

# ADDRESSING RISKS OF FORCED LABOR IN SUPPLY CHAINS:

## *Protecting Workers from Unfair Restrictions on their Freedoms at Work*

**W**ith increasing attention to forced labor, trafficking, and modern slavery issues throughout supply chains, including new laws and regulations,<sup>1</sup> FLA-affiliated companies continue to exercise their long-standing commitment to protecting workers from such violations in their manufacturing facilities, even as the most proactive companies also investigate how to enforce this commitment at deeper levels of the supply chain.

FLA standards on forced labor — incorporated into the FLA program since its inception in 1999 — detail more than a dozen indicators for companies evaluating whether their suppliers or producers are upholding their human rights commitments, and can be useful at any supply chain level.<sup>2</sup>

This brief will focus on best practices for identifying and eradicating forced labor at the supplier level. It will explain the indicators of forced labor as incorporated into the FLA code, provide examples of risks and violations reported by the FLA's on-the-ground assessors, and offer recommendations of proactive and cooperative steps that brands can take to ensure suppliers do not engage in or tolerate trafficking and forced labor.

Beyond the basic requirement that “workers shall have the right to enter into and to terminate their employment freely,” and the clear prohibitions on “prison labor [and] bonded labor,” FLA standards also require that workers must have reasonable freedom

of movement at work, must not be bound to their jobs by debt, and may not be forced to work overtime involuntarily. Companies assessing entire supply chains against these standards — and working to remediate the violations they find — are well adapted to an evolving global environment in which governments, consumers, and civil society, are raising increasing concerns about companies' connections to human trafficking and modern slavery.

For example, in April of 2017, the advocacy organization Know the Chain<sup>3</sup> evaluated companies in three industry sectors — apparel and footwear, food and beverage,



### Code Element: Forced Labor

There shall be no use of forced labor, including prison labor, indentured labor, bonded labor or other forms of forced labor.

<sup>1</sup> In recent years, the US, UK, and other countries have amended or passed regulations requiring greater transparency by companies of the forced labor risks in their supply chains and disclosure of their efforts to combat these risks. See [http://www.fairlabor.org/sites/default/files/images/supply\\_chain\\_traceability\\_and\\_transparency\\_june\\_2017.pdf](http://www.fairlabor.org/sites/default/files/images/supply_chain_traceability_and_transparency_june_2017.pdf)

<sup>2</sup> Find the complete FLA Workplace Code of Conduct and all compliance benchmarks at <http://www.fairlabor.org/our-work/labor-standards>.

<sup>3</sup> <https://knowthechain.org/forced-labor-action-compared-findings-from-three-sectors/>



## Code Element: Hours of Work

Employers shall not require workers to work more than the regular and overtime hours allowed by the law of the country where the workers are employed. The regular work week shall not exceed 48 hours. Employers shall allow workers at least 24 consecutive hours of rest in every seven-day period. All overtime work shall be consensual. Employers shall not request overtime on a regular basis and shall compensate all overtime work at a premium rate. Other than in exceptional circumstances the sum of regular and overtime hours shall not exceed 60 hours.

and communications technology — publicly reporting on the extent of their efforts to eradicate forced labor. And the Interfaith Center on Corporate Responsibility (ICCR) has maintained a “No Fees” Initiative in recent years, encouraging companies across many industries to pledge that they will forbid workers to be charged recruitment fees in their supply chains, to prevent the risk of bonded labor.<sup>4</sup>

The FLA and our affiliates believe no worker should be unable to leave a job at will because of the burden of a heavy recruitment debt to an employer. No migrant worker should have

to worry about being able to return home freely because an employer is withholding a passport, other important legal documents, or workers’ wages. And no worker should have to risk termination because they are unable to work involuntary overtime or choose not to. Below we explain some of the most common forced labor findings reported by FLA assessors in recent years as part of our effort to increase awareness of forced labor indicators, and to remind our affiliates of their commitments and obligations on this important issue:

<sup>4</sup> <http://www.iccr.org/no-fees-initiative>

## 1. Mandatory Overtime:

### BENCHMARKS



**Forced Labor, 8** – The imposition of overtime where workers are unable to leave the work premises constitutes forced labor.



**Hours of Work, 8.5** – Employers shall enact a voluntary overtime system, including for overtime mandated to meet exceptional circumstances.

The FLA Code requires that all overtime be consensual and voluntary, with no punitive consequences for workers who refuse overtime, “including for overtime mandated to meet exceptional circumstances.” In recent years, FLA assessors have found violations of this standard in factories in China, Jordan, Vietnam, Turkey, and the U.S. In these cases, brands should require that suppliers remove any mandatory overtime requirements written into the factory’s policies and procedures, and ensure that workers and managers are trained on the principle that workers must not be compelled to work involuntary overtime. Brands should also be aware that mandatory overtime is often linked to further violations, such as failure to provide workers with one rest day in every seven, violations of legal limits on working hours for young workers and pregnant women, or workers not being compensated for their work at premium overtime rates.



In some cases, the presence of a mandatory overtime policy may indicate a more systemic problem with a factory’s production planning and hours of work management. For example, in some factories where assessors have found workers threatened with termination if they refuse to work overtime, they have also found factory management regularly

planning for a production schedule of 50 to 55 hours (or more) per week for workers. In addition to adjustments at the factory level, such violations may also require brands to collaborate with suppliers to achieve a working environment that meets our agreed upon standards for hours-of-work and fair compensation.

## 2. Production Targets Too High:

### BENCHMARKS



**Forced Labor, 7.5** – Employers shall not utilize practices that restrict workers’ freedom of movement ... [such as] setting production targets or piece rates at such a level that workers need to work beyond regular working hours (excluding overtime) as set under the FLA Workplace Code in order to make the legal minimum wage or the prevailing industry wage.

need to work beyond regular working hours as set under the FLA Workplace Code, excluding overtime, in order to make at least the minimum wage or the prevailing industry wage, whichever is higher.



**Compensation, 7.3** – Employers shall not set production targets, piecework, or any other incentive or production system at such a level that the payment for overtime work performed is less than the premium pay required by law or the FLA Workplace Code.



**Employment Relationship, 24** – Employers shall not set production targets, piece rates or any other incentive or production system at such a level that workers

FLA standards prohibit employers from setting piece-rate production targets so high that employees must work overtime to earn the equivalent of the legal minimum wage. For example, one FLA assessment in Haiti found that a factory’s piece-rate was set so high that workers took 9.5 hours to sew enough garments to earn an amount equal to eight hours compensated at the local minimum wage. While piece-rate workers may choose to work voluntary overtime hours to increase their pay, adherence to FLA standards requires adjusting piece rates and production targets so that workers putting in a regular workweek, without overtime, can earn wages that can meet their basic needs and provide some discretionary income.

## 3. Recruitment Fees and Wage Advances:

When an employer or recruitment agency imposes recruitment fees or deposit requirements, a worker without enough

money to pay these costs upfront may be provided with a loan by a labor contractor or a wage advance by a factory. Such workers



## BENCHMARKS



### **Forced Labor, 7.2, 7.3, 7.4** –

Employers shall not utilize practices that restrict workers' freedom of movement or ability to terminate his or her employment, [such as] ... requiring deposits, imposing financial penalties, [or] requiring recruitment fees.



### **Employment Relationship, 5.3** –

Employers shall not use employment agencies that rely on practices such as requiring workers to pay recruitment and/or employment fees.



### **Employment Relationship, 6.2** –

Fees associated with the employment of workers shall be the sole responsibility of employers.



### **Employment Relationship, 20.1** –

Wage advances shall not exceed three months pay or legal limits, whichever is less.



### **Non-discrimination, 3.1.3** –

Employers shall ensure that migrant/contract/contingent/temporary workers are compensated directly and in full, without deduction for recruitment fees or any other agency charge for services, such as obtaining residency permits or work visas on behalf of workers.

risk being unable to freely leave their job until all debts are paid — an employment situation tantamount to bonded labor. For this reason, the FLA code requires that workers never be required to pay for their job. They must not be required to pay recruitment costs or fees imposed by labor contractors, employment agencies, or any other entity. If suppliers choose to follow a hiring process that results in recruitment fees — or in cases of unavoidable recruitment costs, such as when pre-employment health examinations are required by law — the employers themselves must bear these costs.

Through assessments of factories and farms around the world, the FLA has found that migrant worker populations are especially vulnerable to recruitment debt that binds them to their jobs. We have found migrant workers who are in debt to their employers or recruiters during agricultural assessments in Turkey, in both agricultural and factory assessments in Southeast Asia, and among the many Asian migrant workers who travel to Jordan for work. Recent FLA assessments in Jordan have found workers charged fees as high as \$526, or nearly two months of wages, and in Malaysia as high as \$975, or more than three months wages.

Similarly, wage advances made after a worker has been hired and started work can create a debt bondage relationship between the worker and employer, since it is not possible for the worker to leave without working off the debt. FLA assessors have reported cases of workers paid up to two years of salary in advance, severely limiting workers' freedom. To reduce the risk of an exploitative employment relationship, FLA benchmarks state that after a worker is hired, wage advances must never exceed three months pay or legal limits, whichever is lower.

## Code Element: Compensation



Every worker has a right to compensation for a regular work week that is sufficient to meet the worker's basic needs and provide some discretionary income. Employers shall pay at least the minimum wage or the appropriate prevailing wage, whichever is higher, comply with all legal requirements on wages, and provide any fringe benefits required by law or contract. Where compensation does not meet workers' basic needs and provide some discretionary income, each employer shall work with the FLA to take appropriate actions that seek to progressively realize a level of compensation that does.





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**Forced Labor, 7.6** – Employers shall not utilize practices that restrict workers' freedom of movement or ability to terminate his or her employment [such as] ... denying and hampering access to, and renewal of, identity papers and/or work permits or any other personal legal documents.



**Forced Labor, 9** – Workers shall retain possession or control of their passports, identity papers, travel documents, and other personal legal documents.



**Forced Labor, 10** – Employers shall provide at employee request secure storage for employees documents such as passports, identity papers, travel documents, and other personal legal documents. Such storage shall be freely accessible to workers. Employers shall not withhold any such documents or restrict workers' access to them for any reason whatsoever, including in order to ensure that workers shall remain in employment in the workplace.



**Employment Relationship, 5.8** – Employers shall not use employment agencies that rely on practices such as retaining possession or control of workers' identification and other documents like passports, identity papers, work permits, and other personal legal documents.

## 4. Control of Employee Documents:

FLA standards require that workers must be permitted to retain possession of all personal identity papers, passports, work permits, and other legal documents, though assessors often find that employers demand that migrant workers hand over their passports to factory management, labor contractors, or recruitment agencies.

In some cases, employers will explicitly require workers to forfeit their personal documents; in other cases, interviews with workers reveal that the pressure to relinquish personal documents may be more subtle. For example, some migrant workers have reported that upon arriving for work in a foreign country, they were not aware of their right to retain their personal documents, and simply followed the example of other workers willingly turning over their passports.

When passports are kept by factory management, workers may not be able to move freely if management will not relinquish the documents, or may be charged travel fees to recover these documents (also forbidden by the FLA code). To protect workers, FLA standards hold brands accountable for ensuring that suppliers clearly inform workers that they may retain their passport and all other documents, and that workers cannot be charged fees or required to leave a deposit to ensure their return to the factory if they choose to travel during time off.

Even when factories can demonstrate that workers gave their consent for the company to hold their passport, such as when workers have signed release forms, workers must be permitted free and easy access to their personal documents at all times.

## 5. Employer-Controlled Residences:

Any employer action that unreasonably holds a worker within an employer-controlled space represents a violation of the FLA Workplace

Code of Conduct. FLA standards require that workers must be free to choose their own housing. Some workers may choose to



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**Forced Labor, 5** – Employers shall not require workers to live in employer-owned or –controlled residences as a condition of recruitment, continued employment, or to received the same terms of employment and working conditions as other workers in the same position. Employers shall not subject workers to any undue influence to persuade workers to live in such residences.



**Forced Labor, 6** – The freedom of movement of workers who live in employer-owned or –controlled residences shall not be unreasonably restricted.

live in company-controlled dormitories during their employment. If they choose the housing offered by the employer, they must remain reasonably free to come and go as they please. FLA assessors have found employers establishing curfew rules for worker housing (prohibiting leaving the dormitory after a certain time of night). Whether workers' freedom of movement is restricted by an employer policy — or as we have observed in some cases through the locking of doors — their rights (and FLA standards) are being violated.

## 6. Timely Payment:

Finally, when workers aren't paid on time, they may fear that they will never receive their payment if they leave their job. Timely payment is important for many reasons, not least because workers' livelihood and the security of their families and dependents rely on the stability of a predictable income. At the same time, timely payment helps ensure that workers' continued employment is freely chosen.

## BENCHMARK



**Compensation, 4** – All wages, including payment for overtime, shall be paid within legally defined time limits. When no time limits are defined by law, compensation shall be paid at least once a month.

## RECOMMENDATIONS

**In recent years**, the FLA has found that most forced labor violations uncovered by factory assessments have related to some form of a mandatory overtime policy, production planning for a regular workweek that requires overtime, or both.<sup>5</sup>

While all forced labor violations are serious all on their own, they also tend to be accompanied by related workplace violations wherever they occur. Piece-rate workers facing unreasonable or impossible production targets may be forced to work unreasonable hours or

accept wages insufficient to meet their needs. Workers forced to pay fees or commissions to labor contractors may net wages lower than the legal minimum. And workers locked in an employer-controlled dormitory, or forced by company policy to live there, may face health and fire-safety risks they could escape, if granted freedom of movement.

<sup>5</sup> The FLA recorded workers facing employment practices like those described in this brief in 18 percent of factories assessed in 2014 and 15 percent of factories assessed in 2015. This is down from 2010, when assessors reported forced-labor findings in 35 percent of factories assessed.



To protect workers from conditions like these, and to lay the groundwork for any necessary remediation, proactive communication between FLA-affiliated brands and their suppliers is key. Brands should:

- ▶ Ensure suppliers understand FLA standards, indicators of forced labor as defined by the International Labour Organization (ILO) and best practices,
- ▶ Ensure that company staff are aware of which parts of the supply chain are at greatest risk for forced labor, such as areas with a high migrant population, or the widespread use of labor contractors and recruitment agencies. Invest in conducting in-depth assessments of the forced labor indicators in the most at-risk locations,
- ▶ Explain in detail to suppliers which workplace practices trigger a forced labor finding, and confirm that suppliers are not engaged in any such practices,
- ▶ Maintain strict policies against retention of workers' legal documents and identification papers and recommend that suppliers retain photocopies of such documents to fulfill their administrative needs,
- ▶ Be prepared to move quickly to remediate any violations found, including potentially difficult-to-negotiate requirements like

repayment of recruitment fees paid by workers whether to employers or recruitment agencies,

- ▶ Be prepared to discuss purchasing and production practices, and to find cooperative solutions whenever suppliers are found to rely on mandatory overtime to meet too-high production targets, and
- ▶ Establish direct-to-worker grievance channels in the native languages of all of employees at a factory or a farm as a recourse for workers to report forced labor violations, especially in workplaces where a migrant worker population may face language barriers on the job,
- ▶ Collaborate with other brands sourcing from the same regions and suppliers to raise awareness about forced-labor issues and to find collective solutions to common findings.

Proactive communication with suppliers alerts them to their buyers' labor requirements within the facilities and farms they manage, and can also provide an opening to discuss how to prevent forced labor abuses with their own suppliers. We encourage robust discussion of the standards and best practices described in this brief to inspire cooperation — at all levels of the supply chain — to eradicate all instances of forced labor. ■







## **RESOURCES FOR FURTHER READING:**

U.S. Department of Labor resources:

**<https://www.dol.gov/ilab/child-forced-labor/index.htm>**

International Labour Organization (ILO)

Fair Recruitment Initiative:

**<http://www.ilo.org/global/topics/fair-recruitment/lang--en/index.htm>**

ILO Report: “Hard to See, Harder to Count”

**[http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_182096.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182096.pdf)**

Interfaith Center on Corporate Responsibility (ICCR)

(guidance on ethical recruitment:

**[http://www.iccr.org/sites/default/files/iccrsbestpracticeguidanceethicalrecruitment05.09.17\\_final.pdf](http://www.iccr.org/sites/default/files/iccrsbestpracticeguidanceethicalrecruitment05.09.17_final.pdf)**

Modern Slavery Registry (company statements):

**<http://www.modernslaveryregistry.org/>**

Alliance 8.7 (initiative to combat modern slavery):

**<http://www.alliance87.org/>**

Know the Chain

(report on company efforts to eliminate forced labor):

**<https://humanityunited.org/uneven-response-forced-labor-apparel-footwear-sector/>**