



FAIR LABOR
ASSOCIATION

***GUIDELINES OF GOOD PRACTICE ON
HIRING, TERMINATION, DISCIPLINE AND
GRIEVANCES***

***FLA Central American Project (CAmP)
April 2005
Version 2.0***

Good Practices, Better Results

TABLE OF CONTENTS

A. Introduction

B. Guidelines on Hiring

1. Hiring Policy
2. Hiring Procedures
 - 2.1 General Guidelines
 - 2.2 Recruitment
 - 2.3 Vacancy Announcements
 - 2.4 Notifications
 - 2.5 Requirements for Applicants
 - 2.6 Screening
 - 2.7 Selection
 - 2.8 Documentation (Record Keeping)
 - 2.9 Placement
 - 2.10 Promotion
 - 2.11 Retention Strategies/Reducing Turnover

C. Guidelines on Termination

3. Termination Policy
4. Termination Procedures
 - 4.1 General Guidelines
 - 4.2 Termination on Disciplinary Grounds
 - 4.3 Termination Based on Operational Requirements (Redundancy Retrenchment)
 - 4.4 Voluntary Resignation

D. Guidelines on Disciplinary Action

5. Disciplinary Policy
6. Disciplinary Procedures
 - 6.1 General Guidelines
 - 6.2 Necessary Elements to Ensure that a Procedure of Progressive Discipline is Objective and Fair
 - 6.3 The Five Steps of Progressive Discipline
 - 6.4 Elements to Include in a Reprimand or Warning
 - 6.5 Right to Confidentiality
 - 6.6 Right to Appeal

E. Guidelines on Grievances

7. Grievance Policy
8. Grievance Procedures
 - 8.1 General Guidelines
 - 8.2 Definitions
 - 8.3 Informal Procedures
 - 8.4 Formal Procedures
 - 8.5 Particularly Serious Cases: Violence, Sexual Harassment and Other Forms of Harassment
 - 8.6 Example of Policy and Procedure For Handling Cases of Sexual Harassment
 - 8.7 Whistleblowing

A. INTRODUCTION

THE TEXTILE INDUSTRY OF CENTRAL AMERICA IN CONTEXT

The importance of the textile assembly industry as an economic sector and as a source of employment in Central America can hardly be overestimated. The following figures¹ give an idea of the importance and the socio-economic impact of this sector in the region:

- a) The *maquila* sector, services and the informal sector are the main sources for employment generation for women with the lowest levels of education in Central America, Panama and the Dominican Republic.
- b) An indicator of the dynamism of textile assembly for export sector is the growth of the value added it generates in Central America, which went from \$395.9 million in 1993, to \$2,776 million in 2000.
- c) The employment generated by the assembly industry (textile plus other sectors) in Guatemala, El Salvador, Honduras, Costa Rica and the Dominican Republic reached 585,138 direct jobs in 2001, of which between 56% and 87% are women.

According to statistics of Vestex (the Apparel and Textile Commission) in 2002 in Guatemala, the textile and apparel assembly industry generated 106,846 jobs, an increase of 36,000 jobs since 1994. In Honduras, according to the Honduran Manufacturers Association (AHM), over 107,000 jobs are attributable to the apparel assembly industry. In El Salvador, the number of jobs generated by the apparel assembly industry was 92,000 in 2001, according to the Economic Commission for Latin America (CEPAL).

This is, thus, a sector which generates an important number of jobs (in some countries more than in others), and which, above all, generates employment for one particular segment of the population: women with a low level of education. This means that the sector is a source of employment for a group of persons with difficult access to other types of jobs, if we exclude jobs or self-employment in the informal sector.

At the same time this fact, combined with a labor market situation where there is a surplus of workers and a deficit in the number of available jobs, produces an environment where discrimination may easily occur (especially keeping in mind that although in some cases up to 87% of the workers are women, most of the managerial posts are occupied by men²).

Furthermore, taking into account that in these societies discrimination based on the grounds of gender, race, age, participation in workers' organizations or any combination of these, is relatively common, the need for an active policy by the company in order to ensure a working environment where there is equality and people are treated fairly and with dignity, becomes evident.

¹ Source: Janina Fernández, Empleo y políticas sociales en la maquila de exportación en Centroamérica y la República Dominicana, Organización Internacional del Trabajo, Oficina Sub-regional, San José 2002.

² Unfortunately we do not have trustworthy and verifiable data on the percentage of women holding management positions in the textile industry in Central America and the Dominican Republic.

WHAT IS THE OBJECTIVE OF THE GUIDELINES OF GOOD PRACTICE?

The main objective of this material is to provide a set of tools for factory managers and human resources personnel to assist them in developing policies and procedures that help ensure equality and diversity in the workplace. Thus the guidelines provide tools for employers to ensure that their factories in practice comply with the rights embodied in national legislation as well as in Conventions of the International Labor Organization, all with the final objective of ensuring a decent, ethical, dignified and more harmonious working environment.

WHAT DO THESE GUIDELINES CONTAIN?

The guidelines cover four key areas of the employment relationship, i.e.: Hiring, Termination, Disciplinary Action and Grievances. We have chosen to focus on these four priority issues, notwithstanding that other discriminatory practices may occur, for instance in setting wages or allocating moderation quotas or overtime.

These Guidelines are based on Conventions of the International Labor Organization and on the Fair Labor Association's Code of Conduct.

WHY GUIDELINES OF GOOD PRACTICE ON EQUALITY AND DIVERSITY?

Both national legislation and international conventions and codes of conduct promoted by the different brands include general principles and workers' rights which have to be developed within the company through policies, internal work regulations, and other norms of conduct that regulate the relationship between the employer and the worker in the company.

In many instances human resources and personnel managers have not received the necessary training to develop these policies and procedures in accordance with the principles of equality and diversity embodied in the international standards. At times this leads to measures or policies that seem neutral but which discriminate against a group or groups of persons in their application.

On the other hand, many employers are still not aware of the fact that a discrimination-free working environment improves morale, motivation and productivity among workers and that the perception of discrimination in the workplace weakens trust, communication and cooperation since benefits in such an environment are based on criteria other than performance.

When national legislation or Convention No. 111 on Discrimination in Employment and Occupation establish that there should be no discrimination with regard to access to employment and in working conditions, how do we translate this principle into practice in the company? Many employers ask themselves: What actions or measures that I take may be considered discriminatory? How do I ensure that my internal procedures do not violate this fundamental right? Is it necessary to document all processes in order to demonstrate that the measures I have taken are fair and that I am applying them in an objective manner to all the workers? Do my workers have the impression that I am not treating all of them the same way or that I am prone to favoritism and nepotism?

These Guidelines aim to facilitate answers to these questions as well as to provide guidance for managers or human resources personnel in the process of developing or revising policies, procedures and/or internal regulations in a way that guarantees that they are in accordance with national legislation and international standards, and that their practices are consistent with good practices recognized as such by global corporations.

HOW TO USE THESE GUIDELINES?

In addition to the elaboration of the Guidelines, the Fair Labor Association has developed training material to accompany them in order to provide employers with practical examples that make them more understandable.

When implementing the Guidelines, it is useful to work jointly with employers and managers of similar enterprises in order to exchange ideas and to see how others have resolved the same problems. Although it is sometimes uncomfortable to expose one's management systems to the critical view of others, it can be a very productive way to obtain good ideas and solutions to common problems.

The successful implementation of the Guidelines will rely on the cooperation between employers and workers. Making the workers an integral part in the process of elaboration of internal procedures of the company fosters trust and cooperation and facilitates the implementation of those procedures.

A GENERAL COMPANY POLICY

In order to create a non-discriminatory work environment, the company should:

- Make a strong commitment to equality and non-discrimination from the top Management.
- Raise awareness about both direct and indirect discrimination.
- Involve both workers and managers.
- Set up a structure or frame of reference for identifying priority areas to tackle.
- Meet regularly.
- Establish a system to monitor progress.
- Set up joint committee -- composed of workers and management -- to ensure the adherence to norms and the application of good practices. This committee may serve as a channel for grievances.
- Build on strengths and remedy weaknesses.
- Lead by example.
- Establish a zero-tolerance approach to discrimination.
- Continuously encourage management to improve their knowledge on these questions by way of seminars, workshops and training courses both internally and externally.

B. GUIDELINES ON HIRING

1. *Hiring Policy*

- 1.1 The employer shall base its hiring practices on a policy of equality in accordance with the legislation in force, international conventions and codes of conduct applicable to their factory.
- 1.2 Workers shall be selected only on the basis of their qualifications, skills, abilities, experience and demonstrated performance, as well as other directly job-related criteria.
- 1.3 The employer shall under no circumstances apply hiring practices that discriminate on the basis of sex, race, religion, age, disability, sexual orientation, nationality, political opinion or affiliation, social or ethnic origin, membership in any organization or association, including labor unions, or any other grounds provided for in the national legislation.
- 1.4 In filling vacancies through the promotion of workers already with the company, the employer shall ensure, and document, that this takes place in a fair and transparent manner, and that – as with external hiring – nepotistic or discriminatory practices, do not form part of the decision to promote one worker over another.

2. *Hiring Procedures*

2.1 GENERAL GUIDELINES

- 2.1.1 The employer shall adopt written and standardized hiring procedures and any hiring must follow these procedures.
- 2.1.2 The hiring process shall be clear and transparent. Current workers as well as applicants will be informed of the procedures and criteria used for hiring.
- 2.1.3 All steps or phases of the hiring process shall be documented in order to avoid any doubts as to the fairness and equality of the process.
- 2.1.4 The person or persons in charge of each step of the hiring procedure shall be clearly defined and this should form part of the written procedure, as well as the person or persons in charge of supervision and implementation of the procedures.
- 2.1.5 The person or persons in charge of the hiring procedures, both their supervision and implementation, shall be provided with adequate training on equality and non-discrimination issues.

2.1.6 In cases where the company decides to hire external services (for instance through the free trade zone authorities) to undertake the hiring, or any of the phases of the process, the company will ensure that these services are undertaken following the principles and policies established and defined in the company.

2.2 RECRUITMENT

2.2.1 When employers recruit they should:
(i) identify the inherent requirements and essential functions of the vacant position;
(ii) describe clearly the necessary skills and capabilities for the job;
(iii) set reasonable criteria for selection of job applicants to vacant positions.

2.2.2 It is always an advantage to develop an as detailed as possible job description for a post before it is advertised, since this will make it easier to develop a precise advertisement. The job description will serve a double purpose since it will also be a useful tool for evaluating performance once the candidate has been hired. Thus the job description will be useful both for the new worker when performing his or her job as well as for management when evaluating performance.

2.3 VACANCY ANNOUNCEMENTS

2.3.1 The vacancy announcement should include enough information about the skills required for a potential candidate to evaluate whether he/she possesses the necessary education, skills or experience required to be considered a candidate for the vacancy.

2.3.2 Vacancy announcements shall not signal preferences with regards to sex, race, religion, nationality or age of candidates.

2.3.3 A vacancy announcement for a particular post should include the following.

- Name (or at least type) of company searching for new workers.
- Job title.
- Short description of main tasks.
- Level of education and/or experience required.
- If the post requires special certification, such as a driver's license, this should also be included.
- Information regarding salary range and benefits offered may also be included in the announcement.
- The announcements should be published in the widest possible range of media in order to reach as diverse a group of candidates as possible.

2.4 NOTIFICATIONS

- 2.4.1 When reasonable and practical to do so, notification acknowledging receipt of the application should be sent to all applicants within a reasonable time after the application deadline (e.g., 10 working days). If the company expects a very high number of applicants for a specific post, making the sending of acknowledgement notifications to all applicants impractical, the company should indicate this in the announcement.
- 2.4.2 After performing the initial screening of applications and creating a short list of potential candidates, the employer should (unless specified in the announcement) send a notification of rejection to the applicants not included in the short list.
- 2.4.3 If the company deems that the applicant's background and experience could make him or her interesting for employment in the future this will be mentioned in the notification of rejection, together with a request to keep the applicant's data and personal history on file for future opportunities. If the applicant is not interested, all documentation forwarded as part of the application shall be returned.

2.5 REQUIREMENTS FOR APPLICANTS

- 2.5.1 The hiring procedures shall make clear what the requirements are for the vacant post.
- 2.5.2 They should outline what documentation the applicants should include with their application (e.g., copy of identity document, references, copies of school certificates, other documents, etc.) and what should be presented at a later stage (e.g., when the candidate is called for an interview). If documentation is to be submitted with the application, this should be made clear in the announcement.
- 2.5.3 When responding to a candidate inviting him/her to participate in the next steps of the hiring process (tests, interview) it should be made clear what these steps will be and what, if any, additional documentation the candidates need to provide.

2.6 SCREENING

- 2.6.1 The screening of candidates shall be objective and standardized, and the mechanisms used for screening shall be included in the company's hiring procedures (e.g., skills testing and interview).
- 2.6.2 Any mechanism used in the screening process shall be strictly limited to procedures designed to predict objectively, as accurately as possible, how the candidate will perform if selected for the post.
- 2.6.3 No tests which might be considered discriminatory, such as pregnancy tests, HIV testing, sterilization, review of tattoos or piercings, inquiries into the applicants civil status, family or personal life, or other non job-related screening practices can be applied.

2.6.4 The qualifications asked should be genuinely necessary and relevant to the job, avoiding exaggerated requirements with the aim of excluding certain categories of candidates.

2.6.4.1 Certain abilities, such as for instance the ability to lift a certain weight, should be evaluated individually before assuming that any categories of candidates, e.g., women, are automatically disqualified.

2.6.5 Testing of candidates' skills

2.6.5.1 Skills testing shall be limited to those skills relevant to the applicant's performance of the job.

2.6.5.2 In no case should a test be designed in a way that perpetuates discriminatory practices by emphasizing social, cultural or linguistic characteristics that are not relevant to the abilities required for the job.

2.6.5.3 To determine which test(s) is/are relevant, a detailed job description is a useful tool. A well-designed job description should include all of the main functions of the vacant position.

2.6.5.4 It is important that instructions given to workers not use language that is too technical in order to ensure that they are understood clearly and easily.

2.6.6 Interviews

2.6.6.1 In a hiring process, the interview is normally the last step, where the department of personnel (or, if one exists in the company, a selection committee including workers' representatives or a union if the company is unionized) aims to get to know the applicant better, in order to determine his or her abilities and attitude regarding the job in question. Elements of importance that are not clear from the application form/letter or personal history can also be clarified in the interview.

2.6.6.2 Selection interviews should be reasonable, objective and unbiased.

2.6.6.3 During the interview unnecessary and irrelevant questions should be avoided since the interviewer, even unintentionally, might act in a discriminatory fashion merely by asking them, and, giving importance to information learned in this manner in the hiring process would be an act of discrimination.

2.6.6.4 The company's hiring procedures shall include a clear outline of questions that are not allowed and the reasons why. Examples of issues that should not be discussed during the interview are:

- Date of birth and age (in order to avoid discrimination on ground of age). The candidate's birth date is normally included in his or her curriculum and should be verified after selection in order to avoid child labor
- Sex

- Race.
- Nationality (it is allowed to ask whether the candidate holds a working permit for the relevant country)
- National and social origin
- Disabilities, unless it is to discuss how best to accommodate a worker with a disability in order to perform at the best of his/her abilities
- Religion
- Marital status, family status (children or dependants)
- Arrests or detentions
- Information on physical details
- Affiliation or membership in organizations current and past

A SIMPLE RULE FOR AVOIDING DISCRIMINATORY BEHAVIOR IN INTERVIEWS:

IF THE QUESTION IS NOT JOB RELATED, DON'T ASK IT

2.6.7 References

- 2.6.7.1 Checking references from previous employers is an appropriate method to verify the applicant's employment history, including attitude and aptitude in former jobs, as well as starting and termination dates and reasons for leaving earlier jobs.
- 2.6.7.2 The employer shall never use the references to probe into the candidate's private life, including questions that should not be asked during an interview. This would constitute a violation of the applicant's right to privacy, and such information should neither be neither solicited nor revealed.

2.6.8 Medical testing

- 2.6.8.1 Medical tests must be relevant and appropriate to the kind of work and the necessary fitness criteria for the job, the workplace and its risks, as well as to the needs of the employer's business.
- 2.6.8.2 Employers should establish that tests do not unfairly exclude persons and are not biased in how or when they are applied, assessed or interpreted.
- 2.6.8.3 Tests to establish the health of an applicant or worker should be differentiated from tests that assess his or her ability to perform essential job functions or duties.

- 2.6.8.4 Medical tests should therefore only be carried out after an employer has established that the person is in fact competent to perform the essential job functions or duties and after a job offer has been made. The same applies to medical testing for admission to membership of a worker benefit plan.
- 2.6.8.5 An employer who requires a person to undergo any medical, health screening or safety test must bear the costs of the test(s).
- 2.6.8.6 All results shall be confidential.

2.7 SELECTION

- 2.7.1 The purpose of the selection process is to assess whether or not an applicant has the abilities and qualifications to perform a certain job.
- 2.7.2 When making the final selection, the only relevant issues the employer shall take into account are those that will serve to determine which of the candidates is most suited to the post that needs to be filled.
- 2.7.3 The offer of employment should be made in writing to the selected applicant(s) in the form of a letter including the following:
- Name and address of the applicant.
 - Name and address of the hiring company.
 - Name of the position for which the applicant has been selected.
 - The department or unit to which the position belongs, and to whom he reports.
 - Job description (if too long to include, attach).
 - Base salary and mode of payment (in weekly, biweekly or monthly installments) and amount of each payment.
 - Deductions (taxes, social security).
 - Other benefits (health insurance, pension plan, etc.).
 - Vacation (how many days or weeks per year).
 - Other leave and under what circumstances (local or national holidays, sickness or emergencies).
 - Starting date.
- 2.7.4 In order to ensure diversity and nondiscrimination in hiring, one effective way is by establishing a selection committee with as diverse a composition as possible. A selection committee should include, apart from representatives of management/human resources, workers representatives, in particular union members, women, members of minority groups, etc.

2.7.5 Probationary Period

- 2.7.5.1 If a factory/company initiates the employment relationship with a probationary period, it must be made clear to the new worker:

- ✓ that he or she is employed initially on probation;
 - ✓ the duration of the probationary period ;
 - ✓ what the worker is expected to demonstrate during the probationary period;
 - ✓ what kind of supervision or reporting on the worker's performance will take place during the probationary period.
- 2.7.5.2 The probationary period will be applied in a uniform manner to all new workers within the same job category.
- 2.7.5.3 During the probationary period the supervisors will be responsible for providing assistance with regards to the performance and behavior expected to help the new workers during the probation period.
- 2.7.5.4 All evaluations of the worker's performance shall be in writing, and a copy shall be given to the worker.
- 2.7.5.5 If upon the termination of a probationary period, the worker is not offered a permanent position, the worker must be given documented evidence in writing supporting the decision to terminate the employment relationship. Should this information not be provided, it will be understood that the worker has necessarily completed the probationary period and has been hired.
- 2.7.5.6 The worker shall also be given an opportunity, and be informed of this, to dispute and appeal a negative decision taken based on performance evaluations during the probationary period. It is advisable that said appeal take place before a mixed commission or panel including union representatives, or where a union does not exist, workers' representatives.
- 2.7.5.7 Once the probationary period is over, it cannot be extended, nor can a new probationary contract be offered to the same worker to undertake work of similar characteristics. The only situation where a new probationary period may be justified is when the worker is offered a job with different characteristics and with different skills requirements. Under no circumstances should workers be subjected to a series of successive probationary contracts.

2.8 DOCUMENTATION (RECORD KEEPING)

- 2.8.1 The employer shall keep complete records of the entire hiring process, in order to be able to demonstrate, if needed, that the selection has been made fairly and by using objective criteria, and that no discrimination on grounds of race, religion, national or ethnic origin, nationality, gender, age, union membership, membership in other organizations, political opinions or activism or social background has taken place.
- 2.8.2 Once a person is hired the documents submitted by him or her, such as copies of school certificates, identity documents, written references, etc., might be kept in the worker's personnel file. Notes taken by the person(s) in charge of the hiring process from verbal interviews with former employers or other references shall not be kept, since these constitute a personal impression of someone else's

evaluations and opinions and can thus not be regarded as official documentation on the applicant's skills and abilities. Any information on the applicant's personal life which may have emerged during the hiring process should not be kept on file.

- 2.8.3 No records or personal data on a non-successful applicant should be kept without his or her explicit and written consent. Data on a non-successful applicant shall in any case only be kept if the company has genuine interest in keeping them for the purpose of inviting the applicant to participate in a future hiring process.

2.9 PLACEMENT

2.9.1 Orientation

- 2.9.1.1 On starting, the new worker shall receive an orientation as to the functions and objectives of the company, the tasks expected by him/her, and his/her rights and obligations.
- 2.9.1.2 The orientation should have as its main objectives to make the new worker fully productive as soon as possible and to make him or her feel part of the company.
- 2.9.1.3 The introduction should be made by the worker's direct supervisor, and should include a presentation of his/her co-workers, workspace and tasks. If the supervisor is not senior management, an introduction (i.e., by setting up a short meeting) with the senior manager of the company/factory/plant is a good way of making the new worker feel part of a team.
- 2.9.1.4 The supervisor should also outline to the new worker his/her expectations, and if he/she prefers particular tasks to be performed in a specific way. This avoids future problems which can be prevented by a comprehensive orientation.

2.9.2 Worker handbook

- 2.9.2.1 The company should provide the new worker with a worker handbook where rights and obligations as well as other important information are described in clear and unambiguous terms.
- 2.9.2.2 The employer shall ensure that all workers have received the handbook and that when changes and updates take place, that all workers receive these. This may be done by distributing new handbooks every time it is reviewed or updated or, a more cost-effective manner, design the handbook in a way which makes it possible to exchange only the sections of it which are changed (i.e., by using a ring-binder.).
- 2.9.2.3 Based on the company's need, the handbook may include, but not necessarily be limited to, the following information:

- 1) **Acknowledgement form**: To ensure that the worker knows that it is his or her responsibility to read and understand the company handbook, it is a good idea initiate the handbook with an acknowledgement form. The acknowledgement statement should be signed by the worker, stating that he/she has read and understood the contents of the handbook, within a reasonable time after joining (e.g., two weeks). It is also good policy to set up a meeting with the human resources department in order to give the worker an opportunity to clarify any questions he or she might have with regards to the content of the handbook before signing the acknowledgement form. The employer should develop alternative methods of conveying information and training on matters covered by the handbook for workers who may be illiterate.
- 2) **Introduction**: The introduction is the place to welcome the new worker to the company, as well as to describe the company, its mission, values and beliefs. The company's mission statement, as well as a general description of the worker's role in fulfilling this mission should be part of the introduction. Many companies formulate the introduction in the form of a welcome letter to workers.
- 3) **Equal opportunities**: This section outlines the company's policy with respect to equal employment opportunity. Here it should be stated that the company extends equal opportunity to all individuals without regard for race, religion, sex, national origin, age, disability or handicaps, union membership, or any other reason foreseen in national legislation. Not including this section might lead, although unintentionally, to misunderstandings on the part of the workers with regards to the company's policy on equal opportunity and treatment.
- 4) **General policies**: This section should include the following:
 - a) Norms which govern the operation of the company in addition to national labor legislation, e.g., codes of conduct, ethics codes, etc.
 - b) Personal information: A basic reminder of the importance of keeping the personnel records up to date at all times, and that changes in name, home address, telephone number, marital status, number of dependents, etc., should be reported immediately.
 - c) Attendance: A statement regarding the importance of attendance and punctuality, rules governing requests and granting of leave, and the relationship between attendance and performance evaluations.
 - d) Use of company property: This should include rules for the use of company equipment (machinery, telephone (personal calls), computers including internet use, etc.) leaving no doubt as to what is permitted and not permitted use of such equipment.
 - e) Confidentiality: The policy should include a description of the information that the company considers confidential (product pricing and cost information, formulas, contract terms, all computer files, blueprints, worker names or addresses, etc.), and, if a confidentiality statement is deemed necessary, the contents of

the statement, what categories of workers are required to sign it, and for what reasons (including the consequences of breaking the confidentiality statement).

- f) Dress code: The need to develop a dress code will vary from company to company and from job to job within a company. Companies that require uniforms or special safety clothing should describe their requirements in the dress code. Companies with workers who are in contact with customers will generally set forth standards of dress, hygiene and attitude.
 - g) Conflict of interest: In this section the company should set out any actions or behavior by the workers which may constitute a conflict of interest.
- 5) **Safety and accident prevention rules**: Generally the safety section of the worker handbook will refer to other documents and information. It is important, if the handbook refers for example to safety posters, safety procedures, or safety equipment, that these items be easily accessible to workers. Periodic training for workers on the use of safety equipment, office safety, behavior in case of fire or earthquakes and escape routes should be given in accordance with the needs of the specific industry.
 - 6) **Anti-substance abuse**: The handbook should clearly state the company's policy on drug or alcohol abuse, including, if needed, requirements for testing and disciplinary procedures that will be followed in case of violation.
 - 7) **Sexual Harassment**: It is essential for a company to adopt a clear policy against sexual harassment and make this policy clear to the workers, defining what constitutes sexual harassment, procedures for presenting a complaint, and mechanisms for investigation, and discipline process.
 - 8) **Smoking**: This section should set out areas where smoking is allowed as well as the length of breaks and how often a worker may take a smoking break.
 - 9) **Performance reviews**: The worker handbook need not describe in detail the process of performance reviews, but should address when the reviews should be expected by the worker, and in brief terms the role of the reviews for wage increases, possibilities for promotions and, at the other end of the scale, disciplinary action and termination.
 - 10) **Employment categories**: If the company operates with different employment categories (e.g., permanent full-time, permanent part-time, temporary full-time or temporary part-time) these should be set out in the handbook including what the different categories mean in terms of benefits, rights and obligations so as to avoid misunderstandings.
 - 11) **Disciplinary action**: This chapter should include a brief description of the policy and process of disciplinary action (see also chapter on Disciplinary Action in these Guidelines).

- 12) **Procedures for resolving conflicts and grievances:** This chapter will include a description of the formal and informal written mechanisms for the resolution of grievances, who is responsible and who should be involved, as well as the steps to follow when presenting a formal complaint.
- 13) **Work hours and reporting:** This should include information on the length of the workday, workdays per week, use of time clock and time cards, use of overtime and reporting of leave and absences.
- 14) **Holidays:** The chapter should describe which religious and/or national or regional holidays are recognized by the company and how, and to what extent the workers will be paid for them. Should there be “unpaid” holidays, meaning holidays that the workers may take although not recognized as paid holidays by the company, should be clearly explained in the handbook.
- 15) **Vacation:** The vacation policy should define who is eligible for vacation, how vacation is calculated according to length of time in the company, and policy to carry over vacation from one year to the next and limitations. It should also address what happens to unused vacation in the case of separation from the company. Some companies operate with specific vacation periods or require that workers request their vacation well in advance of taking time off. If so, this should be addressed in the handbook.
- 16) **Sick leave:** This section should include the rules governing sick leave, e.g., how many days, if sick leave is allowed without medical certification, and rules regarding payment during sick leave.
- 17) **Short-term disability:** If the company offers a voluntary insurance against short- or long-term disability, this should be outlined in the handbook.
- 18) **Severance pay:** In cases of downsizing or workers becoming redundant for other reasons, workers are normally entitled by law to severance pay, the size of which is determined among others by length of employment. As a minimum the formula for the calculation of severance pay must comply with national legislation, and in cases where additional elements are included beyond the minimum legal obligations (e.g., as part of a collective agreement), this should be outlined in the worker handbook.
- 19) **Worker’s compensation:** This section should include information on the entitlements of a worker in case of a labor-related injury.
- 20) **Retirement plan:** If the company provides its workers with a retirement plan, the characteristics and entitlements pertaining to the plan should be outlined in the handbook, including the percentage of the contribution drawn from the worker’s paycheck and the percentage covered by the company.

- 21) **Tuition assistance**: Offering tuition assistance is a good way of encouraging workers to improve and develop their skills, and, thus, the company's knowledge base. If such a program exists it should be noted and described in the handbook.
- 22) **Other benefits**: Below is a list of other possible subjects that may be included in the handbook according to the needs of a particular company:
- Credit union
 - Idea or performance incentive awards
 - Length of service awards
 - Discounts to workers for purchase of goods produced by the company
 - Annual physical examination

2.9.3 Preparation for the arrival of a new worker

- 2.9.3.1 Before the new worker arrives, the employer should ensure that his/her workspace, equipment, safety gear and (when applicable) uniform is in place, so that the worker can be assigned them on the first day.
- 2.9.3.2 The supervisor and coworkers of the new worker should also be informed of the new arrival and his/her area of work and responsibilities.

2.9.4 On arrival

- 2.9.4.1 On arrival, the new worker shall be received by the person who was in charge of hiring him/her, since this person until now has been the worker's point of contact with the company.
- 2.9.4.2 As a first step any necessary paperwork should be taken care of, such as signing of contract (if this has not been done at an earlier stage).
- 2.9.4.3 The new worker should receive a copy of the contract signed by him/herself and by the employer, with the necessary authentications.
- 2.9.4.4 The new worker should be given a copy of the worker handbook as well as an explanation of its content and use. A new meeting should be set up within for instance five days, at which the worker should be given an opportunity to ask questions and receive clarifications regarding the handbook and other elements of his/her new job, and to sign the acknowledgment form included in the worker handbook.
- 2.9.4.5 Next, the new worker should be introduced to his/her supervisor and coworkers, and the supervisor should take over the induction of the new worker from this point, explaining where and with whom the worker will be working, what his/her tasks are, and how the supervisor prefers thing to be done, the latter in order to avoid misunderstanding which later may lead to conflicts and grievances. Any equipment or clothing the worker will need for his/her work should be given to him/her at this time.

2.9.4.6 If there are specific tasks that are appropriate to ask the new worker to perform on the first day, these should be explained in clear terms, and the new worker should be given adequate time to finish them without undue pressure, and always taking into consideration that it is the first day on the job.

2.9.4.7 Co-workers who can be asked questions should be assigned, and the new worker should be introduced to them during the first day.

2.9.5 During the first weeks

2.9.5.1 During the first few days and weeks a series of activities to facilitate the new worker's adaptation should take place.

2.9.5.2 These should include, but not necessarily be limited to:

- Sufficient time set aside for the worker to study the worker handbook before the second meeting with the person in charge of hiring (e.g., the Human Resources department).
- Sufficient time set aside for the supervisor to discuss the job description with the new worker, reviewing the tasks therein and clarifying doubts.
- A second meeting should be arranged with the HR responsible within 5-10 working days of the worker starting work. In this meeting the new worker's direct supervisor may also participate. The meeting has two objectives: first, to clarify any questions or doubts the worker may have with regard to the contents of the worker handbook; and, second, to give the new worker a possibility to raise any questions or doubts about his or her work. This is also a good time to discuss the new worker's training needs (if any) and to program the necessary training.
- Implement the training as necessary.

2.9.6 Training/Induction period

2.9.6.1 The company shall have in place a policy and procedures for dealing with the induction of new workers.

2.9.6.2 The policy and procedures should be designed to make the new worker's time to productivity as short as possible, to detect as soon as possible his/her training needs, and to give the new worker sufficient time to adapt to a new environment, different requirements and, possibly, a different corporate culture.

2.10 PROMOTION

2.10.1 Promotions should be accredited in writing.

2.10.2 When a promotion takes place, the company should ensure that the promoted worker gets the training needed in order to cope with the demands of the new post.

2.10.3 The employer cannot terminate on grounds of negligence or inefficiency a recently-promoted worker when it is the promotion itself to a post with higher responsibility which is the cause of the deficiency. In this case the worker should be reinstated in his or her former post, unless at least three months have passed since the promotion. Within this time, a worker who feels inadequately equipped to cope with the demands of a new job, can request to be reinstated in the post he or she held earlier, and the employer should agree to this.

2.11 RETENTION STRATEGIES/REDUCING TURNOVER

A high level of turnover in a company also carries high costs, since trained and experienced workers must be replaced continuously with new – often inexperienced – people who, at the least, will need a reasonable period of time in order to perform at maximum level. In addition to this we must consider the lost training investment by the company on workers who leave, often to put in practice their training in a competitor's company, it is obvious that effective retention strategies make good business sense, especially when it comes to key workers.

In establishing a company's retention strategy, the key issue is to find out why workers leave. One way to do this, and to keep the information up to date, is by conducting an exit interview with workers who are leaving, asking them about their reasons for leaving, what they were happy about while working in the company and what they were less satisfied with or unhappy about. The motivation for leaving varies from industry to industry and from worker to worker, and they may be as simple as the desire by a worker to want to try something new (without being necessarily dissatisfied with their employment), or to start their own business. General reasons for a worker leaving a job are:

- a) Inadequate or uncompetitive compensation.
- b) Poor working conditions.
- c) Lack of appreciation.
- d) Lack of support.
- e) Lack of possibilities for advancement.
- f) The worker feels unfairly treated.

Overcoming these reasons requires the implementation of six distinct categories of retention strategies:

- **Work environment strategies:** Create and maintain a workplace that attracts, retains and nourishes good people.
- **Relationship strategies:** Focus on how management treats workers and how they treat each other.
- **Support strategies:** Involve giving people the tools, equipment and information necessary to get the job done.
- **Growth strategies:** Deal with personal and professional growth.
- **Compensation strategies:** Cover the broad spectrum of total compensation, not just base salary.
- **Equity strategies:** Emphasize equal and fair treatment of all workers.

The following is a list of good practices to improve the company's success-rate in retaining workers and avoiding possible resignations:

- a) Hire right to begin with.
- b) Develop a comprehensive orientation program for new workers.
- c) Use creative rewards and recognition.
- d) Create annual personal growth plans for each worker.
- e) Make sure people have the training to get their jobs done.
- f) Treat everyone fairly and equally.
- g) Do corporate succession planning.
- h) Conduct exit interviews with workers who resign.

Retaining Key Workers

The cost of turnover exists at all levels, but in positions that are considered "key" it is very high. Efforts to keep key workers should therefore be a priority. The following provides a summary of the principal steps in a strategy for retaining key workers:

- a) Identify key workers and positions.
- b) Know what motivates key workers on an individual level.
- c) Provide a deferred compensation plan that benefits key workers.
- d) Monitor and manage key worker performance.
- e) Review key workers annually.
- f) Use benefits and compensation as incentives to retain workers.

Worker benefits provide a powerful tool for attracting and retaining workers. In designing an attractive and retention-oriented benefits program, the following steps can be useful:

- a) Create a benefits mission statement.
- b) Identify the "audience" for benefits, and their specific wants and needs.
- c) Permit free choice of benefits within a defined series of possibilities.
Given that needs and preferences are different from worker to worker, they should themselves be given the opportunity to identify their priorities thus avoiding imposed generalizations when defining benefits.
- d) Define a benefits budget that fits the financial situation of the company.
- e) Give workers as much control as possible over their benefits.
- f) Communicate the benefits plan. Ensure that all workers are aware of the plan, how it works, and the qualifying mechanisms.
- g) Create rewards and recognition for specific behaviors/results.
- h) Make the rewards program simple, known to workers, and easy to understand.
- i) Get workers involved in designing and running the program, for instance by including workers' representatives, e.g., the union, in the process.
- j) Ensure that the rewards program is absolutely fair and equitable, and that the eligibility for awards is based on merit alone and not factors that may be susceptible to suspicions of favoritism, nepotism or discrimination.

C. GUIDELINES ON TERMINATION

3 Termination Policy

- 3.1 The employer shall base its termination practices on a policy of equality and non-discrimination, in accordance with national legislation, international conventions and applicable codes of conduct applicable in the factory.
- 3.2 The policy of termination will be based on the principle of restorative justice and not on principles of retributive justice.
- 3.3 Dismissal of workers shall only be allowed for two reasons, which in both cases should be documented comprehensively:
 - 1) For reasons of unacceptable behavior or performance on behalf of the worker, and only, except in extreme cases like robbery or willful destruction of company property, or serious cases of sexual or other harassment or violent behavior, after going through the procedures for disciplinary action outlined in section D of these Guidelines; and
 - 2) For reasons of redundancy, where there is a clearly demonstrable and documented surplus of labor and where the dismissal of one or several workers is considered a business necessity.
- 3.4 The employer shall under no circumstances apply termination practices which are discriminatory on the basis of sex, race, religion, age, disability, sexual orientation, nationality, political opinion or affiliation, social or ethnic origin, membership in any organization or association, including unions, or any other ground covered by national legislation.

4 Termination Procedures

4.1 GENERAL GUIDELINES

- 4.1.1 The employer shall adopt written and standardized termination procedures. Any termination must follow these procedures.
- 4.1.2 The termination process shall be clear and transparent, and workers shall be informed of the procedures and criteria used for termination.
- 4.1.3 All steps or phases of the termination process shall be documented in order to avoid any doubts as to the fairness of the process.
- 4.1.4 The person or persons in charge of each step of the termination procedure shall be clearly defined and this will form part of the written procedure, as well as the person or persons in charge of supervision and implementation of the procedures.

4.2 TERMINATION ON DISCIPLINARY GROUNDS (See Guidelines on Disciplinary Measures)

- 4.2.1 In instances of termination on disciplinary grounds, the reasons for dismissal shall be investigated and comprehensively documented.
- 4.2.2 Before dismissal, the worker should have the opportunity of a hearing where he or she may be represented by a union representative, co-worker and/or someone else of the worker's choosing in order to defend him/herself against the accusations.
- 4.2.3 The termination is not effective (neither factually nor legally) until the worker has executed his or her right to a hearing. This way the worker will not be prejudiced during the processes which he or she decides to undertake in order to appeal the termination through the legal system.
- 4.2.4 Where appropriate, the company shall follow national law with regard to severance pay and the payment of other benefits to which the worker may be entitled in accordance with the law.
- 4.2.5 In cases where the worker does not possess the skills or competencies necessary for reasons of technological change, the employer should give the worker the opportunity to adjust his or her skills to the new necessities, and only terminate the worker when he or she does not have the will or capacity to adjust.

4.3 TERMINATION BASED ON OPERATIONAL REQUIREMENTS (Redundancy Retrenchment)

4.3.1 Definitions

- 4.3.1.1 Dismissal based on operational requirements of the employer's undertaking refers to dismissals based on the economic, technological, structural or similar needs of an employer.
- 4.3.1.2 Redundancy: Refers to a surplus of labor, which occurs when the need for workers required to carry out work of a particular kind has ceased, diminished, or is expected to be reduced either permanently or temporarily. These circumstances could be due to a recession in which business needs fewer workers because of reduced output. There can also be a redundancy situation where the business achieves the same or even an increased level of output with fewer workers, or there is less work for existing workers. This can come about through mechanization or computerization or just as a result of increased efficiency by implementing new technology. In this situation the employer is entitled to discharge the services of some workers, which become redundant in accordance with the new requirements.
- 4.3.1.3 Retrenchment: Refers to the dismissal of workers which have become redundant, temporarily or permanently, for the reasons described above.

4.3.2 Obligations of the employer

- 4.3.2.1 Dismissals because of operational requirements are "no fault" dismissals – in other words, the worker is not responsible for the termination of employment. The effective cause of the termination is one or more external or internal factors related to the employer's business needs.
- 4.3.2.2 In order to justify the retrenchment of workers, the employer must be able to provide sufficient documentation showing that redundancy was the real reason for dismissal. If an employer fails to do so, the dismissal is deemed unfair.
- 4.3.2.3 When the employer claims termination on grounds of redundancy, the employer may not initiate other processes of recruiting and hiring of personnel to work in the company in the same category or position of the workers who are being dismissed since it is understood that the dismissal occurred for reasons for which the workers were not responsible.
- 4.3.2.4 After a retrenchment, when the employer considers necessary to proceed with hiring of new workers, the jobs should be offered first to the worker(s) terminated from jobs in the same category, before posting announcements for the job(s), since it is understood that the dismissals occurred for reasons for which the workers were not responsible.
- 4.3.2.5 The requirement of fairness places particular procedural and substantive obligations on the employer:
- The employer must ensure that all possible alternatives to dismissal are explored and that those workers to be dismissed are treated fairly
 - The employer must ensure that the workers to be dismissed are selected objectively and that severance pay and other benefits are paid according to law.
 - The employer must consult with the worker(s) before a final decision to dismiss is taken.

4.3.3 Criteria for selecting workers

- 4.3.3.1 Selection criteria that are generally accepted to be fair include: length of service, skills and qualifications, and implementation of policies of affirmative action.
- 4.3.3.2 The most common principle for selecting who should be dismissed is known as LIFO (last in – first out), meaning that as a rule the workers with least time with the company should be the first to be dismissed on grounds of redundancy.
- 4.3.3.3 Criteria which infringe international labor standards (ILO Conventions or Recommendations), the national labor law, or the company's Code of Conduct, can never be considered fair. Examples of unfair selection are selection on the basis of union membership or activity, pregnancy, HIV positive, sex or any other discriminatory ground.

4.3.3.4 Criteria that are apparently neutral should be carefully examined to ensure that when they are applied they do not have a discriminatory effect.

4.3.4 Consultations

4.3.4.1 Consultations with representatives of the workers, or where a union exists with union representatives, are recommended in all cases where dismissals are necessary for operational reasons, since a procedure involving the workers will help in avoiding labor unrest, protest actions and/or strikes.

4.3.4.2 The consultations should be set up as a joint problem-solving exercise where the parties should strive for solutions based on consensus where this is possible.

4.3.4.3 The consultations should commence as soon as it is clear that a reduction of the workforce is likely so that other alternatives can be explored.

4.3.4.4 The consultation process should allow worker representatives the opportunity to meet and report back to workers, to meet with the employer, and to request, receive and consider information about the situation at hand.

4.3.4.5 The consultations, which should constitute a genuine effort to find alternative solutions, ought to cover at least the following themes:

1) The reasons for reduction of the workforce and the exploration of other possibilities:

- The employer should disclose and share information with the workers' representatives that explains and justifies the need for reduction of employment.
- The employer should keep an open mind and consider seriously proposals from the workers on alternatives.

2) The fair selection of workers to be dismissed:

- When the LIFO principle is employed, the company should share with the workers' representatives a list of workers including their starting date to avoid any doubts as to the fairness in the execution of the dismissals.
- If the LIFO principle is used, but with some exceptions, in order to retain workers with special skills necessary for the successful operation of the company, or due to policies of affirmative action, the reasons for retaining these particular workers should also be documented and shared with the workers' representatives.
- When other principles for selection of the workers to be dismissed are used, the criteria for their selection must be agreed between the consulting parties. However, such criteria must never violate the principles set out in paragraph 4.3.3.3 of these Guidelines.

3) The payment of severance pay:

- Workers shall be entitled to severance pay in accordance with national law. National labor legislation normally establishes a formula for the

payment of severance pay upon dismissal, generally stated as the sum of vacations due + unpaid Christmas bonus due (aguinaldo) + a determined number of weeks pay per year employed (the number of weeks per year entitlement varies from country to country). This, however, is a *minimum* established by the law, and where possible consensus should be reached through consultations as to other factors which could be included to calculate the severance pay.

- The right to severance pay shall not be affected by the time it takes the worker to find work elsewhere.
- 4) Criteria for rehiring: Workers dismissed for reasons based on the employers' operational requirements should be given preference if the employer re-hires workers with comparable qualifications.
 - 5) Steps to avoid or diminish the adverse effects of the dismissals: Time off to seek work, social plans, etc. should be taken into consideration during the consultations and implemented to the degree possible.
 - 6) Employers should also consider other means to facilitate the transition of terminated workers, such as training or micro-credits.

4.4 VOLUNTARY RESIGNATION

4.4.1 If voluntary resignation or early retirement is to be used in cases of redundancy or retrenchment, this should be discussed and agreed in the consultations with the workers' representatives. If properly used, and properly compensated, voluntary resignation or early retirement can alleviate the burden in situations where reduction of the workforce is necessary for operational reasons.

4.4.2 Any voluntary resignations signed under false pretenses and under duress constitute a violation of basic workers' right and should therefore never occur, for example:

- under threat or in order to secure good references,
- as a condition for receiving severance pay,
- as a way of getting rid of "troublesome workers."

D. GUIDELINES ON DISCIPLINARY ACTION

5 *Disciplinary Policy*

5.1 The employers shall adopt disciplinary rules that establish the standard of conduct required of their workers.

5.2 The rules or standard of conduct should be:

- i) valid and reasonable;
- ii) clear and unambiguous; and,
- iii) consistently applied by the employer.

- 5.3 An employer's rules must create certainty and consistency in the application of discipline. This requires that the standards of conduct made available to the workers in a manner that is easily understood.
- 5.4 When disciplinary action is necessary to correct a behavior that does not meet expected and communicated performance standards (absenteeism, tardiness, lack of productivity and efficiency, etc.), the company will employ a process of **progressive discipline** seeking to correct the situation. The process of progressive discipline as a method is used when disciplinary action is necessary for reasons of misconduct (except serious faults, such as physical assault, etc.) as it is for reasons of lack of, or poor, work performance.
- 5.5 The primary purpose for progressive discipline is to assist the worker in understanding that a performance problem or an opportunity for improvement exists. The goal is to **improve worker performance, not to punish the worker**. Efforts should be made to correct workers' behavior through a system of graduated disciplinary measures. The process features increasingly formal efforts to provide feedback to the worker so that he or she can correct the problem. Progressive discipline is most successful when it assists an individual to become an effective member of the organization. Failing that, progressive discipline enables the organization to fairly, and with substantial documentation, terminate workers who are ineffective and unwilling to improve.

6 *Disciplinary Procedures*

6.1 GENERAL GUIDELINES

- 6.1.1 The employer shall adopt written and standardized disciplinary procedures and any disciplinary measures must follow these procedures.
- 6.1.2 All steps or phases of any disciplinary procedure shall be documented in order to avoid any doubts as to the fairness of the process.
- 6.1.3 The person or persons in charge of each step of the disciplinary procedure shall be clearly defined and this should form part of the written procedure, as well as the person or persons in charge of supervision and implementation of the procedures.
- 6.1.4 Employers should keep records for each worker specifying the nature of any disciplinary transgressions, the actions taken by the employer and the reasons for the actions.

6.2 NECESSARY ELEMENTS TO ENSURE THAT A PROCEDURE OF PROGRESSIVE DISCIPLINE IS OBJECTIVE AND FAIR

- 6.2.1 The employer shall have provided the worker with an accurate and comprehensive job description, clearly written performance expectations, and adequate training.

- 6.2.2 The company shall provide written guidelines concerning behavior to workers, setting out the consequences of violating them. These guidelines should be included as part of the worker handbook.
- 6.2.3 The employer must ensure that the standards of worker performance and rules of worker conduct are being applied fairly and equitably, and that all the workers demonstrating similar deficient behavior or violating similar rules are being treated alike.
- 6.2.4 The employer shall on a regular basis communicate information regarding performance expectations and deficient behavior to the workers.
- 6.2.5 The employer shall maintain written records of counseling meetings. The worker shall be given the opportunity to respond.
- 6.2.6 The employer must ensure that the progressive disciplinary action is initiated in a timely (immediately after documenting the fault), consistent and confidential manner.
- 6.2.7 The fault(s) leading to disciplinary action shall be investigated and documented before the disciplinary action begins
- 6.2.8 In extreme cases, where a direct dismissal is justifiable, it must be documented with unequivocal proof of the action leading to dismissal, including, but not limited to, material proof (in the case of robbery or destruction of property) and signed witness statements.

6.3 THE FIVE STEPS OF PROGRESSIVE DISCIPLINE

- 1) **Counseling**: Counsel the worker about performance and ascertain his or her understanding of the requirements. Ascertain whether there are any issues contributing to the misconduct or poor performance that are not obvious to the supervisor. Solve these issues, if possible.
- 2) **Verbal reprimand**: If the worker continues to perform in the same manner, the next step is to verbally reprimand the worker for misconduct or poor performance.
- 3) **Written warning**: If the misconduct or poor performance persists, provide a written warning to the worker, with a copy for the worker's file, in an effort to correct the unwanted/unacceptable behavior or poor performance.
- 4) **Suspension**: If the above steps fails to correct the problem, or improve the performance of the worker, provide a limited and escalating number of days in which the worker is suspended from work. For example by starting with one day and escalating to five.
- 5) **Termination**: If the worker continues with the misconduct or poor performance, the employer may end the employment of an individual who

refuses to improve. Termination is the most severe sanction a worker may receive so it must be applied with great care. On terminating a worker for disciplinary reasons, the progressive process which has gone beforehand should be fully documented for the employer to demonstrate that every opportunity to correct or improve has been given to the worker before going to the step of termination.

6.4 ELEMENTS TO INCLUDE IN A REPRIMAND OR WARNING

6.4.1 Both the verbal and the written reprimand (steps 2 and 3) should contain, but not necessarily be limited to, the following elements:

1. What did the worker do?

- Clearly identify the specific conduct deemed deficient and describe the conduct in complete and specific terms using plain language.
- Include dates, names, places, events, witnesses, etc., to supplement general statements of misbehavior or deficiencies with specific examples.
- The document (in the case of a written reprimand) should be a self-explanatory record. A third person should be able to understand what the worker did that created the problem upon reading the document, without having to refer to any other information source.

2. How did the behavior violate a performance expectation/rule?

- Include the rule, authority, and/or expectation relating to the deficient behavior, such as company policies, rules, collective bargaining provisions, job descriptions, written work rules or written administrative memos /instructions/directives.
- Where the inappropriate behavior has previously occurred, a notation should be made of the prior violation and resulting action, if any.

3. What is the impact of the worker's conduct?

- Cite the adverse effect of the worker's conduct on company operations and other persons. Examples include: lack of dependability; unnecessary shift of duties to other worker(s); lack of continuity and consistency; unnecessary expenditure of supervisor's time; interruption in normal procedures causing delay in the completion of work; unnecessary exposure to personal injury and company liability; destruction or damage to property and repair costs; and lack of compliance with required timelines.

4. What does the worker need to do to improve?

- Provide specific suggestions and/or directives for the worker to meet job requirements. Outline directions regarding the proper behavior or level of performance expected in the future. The description of the behavior must be clear and unambiguous, easy to understand, and as complete as possible.
- Include the effective timelines to improve and the consequence(s) if the worker fails to comply (e.g., further disciplinary action that may result in dismissal etc.). In other words, the worker must know what

he or she should do to correct deficient performance or behavior and what will happen and when, if the behavior is not corrected.

- Identify any assistance that the worker may require to meet job requirements, such as additional training, equipment etc.

5. What rights does the worker have in connection with the disciplinary action?

- The employer should notify the worker of the allegations using language that the worker can understand.
- The worker should be entitled to sufficient time to prepare a response and to seek the assistance of a trade union representative or fellow worker. The representative may, if the worker so wishes, also be present and assist the worker during the hearing.
- The hearing should be held and finalized within a reasonable time.
- The worker should be given a proper opportunity at the hearing to respond to the allegations and to provide witnesses if the worker considers it necessary.
- If a worker unreasonably refuses to attend the hearing, the employer may proceed with the hearing in the absence of the worker.
- If the worker is dismissed, the worker should be given in writing the reason for dismissal and reminded of any rights to refer a dispute concerning the fairness of the dismissal to the appropriate labor authorities.
- The worker has a right to receive a copy of any document(s) including a letter of reprimand that could lead to an adverse personnel action prior to their placement in the worker's official personnel file (how many days prior should be clearly defined and documented, e.g., five or ten working days).
- The worker may submit a response to these documents that must be included in the worker's official personnel file.
- The worker has the right to review his/her personnel file and obtain copies of all materials contained within it.
- When preparing a letter of reprimand, it should be stated in the letter that a copy will be placed in the worker's personnel file and that the worker may submit a response.
- Discipline against a trade union representative or a worker who is an office-bearer or official of a trade union should not be instituted without first informing and consulting the trade union.

6.5 RIGHT TO CONFIDENTIALITY

6.5.1 The worker is entitled to having all disciplinary action towards him or her kept confidential. Management may only divulge information with the explicit consensus of the worker and in such circumstances only to the persons who need additional information.

6.5.2 Disciplinary action should never take place in front of the worker's co-workers.

6.6 RIGHT TO APPEAL

- 6.6.1 The worker should have the right to appeal a disciplinary action taken against him or her. Such appeal may be exercised before an independent body, such as an independent mediator, or a mixed commission, evaluating the case.
- 6.6.2 The worker should be informed, both in the worker handbook and when the employer starts the disciplinary process, of these rights. The information should include at which points in the process and to what instances the worker can appeal, including bodies set up for this purpose within the company, as well as the possibilities for appeal within the national legal system.

E. GUIDELINES ON GRIEVANCES

7 *Grievance Policy*

- 7.1 The company shall be committed to promoting a work environment where all workers can discharge their professional responsibilities in an effective and efficient manner and where each individual is treated with respect, dignity and courtesy.
- 7.2 To this end policies and strategies aimed at preventing and resolving grievances shall be implemented, including training, information and documentation.
- 7.3 Workers shall have clear and transparent procedures for the handling of grievances. These procedures, when used with serious intent, shall not in any circumstances prejudice the worker, neither in his or her continuation with the company (no risk of being fired) or for promotion/advancement in the future.

8 *Grievance Procedures*

8.1 GENERAL GUIDELINES

- 8.1.1 Any worker who, acting individually or jointly with other workers, considers that he or she has grounds for a grievance should have the right to do so without suffering any prejudice whatsoever as a result, and to have such grievance examined pursuant to an appropriate procedure.
- 8.1.2 In order to resolve grievances and conflicts in the most fair and just manner as possible, as well as in the fastest and most convenient manner for all involved, the company shall have in place a clear mechanism for their resolution.
- 8.1.3 There should be two channels for the solution of grievances, the **informal** and **formal**.
- The informal procedure aims at resolving the grievance or conflict quickly, through dialogue, and without documenting the process.

- The formal process differs from the informal process in being more complex and time-consuming, since the process is documented in writing every step of the way, from the presentation of the grievance itself to the recommendations for its resolution.

8.1.4 The steps through which the resolution of grievances under either channel must pass should be clearly outlined in the worker handbook, including the action(s) the complainant needs to take in order to initiate the process, as well as the time limits set for each step on the way to a resolution of the grievance. The persons in charge of each step, and at each level, must also be specified.

8.2 DEFINITIONS

8.2.1 Grievance vs. Conflict

Most grievances are rooted in a conflict or, at least, a conflictive relationship between a worker and a supervisor or between workers. However, not all conflicts can be considered grievances. Conflicts are normally divided between collective and individual conflicts, and between conflicts of interest and conflicts of rights.

8.2.2 Collective Conflict

A *collective conflict* is normally (although not always) a *conflict of interest*, for instance on pay, and is generally solved through a process of collective bargaining.

8.2.3 Individual Conflict

Individual conflicts are normally *conflicts of rights*, where an individual worker feels that his or her rights are being infringed or violated by the company, a supervisor or a co-worker. These are the conflicts which lead to grievances and the company should have in place standardized and fair mechanisms to deal with them when they occur.

8.3 INFORMAL PROCEDURES

8.3.1 An informal procedure should be in place to solve grievances where such a mechanism is a possible way to resolution.

8.3.2 The informal process should not be seen as a first step, but as a method *per se* to solve grievances which are deemed possible to resolve by informal means.

8.3.3 This, however, does not exclude the complainant's right to, at any point, submit the grievance for consideration through the formal procedure.

8.3.4 No records of the proceedings shall be maintained and the process is confidential to the parties.

8.3.5 The main steps of the informal procedure are:

1. Submission of the complaint: When a worker finds him or her-self in a situation that merits the presentation of a grievance, the normal first step is to turn to the worker handbook for the regulations and policies that govern grievances, including how, and to whom, a grievance should be presented. This will normally be someone

from the Human Resources Department (e.g., the Director) with training in the procedures and the ability to assist the worker in deciding whether the complaint can be resolved through an informal process.

2. Third party assistance: The main tool of an informal grievance procedure is dialogue between the parties in order to clarify possible misunderstandings, inform the party towards whom the grievance is directed of the complaint, and try to find ways to help the parties themselves find the necessary solution to the problem. However, the complainant and the other party -- where this is a person and not a department or management as such -- may request the assistance of a representative of the company's Human Resources Department, a union representative, his or her supervisor, another higher level worker, or a co-worker, in preparing and carrying out the dialogue necessary to settle the problem.

3. Conciliation: To assist in the informal resolution of workplace problems, the workers involved in the grievance shall have the possibility to request conciliation. Conciliation is a voluntary process, to which both parties must agree, where a conciliator helps the parties in reaching a solution. The conciliator is not supposed to present proposals for resolution, only to assist the parties in working towards finding their own solution. For a successful conciliation the following elements are necessary:

- ✓ That the company has in place a number of persons that are trained to act as conciliators, and that the workers are informed of this.
- ✓ That the parties be given the opportunity not only to agree upon embarking on conciliation, but also to agree on the conciliator. The conciliator should be perceived as neutral by both parties, and should not have, or be perceived to have, a stake in any possible outcome or be linked to one or the other party to the grievance. Hence the importance of being able to count on more than one trained conciliator within the company.
- ✓ Although the conciliator does not actively propose solutions, the role of assisting the parties in exploring options requires skill and tact. The assigned conciliators shall therefore receive periodic training and upgrading of their skills.
- ✓ The conciliation process (as is the case for the entire grievance procedure), including its deliberations and results, shall be maintained confidential and no records shall be kept.

The workers acting as conciliators shall be released from their normal duties to the extent necessary for this purpose (conciliations and training) without any reduction in salary or other benefits.

4. Mediation:

- ✓ A worker may request the services of a mediator to assist with informal resolution of a workplace problem. The main difference between conciliations and mediation lies in the origins and role of the mediator.
- ✓ The mediator should ideally be an independent entity, and should be neither a company worker nor part of management. If no external mediators exist in reasonable proximity to the workplace, mediators may be sought and trained from within the company. In such a case the company shall ensure that the mediators receive proper training,

and that there is a sufficient number of mediators to make sure that one can be found who is completely independent in his or her relationship to the parties to the grievance.

- ✓ The mediator shall be appointed by mutual consent of the parties to the conflict.
- ✓ The main difference in the mediator's role (as compared to the conciliator) is that in addition to assisting the parties in finding solutions to the workplace problem, the mediator shall also actively propose solutions for the consideration of the parties.
- ✓ As with all elements of the informal procedure, mediation shall also take place in strict confidentiality, and no records shall be kept of the proceedings or the result.

If the mediators are brought in from outside of the workplace, the cost of this shall be covered by the company. If mediators are part of the workforce, they shall be released from their normal duties to the extent necessary for this purpose (mediations and training) without any reduction in salary or other benefits.

8.4 FORMAL PROCEDURES

8.4.1 For some types of grievances, an informal solution is not possible, and the company shall also have in place a formal mechanism for handling these grievances.

8.4.2 The worker handbook shall include a clear procedure indicating which mechanisms exist for dealing with the grievance, who is responsible and who is involved, and the steps to be taken present a formal grievance and put the procedure in motion.

8.4.3 In addition to being a slower, more complex and more resource-intensive process than the informal procedure, the main difference between the two is that in a formal grievance procedure a written record shall be kept of the complete process.

8.4.4 The steps of a formal grievance procedure:

- 1) The internal grievance procedure is initiated by the complainant presenting his or her case, in writing, to the Human Resources Department where such exists or, if not, to the persons assigned by the company to handle grievances.
- 2) The case shall then, within a reasonable time limit (e.g., 10 working days), be presented to the other party to the conflict who shall have the right to respond within a reasonable and clearly stated time limit (e.g., the same 10 working days).
- 3) The elaboration of a standard form for filing a grievance is recommended in order to facilitate the process.

- 4) Once the initial steps are completed, the grievance, as well as the response, will be studied by a Joint Advisory Board or Panel established by the company on a permanent basis for this purpose, consisting of an equal number of representatives from management and workers. The union, where one exists, should be part of this board. The number of members may differ in accordance with the company's needs, but parity in terms of management/worker representation should always be maintained.
- 5) The role of the Board is to try to find an acceptable solution, basing its recommendations on basic principles of fairness and justice. The principles on which the Joint Advisory Board bases its recommendations should be made clear to the parties, and should be in full compliance with the company's internal code of conduct, where such exists, and as a minimum with the international labor standards and national labor law. It should be made clear to the parties that failing to find a satisfactory solution at this stage will involve taking the case to the legal system, which in most cases will be both a long and expensive process.
- 6) The parties to the conflict may, if they so wish, request a hearing at which they can present their arguments. If the parties renounce this, the Board shall base its recommendations solely on the written presentation of the grievance and its response.
- 7) A reasonable deadline (e.g., two months) shall be set for the Board to present its recommendations to the parties, which will then have a deadline for signaling their acceptance (or not) of these (e.g., 10 days). The Board must present a recommendation within the time limit set. The recommendation should preferably be reached by consensus, and -- considering that this is a bipartite body -- when this is not possible, a system for ensuring a result by vote should be in place, i.e., by giving double vote to the chair in case of a tie. The chairmanship should rotate between the two parties following a pre-established and agreed upon system (e.g., six months each).
- 8) After presenting the parties with the Board's recommendation for resolution, the parties shall have the opportunity to signal their agreement or disagreement with the Board's recommendation. If any of the parties does not respond to the Board's recommendations within the time limit set, it shall be assumed that these have been accepted by the party or parties concerned.

8.5 PARTICULARLY SERIOUS CASES: VIOLENCE, SEXUAL HARASSMENT AND OTHER FORMS OF HARASSMENT

- 8.5.1 The employer shall emphasize and actively promote a workplace free of any sexual or other forms of harassment of workers, or job-applicants, by management or other workers.

- 8.5.2 The employer shall promote a climate in the workplace where the dignity of workers is respected at all times, and where victims of harassment of any kind will not feel that their grievances are ignored or trivialized, or fear reprisals.
- 8.5.3 Cases where the complainant claims to be harassed, physically, psychologically or sexually shall be treated with special diligence and care, and shall involve, in addition to the above mentioned conflict-solving mechanisms, a process of investigation in order to ensure, to the degree possible, that concrete proof supporting or dismissing the grievance exists.
- 8.5.4 The investigation of a grievance of this nature must be carried out in a way that ensures the anonymity of the parties to it and ensuring that the aggrieved party is not disadvantaged and that the position of the other party or parties is not prejudiced if the grievance is found to be unwarranted.
- 8.5.5 These cases involve serious offenses which, if proven true, should result in serious consequences for the aggressor, ranging from, in the least serious cases, disciplinary action, to, in the most serious cases, charges being brought before the relevant authorities.

8.6 EXAMPLE OF POLICY AND PROCEDURE FOR HANDLING CASES OF SEXUAL HARASSMENT

The following is an example of a policy and grievance procedure designed for dealing with sexual harassment, but which in principle would be the same for other cases involving harassment of workers. The policy and procedures should include, but not necessarily be limited to, the following:

8.6.1 Definition of sexual harassment. Definitions used may differ in the details, but should contain the following key elements:

- Conduct of a sexual nature and other conduct based on sex that affects the dignity of women and men, which is unwanted, unwelcome, unreasonable and offensive to the recipient.
- Situations where a person's reaction, or submission to, such conduct is used explicitly or implicitly as a basis for a decision that affects the person's job.
- Conduct of a sexual nature that creates an intimidating, hostile or humiliating working environment for the recipient.

8.6.2 Policy statements. Employers should issue publicly a policy statement that provides that:

- All workers, job applicants and other persons, who have dealings with the business, have the right to be treated with dignity.
- Sexual harassment in the workplace or taking advantage of the work relationship will not be permitted or condoned.
- Persons who have been subjected to sexual harassment in the workplace have a right, and are encouraged to raise a grievance about it should it occur and appropriate action will be taken by the employer.

1. Management should be placed under a positive duty to implement the policy and to take disciplinary action against workers who do not comply with the policy.
2. A policy on sexual harassment should also explain the procedure to be followed by workers who are victims of sexual harassment. In addition, the policy should state that:
 - Allegations of sexual harassment will be dealt with seriously, expeditiously, sensitively and confidentially.
 - Workers will be protected against victimization, retaliation for lodging grievances and from false accusations.
 - Policy statements on sexual harassment should be communicated effectively to all workers.

8.6.3 A company-wide complaint procedure. Employers should develop clear procedures to deal with sexual harassment. These procedures should ensure the resolution of problems in a sensitive, efficient and effective way.

8.6.4 Assistance and advice. Sexual harassment is a sensitive issue and a victim may feel unable to approach the perpetrator, lodge a formal grievance or turn to colleagues for support. As far as possible, employers should designate a person outside of line management whom victims may approach for confidential advice. Such a person:

- May be employed by the company to perform *inter alia* such a function, or may be a trade union representative or co-worker, or an outside professional.
- Should have the appropriate skills and experience and be properly trained and given adequate resources.
- Should be required to have relevant counseling and labor relations skills and be able to provide support and advice on a confidential basis.

8.6.5 Options to resolve a problem. Workers should be advised that there are two options to resolve a problem relating to sexual harassment. Either an attempt can be made to resolve the problem in an informal way or a formal procedure can be embarked upon. The worker should never be pressured to accept one or the other option.

8.6.6 Informal procedure

1. It may be sufficient for the worker concerned to have an opportunity where she/he can explain to the person engaging in the unwanted conduct that the behavior in question is not welcome, that it offends or makes him or her uncomfortable, and that it interferes with his or her work.
2. Informal procedures are appropriate when the allegations are of a less serious nature and the parties are likely to have ongoing contact with one another and the complainant wishes to use informal processes so that an ongoing relationship may be maintained.

3. Informal procedures should only be embarked upon when there is a possibility of reaching a solution through this channel, for instance if there is a possibility that the offending party is not aware that his or her behavior is offensive, e.g., jokes, comments and innuendos that may be misunderstood. In these cases often what is needed is simply an opportunity to explain that the behavior is unwanted and upsetting in order to correct it.
4. Informal procedures may include the following:
 - The complainant may seek advice from a direct supervisor, another representative of management, or a co-worker, e.g., a union representative.
 - The complainant may ask his or her supervisor or another manager (e.g., head of personnel, or the person in charge of grievances in the human resources department) or co-worker to speak to the alleged harasser on his or her behalf.
 - If a complaint is made, it may be resolved through conciliation or counseling if the alleged harasser admits or acknowledges the behavior.
 - A supervisor or manager may take independent action in the absence of a complaint if he or she observes unacceptable conduct.
5. If the informal approach does not provide a satisfactory outcome, if the case is severe or if the conduct continues, it may be more appropriate to embark upon a formal procedure. Severe cases of sexual harassment include: sexual assault, rape, strip searches and *quid pro quo* harassment.

8.6.7 Formal procedure

A formal procedure for resolving sexual harassment grievances should (as for any other type of grievance) be available and should:

- be clearly documented and accessible to all workers.
- specify with whom the worker should lodge the grievance.
- guarantee timeframes that allow the grievance to be dealt with expeditiously.
- guarantee confidentiality and objectivity.
- be administered by trained personnel.
- provide clear guidance on investigation procedures and record keeping.
- include an undertaking that no worker will be victimized or, disadvantaged for making a complaint.
- guarantee the right to appeal any decision taken, both on the part of the alleged victim as well as on the part of the alleged harasser, to an independent commission or panel.

8.6.8 Investigation and disciplinary action

- Care should be taken during any investigation of a grievance of sexual harassment that the aggrieved person is not disadvantaged, and that the position of other parties is not prejudiced if the grievance is found to be unwarranted.

- The range of disciplinary sanctions should be clearly stated.
- Serious incidents of sexual harassment or continued harassment after warnings are offenses that qualify for dismissal of the aggressor. In particularly serious cases where the harassment goes beyond being a workplace problem and includes actions which are in breach of national law, the company has the obligation, in addition to dismissing the aggressor, to report the case to the proper competent authorities.
- It should also be made clear that it is a disciplinary offense to victimize or retaliate against a worker who in good faith lodges a grievance of sexual harassment.
- If it is clear that an unwarranted grievance has been lodged in bad faith, this is in itself an offense, and the consequences and disciplinary action to be taken should be made clear to the workers. At the same time it should be ensured that these measures are not used in such a way as to dissuade victims from presenting valid grievances.

8.6.9 Provision of confidentiality

- Employers and workers must ensure that grievances about sexual harassment are investigated and handled in a manner that ensures that the identities of the persons involved are kept confidential.
- In cases of sexual harassment, management, workers and the parties concerned must endeavor to ensure confidentiality in the disciplinary investigation. Only appropriate members of management as well as the aggrieved person, his or her representative, the alleged perpetrator, witnesses and an interpreter (if required), must be present in the disciplinary investigation.

8.7 WHISTLEBLOWING

- 8.7.1 The company shall have established procedures, which will be communicated to workers, encouraging them to report any cases of harassment of any type of which they may be aware.
- 8.7.2 Mechanisms should be in place in order to ensure and protect the anonymity of these workers.
- 8.7.3 If revenge or retaliation actions take place against a worker for whistleblowing, this should be treated as a serious offense, and be dealt with as such through the disciplinary procedures.