it concerns the employer-worker relationship or is likely to affect the conditions of employment of one or more workers in the enterprise, if the situation appears to be contrary to the provisions of a collective agreement, individual employment contract, national laws or other rules.

Question: A facility has a policy requiring its employees to provide advance notice of resignation beyond what is legally required; if an employee resigns sooner than the amount of time specified in the policy, the company will deduct a certain percentage of the employee's wages. Employees that are terminated by the facility during the probationary period are not paid their wages for the days worked. Employees that resign by their own

choice during their probationary period are not paid their wages for the days worked. Is this okay?

Answer: Notice requirements are balancing the right of workers to leave employment when they so desire with the right of the employer to a reasonable period of time to identify a replacement worker. Notice requirements are set by national law, as it is for the government, ideally in consultation with the workers' and employers' organizations, to determine the appropriate balance between these competing rights. Workers and companies both should abide by the notification provisions in national law. Any penalties imposed on workers for failure to give the legally required minimum notice should be set according to national law, which company policy should respect.

The probationary period is providing the employer and worker a period of time for either or both sides to determine if the worker is suitable for the job, and if the job is suitable for the worker. If either decides that the fit between worker and job is not right, they are free to stop the working relationship at any time during this period, subject to notice provisions, and should not incur a penalty for exercising this right. Withholding wages that the worker has earned when the employer exercises this right is not forced labour (e.g., Forced or Compulsory Labour Convention (No. 29); Abolition of Forced Labour Convention (No. 105). However, it is inconsistent with provisions on protection of wages, Protection of Wages Convention (No. 95) and Recommendation (No. 85), 1949. Workers should be remunerated for days worked, regardless of whether the employer choses to terminate the employment relationship. Withholding wages to deter or penalize a worker for exercising his or her right to terminate the employment relationship is coercive, and contradicts the purpose of a probationary period.

Question: Some of our sites/companies are offering loans to employees as part of our employee care programme. To make sure the good initiative does not turn into something negative, we are looking at forming a policy to avoid incidents that would be regarded as bonded labour, obstruction to freedom of movement and that the instalment payments result in the daily wage falls below minimum wage.

Answer: The policy should clarify that wage advances and loans to employees should not be used as a means to bind workers to employment. Advances and loans should not exceed the limits prescribed by national law. Deductions from wages made for the repayment of a loan should not exceed the limits prescribed by national law. Workers should be informed of the terms and conditions surrounding the granting and repayment of advances and loans.

Internet access

Question: I am an oceangoing Chief Officer, and have been working on ships for the last 5 years. Each employment contract is based on 4-5 months and this is also the period of separation from family and loved ones. Many vessels do not have Internet connections which makes communication with family very difficult. Are there International Instruments

that underline the need for the employer to provide crew on ships with regular Internet access?

Answer: The ILS that addressees the issue of internet access, which you may find useful in your discussions with management is the Maritime Labour Convention. Guideline B3.1.11 – Recreational facilities, mail and ship visit arrangements – states the following:

1. Recreational facilities and services should be reviewed frequently to ensure that they are appropriate in the light of changes in the needs of seafarers resulting from technical, operational and other developments in the shipping industry.

4. Consideration should also be given to including the following facilities at no cost to the seafarer, where practicable:

(j) reasonable access to ship-to-shore telephone communications, and email and Internet facilities, where available, with any charges for the use of these services being reasonable in amount.

Q&As on business and working time

Working hours

Question: What are the ILO provisions concerning working time?

Answer: Multinational enterprises operating in developing countries are encouraged in general to offer the best possible conditions of work, including working time, within the framework of government policies. These conditions should be related to the economic position of the enterprise (see ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (MNE Declaration), paragraph 34).

MNEs are encouraged to progressively reduce the normal hours of work from 48 hours to 40 hours, taking into account national conditions and practice, as well as the conditions in the particular sector of operation, in order to avoid any reduction in wages (see Reduction of Hours of Work Recommendation, 1962 (No 116), paragraphs 1, 2 and 4. R. 116 is cited in the MNE Declaration). In progressively reducing hours of work, the following considerations should be taken into account:

- *the level of economic development attained and the extent to which the country is in a position to bring about a reduction in hours of work without reducing total production or productivity, endangering its economic growth, the development of new industries or its competitive position in international trade, and without creating inflationary pressures which would ultimately reduce the real income of the workers;*
- *the progress achieved and which it is possible to achieve in raising productivity by the application of modern technology, automation and management techniques;*
- *the need in the case of countries still in the process of development for improving*

the standards of living of their peoples; and

- *the preferences of employers' and workers' organizations in the different branches of activity concerned as to the manner in which the reduction in working hours might be brought about (R. 116, paragraph 19).*

With overtime, this limit could extend to 48 hours; but such overtime should be an exception to the recognized rules or custom of the establishment (R. 116, paragraph 11). Any overtime worked should be remunerated at higher rates than normal working hours (R. 116, paragraph 19(1)). In arranging overtime, due consideration should be given to persons under 18 years of age, pregnant women, nursing mothers and people with disabilities (R. 116, paragraph 18).

Workers, in particular through their representatives, should be consulted in addressing how to progressively reduce hours of work (R. 116, paragraph 20(1)).

National employers' and workers' organizations may also be a good source of information on national law, regulation and collective bargaining agreements pertaining to working time law and practice.

Question: What is the meaning of the "reference periods" mentioned in paragraph 12(2) of The Reduction of Hours of Work Recommendation No. 116?

Answer: Paragraph 12(2) of the Reduction of Hours of Work Recommendation No. 116 refers to the maximum reference period over which averaging of hours of work may be permitted. The maximum reference period is the basis on which hours of work are averaged to allow a more flexible approach to fixing a limit to hours of work per week. Averaging is permitted on condition that:

- it is an exceptional case;
- there is an agreement between the workers' and employers' organizations; and
- this agreement has been transformed into regulations by the competent authority. authority (Hours of Work (Industry) Convention, 1919 (No. 1), Article 5. A similar provision is found in Hours of Work (Commerce and Offices) Convention, 1930 (No. 30), Article 6.)

Reference periods can be three-month, six-month or even 12-month.

Question: What are the maximum hours of work per week allowed under ILO standards for shift workers?

Answer: The relevant ILS set a limit on normal (pre-overtime) hours of eight per day and 48 hours per week (see Hours of Work (Industry) Convention, 1919 (No. 1), Article 2; and Hours of Work (Commerce and Offices) Convention, 1930 (No. 30), Article 3) or 40 hours per week (see Forty-Hour Week Convention, 1935 (No. 47), Article 1(a). The introduction of the 40- hour work week should not result in a reduction in the standard of living for workers). Governments are encouraged to progressively reduce the normal hours of work from 48 hours to 40 hours, taking into account national conditions and practice in order to avoid any reduction in wages (see, Reduction of Hours of Work Recommendation, 1962 (No 116), paragraphs 1, 2 and 4).

The eight-hour day and 48 hour week may be exceeded, provided that the average number of hours over a three-week period does not exceed eight hours per day and 48 hours per week (C. 1, Article 2(c)). Averaging of work hours over a reference period of three weeks is permissible in case of shift work (ibid, Article 2(c)); and the eight-hour-day and 48-hour-week limits may be exceeded in case of continuous processes working by a succession of shifts where a 56-hour weekly maximum limit may be applied (Ibid, Article 4).

The Committee of Experts noted in its 2005 General Survey Hours of Work: "While international standards with respect to hours of work are required to provide effective protection for workers, the government reports and the information provided by the social partners reveal that Conventions Nos. 1 and 30 do not fully reflect modern realities in the regulation of working time. In fact, there are elements of the Conventions that are clearly outdated. Perhaps the most obvious is the 56-hour limit on continuous shift work contained in Article 4 of Convention No. 1. None of the countries that responded to the survey impose such a limit on continuous shift working. At the same time, many counties have introduced legal limits that are more favourable to workers than the generally applicable limit on working hours. In Norway, for example, the 40-hour limit is reduced to 36 hours for continuous shift workers, and the same limit applies in Paraguay rather than its ordinary 48-hour limit" (2005 General Survey Hours of Work, paragraph 322).

Shift workers are also subject to temporary exceptions in exceptional cases of pressure of work, accident, force majeure, and urgent repair work (C. 1, Articles 3 and 6); averaging of work hours over an undefined period, but only in exceptional cases and where there is an agreement between the workers' and employers' organizations which has been transformed to regulations by the competent authority (C. 1, Article 5).

Finally, work that is "inherently intermittent" is permitted as a permanent exception to the general eight-hour day and 48-hour week limits (Hours of Work (Commerce and Offices) Convention, 1930 (No. 30), Article 7(1)(a)) are permissible on condition that the competent authority issues regulations determining the number of additional hours of work which may be allowed in the day, after consultations with the employers' and workers' organizations.ention, 1930 (No. 30), Article 3.

Question: Are 24-hour shifts consistent with ILS?

Answer: Working 24 hours per shift would not be consistent with the principles of ILS concerning working time.

The relevant ILS set a limit on normal (pre-overtime) hours of 8 per day and 48 hours per week (see Hours of Work (Industry) Convention, 1919 (No. 1), Article 2; and Hours of Work (Commerce and Offices) Convention, 1930 (No. 30), Article 3). The eight-hour day may be exceeded in the case of shift work (C. 1, Article 2(c)), provided that the average number of hours over a three- week period does not exceed eight hours per day and 48 hours per week (C. 1, Article 2(c)).
In cases where the nature of the production process requires that it be carried on continuously by a succession of shifts, a 56-hour weekly maximum limit on average may be applied (C. 1, Article 4), but only in exceptional cases where it is recognized that the normal limits to hours of work cannot be applied.

Work that is "inherently intermittent" is permitted as a permanent exception to the general eight-hour day and 48-hour week limits (Hours of Work (Commerce and Offices) Convention, 1930 (No. 30), Article 7(1)(a)). on condition that the competent authority issues regulations determining the number of additional hours of work which may be allowed in the day, after consultations with the employers' and workers' organizations.

The relevant conventions also allow temporary exceptions in exceptional cases of pressure of work, accident, force majeure, and urgent repair work (C. 30, Articles 3 and 6); averaging of work hours over a period exceeding one week, but only in exceptional cases and where there is an agreement between the workers' and employers' organizations which has been transformed to regulations by the competent authority (C. 30, Article 5). Therefore it is important to check national law provisions concerning the limit on hours of work for shifts.

The national employers' and workers' organizations in the countries of operation may be able to provide further information.

Question: Which ILO convention, if any, provides guidance on hours of work for producersof agricultural and or horticultural products worldwide?

Answer: ILS do not give specific guidance on hours of work in agriculture. Instead, they leave to the competent authority in each country to determine the appropriate limits, in consultation with the national employers' and workers' organizations.* Therefore it is important to check national law and any collective agreements which may exist in the countries in which you are operating.

The ILO Code of Practice on Safety and Health in Agriculture contains a section on hours of work which provides the following guidance:

- 19.2. Working hours.
- 19.2.1. The pace of agricultural work has increased with the use of task rates and piecework. Long hours of work, particularly intense manual labour, contribute to workers' fatigue and lead to accidents on the job.
- 19.2.2. Daily and weekly working hours should be arranged so as to provide adequate periods of rest which, as prescribed by national laws and regulations, or approved by labour inspectorates or collective agreements, where applicable, should include:
  - (a) short breaks during working hours, especially when the work is strenuous, dangerous or monotonous, to enable workers to recover their vigilance and physical fitness;
  - (b) sufficient breaks for meals;
  - (c) daily or nightly rest of not less than eight hours within a 24-hour period; and
  - (d) weekly rest of at least a full calendar day.
- 19.2.3. Extended workdays (over eight hours) should be contemplated only if:
  - (a) the nature of the work and the workload allow work to be carried out without increased risk to safety and health; and
  - (b) the shift system is designed to minimize the accumulation of fatigue.

The national employers' and workers' organizations in the countries of operation may be able to provide further information. The International Global Union Federation for workers in the agricultural sector is the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF).

* The Hours of Work (Industry) Convention, 1919 (No. 1) states in Article 1, paragraph 3, that "competent authority in each country shall define the line of division which separates industry from commerce and agriculture." The Safety and Health in Agriculture Convention, 2001 (No. 184) states in Article 20 that hours of work, night work and rest periods for workers in agriculture should be in accordance with national laws and regulations or collective agreements.

Question: Does the ILO Hours of Work (Industry) Convention, 1919 also apply for producers of agricultural and or horticultural products worldwide. If not which ILO convention is applicable for abovementioned producers?

Answer: ILS do not give specific guidance on hours of work in agriculture. Instead, they leave to the competent authority in each country to determine the appropriate limits, in consultation with the national employers' and workers' organizations.[1] Therefore it is important to check national law and any collective agreements which may exist in the countries of operations. The ILO Code of Practice on Safety and Health in Agriculture contains a section on hours of work which provides the following guidance:

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(c) daily or nightly rest of not less than eight hours within a 24-hour period; and

(d) weekly rest of at least a full calendar day.

19.2.3. Extended workdays (over eight hours) should be contemplated only if:

(a) the nature of the work and the workload allow work to be carried out without increased risk to safety and health; and

(b) the shift system is designed to minimize the accumulation of fatigue.

[1] The Hours of Work (Industry) Convention, 1919 (No. 1) states in Article 1, paragraph 3, that "competent authority in each country shall define the line of division which separates industry from commerce and agriculture." The Safety and Health in Agriculture Convention, 2001 (No. 184) states in Article 20, that hours of work, night work and rest periods for workers in agriculture should be in accordance with national laws and regulations or collective agreements.

Working hours – Overtime

Question: We respect the limit of 48 hours/maximum 12 hours overtime a week on a non-regular basis but our employees (mainly migrant workers) constantly push for more work as their sole interest is to earn as much as possible before returning home. Some workers will even look for extra work at other workplaces. This is a true dilemma for us. What are your recommendations?

Answer: The problem of long working hours and the need for adequate rest is vitally important for both workers and managers. Excessive working hours can cause sleep disturbance and fatigue, cardiovascular, gastro-intestinal and mental health disorders. Fatigue can contribute to a higher incidence of accidents and injuries, as well as decreased productivity and poorer quality.

The main responsibility of any enterprise is to obey the national law. The ILO also encourages companies to follow the principles set out in the ILS. You may wish to have a dialogue with workers about their motivations for seeking extra working hours. In the discussion management could convey its concerns about the safety and health risks involved in working long hours.*

Below are a range of different factors motivating workers to seek more hours of work. These may help stimulate your thinking about what solutions may be most appropriate for your particular situation.

It may be that the workers really want to earn an adequate income; after they reach the expected level of earnings they begin to choose more leisure. In such cases, increasing workers' total earnings in fewer hours through improving their productivity and income is the answer. Employers' with superior technology and work organization can succeed in reducing hours of work through increased earnings per hour, while still remaining competitive. However, given the competitive pressures facing any particular enterprise, the challenge of raising wages to curb worker demand for more hours is best tackled on an industry-wide or national basis.

In some cases, demand for longer work hours comes not only from the workers, but also, or even primarily, from the local management. In such cases, there is a perception on the part of management that excessive overtime is cost-effective because even though worker productivity drops off significantly after ten or 12 hours of work it is still more productive than having the machines sit idle. In case of wanting to maintain continuous production, a potential answer is for factories to go to shift work, which eliminates machine downtime. However, such a change needs to be done in close consultation with the workers, as those workers put onto night shifts will be greatly affected. It is recommended to establish a collective agreement to determine issues such as shift rotation, resting time, compensation, OSH concerns, etc.; and in all cases to have good communication with the workers before initiating the change, as well as an effective change management process for helping all parties to adjust.

Lastly, another factor which may be affecting workers' choices is their options. Many

migrant workers live in very poor conditions, with virtually no leisure activities. Supplying workers with adequate housing may do a lot to decrease worker demand for more hours and dissuade workers from moonlighting at other factories.

It may be that your enterprise's situation is not related to any of these factors. This is why it is important to have a preliminary dialogue with the workers rather than assuming any particular motivations, in order to have an effective response.

*A tool which might be helpful is: Working time: Its impact on safety and health, by A. Spurgeon.

Question: Does compulsory overtime constitute forced labour?

Answer: The imposition of overtime does not constitute forced labour as long as it is within the limits permitted by national legislation or collective agreements. Above those limits, it is appropriate to examine the circumstances in which a link arises between an obligation to perform overtime work and the protection against forced labour.*

In cases in which work or service is imposed by exploiting the worker's vulnerability, under the menace of a penalty, dismissal or payment of wages below the minimum level, such exploitation ceases to be merely a matter of poor conditions of employment and becomes one of imposing work under the menace of a penalty and calls for protection.

* General Survey concerning the Forced Labour Convention, 1930 (No. 29) and the Abolition of Forced Labour Convention, 1957 (No. 105), 2007, paragraph 132.

Question: Is there any guidance on the limit of overtime if the competent authority in a country does not place any limits on it?

Answer: The ILO Reduction of Hours of Work Recommendation, 1962 (No 116) sets out in the preamble the overall objective of the progressive reduction of hours of work to the standard of the 40-hour week without reducing wages (ibid). It takes into account differing economic and social conditions (R. 116, preamble) and variations in national practices; allows country-specific and industry-specific practices (see, R. 116, paragraph 1), and takes into account the need to improve living standards (R. 116, paragraph 7) .

However, in cases where the normal working week exceeds 48 hours, "immediate steps should be taken to bring it down to this level without any reduction in the wages of the workers" (R. 116, paragraph 5). The Committee of Experts has addressed the question of the maximum overtime hours permitted under the provisions allowing permanent or temporary exceptions (General Survey Hours of Work, 2005, ILO, Geneva, paragraphs 143-145).

The Committee of Experts has addressed the question of the maximum overtime hours permitted under the provisions allowing permanent or temporary exceptions (General

Survey Hours of Work, 2005, ILO, Geneva, paragraphs 143-145):

- Neither Convention No. 1 nor Convention No. 30 prescribes any specific limits to the total number of additional hours which may be worked during a specified period in case of permanent or temporary exceptions. Convention No. 1 merely states that the maximum of additional hours in each instance of exceptions shall be fixed by regulations made by public authority. Similarly, under Convention No. 30except in the case of a temporary exception in case of accident, force majeure or urgent work, regulations made by the public authority shall determine the number of additional hours of work which may be allowed in the day and, in respect of temporary exceptions, in the year.
- In the light of the above, when deciding what should be considered as a "reasonable" limit on the number of additional hours in case of a certain exception, the public authority should make a thorough evaluation of the intensity of the respective work, its ability to produce physical or mental fatigue, and of possible negative consequences of fatigue for the respective employee and the public at large. The higher the intensity of the work, the higher is its ability to produce fatigue. The more serious the negative consequences of such fatigue could be, the lower would be a "reasonable" limit that should be allowed in case of a particular exception.

Question: If factory rules and regulations contain a mandatory overtime policy, what are the circumstances under which this would or would not be considered forced labour?

Answer: A factory's overtime policy should comply with national law and applicable collective agreements. The obligation to do overtime work is not considered forced labour if it stays within the limits permitted by national legislation or specified in relevant collective agreements. Forced labour occurs if overtime exceeds the weekly or monthly limits allowed by law and is made compulsory by threats of a penalty, irrespective of the reasons for such overtime.

Any threats of fines for refusing to work overtime which effectively deter workers from declining to work overtime beyond legal limits would also be of concern. If the workers perceive a company policy of issuing fines for not working overtime exceeding legal limits as such a threat, this could be considered forced labour. Furthermore, the ILO CEACR has noted that in some cases the menace may be more subtle. Fear of dismissal may drive employees to work overtime beyond what is allowed by national law; in other cases, workers may feel obliged to work above the legal maximum because this is the only way they can earn the minimum wage (for example, where remuneration is based on productivity targets). In these cases, although in theory workers may be able to refuse to work, their vulnerability may mean that they have no choice and are therefore obliged to do so in order to earn the minimum wage or keep their jobs, or both. This then becomes a situation of imposing work under the menace of a penalty and can be considered forced labour.

Rest periods – Weekly rest

Question: Are there any standards on the duration of rest periods?

Answer: The ILS have only a few guiding provisions concerning rest periods. Rest periods are defined as periods during which the persons employed are not at the disposal of the employer (Hours of Work (Commerce and Offices) Convention, 1930 (No. 30), Article 2). Employers' should post conspicuously in the establishment the rest periods which are not included in the hours of work (Ibid, Article 11(2)(b)). There should be no discrimination in rest periods allowed (Discrimination (Employment and Occupation) Convention, 1958 (No. 111), Article 1, paragraph 3 and Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111), paragraph 2(b)(vi)). Employers' should take into account the need for more flexible arrangements regarding rest periods, for workers with family responsibilities (see Workers with Family Responsibilities Recommendation, 1981 (No.165), paragraph 18(b)).

National employers' and workers' organizations may also be a good source of information on national law, regulation and collective bargaining agreements pertaining to rest periods in national law and practice.

Question: Does a worker belonging to a religious minority have a right to a day of rest that differs from the customary day of rest?

Answer: The day of weekly rest should be fixed, wherever possible, so as to coincide with the days already established by the traditions or customs of the country or district.* The traditions and customs of religious minorities should, as far as possible, be respected (C. 106, Article 6(4)).

The national employers' and workers' organizations may have some suggestions about how to accommodate religious minorities in the communities in which your company is operating.

*The Weekly Rest in Industry Convention, 1923 (No. 14) states in Article 2(3) that weekly rest should "wherever possible, be fixed so as to coincide with the days already established by the traditions or customs of the country or district." The Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106) provides in Article 6(3): "The weekly rest period shall, wherever possible, coincide with the day of the week established as a day of rest by the traditions or customs of the country or district."

Paid holidays

Question: What are the provisions in ILS for paid leave?

Answer: The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy does not specifically address holidays with pay, speaking only of benefits and conditions of work generally. It encourages MNEs to provide benefits not less favourable to workers than those offered by comparable employers in the country concerned (MNE Declaration, paragraph 33). Where no comparable employers' exist, MNEs are encouraged to provide the best possible benefits and conditions of work, within the framework of government policies and related to the economic position of the workers and their families (MNE Declaration, paragraph 34).

The Holidays with Pay (Revised) Convention, 1970 (No. 132) specifies a minimum of three working weeks for one year of service (Holidays with Pay (Revised) Convention (No. 132), Article 3(3)). This would amount to either 15 or 18 days, depending on the length of the work week.

Minimum service may be required for entitlement, but should not exceed six months (C. 132, Article 5(2)). Employees whose service is less than one year (calendar year or equivalent length) should be granted a proportionate period of paid leave (C. 132, Article 4).

Employees should receive in respect of the full period of that holiday at least his or her normal or average remuneration (including payments in kind or cash equivalent) (C. 132, Article 7).

Leave may be divided into parts, but with one part consisting of a minimum of two uninterrupted weeks (C. 132, Article 8(2)).

Question: How should we deal with national legislation which provides that new employees have less than three weeks of paid vacation, but the amount increases based on seniority of employees?

Answer: The Holidays with Pay (Revised) Convention, 1970 (No. 132) specifies a minimum of three working weeks for one year of service (C. 132, Article 3(3)). This would amount to either 15 or 18 days, depending on the length of the work week.

This minimum applies to all employed persons (see C. 132, Article 2(1)) regardless of seniority. Paid leave is not just a reward for service; it is a key means of promoting the health and well-being of the worker and in many countries helps workers to meet their family responsibilities. Therefore the minimum of three weeks specified in the Convention applies to all workers, although minimum service may be required for entitlement, but should not exceed six months (C. 132, Article 5(2)).

The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy encourages MNEs to provide benefits not less favourable to workers.

than those offered by comparable employers' in the country concerned (see MNE Declaration, paragraph 33). Where no comparable employers' exist, MNEs are encouraged to provide the best possible benefits and conditions of work, within the framework of government policies and related to the economic position of the workers and their families (MNE Declaration, paragraph 34).

Question: How should we count paid leave in relation to sick leave?

Answer: The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy does not hold a specific reference to holidays with pay, speaking only of benefits and conditions of work generally. It encourages MNEs to provide benefits not less favourable to workers than those offered by comparable employers' in the country concerned (MNE Declaration, paragraph 33).

Where no comparable employers exist, MNEs are encouraged to provide the best possible benefits and conditions of work, within the framework of government policies and related to the economic position of the workers and their families (MNE Declaration, paragraph 34).

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Absence from work due to illness, injury or maternity should be counted as part of service (C. 132, Article 5(4)).

Periods of sickness or injury generally should not be counted as part of the holidays with pay, but the convention leaves discretion to determine the conditions (C. 132, Article 6(2)). Paid holidays granted in excess of the three week minimum may take sick leave into account, so long as the prescribed three week minimum is available to every worker every year.

Sick leave or other interruptions of work related to illness or accident may be counted as part of the minimum annual holiday in conditions to be determined by the competent authority. At the enterprise level, it might be appropriate to clearly delineate these conditions in full consultation with the representative workers organization.

Question: How should we count paid leave in relation to public/customary holidays?

Answer: The Holidays with Pay (Revised) Convention, 1970 (No. 132) specifies a minimum of three working weeks for one year of service (C. 132, Article 3(3)). This would amount to either 15 or 18 days, depending on the length of the work week.

Public or customary holidays should not be counted as part of the three week minimum annual holiday with pay (C. 132, Article 6(1)). Paid holidays granted in excess of the three week minimum may take public or customary holidays or sick leave into account, so long as the prescribed three week minimum is available to every worker every year.

The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy encourages MNEs to provide benefits not less favourable to workers than those offered by comparable employers' in the country concerned (see MNE Declaration, paragraph 33).

Where no comparable employers' exist, MNEs are encouraged to provide the best possible benefits and conditions of work, within the framework of government policies and related to the economic position of the workers and their families (MNE Declaration, paragraph 34).

Question: What is the ILO's labour standard on working hours and overtime for young persons (under 18 years old but above 16 years old)?

Answer: Measures should be taken to ensure that the conditions in which young persons under the age of 18 years are employed are supervised closely. This includes:

- "strict limitation of the hours spent at work in a day and in a week, and the prohibition of overtime, so as to allow enough time for education and training (including the time needed for homework related thereto), for rest during the day and for leisure activities" and

- "the granting, without possibility of exception save in genuine emergency, of a minimum consecutive period of 12 hours' night rest, and of customary weekly rest days."

In determining whether work is hazardous, consideration should be given to whether it is performed "under particularly difficult conditions such as work for long hours." The minimum age for hazardous work is 18 years of age.

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