Principle 4: Freedom to Change Employment Is Respected

Workers are free to refuse their contract; cancel and change their employment; and, where appropriate, return home travel at the end of their employment contract should be provided.

Introduction

Applying the Building Responsibly principles in practice will be unique in every instance. This guidance note offers discussion around the potential issues and challenges faced and offers suggested good practice options for the implementation of each principle in the Key Components for Consideration section.

In countries where the local workforce is limited and in other situations, the construction sector often relies on migrant workers. When workers migrate for work, whether internally or internationally, their right to work and reside in one location can be regulated by administrative requirements. In many places, the award of a visa or work permit may be linked to worker employment contracts, potentially limiting their options to freely change employment. This puts migrant workers in a vulnerable situation that, when associated with other practices such as recruitment fees, delays on payment, or retention of workers’ personal documentation, may result in workers being forced to perform work in a place and under conditions that they would otherwise refuse.

Key Terms and Definitions

» **Forced Labor**: Work or service exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily. This definition consists of three elements:
  - “Work or service” refers to all types of work occurring in any activity, industry, or sector, including in the informal economy.
  - “Threat of a penalty” refers to a wide range of penalties used to compel someone to work. In the construction sector, examples of this include withholding wage or overtime payments to obtain work.
  - “Offered himself or herself voluntarily” refers to the free and informed consent of a worker to take a job and his or her freedom to leave at any time.

» **Reasonable notice**: The notice period is the time that workers must continue working for their employers after they resign or are dismissed. Unless mentioned in an applicable collective or individual agreement, workers and employers are expected to give each other reasonable notice before severing their employment relationship. There is no common agreement on how long a reasonable notice period is, but it can reflect factors such as worker’s skills, seniority, or length of service.

» **Workers’ Personal Documentation**: Workers’ personal documentation in this context refers to identity documents such as workers’ passports or any other forms of identification, driving license, work permits, and bank cards or other financial, vocational or academic documentation.
Key Challenges

Managing Restrictive Laws
Some jurisdictions require workers to secure approval from their employer to change jobs or exit the country. This puts companies in a position where, by following the law, they can impose restrictions on workers’ right to work and freedom of movement.

Implementing Adequate Immigration Procedures
Employers that are not implementing immigration procedures adequately (visa, work permits, etc.) may leave their employees “undocumented.” If they lack documentation, migrant workers may be considered illegal by local authorities and deported at any time.

Reflecting the True Cost of Recruitment
When workers exercise their right to change employment early in the employment contract, companies that have implemented good recruitment processes and paid for medical examinations, training, pre-departure seminars, skill tests, visas and airfare, etc. may not be able to recover these costs.

Key Components for Consideration

☑ Companies should allow workers to leave the work relationship and terminate the employment contract provided that workers give reasonable notice in accordance with national law, the collective agreement, or their employment contract.

☑ Companies should not levy administrative or financial penalties when workers terminate their contract early in accordance with national law, the collective agreement, or their employment contract.

☑ Companies should provide workers with access to all their savings and, in some circumstances, assistance with repatriation, even when workers terminate their contract early in accordance with national law, the collective agreement, or their employment contract.

☑ Companies should not prevent or hinder workers from seeking employment or from changing employment in the host country by placing restrictions that go beyond national law.

☑ Companies should assist workers in finding new work or should provide a proper compensation package in case of layoffs, including the costs of returning home for migrant workers.

☑ Companies should not retain workers’ personal documentation as this may prevent workers from leaving their jobs or changing employers freely and may make workers more vulnerable to exploitation.

☑ Companies should implement all worker-related administrative tasks in due time to minimize the risk for workers of finding themselves in a restricted or illegal situation, which could create difficulties for workers when seeking new employment.
Tools and Resources

- ILO Recommendation No. 188 on Private employment agencies
- Combating forced labour: A handbook for employers and business
- Guiding Principles on Business and Human Rights (principle 12, 19)
- Dhaka Principles for Migration with Dignity (principle 10)
- A Guide to Implementing the Dhaka Principles
- Sedex, Guidance on Operational Practice and Indicators of Forced Labour
- IPIECA: Responsible Recruitment and Employment Guidance Document

About Building Responsibly

Building Responsibly is a group of leading engineering and construction companies working together to raise the bar in promoting the rights and welfare of workers across the industry. We have come together to foster and ensure a better working environment for workers in the engineering and construction sector. Doing so will allow us to more effectively respond to client, stakeholder, and regulatory expectations and manage a healthier, more productive workforce.

For more information and resources to support implementation of these Principles, visit www.building-responsibly.org.

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