



Ensuring responsible factory retrenchment, exit, and closure: Guidance for companies

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1. Introduction

A comprehensive and robust social compliance program should take into consideration and address the effects of a company's operations for the full employment lifecycle of workers in manufacturing facilities, from hiring through to termination. Using the Principles of Fair Labor and [Responsible Sourcing and Responsible Production](#), the Fair Labor Association (FLA) expects its members to take steps to act responsibly in situations of retrenchment, facility exit, or facility closure, with the goal of minimizing any negative impacts on workers that could result from the company's or the supplier's decisions and actions in those situations.

Beyond the requirements under the FLA Principles, it is important to consider that situations involving retrenchment, exit and/or facility closure tend to be unique. These situations often prompt FLA member companies to consider their obligations to workers beyond what is expressly stated in the Principles. FLA strongly encourages a worker-centric approach to each of these situations and buyer and supplier actions that mitigate negative consequences for workers.

Responsible retrenchment, exit, and closure have always posed challenges due to the potential for negative financial impacts on workers. The COVID-19 pandemic further exacerbated the vulnerability of apparel and other production workers around the globe, and it highlights how important it is that companies bring a high level of commitment to responsible retrenchment, exit, and closure.

The Principles of Fair Labor and Responsible Sourcing and Production include specific obligations regarding retrenchment and exit:

- **Production Principle 2.1a)** requires Company Affiliates to have **responsible retrenchment policies and procedures** in place.
- **Production Principle 5.4a)** requires Company Affiliates to have a **documented process for responsible retrenchment**, and to align this process with workplace, legal, and collectively bargained standards.
- **Sourcing Principle 2.1a)** requires Company Affiliates to have **responsible exit policies and procedures**.
- **Sourcing Principle 5.4b)** requires Company Affiliates to monitor facilities to **ensure implementation of responsible retrenchment policies and procedures** aligned with workplace, legal, and collectively bargained standards.

The Principles require companies and suppliers to bolster the proactive systems that drive their response to retrenchment, exit, and closure. Without strong systems and

focused attention to their implementation, companies risk making ad hoc decisions that could adversely impact workers.

This guidance is primarily designed for FLA’s Participating Company (PC) members. Furthermore, the guidance contains information that PCs can share with their contract suppliers not affiliated with FLA. The goal is to provide practical assistance to PCs and contract suppliers working with PCs as these FLA members work toward accreditation of their social compliance programs. As these members move forward with implementing the Principles, the guidance will provide a roadmap of what is considered best practice for members in the context of these challenging issues.

2. Responsible Retrenchment

Brands and suppliers need to take proactive steps – both systemic and operational – to ensure that retrenchment of workers is carried out responsibly. In addition to the provisions in FLA’s Principles, the FLA Workplace Code of Conduct and Compliance Benchmarks note that employers should have in place policies and procedures for retrenchment and termination, including how termination/severance payments will be made.¹ Suppliers and brands should make sure that they are aware of legal requirements in their respective sourcing countries.

What is “Retrenchment?”

Retrenchment occurs when an employer has bona fide economic, technological, structural, or similar reasons to reduce the size of its workforce.² Retrenchment may also be referred to as redundancy and downsizing.

Economic reasons for retrenchment may derive from the internal financial status of the supplier, or external factors such as market conditions, trade tariffs, or regulations. Technological advances and automation of operations may mean current jobs are no longer required. Structural reasons refer to a restructuring of the business for legitimate financial reasons, resulting in redundancies.

2.1 Suppliers and Responsible Retrenchment Obligations

Suppliers should establish and implement written policies and procedures on responsible retrenchment aligned with workplace, legal, and collectively bargained standards. In the following section, we will examine what factors are important to consider before retrenching workers and how to develop a responsible retrenchment policy and related procedures.

¹ See FLA Workplace Code of Conduct and Compliance Benchmarks, ER.15 and ER. 16.

² The International Finance Corporation’s [Good Practice Note – Managing Retrenchment](#) defines “retrenchment” as a term “which can cover a wide range of dismissals that do not essentially relate to the conduct or capability of the worker.”

- **Why is a supplier considering retrenchment?**

Before taking any actions to retrench workers, it is important to fully assess **why** management is considering retrenchment. Retrenchment should occur only when the employer can establish a clear, demonstrable, and documented reason showing that retrenchment is due to economic, technological, structural, or similar needs.

Before making any decisions about reducing its workforce, a supplier considering retrenchment should ask itself the following:

- 1. Are there alternative to retrenchment?**

Bearing in mind applicable laws as well as the need to consult with the union(s) or worker representatives, all alternative options should be reviewed and considered before making a final decision to retrench workers. Alternatives to retrenchment may include:

- Workers move to other positions within the organization;
- Workers take unpaid leave or are temporarily furloughed;
- Reduction in workers' hours;
- Allow some workers to work part time and/or job share;
- Workers beyond retirement age voluntarily taking retirement; or
- Defer any bonus payments and/or additional benefits, if cash flow is an issue.

- 2. Is the retrenchment being considered as a cost cutting measure?**

- Employees should be viewed as assets to be developed versus costs that need to be reduced. Workers' labor represents future economic value to the company. They are the backbone of a company and the value producers.
- When workers are retrenched, the company loses valuable skills and experience, and this loss can be disruptive and harmful when it involves many workers potentially leaving skill gaps or resulting in loss of institutional knowledge.
- Retrenchment as a cost cutting measure should be used only as a last resort.

3. Is the need for workforce reduction likely to be short term or long term?

- When faced with a situation of temporarily employing too many workers, finding a way to retain these workers may be a better option than retrenchment – a furlough or other temporary option as distinct from a permanent end to the employment relationship.
- If the problem is that there are too many workers for the amount of work the supplier has for now and the foreseeable future, then retrenching the workers may be the only solution because the supplier is addressing a longer-term problem.

Throughout the decision-making process, it is critical to focus on the workers and the impact retrenchment will have on them and the surrounding community.

Important Note Regarding Retrenchment and Hiring

When an employer intends to retrench, it **should not** initiate other processes of recruiting and hiring of personnel to work in the company in the same categories or positions as the workers who are being retrenched. It should be understood that the retrenchment is occurring for reasons for which the workers are not responsible. If and when it becomes possible to proceed with the hiring of new workers, the jobs should be offered first to the worker(s) terminated from jobs in the same or similar categories before posting hiring announcements for those job(s).

- **What should be included in a retrenchment policy?**

A responsible retrenchment process is one that is carried out in a manner that is transparent, fair, and objective.

Transparency during a retrenchment, both in specifics and timing, is fundamental to reducing the tensions inherent in the process. Management should establish communication channels to ensure that workers are provided with clear and consistent information, with sufficient advance notice of the retrenchment date.

When selecting those individuals to be retrenched, **fairness** and **objectivity** in the selection process are of paramount importance. Management needs to ensure that selection of the workers is based on objective and impartial standards applied in an unbiased manner.

A supplier should develop responsible retrenchment policies to establish the principles on which any retrenchments would be conducted; the policy answers the question of “why retrench responsibly” by outlining the supplier’s position on the issue.

While a supplier’s retrenchment policy will be customized to its circumstances, the policy should generally contain commitments to the following:

- The principles of transparency, fairness, and objectivity in the retrenchment process;
- Maintenance of employment security whenever possible;
- Consideration of alternative proposals with a view toward reaching agreement on:
 - Ways to avoid retrenchment,
 - Ways to minimize the number of workers affected by the retrenchment,
 - How to mitigate retrenchment's effects on the workers, and
 - How to mitigate retrenchment's effects on the surrounding community.
- Prohibition on recruiting new workers or replacement workers during the retrenchment process or immediately thereafter (unless the company makes efforts to rehire the retrenched workers first);
- Keeping the union and/or worker representatives as well as the workforce fully informed of reasons for retrenchment, timeframes, and any other relevant information that will affect the employment stability of the workforce; and
- Payment to workers in a timely manner of all due wages and legal benefits, including severance pay.

When drafting the policy, management should consult with the factory's union(s) or worker representatives to gain their input. By having worker input during the drafting process and striving to reach a consensus wherever possible, worker confidence and trust in the retrenchment process will be strengthened.

- **How does a supplier develop retrenchment procedures?**

Determining how the retrenchment will be conducted, including how many workers need to be retrenched and/or what positions need to be cut back, can be a difficult decision. Retrenchment procedures document the process for making and communicating these decisions.

Generally, the procedures should cover:

- **Communication:** How the retrenchment process will be communicated internally with the workforce, customers, any agents or intermediaries, and local authorities. If possible, include general guidelines on the expected speed of communication, recognizing that each situation will require a unique and customized response.
- **Consultation:** The consultation and engagement process with union or worker representatives. Where there is a collective bargaining agreement that has terms related to worker retrenchment, the procedures should be aligned with these

standards. In some countries, the supplier is also required to consult with relevant national and/or local authorities regarding any planned retrenchment.

- **Notification:** The notification process to workers who are being retrenched.
- **Selection:** The selection process for retrenching workers; this process should be done in alignment with any legal requirements and the code of conduct, especially in conjunction with the Nondiscrimination and Employment Relationship code elements. Throughout the decision-making process, the supplier should ensure the selection criteria are fair and objective.³ Selection criteria that are generally accepted as fair in situations of retrenchment include:
 - Length of service;
 - Skills and qualifications; and
 - Implementation of policies of affirmative action.
- **Standards:** The procedures should reference all applicable workplace, legal, and collectively bargained standards, including but not limited to the notification process to local authorities and severance benefits. Where there are differences among local law, the collective bargaining agreement, and the code of conduct, the highest standard should apply.
- **Benefits:** The procedures should ensure the facilities providing the legally required social security benefits and on a regular basis, to ensure workers can receive retrenchment benefits. The procedures should include a process to ensure workers receive their legally-owed benefits, including providing support to file for social security benefits.
- **Re-Employment:** The procedures include how the company will support with re-employment of retrenched workers, including re-hiring at other owned facilities or supporting workers in being recruited at nearby factories. Where workers are re-hired at another owned facility, their seniority should be applied.

³ The most common principle of worker selection is known as “LIFO” (last in, first out) – an objective criterion for selection. This means that, as a rule, the workers with the least seniority at the company should be the first to be retrenched. Ensure that the worker selection criteria do not infringe on international labor standards (such as the ILO Conventions), national law, or the company’s code of conduct. Selection criteria should never be based on:

- Union membership or activity (Note to designer: See the next page for the remaining footnote text.)
- Race, sex, age, color, political opinion or affiliation, national or social origin, or religion
- Pregnancy
- HIV or any other health status
- Contractual status
- Any other discriminatory ground addressed in the company’s code of conduct or in national legislation.

- **Civil Society:** The procedures should include engagement with civil society and community leaders to ensure that feedback on specific sensitivities and impacts for workers are considered in retrenchment process.
- **Grievance Mechanisms:** The procedures should ensure retrenched workers know of and have access to the company’s grievance mechanisms and describe how the company will ensure that grievances from retrenched workers will be addressed by the company.

Workers should be informed about the retrenchment process as early as possible with adequate notice and a clear timeframe of when retrenchment will occur. Any final wages, severance payments, and other benefits owed to workers should be provided. Workers should be made aware of their right to appeal, and suppliers must have adequate systems in place to address all worker appeals in an impartial manner.⁴ Suppliers are encouraged to consider developing a supervisory or joint labor/management committee to oversee the process and ensure fairness in the procedure.

Once the policy and procedures are finalized, it will be critical to provide training to managers, supervisors, and workers on how any subsequent retrenchments will be handled.

Notes from a Civil Society Organization: Policies and Procedures

When developing the policies and procedures, it is imperative to consult with workers on the contents of a responsible retrenchment process. Worker consultation should begin early. Consultation works well if the employer makes it clear to workers that they want to know what workers think. Management needs to make it clear that the issues raised by workers are important to them, and they will listen and incorporate worker feedback.

Consultation can take place via a worker survey or focus group discussion. Both focus groups and surveys can be useful for some topics, but talking to individuals in a safe space where they can talk openly will give valuable insights. Managers need to build trust with the workers and make it clear that there is a common interest to find solutions.

2.2. Participating Companies and Responsible Retrenchment – Monitoring Suppliers

Brands must monitor their suppliers’ retrenchment policies and practices. Sourcing Principle 5.4 outlines a Participating Company’s monitoring obligation to ensure suppliers have in place and effectively implement policies and procedures on responsible retrenchment that are aligned with workplace, legal, and collectively bargained standards. In addition, the suppliers must show that, when the responsible retrenchment policy or procedures were not followed, they remediated this failure through providing

⁴ FLA’s Grievance Mechanism Toolkits are available in the Resource Library of MyFLA.

retrenched workers with any legally-owed benefits not received and revisiting the policy and procedures to evaluate the need for updates in order to prevent future noncompliance.

i. Why monitor for responsible retrenchment?

PCs should monitor their suppliers' responsible retrenchment policies and procedures to ensure:

- Workers are protected and receive their legally-owed benefits;
- The retrenchment process is conducted in a manner that upholds all workplace and legal standards as well as any collectively bargained standards; and
- The retrenchment process aligns with the company's code of conduct, especially in the areas of employment relationship, compensation, nondiscrimination, and freedom of association.

ii. What retrenchment issues should be monitored?

A PC should have clear monitoring policies and procedures for its supply chain. With regard to a PC's monitoring of its suppliers' responsible retrenchment policies and procedures, it should assess:

- The development of the supplier's retrenchment policies and procedures, and how often they are updated;
- The supplier's guidelines on the criteria to determine which positions will be eliminated when retrenchment is unavoidable;
- Review of the records of any recent retrenchments to ensure the supplier's policy and procedures were followed; and
- The supplier's grievance mechanisms and whether they are functioning and effective for the workers throughout any retrenchment process.

Retrenched Workers' Access to Grievance Mechanisms

When monitoring a supplier's recent retrenchments, it is important to consider the accessibility of the grievance mechanisms for a retrenched worker. The worker may believe the retrenchment was improperly conducted, but due to financial constraints feels the need to accept the severance offered by the supplier. In some sourcing countries, a condition of receiving a severance package is agreeing not to pursue an appeal against the employer regarding the retrenchment. Therefore, the worker is forced to choose between pursuing a grievance or receiving severance after losing a job.

PCs should also consider:

- Are there circumstances when the supplier will support retrenched workers with re-employment – for example, the supplier could contact other suppliers in the region to help retrenched workers find new jobs;
 - **If the supplier does not offer this support:**
 - i. PCs may consider contacting other suppliers in the region to determine if those suppliers can assist with the re-employment of the retrenched workers, and
 - ii. PCs are urged to monitor the process closely to ensure the supplier provides the workers with their legally-owed payments;
- What actions the PC will take if the supplier fails to provide retrenched workers with their legally-owed severance benefits; and
- Maintaining a dialogue with local stakeholders to keep abreast of local conditions and assess the impact of any potential retrenchment plans.

iii. How to monitor supplier retrenchment?

A PC's monitoring program should review the supplier's records to ensure any recent retrenchments were conducted in accordance with the supplier's policy and procedures, local law, and code of conduct. The PC should also evaluate how the retrenchment was communicated to it and the supplier's other customers. The monitoring should include:

- Identification of people or positions responsible for the implementation of the retrenchment process;
- Assessment of whether those identified as responsible for implementing retrenchment receive adequate training and resources;
- Details of any consultation arrangements with the trade union, or worker representatives, including timeframes and content of consultations;
- Evaluation of the company's procedures and accounting for payment of final wages and severance to any retrenched workers; and
- Evaluation of whether there is an impartial appeal process for efficiently handling worker disagreements over the way in which the retrenchment was conducted.

Retrenchment and Fair Compensation

When monitoring a supplier's retrenchment process, a PC should also examine its fair compensation strategy with that supplier. Is the retrenchment occurring because of financial difficulties? If so, is the PC adequately implementing its [fair compensation strategy](#) and responsible purchasing practices? FLA's Online Fair Compensation Dashboard is available to PCs to assist them with understanding where their suppliers' wages fall on the wage data benchmarks.

There will be times when retrenchment is unavoidable. The key to making the process work smoothly and minimize the impact on workers is to have a responsible retrenchment policy and related procedures in place. By proactively establishing this framework, suppliers can ensure that retrenchment will be conducted in a transparent, fair, and objective manner. PCs' monitoring of their suppliers' retrenchment practices provides operational insights into how a supplier puts its policy and procedures into action and monitoring of a supplier's financial health provides important information that can help PCs understand if there are bigger problems brewing with that supplier. Addressing gaps in systems and implementation can go a long way in supporting workers to navigate the inherent challenges in any retrenchment process.

Notes from an FLA Participating Company: Retrenchment

Successfully monitoring your supplier's policy and application of retrenchment procedures requires more engagement than auditing. It is important for us, as a responsible company and buyer, to have open dialogue with all suppliers and highlight the importance of retrenchment policies via supplier summits, trainings, and direct feedback to suppliers. We have set up a process which asks all of our suppliers to inform us before they make any major staff changes. This notice from the suppliers ensures we have full visibility into any potential retrenchments, and we can ensure they are abiding by the law. If the supplier has trouble making payments to retrenched workers, we will have the opportunity to provide further guidance or assistance.

3. Responsible Exit/Disengagement

3.1 Participating Companies' Responsible Exit Obligations

Responsible Exit is built into Sourcing Principle 2, Responsible Purchasing Practices. In this Principle, a PC needs to demonstrate that it has formal, written policies and procedures for planning and purchasing that align with the PC's commitment to workplace standards. Embedded in this responsible purchasing practices commitment is having a responsible exit policy and accompanying procedures that consider and address the impact of an exit on a supplier's facility and its workers.⁵

⁵ In the case of a significant decrease in orders from a supplier, the responsible exit protocol should also be followed. What constitutes a significant decrease in orders will be dependent on how strategic a customer the PC is for that supplier. If the PC's orders represent a significant portion of the supplier's business, then the PC will need to evaluate carefully any large decreases in orders to that supplier.

i. Why is the company considering exit?

Exiting a facility is a big decision with potential negative consequences for workers. The risk to workers is magnified when a company has substantial production volume in a facility. In the event a PC considers exiting a factory, it should consider both the reasons for and implications of exiting.

- Is the decision to exit an economic or an operational decision?⁶
- Is the decision to exit the result of persistent or zero tolerance code of conduct non-compliance that has gone unremediated?
- Are there other reasons tied to the supplier's policies or practices that are at the heart of the exit decision?

When the decision to exit is an economic or operational decision, a PC should collaborate with the supplier and consider whether there is an opportunity for the supplier to take on different orders, styles, or other work. PCs are encouraged to have an open dialogue with the supplier and consider alternatives and review all possible actions to avoid having to exit the facility.

When a PC considers exit due to persistent or zero tolerance code of conduct non-compliances or other irregularities, the PC should work with the supplier and encourage the supplier to use root cause analysis to understand why the non-compliance continues to happen.⁷ A PC should also ask the supplier if any additional training could be provided to increase the skillset of the managers, supervisors, and workers to resolve the compliance problems. A PC should explore all opportunities to mitigate before deciding to exit, but in a situation of a zero-tolerance non-compliance that timeframe may be significantly shortened.

Communication regarding exit for persistent non-compliance or irregularities should be clear, consistent, and take place over a period of time that allows for improvement. Suppliers should be informed that exit is occurring due to the supplier's unwillingness and failure to remediate despite the brand's efforts to assist. The PC should also revisit its pre-sourcing assessment to see if this is a problem that could be caught, for the future, through an improved pre-sourcing assessment.

⁶ Economic or operational reasons could include quality and timeliness of orders, order reduction, change or end of styles, change in access to raw materials, and changes in tariffs and trade agreements.

⁷ Root Cause Analysis is a methodology that helps suppliers find the real causes of a problem that underlie more superficial symptoms. By using the methodology, suppliers are able to identify the root causes of a problem, so the corrective actions put in place to eliminate the problem are directed not only at the symptoms but also at the root causes and therefore corrective efforts have a much higher likelihood of yielding permanent results.

As noted above, in instances where a company uses a large portion of the factory's capacity, or is a strategic buyer, the company should be mindful of the potential disruption the exit will have for the supplier and workers. The more strategic a buyer the company is for the supplier, the more time the company should allow for its divestment process. If the exit will lead to worker retrenchment, the PC should continue engagement with the supplier in order to monitor the process closely and make sure that retrenchment is conducted in a manner that upholds all workplace and legal standards as well as any collectively-bargained standards; workers are informed of their rights to raise any grievances; and workers receive all wages and severance payments that they are due.

Throughout the decision-making process, companies should engage in due diligence (including consultation with civil society) to identify, prevent, and mitigate negative impacts on the workers and the surrounding community that may result from the exit.

ii. What must a company do to exit responsibly?

Exiting a facility is a big decision with potential negative consequences for workers. The risk to workers is magnified when a company has substantial production volume in a facility. In the event a PC considers exiting a factory, it should consider both the reasons for and implications of exiting.

When drafting a responsible exit policy, PCs should include the company's commitment to:

- Maintaining responsible purchasing practices;
- Uphold all business and payment agreements; and
- Provide the supplier sufficient notice of its plan to exit (this notice should be proportionate to the capacity the PC uses and should not be less than six months).

A PC should consult with CSOs and its suppliers when developing its responsible exit policy and take their feedback into consideration.

Once the responsible exit policy is established, the PC should ensure that there is broad understanding of the policy within the company and that this policy is an important part of the company's commitment to responsible sourcing. The PC should also revisit the policy on a regular basis to ensure it remains current.

iii. How does a responsible exit happen?

Once a PC's policy is in place, it will need to draft the accompanying procedures to make clear how the policy will be implemented. The responsible exit procedures should

identify the steps a PC must take when it has determined that it must exit a factory. Although procedures may vary for each company, they should include:

- Identification of a specific staff person(s) responsible for the company's exit policy and procedures and the implementation of any factory exit.
 - This person should make sure that there is good internal alignment amongst the company's different departments to ensure that there is a clear understanding of the exit policy and procedures.
- Development and deployment of an exit questionnaire to a supplier the PC intends to exit to fully understand the impact of the exit on the workers, facility, and surrounding community. The PC should also develop the evaluation criteria for the questionnaire, and how this data will be integrated into the PC's exit plan.
- Consultation with the supplier on the exit plan. This consultation should include topics such as:
 - Timeline;
 - Order placement for the phase-out period; and
 - Any financial/cash flow vulnerabilities for the supplier.
- The steps the PC will take to mitigate any negative consequences of the exit on the supplier's workers.
- In the event of retrenchment or factory closure following an exit, consultation with other brands, unions, civil society/other local stakeholders as well as the national government to ensure that workers receive their full legally-mandated benefits in a timely manner.

Effective implementation hinges on the PC training its employees on the Responsible Exit Policy and Procedures. It is especially important that departments such as sourcing, merchandising, buying that are actively involved in engaging with suppliers have a clear understanding of the PC's commitment to responsible exit. The PC should ensure that all communications with the supplier regarding the exit are transparent and timely. The PC should establish a process through which the policy and procedures are reviewed and updated on a regular basis.

Notes from an FLA Participating Company: Internal Partners

Companies should be aware that it can be difficult to ensure that all of the company's internal partners understand the company's commitment to responsible sourcing, including the implications of exiting a factory. It has been a struggle to get all the internal departments to take into account the risks and implications of ending a sourcing relationship. Other departments need to get clear and comprehensive training which explains the labor risk as well as the reputational risk to the company when responsible purchasing practices are not followed.

iv. Responsible exit under special circumstances

There may be circumstances where a company needs to exit a factory due to special circumstances. These can include country-level egregious human rights abuses, military coups, geopolitical or sociopolitical unrest, trade bans, or sanctions. In these instances, companies should first exercise enhanced due diligence and supply chain monitoring and actively engage with the suppliers, other brands, and CSOs to closely monitor the situation. However, if the situation deteriorates, such as increase in violence, confirmed supplier links to known human rights violators, sustained manufacturing disruptions, logistical disruptions, and new sanctions, brands will need to consider exiting.

We encourage companies to plan for these situations and add guidance on special circumstances to their responsible exit policies and procedures. This planning will help to ensure that, if action is needed, the exit can be done in a way that minimizes the impact on workers.

In the event of an unexpected exit, it is important that a company establishes a process to ensure that the factory and the workers are paid for all of the work that has already been done. This would include settlement with factory management in a fair and transparent manner for orders already produced, orders started, orders in production, raw materials purchased by supplier for the order, and any cancellation fees the supplier may have incurred. At a minimum, companies should pay in full without renegotiation for orders started or completed. The company should make sure all of its relevant internal departments (especially sourcing and social compliance) are consulted and involved to facilitate a cohesive message to the supplier and a consistent organizational strategy related to the exit that centers on mitigating the negative consequences for workers.

Example of Special Circumstances: Myanmar's Military Coup

On February 1, 2021, the Myanmar military arrested the country's civilian government leaders and announced a one-year state of emergency. This coup effectively overthrew the democratically-elected leaders; the military used an article from the country's 2008 constitution (drafted by the military) that allows it to declare a state of emergency and take control of all three branches of the country's government. Following the military coup, union leaders and labor rights activists representing Myanmar's garment sector emerged as leaders of the civil disobedience and pro-democracy protests known as the Civil Disobedience Movement. Some apparel companies have started to phase out their sourcing from Myanmar. Companies continuing to source from Myanmar should closely monitor development in the country.

4. Factory Closure

Factory closure is a challenging issue for all affected parties — brands/buyers, suppliers, and above all, workers and their communities. How should companies address the challenges they face when a factory closes and workers are not provided their legally-owed wages or other benefits?

The Preamble of FLA's [Workplace Code of Conduct](#) is a good starting point when considering issues surrounding factory closure:

“Companies affiliated with the FLA are expected to comply with all relevant and applicable laws and regulations of the country in which workers are employed and to implement the Workplace Code in their applicable facilities. When differences or conflicts in standards arise, affiliated companies are expected to apply the highest standard.”

PCs and suppliers should be upholding all applicable laws and a code of conduct aligned with the FLA's standards. This means that they should be upholding standards aligned with the code and benchmarks such as ER.15 on Termination Payouts, ER.16 on Termination and Retrenchment Policies and Procedures, and C.21 on Legally Mandated Benefits. Upholding and enforcing these standards helps avoid situations in which a factory closure results in workers not receiving their legally-owed benefits. In addition to the standards set out in the FLA Code, it is helpful to consider a broader standard for responsible business conduct – the [UN Guiding Principles on Business and Human Rights](#) (UNGPs). The UNGPs state that business has a responsibility to respect human rights:

“Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.”

Factory closures sometimes happen in countries in which the national government's social protections for workers may be inadequate or non-existent; this reality is a key reason why factory closure is a complex issue. This deficiency in government protections means the obligation to workers for severance and other legally-owed benefits may become the full responsibility of the direct employer. Ultimately, PCs and suppliers should be aware of these deficiencies, and their primary consideration should be how to meet the financial obligations to workers in the event of a factory closure.

4.1 Considerations for Suppliers

A supplier facing a factory closure should follow steps similar to those used in the retrenchment process – providing workers with as much notice as possible regarding the closure and ensuring that the workers get paid their legally-owed benefits. In addition, if a factory closes, the supplier may consider taking steps to help the workers find new employment such as:

- Offering the workers employment in another one of the supplier's other factories, if that is an option;
- Providing re-training or new training to the workers in an effort to increase their skills in preparation for seeking new employment; and

- Providing workers with recommendation letters that they can use in seeking new employment.

Suppliers can also take preventive measures to protect against unexpected closures and ensure that workers receive their due payments when a closure is unavoidable. These include:

- Ensure that the supplier is complying with all legal requirements.
- Consider whether the supplier is able to establish a severance fund/escrow for workers to ensure that payments to workers are protected and will be available to them in the event the factory closes.
- Engage in ongoing, transparent communication with workers and unions.
- Maintain regular outreach to CSOs and other community organizations.

4.2 Considerations for Participating Companies

Factory closure can present more complications for PCs than exit or retrenchment and will thus require additional due diligence steps.

- PCs should be on the lookout with their suppliers for “early warning signs” that could lead to factory closure. This type of monitoring alerts buyers to problems before they become so severe that the factory has to cease operations, or helps a buyer prepare for a closure. Warning signs can include issues such as:
 - Delayed and/or partial wage payments to workers;
 - Non-compliance going unresolved for extended periods of time;
 - Non-payment of mandatory contributions, such as social security; and
 - Failure to pay vendors and service providers.

Notes from an FLA Participating Company: Factory Closure

The supplier was faced with a factory closure announced by the factory owners. The company took the responsibility to monitor the factory through the closure to ensure that the workers were paid and received severance payments they were due. In this case, the company had about a third of the factory's capacity. They decided to establish an internal team made up of an individual in the headquarter office, an individual in the sourcing country, and an individual on the corporate responsibility team. This team met regularly to discuss the closure and ensure that payments were being made to the workers. In situations like these, it is helpful for factories to reach out to their network to try to facilitate work at other factories. The closures are more detrimental now because workers cannot find new jobs.

Proactively monitoring suppliers to look for signs of potential factory closures assists a PC to take preventive action to avoid or mitigate the impact of a sudden closure

resulting in workers being left without their due wages and severance. To monitor for potential factory closures, PCs should:

1. Monitor regularly and comprehensively to detect underlying risks.
 - The PC should be aware of country specific risks, including what types of social protection and employment benefits are legally due to workers in their sourcing countries, if any. This country-specific due diligence could be evaluated as part of a PC's pre-sourcing assessment.
 - The monitoring should include an examination of the financial health of the supplier, including how the supplier accounts for severance funds for its workers. If there is no legal requirement for a separate severance fund account, consider the supplier's overall financial health and ability to pay severance to its workers in the event that becomes necessary. The PC should consider adding a periodic financial audit of its suppliers to its monitoring program.
 - Ensure that a sufficient number of worker interviews are included in the company's factory audits, and pay close attention to any red flags that workers communicate.
 - If the PC finds financial irregularities with the supplier, the PC should look at:
 - Its own responsible purchasing practices policy and procedures and their implementation to see if the financial issues are connected to or caused by the PC.
 - What can be done to remedy these financial issues regardless of their cause. A PC could provide additional help by prioritizing certain payments to the supplier, assisting the supplier in finding low interest rate loans, or providing technical financial assistance.
2. Establish criteria that are "red flags" – signals that a closure may be imminent. Set out a process for what actions will be taken when those red flags arise.
3. As a best practice, work with the supplier to establish a factory closure fund (withholding an amount equivalent to severance if the PC thinks the workers are in danger of not receiving it).
4. Conduct proactive outreach to CSOs, other stakeholders, and union/worker representatives (when possible) to ensure that the company has the benefit of their insights.

When a PC's sourcing factory closes suddenly and workers do not receive their benefits, what can a PC do? PCs should consider what actions they can take as a responsible

business committed to the FLA’s standards to assist the workers in receiving the payments they are due. For example, a company might provide resources to the workers letting them know what governmental benefits are available to them, or a company can collaborate with other companies sourcing from the same factory to determine if they can provide financial assistance to the workers.

Grievance Mechanisms

Protecting workers, and ensuring workers have a meaningful voice, is an important aspect in retrenchment, exit, and closure. Workers should have the opportunity to raise any concerns, and PCs/Company Affiliates should make sure all workers have access to functioning Grievance Mechanisms. Grievance Mechanisms can take many forms. The most important element is the implementation and management of a grievance mechanism that workers trust, understand, and feel comfortable using. Companies must have at least one confidential and anonymous reporting channel, and at least one grievance mechanism that includes a union and/or worker representative committee.

For additional guidance on Grievance Mechanisms, please refer to the FLA’s PC/Company Affiliate Grievance Mechanism Toolkits in the Resource Library of MyFLA.

Fair Labor Investigations

FLA administers a set of tools that enable it to address instances of significant and persistent noncompliance with its Workplace Code of Conduct and Compliance Benchmarks in production facilities owned or used by FLA member companies, suppliers, or university licensees. These include Third Party Complaints, Brand-Commissioned Investigations, and FLA-Commissioned Special Independent Investigations – of which Third Party Complaints have been by far the procedure utilized most frequently. It is noteworthy that many of the TPCs and safeguard investigations relate to issues such as retrenchment, facility exit, and facility closure – situations in which workers do not receive their legally owed benefits (wages and severance). In the last fifteen years, the Fair Labor Investigations process has conducted over fifteen investigations regarding factory closures. More information on Fair Labor Investigations is [available here](#).

5. Conclusion

A company’s commitment to social compliance extends all the way through to how it ends its relationships with suppliers and the consequences of those decisions for workers. This document provides guidance to companies on how to terminate factory relationships responsibly such that workers are protected through that final phase as they were throughout the company’s engagement with the factory.

Retrenchment: Suppliers should establish written retrenchment policies and procedures in order to have a framework in place in the event of a retrenchment. The key characteristics of any responsible retrenchment are that it is carried out in a transparent, fair, and objective manner. In addition, PCs should monitor their suppliers to ensure that they have responsible retrenchment policies and procedures in place and that any worker retrenchment is performed in accordance with such policies and procedures.

Exit: Responsible exit policies and procedures form part of a company's responsible purchasing practices. When a PC decides to exit a factory, it should have a clear plan aligned with its policy and procedures. A PC's approach to exit responsibly should be included in the company's responsible purchasing practices, highlight its obligation to uphold all business and payment agreements, and provide the supplier sufficient advance notice.

Factory Closure: Factory closure is a particularly complex issue. In many situations, a factory closure occurs when the supplier is in a dire financial situation and unable to pay the workers the benefits they are legally owed. These are situations in which PCs will be well served if they have thought about closure scenarios in advance, so that they are prepared to deal with situations as they arise. Furthermore, PCs' monitoring programs can be used to check for early warning signs at a supplier that is at risk of closing one or more facilities. By being on the lookout for these signs, the PC could potentially intervene with the supplier before the situation deteriorates and closure is the ultimate outcome.

Mitigating the impact of retrenchment, exit, or facility closure on workers is of paramount importance as factory workers' livelihoods are extremely vulnerable in the event of sudden employment changes. Planning for and implementing responsible retrenchment, exit, and closure policies are thus an important part of being a responsible buyer and supplier.

6. Appendices: Process Checklist

Below are sets of key questions to help guide companies through each process. They are focused on:

- Policy and Procedures
- Responsibility
- Training
- Implementation
- Communication and Worker Involvement
- Review Process

6.1 Responsible Retrenchment

Checklist for Suppliers

1. Do we have a clear justification for retrenchment?
2. Have we reviewed all alternative options?
3. Do we have a Responsible Retrenchment policy and procedures in place?
4. Does the policy include references to/take into consideration:
 - Obligations to ensure transparency, fairness, and objectivity in the retrenchment process;
 - Maintenance of employment security whenever possible;
 - Minimum notice period;
 - Ways to mitigate the negative impact on workers;
 - Refrain from recruiting new workers or replacement workers during the retrenchment process or immediately thereafter (unless the company makes efforts to rehire the retrenched workers first);
 - Keep the workers, union, and/or worker representatives fully informed; and
 - Payment to workers in a timely manner of all wages and legal benefits due to them, including severance pay.
5. Have we identified all of the departments that we need to involve in the process?
6. Have we communicated our policy internally?
7. Have we assigned responsibility to ensure our policy is followed and implemented?
8. Have members of our team been informed about our policy and procedures?
9. Are members of our team skilled/experienced enough to deal with this issue?
10. Have we consulted workers?
11. Have we given adequate notice to workers?
12. Have we communicated our procedures clearly to the workers involved?

13. Have we identified if there are any payments, including severance and other legally-owed benefits, that must be paid to the retrenched workers?
14. Have we been objective and transparent in who we are retrenching?
15. Do workers have access to a functioning grievance mechanism throughout the retrenchment process?
16. Have we reviewed and evaluated key learnings from the process as they emerge and after the process concludes for a specific factory? Are there ways this process can be improved?

Checklist for Participating Companies

1. Do we have systems in place to have open and regular dialogue with our suppliers?
2. Are we actively monitoring our suppliers?
3. Are we actively tracking and identifying any potential concerns/red flags?
4. Does our retrenchment monitoring include the following?
 - Ensuring our supplier's/factory's responsible retrenchment policies and procedures are in place; and
 - Having a system in place to review records of any recent retrenchments.
5. Do workers have access to functioning and effective grievance mechanisms?

6.2 Responsible Exit and Closure

Checklist for Participating Companies

1. Do we have systems in place to have open and regular dialogue with our suppliers?
2. Are we actively monitoring our suppliers?
3. Are we actively tracking and identifying any potential concerns/red flags?
4. Do we have a clear and fair justification for exiting?
5. Have we identified specific staff/departments responsible for developing the exit policy?
6. Do we have clear procedures to follow if we decide to exit a factory?

7. Have we evaluated the impact of our exit on the workers? Factory? Supplier? Community?
8. Have we given the supplier sufficient notice of the intent to exit? Are we a strategic buyer for this supplier or do we use significant capacity at the factory – in these cases we need to provide a longer notice period. In no event should the notice period be shorter than six months.
9. Are there any outstanding orders and/or payments?
10. Have we consulted with:
 - Brands sourcing at the same factory
 - Workers
 - Worker representative groups and/or unions
 - Civil society/other local stakeholders
11. Do workers have access to a functioning grievance mechanism?
12. Regarding closure:
 - Are we tracking whether the legally-mandated payments are being made to the workers? If not, what are we going to do about that?
 - How can we use our leverage with the factory/supplier and potentially with other brands sourcing from that factory to ensure that the payments are made where they are owed?
 - Could the closure have been due to actions taken by us? Do we need to re-evaluate our responsible purchasing practices?
 - How strong are the national government's worker protection laws?
 - Do we have a "subsidiary responsibility" to workers if they are owed payments upon a factory closure?

7. Additional Resources

The list below contains links to additional resources on the issues of retrenchment, exit, and factory closure. The list is not exhaustive and will be updated periodically.

Resources from International Organizations:

- Better Work: [Managing Transitions and Retrenchments](#) (April 2020)
- International Finance Corporation:

- [Guidance Notes: Performance Standards on Environmental and Social Sustainability](#)
- [Good Practice Note – Managing Retrenchment \(August 2005\)](#)
- International Labor Organization: [Call to Action](#) (April 2020)
- International Trade Union Confederation (ITUC): [Investments in social protection and their impacts on economic growth](#)
- Organization for Economic Co-operation and Development: [OECD Guidelines on Multinational Enterprises](#)
- [UN Guiding Principles on Business and Human Rights \(UNGPs\)](#)
- UN Office of the High Commissioner for Human Rights: [Business and Human Rights in Challenging Contexts: Consideration for Remaining and Exiting](#)

Resources from Civil Society Organizations:

- ACT Initiative on Living Wages: [Responsible Exit Policy and Checklist](#)
- Maquila Solidarity Network: [Cases where brands compensated workers after factory closures](#) (March 2018)
- SOMO
 - [Responsible disengagement in the time of corona](#) (April 2020)
 - [Should I stay or should I go? Exploring the role of disengagement in human rights due diligence](#) (April 2016)
- Workers Rights Consortium: [Fired, then robbed – Fashion brands’ complicity in wage theft during Covid-19](#) (April 2021)

Illustrative FLA Case Studies:

- [Gildan Star Third Party Complaint](#) (September 2019)
- [Hanesbrands CSA Guatemala Third Party Complaint](#) (April 2019)