

PROTECTIONS AGAINST TRAFFICKING IN PERSONS**Monitoring the Performance of Labor Recruiters**

The risks of Human Trafficking can be controlled by properly designed and implemented processes for recruitment, selection and hiring of workers. Those risks are greater and more difficult to control when recruitment, selection and hiring are outsourced to third party labor recruiters. Therefore, companies should, whenever possible, recruit, hire and employ workers directly.

When direct recruitment is not possible, companies must exercise careful due diligence in the selection of labor recruiters to minimize the risk of human trafficking as a result of fraudulent or misleading recruitment practices (refer to Tool 3, Criteria for Screening and Evaluating Labor Recruitment Candidates).

Once a company has engaged a labor recruiter, regular monitoring the recruiter's performance against Code of Conduct and legal requirements is essential to help ensure ongoing compliance.

The following sample tool recommends a generic approach to monitoring labor recruiter performance, but is not intended to ensure compliance with specific legal requirements, such as the Federal Acquisition Regulation (FAR).

INTRODUCTION

The purpose of a labor recruiter performance assessment is to verify whether or not the recruiter is performing according to legal requirements and to the ethical and social responsibility requirements that the company or its customer has defined. Companies need visibility into how their labor recruiters operate, and a way to measure recruiter performance against legal requirements and social responsibility benchmarks. Performance assessment is especially critical where the protection of migrant workers against human trafficking is concerned.

Having an assessment procedure in place gives companies an objective basis for management decisions, and helps protect against hidden abuses. It also drives labor recruiters toward performance effectiveness and continuous improvement, and toward meeting agreed upon goals related to business and social responsibility.

Individual companies should judge the best time for assessment based on the job cycle and other considerations. Where the outsourcing of recruitment and hiring is concerned, an assessment of the labor recruiter should be conducted soon after workers arrive at the work site. Assessments should also be conducted prior to contract renewal or in advance of a subsequent

deployment of workers. Recruiters charged with aspects of on-site management of workers should be assessed periodically and issues that have been identified should be promptly addressed.

The performance assessment itself requires a process of triangulation – gathering and analyzing information from several sources. Verité recommends gathering information from all of the following sources, where possible and relevant:

- Recruitment agency management and staff;
- Workers;
- External stakeholders, such as government agencies accrediting labor recruiters and NGOs that work with trafficking victims;
- Documents, including:
 - ✓ Business records - license, registration, etc.
 - ✓ Payroll records
 - ✓ Fees and payment records
 - ✓ Worker documentation
 - ✓ Discipline records
 - ✓ Grievance records
- Observations during physical inspections;
- Living and dining areas
- Offices of the recruitment agency.

KEY ISSUES FOR ASSESSMENT

This tool introduces some key issues that should be included in the labor recruiter assessment, including:

- Recruitment fees;
- Contracts, orientation and training;
- Wages and benefits;
- Loans, deposits and deductions;
- Accommodation;
- Grievance mechanisms;
- Worker feedback and communication;
- Humane treatment; and
- Document retention.

For each topic area, the need and context for screening is explained, followed by a list of information to gather, and an articulation of key red flags and risks to look out for.

In addition to the issues articulated below, companies should also follow up on the issues raised during the initial recruiter screening, to ensure that processes have not changed and no additional risks have been introduced.

A. ASSESSMENT AREA: RECRUITMENT FEES

Why assess the labor recruiter's policy and procedures on recruitment fees?

There is always a risk that a labor recruiter has induced jobseekers into paying recruitment fees or to pay for its services. In such cases, workers may have borrowed money to pay the recruitment fee which increases the likelihood that they could be entering a situation of debt bondage or human trafficking even before they set foot at your work site.

It is therefore important that you communicate clearly to your labor recruiter that jobseekers cannot be charged recruitment fees and instead that the employer pays for their recruitment. This "employer pays" requirement should be in a company's Supplier Code of Conduct and in contracts and purchase agreements with all suppliers and subcontractors. Oversight must also be in place to ensure that the labor recruiter abides by this requirement.

It is difficult to find hard evidence of violations to the "employer pays" standard, because such fee-charge violations rarely have a paper trail, or the paper trail is falsified to hide fee payments. Workers are often the only source of information regarding violations of this standard. It is important that workers have a safe means for reporting violations directly to your company, and that there is a credible and well-communicated procedure to investigate and respond to such reports, including making sure that the practice is stopped and workers are reimbursed for any fees paid.

What information do you need from the labor recruiters?

- A description of how the labor recruiter ensures compliance with the "employer pays" policy (e.g., the policy is included in work contracts, and sanctions are in place for noncompliance).
- A list of fees and costs that must be paid by the employer or labor recruiter, such as: recruiter service fees, recruitment or placement fees in both sending and receiving countries, airfare or cost for other modes of transportation from the worker's home to the employment location, cost for passport and visa, work permits, residency permits, skills tests, medical exams, pre-departure training, arrival training, security deposits or bonds, government-required fees, etc.
- Mechanisms for jobseekers to report violations of company policy on recruitment fees.
- Procedures for refunding fee charges.

What are some common risks and red flags?

- No written commitment by the labor recruiter to adhere to the "employer-pays" policy.
- Lack of an effective and safe procedure for workers to report ethical violations by internal staff or subcontractors of the employer-pays policy (e.g., workers are coached to lie about fees and expenses).
- Jobseekers are charged a reservation fee and/or deposits.
- Illegal fees are charged to workers for processing deployment documentation.
- Jobseekers are charged fees for mandatory skills training.
- Jobseekers are charged fees beyond market rates for recruiter-owned or -operated accommodations during the pre-deployment period.

B. ASSESSMENT AREA: CONTRACTS, ORIENTATION AND TRAINING

Why assess employment contracts and the orientation and training of migrant workers?

By assessing these areas, you will be able to understand how workers are informed about their legal rights and responsibilities, company policies and employment conditions; how the company ensures that workers clearly understand the policies and conditions; and whether these policies and conditions are explained and provided to workers in a language that they understand.

You also need to check if the information provided to the workers during pre-departure training is the same as what they receive prior to their start of work at the place of employment. It is particularly important to know whether the terms and conditions that the workers originally agreed to are consistent with the ones offered to them at the start of their employment, and if these terms and conditions are consistent with actual practice.

Workers should have signed a contract in their country of origin which was likely approved by their sending country authority. In most cases, these contracts are patterned after standard government contracts to expedite workers deployment abroad. However, upon arrival in the receiving country, some companies ask workers to sign supplemental agreements. These agreements often contain additional terms and conditions that can be unfavorable to workers but workers have little leverage to refuse to sign.

It is also important to know who provides worker training, whether the training meets legal and Code of Conduct requirements, and whether or not it is effective; that is, workers demonstrate the desired level of knowledge.

What information do you need?

- Employment Contracts
 - ✓ Blank sending country contracts
 - ✓ Contract amendments
 - ✓ Random sampling of signed worker contracts
 - ✓ Worker interviews on understanding of contract terms and conditions
- Training Programs
 - ✓ Description and content of training programs provided by the recruiter or the facility
 - ✓ Pre-departure and arrival training; documentation and training materials
 - ✓ Skills development training
 - ✓ Legally-mandated certification and skills programs
 - ✓ Records of training attendance and knowledge measurement
- Verification of Worker Understanding
 - ✓ Languages spoken by the workers
 - ✓ Native language handouts, worker's copy of training materials
 - ✓ Worker interviews to assess understanding
 - ✓ Records of training attendance and knowledge measurement
- Trainers

- ✓ Trainer qualifications
- ✓ Language capability
- ✓ Whether the training is conducted by company staff or is outsourced

What are some common risks and red flags?

- No clear procedures for conducting pre-departure and arrival training of new hires;
- Information provided to workers is not consistent with employment contracts, applicable legal requirements, and company policies and procedures;
- Training is conducted by recruiter or subcontractor, which may result in inconsistent messaging and insufficient information;
- Training is conducted in a language workers do not understand;
- Workers are required to sign supplemental agreements upon arrival at the workplace;
- Labor recruiters charge training fees to workers; or
- Workers are required to post a training bond (can result in workers being unable to terminate their contract freely).

C. ASSESSMENT AREA: COMPENSATION AND BENEFITS

Why assess your company's compensation and benefits system?

Compensation and benefits can be a factor in the risks of human trafficking as workers can be held in the job due to a company's or recruiter's wage practices. Specific risky practices include underpayment of wages, delayed payment or withholding of wages, and unauthorized deductions. An assessment will help you determine if workers are paid the wage rate that was promised; if their wages are paid in the manner to which the workers agreed; and if workers are able to terminate their employment without sacrificing pay for hours previously worked or other financial penalties. If deductions or withholdings are made from workers' pay, an assessment will help you determine if they are required or allowed by law, and if not, if the practice could result in human trafficking.

What information do you need?

- What is the legal minimum wage or collective bargaining agreement wage applicable to the facility?
- What are the legal requirements on wages and benefits, including overtime pay, holidays, leave and social insurance?
- Pay practices;
 - ✓ How are wages paid?
 - ✓ What are the forms of wage payments (cash, deposit in worker's bank account, etc.)?
 - ✓ Who has access to workers' payroll bank accounts?
 - ✓ What is the payroll period and cycle?
- Pay dates (number of days lapsed from last day of payroll period to pay day)
- Pay structure;

- ✓ What is the basic pay rate?
- ✓ What are the overtime rates and other non-regular rates (holiday, rest day, etc.)?
- ✓ Are any cash allowances given?
- ✓ Are any productivity incentives awarded?
- ✓ Are there any bonuses and how are they earned?
- Pay deductions;
 - ✓ Are there any legally mandated deductions (e.g. social insurance premiums)?
 - ✓ Are there other deductions? If yes, are they permitted by law?
 - ✓ Is any type of savings program implemented? If yes, do workers consent to the savings program and do they have full access to and control of their savings at all times?
- Benefits;
 - ✓ Are legally mandated benefits provided?
 - ✓ Which additional benefits are provided by the company?
 - ✓ Are the same benefits provided to all employees, regardless of migration status, gender, etc.?
- Worker education on wages and benefits;
 - ✓ How are workers educated on wage calculations?
 - ✓ How are workers educated on accessing benefits?
 - ✓ Do interviewed workers understand how they are paid and how to read their pay slip?

What are some common risks and red flags?

- Underpayment or delayed payment of wages;
- Labor recruiters have access to workers' bank accounts, resulting in:
 - ✓ Forced savings
 - ✓ Illegal deductions
- Workers are uninformed or misinformed about wage rates and deductions; or
- No pay slips are provided.

D. ASSESSMENT AREA: LOANS, DEPOSITS AND DEDUCTIONS

Why assess fees, deposits, and deductions?

In order to have a clear picture of the vulnerability of the workforce to human trafficking, you will want a full accounting of all fees, deposits and deductions to which migrant workers are subject. To determine workers' vulnerability it is important to understand the purpose, legality, and methods of levy for each of the fees, deposits, and deductions. In addition, you will need to know how workers repay these fees and whether repayment schemes restrict workers' ability to terminate their employment.

What information do you need?

- Fees and loans due to recruiters;
 - ✓ What is the schedule of payments?
 - ✓ What are the terms of repayment (interest rate; number of payments; percentage of wages)?
 - ✓ What is the fee schedule or line items for the fees (for example, food, housing, local transportation)?
 - ✓ What out-of-pocket payments is the worker required to make to the facility or recruiter?
- Deposits, bonds and savings;
 - ✓ Is there a security bond or deposit?
 - ✓ What is the schedule of payments?
 - ✓ What are the terms of payment?
 - ✓ What are the terms for returning savings to workers?
- Recruiter- or company-managed savings;
 - ✓ Where the savings are kept or deposited? If in a bank account, who has access? Is it an ATM account or bankbook account? Who keeps the ATM card? Who keeps the bank book?
 - ✓ Is the workers' consent given for savings?
 - ✓ Do workers have unrestricted access to their savings?
 - ✓ What are the terms for returning savings to workers?
- Wage deductions (disciplinary penalties and fines, meals, housing, uniforms, tools, personal protective equipment);
- Documentation of payments;
- Are all pay deductions recorded in pay slips? If final deductions are taken, are they recorded? (What is the net pay as reflected in pay slip versus pay deposited in worker's account?)
- Worker's copy of proof of payment.

What are some common risks and red flags?

- Workers are charged fees by recruiters for on-site services and management;
- Workers are induced or encouraged to take loans from the recruiter or the employer at excessive interest rates or unreasonable terms of payment;
- Workers are required to lodge deposits before taking up employment and during employment;
- Workers are ill-informed about the terms or the full amount of loans or deductions; or
- Automatic deductions for loan payments are made against workers' salary.

E. ASSESSMENT AREA: ACCOMMODATION

Why assess worker accommodation?

You will want to know the full details of the housing provided to migrant workers, especially if these workers have no choice but to rely on the receiving-country labor recruiter or the employer to secure their housing.

You should check if the recruiter or employer has implemented a housing plan; that the housing provided to workers meets local

housing and safety standards, is comfortable, safe, and secure; and whether workers can freely enter or leave the premises. You need to check the house or dormitory rules and regulations, and whether there are unreasonable restrictions on workers' freedom of movement. Inquiring about the security policy of the accommodation also alerts to safety risks. For example, padlocking the gate from the inside after curfew hours with the key not readily accessible may result in workers getting trapped inside in case of fire.

The assessment should also include who is managing accommodations, what their specific functional tasks are, and if they are properly trained or equipped to fulfill the task. The related expenses, if the accommodations are not provided for free, should also be examined. You need to know how much is charged, how payments are collected, and whether these are reasonable rates. The charge to workers for employer provided or arranged housing should not exceed the rate for similar housing in the local area.

What information do you need?

- Who manages the living quarters
- Who bears the overhead expenses of the accommodations
- Rules on leaving and entering the living quarters
- Other housing security procedures
- Rules while in employer provided or arranged housing
- Number of workers per sleeping room
- Amount of space per worker
- Availability of individual locked storage for identity documents and other personal valuables
- Adequacy of exit facilities
- Smoke and heat detection, fire alarms and emergency lighting
- Adequacy of light, heat and ventilation
- Toilet and shower facilities
- Structural integrity
- Housekeeping practices; and
- Emergency preparedness procedures.

What are some common risks and red flags?

- Workers do not arrange for their own housing accommodations;
- Recruiters or employers require workers to stay in recruiter-controlled or company-controlled housing facilities;
- Curfews are implemented in the dormitories, and workers are unable to enter or leave the premises freely;
- There are penalties for staying out, or for not returning to the dormitory or housing facility at a designated time;
- Gates are closed/locked at designated times; or
- Security personnel are instructed to restrict workers from leaving or entering the dormitory or housing facility.

F. ASSESSMENT AREA: DISCIPLINE AND TERMINATION

Why assess the facility's policy and practices on disciplinary measures and termination?

Disciplinary procedures – whether from the facility or recruiter-- should be based on a clear set of rules and regulations that apply to all workers, regardless of employment status, or nationality and should include the right to due process. The process for termination should be legal and fair. Workers should be able to refuse overtime, for example, without fearing early termination of their contract. Further, conditions for voluntary termination of the contract should not be so prohibitive that workers are unable to leave a job.

What information do you need?

- What are the workplace rules and regulations or code of discipline?
 - ✓ Are there categories of misconduct?
- Which misconduct is subject to a series of warnings? Which is subject to immediate termination?
- What is the procedure for investigating reports of disciplinary violations?
 - ✓ How are workers notified of a disciplinary citation?
 - ✓ What processes are in place for workers to appeal or challenge a disciplinary action?
- What are the disciplinary actions taken by management?
 - ✓ Are escalating warnings issued to workers in response to behavior or performance issues?
- What records are kept of disciplinary proceedings;
- What are the terms and conditions to terminate an employment contract?
 - ✓ What are the penalties for not completing duration of contract?
- What is the process for clearing resigned or terminated worker?
 - ✓ When are resigned or terminated worker paid their last wages?
- What kind of training and education is provided on the facility disciplinary process?
 - ✓ How are managers and supervisors trained on disciplinary policy?
 - ✓ How are workers trained on discipline policy?

What are some common risks and red flags?

- Managers and supervisors are not adequately trained to implement the company's disciplinary policy;
- Workers are not aware of the company's policy on discipline;
- Workers are not aware of performance objectives and the parameters against which they are evaluated;
- Management does not document disciplinary proceedings;
- Punitive deductions, unpaid work or forced overtime are a part of disciplinary measures; or
- There are penalties for early contract termination.

G. ASSESSMENT AREA: WORKER DOCUMENTATION

Why assess the recruiter's or host facility's practices for retention of worker identity documents?

It is critical to determine if the company or recruiter holds workers' original identity or immigration documents, such as passports. Without access to such documents, workers are effectively bound to the worksite. These documents should be held only if required by law and, in these cases, workers should have unfettered access to them. Workers should be in possession of their own documents and be provided with individual locked storage to which workers should have unencumbered access. The key question to consider is whether practices around worker documentation retention create situations where the workers' freedom of movement, or ability to terminate a contract for reasonable cause, are restricted.

What information do you need?

- Document requirements when applying for the job;
 - ✓ Which documents are workers required to show to the facility or recruiter: original/ government-certified documents, or photocopies?
 - ✓ Which documents are workers required to submit to the facility or recruiter: original, government-certified, or photocopy?
- Document requirements upon hire;
 - ✓ Which documents are workers required to submit to the facility or recruiter upon hire: original, government-certified, or photocopy?
 - ✓ Which original documents are held by the facility or recruiter? When are they handed over to the factory or recruiter? Where are documents stored? Who requests workers documents? What reason is given for the document retention? If used for processing of other legal papers, are they immediately returned to the worker after processing?
- Procedure and practices for filing and keeping workers' documents;
 - ✓ If facility or recruiter is required by law to keep worker travel and work documents, how can workers access their documents?
 - ✓ What company or recruiter-provided storage systems are provided to workers to securely store their travel and work documents?

What are some common risks and red flags?

- Workers are required to surrender their passports and other key documents to the recruiter or employer;
- Passports are taken from workers for safekeeping, and workers are made to sign a waiver indicating their consent;
- Workers are required to post a bond or pay a deposit in order to retrieve passports;
- Workers are misinformed about their right to secure their own documents; or
- Workers are not provided means to secure their own documents.