

# Employer Guidebook

on Ethical Direct Recruitment of  
**Inter-State Migrants**  
in the Garment Industry in India



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## Acronyms

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CEDAW	Convention on Elimination of All Forms of Discrimination Against Women
CERD	Convention on the Elimination of all Forms of Racial Discrimination
COVID-19	Coronavirus disease 2019
ICCPR	International Convention on Civil and Political Rights
ILO	International Labour Organization
IOM	International Organization for Migration
NCR	National Capital Region
UNGPs	United Nations Guiding Principles for Business and Human Rights



# Introduction

Unethical recruitment practices include charging high fees, lack of employment contracts due to the unorganized nature of the work and employing mostly low wage workers.

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## Overview of inter-state migration

India continues to be a major garment exporter and plays an increasingly crucial role in the modern global garment supply chain. Inter-state migrant workers make up a significant portion of the garment factory workforce in India's garment industry. While overall, most recent data from 2011 show that there were more men workers (60%) than women workers (40%) in India's garment sector, the proportion of women in this workforce is steadily increasing.<sup>1</sup>

Inter-state migrant workers in the Indian garment industry get recruited through several methods including personal connections, recruitment agencies, and direct recruitment by the employing enterprise. Unethical recruitment practices include charging high fees, lack of employment contracts due to the unorganized nature of the work and employing mostly low wage workers. Where contracts are provided, they are usually in the language spoken in the state where the workplace is located, a language the worker often cannot understand. Another unethical recruitment practice is issuance of faulty employment contracts that might contain misleading terms and conditions, that seem more advantageous to workers than what will be the case once workers start their employment.<sup>2</sup>

Workers in the garment sector are commonly classified as contract workers<sup>3</sup> and contracted for a maximum of 11 months at a time. Such workers are often paid lower wages including wages below the minimum wage; and face challenges accessing social security.<sup>4</sup> In particular, inter-state migrant workers face challenges accessing several health entitlements because these entitlements are not transferrable across state boundaries. Where social security is available, lack of understanding and barriers to accessing advice and information (finding time to access the financial service providers and/or service providers who can support migrant workers) can leave many without such access.<sup>5</sup> Unionization is also low in the garment sector, both due to the general anti-union stance of employers, and low understanding and negative perception of unions on the part of workers. Lack of unionization means that inter-state migrant workers lack bargaining power and representation.<sup>6</sup> Employment conditions in factories can be precarious and workers can face occupational safety and health challenges from working with unsafe machines, in dimly lit factories and with poor ventilation.<sup>7</sup> Workspaces can double up as accommodation or, in any event, be cramped and lacking privacy or security. Language barriers can mean that workers struggle to access redress when their employment and human rights

<sup>1</sup> Mezzadri, A. Department of Development Studies, SOAS, February 2014. Indian Garment Clusters and CSR Norms: Incompatible Agendas at the Bottom of the Garment Commodity Chain.

<sup>2</sup> False Promises and Mobility Restrictions Plague Migrant Workers in Bengaluru's Garment Industry. The Wire, 2018.

<sup>3</sup> In the Code on Wages (2020), a contract worker is defined as "a worker who shall be deemed to be employed in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer and includes inter-State migrant worker but does not include a worker (other than part-time employee) who: (i) is regularly employed by the contractor for any activity of his establishment and his employment is governed by mutually accepted standards of the conditions of employment (including engagement on permanent basis), and (ii) gets periodical increment in the pay, social security coverage and other welfare benefits."

<sup>4</sup> ILO. Working Conditions of Migrant Garment Workers in India: A Literature Review (2017).

<sup>5</sup> ILO. Roadmap for developing a policy framework for the inclusion of internal migrant workers in India (2020).

<sup>6</sup> ILO. Roadmap for developing a policy framework for the inclusion of internal migrant workers in India (2020).

<sup>7</sup> Ibid.

By ensuring that direct recruitment and employment practices are ethical, gender-responsive and non-discriminatory, employers commit to ensuring fair recruitment practices and employment, and decent work standards for all inter-state migrant workers.

are breached.<sup>8</sup> Existing grievance mechanisms that are supposed to provide protection of labour rights require workers to produce documentary proof that there is an employment relationship, which many contract workers do not have. Access to justice is also a challenge due to lack of knowledge of workers' rights to seek remedy and long working hours meaning that workers do not have time to seek support. Discrimination against migrants due to gender or caste can also limit the support available to them, in particular from the police.<sup>9</sup>

Violence against workers in the garment sector remains common in the form of verbal abuse, threats, sexual harassment and physical violence.<sup>10</sup> Violence is used to exert power and control over individuals and can be used to force workers to work, and to prevent them from unionizing. In addition to violence and harassment, women face discriminatory practices including receiving lower wages, working longer hours, being restricted from career progression and living in unsafe and insecure accommodation. These risks can be further exacerbated on women's ethnicity, religion and caste. Pregnancy and maternity can also result in women losing their employment. The absence of women in supervisory

and management positions can limit their ability to access safe spaces or communicate any exploitation, harassment or violence that they could be facing. Workers who might have been subjected to gender-based violence, sexual harassment or exploitation can face long-lasting health problems and stigmatization, which can in turn impact their ability to benefit from or hold down employment.<sup>11</sup>

By ensuring that direct recruitment and employment practices are ethical, gender-responsive and non-discriminatory, employers commit to ensuring fair recruitment practices and employment, and decent work standards for all inter-state migrant workers.

### **Recruitment channels for inter-state migrant workers**

Inter-state migrant workers in India's garment industry get recruited through:

- Direct recruitment by the employing company;
- Recruitment agencies;
- Informally through personal connections;
- Vocational skills training providers, accredited by the National Council for Vocational Training (providing skilling under government schemes) or unaccredited/informal training providers (range from informal training centers to karkhanas/workshops, where training is held).

Recruitment patterns vary between the northern and the southern cluster of states. The International Labour Organization's (ILO) 2015 study found that 70 per cent of companies in Bengaluru in the southern part of the country recruit workers directly, while in the National Capital Region (NCR), the most popular method is through personal connections (42%).<sup>12</sup> A more recent ILO 2020 Report also found workers' mobility tied to single employers/contractors who increase migration to a particular region. This kind of intermediary-facilitated migration reduces the risk of unemployment.<sup>13</sup> Employment through contractors is also much more common in the NCR (Delhi, Gurugram and Noida hubs, with 25%) than it is in Bangalore (1%). According to

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> ILO. Working Conditions of Migrant Garment Workers in India: A Literature Review (2017).

<sup>11</sup> Women in Karnataka's garment sector stuck in cycle of poor working conditions, protests against 'anti-worker' reforms. India News, 2019.

<sup>12</sup> ILO. Working Conditions of Migrant Garment Workers in India (2017).

<sup>13</sup> ILO. Road map for developing a policy framework for the inclusion of internal migrant workers in India (December 2020).

the 2015 ILO study, not all southern garment clusters may be the same situation; for instance, recruitment of distant inter-state migrants by contractors is common in Tirupur, Tamil Nadu. In addition, sometimes workers act as labour brokers and recruit other workers from their network of friends, relatives and acquaintances. The coronavirus disease 2019 (COVID-19) pandemic and the accompanying lockdowns have also had a significant effect on migration patterns. Reportedly there is a decline in the rural-urban flow of migrant workers as of September 2021.<sup>14</sup> Many workers, owing to the uncertainties in urban centers, chose to seek work/jobs/employment closer to their native homes, meaning that the lower-waged workforce has diversified their sector preferences, since they are mostly footloose. In this scenario, personal connections have proved most useful and dependable to secure employment.

Despite this scenario, the garment sector remains a key employer of inter-state migrant workers. However, there are currently no guidelines on ethical direct recruitment available to employers. Direct recruitment is a modality prevalent in Karnataka (Bangalore hub), Tamil Nadu (Tirupur hub), Gujarat (Surat hub), Maharashtra (Solapur, Thane, Nagpur), Rajasthan (Jaipur hub) and NCR regions (Delhi, Gurugram and Noida hubs), all of which are the main manufacturing hubs of ready-made garments supplying products to major global brands.

## Objective of the Guidebook

Based on the above analysis of the recruitment patterns in India's garment industry, this "Employer Guidebook on Ethical Direct Recruitment of Inter-State Migrants in the Garment Industry in India" is designed for employers who directly recruit inter-state migrant workers.

- This Guidebook provides concrete, operational guidance to employers to strengthen ethical direct recruitment, decent work and access to remedy with regards to recruitment and employment practices for inter-state migrant workers in the garment industry in India.
- The Guidebook highlights good practices for employers to consider and replicate as a means to strengthen their business practices and uphold the human and labour rights of inter-state migrants.
- This Guidebook seeks to address the gender dimension of direct recruitment, taking into consideration that a high proportion of inter-state migrant workers are women.

The Guidebook highlights good practices for employers to consider and replicate as a means to strengthen their business practices and uphold the human and labour rights of inter-state migrants.

## Outline of the Guidebook

**This Guidebook is divided into the following sections:**

**Chapter 1:** Rights and Responsibilities of Employers who Directly Recruit Inter-State Migrant Workers: this chapter sets out the rights, responsibilities and obligations of employers when directly recruiting and employing inter-state migrant workers, based on existing international standards, guidelines, codes of conduct and national law.

**Chapter 2:** Best Practice for Employers who Directly Recruit Inter-State Migrant Workers: this chapter sets out in section 1, best practices for employers' policies and management practices; and in section 2, the operational best practices for fair and ethical recruitment, employment and return of inter-state migrant workers.

## Why is this Guidebook Useful?

Given the prevalence of direct recruitment of inter-state migrant workers in the garment sector, providing employers with guidance on how they can ethically facilitate direct recruitment of inter-state migrant workers, in line with international recruitment and employment standards, is important. By adhering to ethical recruitment and employment standards, employers contribute to the protection of human rights of inter-state migrant workers. Such protection is in line with the United Nations Guiding Principles on Business and Human Rights (UNGPs), under which businesses have the obligation to respect human rights under Pillar II, and to provide access to effective remedy

<sup>14</sup> They have not returned: How Covid-19 has impacted labour migration in the country. The Economic Times (2021).

when abuses occur, under Pillar III.<sup>15</sup> Treating migrant workers ethically throughout the migration process also enhances businesses' reputation and prepares them better to meet any requirements imposed by modern slavery and supply chain due diligence legislation if they operate in any of the following markets: Australia, European Union countries such as France, Germany<sup>16</sup> and the Netherlands, the United Kingdom of Great Britain and Northern Ireland , and the United States of America.

This Guidebook briefly sets out the key international and national laws and standards that are applicable to employers who directly recruit inter-state migrant workers. It also summarizes best practices that employers can follow to achieve ethical recruitment, decent work and access to remedy for inter-state migrant workers in the garment sector.

The Guidebook is intended for use primarily by employers but can also be used as a reference tool for government officials, recruitment agents, trade unions and civil society stakeholders that are linked to the recruitment and employment of inter-state migrant workers.

Thanks to this Guidebook, the Human Resources and Compliance staff at companies employing inter-state migrant workers will have a better understanding of:

- The laws applicable to direct recruitment of inter-state migrant workers into the garment sector in India;
- Best practices of employer policies and management practices;
- Operational best practice for ethical recruitment; employment and return of inter-state migrant workers.

## Terms used in this Guidebook

**Table 1: Terms used in this Guidebook**

Term	Meaning in this Guidebook
Coercion	Coercion means compulsion whether legitimate or not, by physical force or threat thereof. Coercion may also be economic in nature, where one uses his or her control over a particular resource to influence the behaviour of another. <i>The IRIS Standard Version 1.2, 2019<sup>17</sup></i>
Decent work	Decent work is work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men. <i>ILO's Decent Work Agenda<sup>18</sup></i>
Direct recruitment	For the purposes of this Guidebook, Direct Recruitment refers to the act of an employer recruiting an employee without the use of an agent or intermediary and pursuing a direct contractual employment relationship with the employee thereafter.
Discrimination	Discrimination is any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, gender, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms. <i>Human Rights Committee, General Comment No. 18: Non-Discrimination (10 November 1989) para. 7 in UN Doc. HRI/GEN/1/ Rev.1, 26</i>

<sup>15</sup> OHCHR. UN Guiding Principles on Business and Human Rights (2011).

<sup>16</sup> For example, Germany's new Supply Chain Due Diligence Act requires companies to identify, prevent and address human rights and environmental abuses within their own and their direct suppliers' operations.

<sup>17</sup> IOM. The IRIS Standard (2019).

<sup>18</sup> ILO. Decent work (n.d.)

Term	Meaning in this Guidebook
Due diligence	<p>Due diligence refers to ongoing risk management process that all companies need to follow in order to identify, prevent, mitigate and account for how they address the adverse impact on human rights of their own activities, or which may be directly linked to their operations, products or services by a business relationship. It includes four key steps: assessing actual and potential human rights impacts; integrating and acting on the findings; tracking responses; and communicating about how impacts are addressed.</p> <p style="text-align: right;"><i>The IRIS Standard Version 1.2,2019</i></p>
Employee	<p>A person (other than an apprentice engaged under the apprentices Act, 1961) employed on wages by an establishment to do any skilled, semi-skilled, unskilled, manual, operational, supervisory, managerial, administrative, technical, clerical or any other work, whether the terms of employment be express or implied.</p> <p style="text-align: right;"><i>The Occupational, Safety, Health and Working Conditions Code, 2020</i></p>
Employer	<p>An employer is a person or an entity that engages employees or workers, either directly or indirectly.</p> <p style="text-align: right;"><i>ILO General Principles and Operational Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs, 2019<sup>19</sup></i></p>
Enterprise	<p>Enterprises include employers, labour recruiters other than public employment services, and other service providers involved in the recruitment process.</p> <p style="text-align: right;"><i>ILO General Principles and Operational Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs, 2019</i></p>
Exploitation	<p>Exploitation is the act of taking advantage of something or someone, in particular the act of taking unjust advantage of another for one's own benefit.</p> <p style="text-align: right;"><i>IOM Glossary on Migration<sup>20</sup></i></p>
Forced labour	<p>Forced labour is all work or service that is exacted from any person under the menace of any penalty and for which the said person has not offered himself/herself voluntarily.</p> <p style="text-align: right;"><i>ILO Forced Labour Convention, 1930 (No. 29)</i></p>
Freedom of movement	<p>The right to freedom of movement in human rights law, is a human right comprising three basic elements: freedom of movement within the territory of a country and to choose one's residence; the right to leave any country; and the right to return to one's own country.</p> <p style="text-align: right;"><i>United Nations, Universal Declaration of Human Rights (UNGA Res 217(A), adopted 10 December 1948), art. 13</i></p>
Grievance	<p>A perceived injustice evoking an individual's or a group's sense of entitlement, which may be based on law, contract, explicit or implicit promises, customary practice, or general notions of fairness of aggrieved communities.</p> <p style="text-align: right;"><i>The UN Guiding Principles on Business and Human Rights (The UN Guiding Principles), 2011<sup>21</sup></i></p>
Grievance mechanism	<p>Any routinized, state-based or non-state-based, judicial or non-judicial process through which grievances concerning business-related human rights abuse can be raised and remedy can be sought.</p> <p style="text-align: right;"><i>The UN Guiding Principles on Business and Human Rights (The UN Guiding Principles), 2011</i></p>

<sup>19</sup> ILO. General principles and operational guidelines for fair recruitment (2019).

<sup>20</sup> IOM. International Migration Law (2019).

<sup>21</sup> OHCHR. UN Guiding Principles on Business and Human Rights (2011).

Term	Meaning in this Guidebook
Identity document	<p>An identity document is an official piece of documentation issued by the competent authority of a government designed to prove the identity of the person carrying it.</p> <p style="text-align: right;"><i>IOM Glossary on Migration</i></p>
Informed consent	<p>Any free, voluntary and informed decision that is expressed or implied and which is given for a specified purpose.</p> <p style="text-align: right;"><i>The IRIS Standard Version 1.2,2019</i></p>
Inter-state migrant worker	<p>Any person who is recruited by or through a contractor in one State under an agreement or other arrangement for employment in an establishment in another State.</p> <p style="text-align: right;"><i>The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979</i></p> <p>Updated to include workers recruited directly by the employer.</p> <p style="text-align: right;"><i>Code on Occupational, Health and Working Conditions (2020)</i></p>
IRIS Standard	<p>The IRIS Standard has been developed through multi-stakeholder consultations and is derived from a number of sources, in particular international human rights instruments, the UN Guiding Principles on Business and Human Rights, international labour standards and related ILO instruments, the ILO's General principles and operational guidelines for fair recruitment, as well as best practice from government regulators and the recruitment industry.</p> <p style="text-align: right;"><i>The IRIS Standard Version 1.2,2019</i></p>
Migrant Worker	<p>A migrant worker is a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national. For these guidelines, the term migrant worker shall also include job seekers and aspirant migrants.</p> <p style="text-align: right;"><i>International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; IOM Glossary, 2019</i></p>
Personal data	<p>Personal data means all information that could be used to identify or harm the person concerned or any groups to which the person belongs; it is any information relating to an identified or identifiable person that is recorded and/or stored by electronic means or on paper.</p> <p style="text-align: right;"><i>The IRIS Standard Version 1.2,2019</i></p>
Pre-departure orientation	<p>Pre-departure orientation are courses designed to help prospective inter-state migrants, acquire the requisite information to prepare them for their migration and employment.</p> <p style="text-align: right;"><i>IOM Glossary on Migration</i></p>
Recruitment	<p>Recruitment includes the advertising, information dissemination, selection, transport, placement into employment and – for inter-state migrant workers – return to their State of origin where applicable. This applies to both jobseekers and those in an employment relationship.</p> <p style="text-align: right;"><i>The IRIS Standard Version 1.2,2019</i></p>
Recruitment agent	<p>Any natural or legal person who provides services for matching offers of and applications for employment without the agent or agency becoming a party to the employment relationship that may arise therefrom.</p> <p style="text-align: right;"><i>The IRIS Standard Version 1.2,2019</i></p>

<sup>22</sup> Refer to Annex A for a full breakdown of fees and costs.

Term	Meaning in this Guidebook
Recruitment fees and costs	<p>Recruitment fees and costs are any fees or costs incurred in the recruitment process for workers to secure employment or placement, regardless of the manner, timing or location of their imposition or collection.</p> <p style="text-align: right;"><i>ILO, General Principles and Operational Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs<sup>22</sup></i></p>
Remedy	<p>Remedy refers to both the process of providing remedy for a negative human rights impact and the substantive outcomes that can counteract or make good the negative impact. These outcomes may take a range of forms such as apologies, restitution, rehabilitation, financial or non-financial compensation, and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition.</p> <p style="text-align: right;"><i>The IRIS Standard Version 1.2, 2019</i></p>
Remittances	<p>Remittances are personal monetary transfers, cross border or within the same country, made by migrants to individuals or communities with whom the migrant has links.</p> <p style="text-align: right;"><i>IOM Glossary on Migration</i></p>

# Methodology

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Chapter 1 of this Guidebook is based on an analysis of key international guidelines and standards including the ILO General Principles and Operational Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs, 2019 and the IRIS Standard alongside an analysis of relevant national and international law and policy.

Chapter 2 translates this analysis into best practices for policies and management practices and operational practices. The Guidebook has been developed in coordination with IRIS Secretariat, trade unions, garment manufacturers and civil society. The final scope, structure and format of the Guidebook are determined in consultation with key garment manufacturers to maximize effectiveness and user-friendliness.

The Guidebook was shared with key stakeholders for their input and feedback, followed by a final round of discussion through a webinar attended by members from international organizations such as ILO, United Nations Development Programme (UNDP), Organisation for Economic Co-operation and Development (OECD); institutions such as the Confederation of Indian Industry (CII) and Praxis; industry representatives from amfori, GoodWeave India, Shahi Exports, Good Labs; and civil society organizations such as Tamil Nadu Alliance. Business houses such as Vastrashi, Goodwill Impex and AB Export from the Jaipur garment hub were also instrumental in improving this Guidebook. In its current iteration, the Guidebook encompasses vital perspectives and has been endorsed by key partners.

## CHAPTER I

# Rights and Responsibilities of Employers in Direct Recruitment of Inter-State Migrant Workers

This Guidebook draws from the new labour codes in order to provide the most relevant information on direct ethical recruitment and employment of inter-state migrant workers into the garment sector.

Until recently, the obligations of employers in India were contained in 44 labour laws. These have been rationalized into four key labour codes (Table 2). As of February 2022, states were yet to implement the labour codes, for which drafting of state rules were

underway. . Until they come into force, the predecessor laws still apply. Below is the list of labour codes and the predecessor laws relevant to obligations of employers of inter-state migrant workers in the garment sector:

**Table 2: Labour Codes and Predecessor Laws**

New Labour Code	Predecessor Laws
Code on Wages, 2019 (in force) <sup>23</sup>	<ul style="list-style-type: none"><li>Payment of Wages Act, 1936</li><li>Minimum Wages Act, 1948</li><li>Payment of Bonus Act, 1965</li><li>Equal Remuneration Act, 1976</li></ul>
Code on Social Security, 2020 <sup>24</sup>	<ul style="list-style-type: none"><li>The Employees' Compensation Act, 1923</li><li>The Employees' State; Insurance Act, 1948</li><li>The Employees' Provident Funds and Miscellaneous Provisions Act, 1952</li><li>The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959</li><li>The Maternity Benefit Act, 1961</li><li>The Payment of Gratuity Act, 1972</li><li>The Unorganized Workers' Social Security Act, 2008</li></ul>

<sup>23</sup> THE CODE ON WAGES, 2019 No. 29 of 2019.pdf ([labour.gov.in](http://labour.gov.in)).

<sup>24</sup> SS\_Code\_Gazette.pdf ([labour.gov.in](http://labour.gov.in)).

New Labour Code	Predecessor Laws
Occupational Safety, Health and Working Conditions Code Bill, 2020 <sup>25</sup>	<ul style="list-style-type: none"> <li>Factories Act, 1948</li> <li>Contract Labour Act, 1970</li> <li>Inter-State Migrant Workers Act, 1979</li> </ul>
Industrial Relations Code Bill, 2020 <sup>26</sup>	<ul style="list-style-type: none"> <li>Trade Unions Act, 1926</li> <li>Industrial Employment (Standing Orders) Act, 1946</li> <li>Industrial Disputes Act, 1947</li> </ul>

This Guidebook draws from the new labour codes in order to provide the most relevant information on direct ethical recruitment and employment of inter-state migrant workers into the garment sector. The Constitution of India also contains key overriding principles applicable to employers, whereas the Sexual Harassment of Women at Workplace (Prevention,

Prohibition and Redressal) Act, 2013 and Indian Penal Code, 1860 provide additional obligations. The following table provides a brief overview of the Indian legal provisions and how they relate to the foremost international legal instruments governing labour rights. Some key provisions are as follows:

**Table 3: Labour Code and its provisions**

Labour Code	Provisions
The Constitution of India	<p>The Constitution of India affirms fundamental human rights as inviolable, prohibiting discrimination on grounds of religion, race, caste, sex or place of birth and protecting citizens' right to freedom of speech and expression, form associations or unions, and protection against exploitation including forced labour.</p> <p>Provisions prohibiting discrimination are in line with international conventions. International Convention on Economic, Social and Cultural Rights (ICESCR);<sup>27</sup> under the International Convention on Civil and Political Rights (ICCPR),<sup>28</sup> Art 8(3) prohibits slavery and every form of trade of slaves and Article 23 of the Indian Constitution forbids trafficking of humans, begars and other forms of forced labour. The Convention on the Elimination of all Forms of Racial Discrimination (CERD),<sup>29</sup> and Convention on Elimination of All Forms of Discrimination Against Women (CEDAW).<sup>30</sup></p> <p>Provisions on protection of the right to freedom of speech and expression, form associations or unions, and protection against and forced labour are as well included in the ICCPR.</p>

<sup>25</sup> OSH\_Gazette.pdf (labour.gov.in).

<sup>26</sup> IR\_Gazette\_of\_India.pdf (labour.gov.in).

<sup>27</sup> OHCHR, ICESCR. International Covenant on Economic, Social and Cultural Rights (1966).

<sup>28</sup> OHCHR, ICCPR. International Covenant on Civil and Political Rights (1966).

<sup>29</sup> OHCHR, CERD. International Convention on the Elimination of All Forms of Racial Discrimination (1965).

<sup>30</sup> OHCHR. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979).

Labour Code	Provisions
The Code on Wages, 2019	<p>The Code includes provisions on wages and allowable deductions. It provides that there be no discrimination among employees on grounds of gender relating to recruitment, selection for employment or wages for the same work or work of a similar nature; that workers receive no less than the minimum wage (this can be the state minimum wage, which must be the same or higher than the national minimum wage); that workers receive a day of rest, overtime pay and are paid regular wages not exceeding pre-set monthly wage cycles. Every worker who works 30 days in a year should get a bonus to be calculated at the rate of 8 and 1/3 percent of the wages earned by the employee or one hundred rupees, whichever is higher whether or not the employer has any allocable surplus during the previous accounting year. The Code allows for deductions from wages which include fines, absence from duty, damage or loss, house accommodation, amenities, advances/loans, taxes, social security contribution and union dues. Deductions cannot be over 50 per cent of the wages.</p>
The Code on Occupational Safety, Health and Working Conditions, 2020	<p>The Code provides an overriding duty on the employer to ensure that the workplace is free from hazards that cause or are likely to cause injury or occupational disease to the employees. The code covers basic standards for health (addressing cleanliness, hygiene, ventilation and potable drinking water); welfare (including adequate washing and bathing facilities for men and women, sitting arrangements for employees required to work in a standing position, facilities for a canteen, adequate first aid boxes, and creche facilities); and hours of work (not to exceed eight hours per day, six days per week, with overtime at twice the rate of wages and one day's leave for every 28 days following 180 days of work).</p> <p>The Code applies to any establishment in which ten or more workers, including inter-state migrant workers are employed. Employers must extend all benefits that are available to local workers to migrant workers as well, including benefits under Employee's State Insurance, Provident Funds, etc; and must also pay an annual lump sum fare for the workers to return home.</p> <p>The Code provides that employers cannot sue for recovery of debt after a worker completes employment and that the appropriate government make schemes to ensure that inter-state migrants are able to avail of benefits of public distribution systems in their native state or the state in which they are employed.</p> <p>Provisions on health and safety are as well included in international conventions, including in ILO's Occupational Safety and Health Convention, 1981, No.155.<sup>31</sup></p>
The Code on Industrial Relations, 2020	<p>This Code consolidates and amends the laws relating to Trade Unions and industrial disputes. It sets out unfair labour practices and establishes that employers should not discriminate against employees based on their membership of a Trade Union or if they are exercising their right to collectively bargain. The law has also imposed restrictions on workers' unions/trade unions regarding their rights to strike and pursue collective bargaining.</p> <p>Provisions on the protection of the right to freedom to form associations or unions are included in international conventions as well, particularly the ICCPR.</p>

<sup>31</sup> ILO. Occupational Safety and Health Convention (1981).

Labour Code	Provisions
The Code on Social Security, 2020	<p>The Code extends social security to all employees and workers and provides the specifics of the Provident Fund Scheme, the Pension Scheme and the Insurance Scheme. The Code also provides the details of maternity benefits, which should be paid at the rate of the woman's average daily wage for a minimum period of eight weeks and a maximum period of 26 weeks, as per the amendment to Maternity Benefits Act, 1961, in 2017.</p> <p>Provisions on access to social security benefits, including maternity benefits, are included in international standards as well, particularly ILO's Social Security (Minimum Standards) Convention, 1952, No.102.<sup>32</sup></p>
The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013	<p>This Act addresses sexual harassment in the workplace, in transportation to and from work and in dwelling places provided by the employer. Under the Act, there is also a provision for the creation of Internal Complaints Committees (ICC) in factories with more than ten employees, to receive complaints from women who have faced sexual harassment at the workplace.</p> <p>Provisions on the prevention of violence and sexual harassment at the workplace are included in international standards as well, particularly ILO's Violence and Harassment Convention, 2019, No.190.<sup>33</sup></p>
Indian Penal Code, 1860	<p>The Penal Code under sections 370 and 370A criminalizes the act of recruiting, transporting, harbouring or transferring a person by using threat, force, coercion, fraud, abuse of power or inducement for the purposes of exploitation, including slavery or practices similar to slavery.</p> <p>Provisions to prevent forced labour, exploitation and slavery are included in international conventions as well, including in ILO Forced Labour Convention, 1930, No.29 and its Protocol of 2014.</p>

In addition to the laws regulating recruitment and employment, the Ministry of Corporate Affairs of the Government of India published National Guidelines on Responsible Business Conduct (2018), which encourages businesses to adopt responsible practices. Such practices include engaging in collective bargaining, eliminating discrimination, paying fair living wages, addressing harassment, incorporating workers in consultations and establishing accessible and equitable grievance redressal mechanisms. The Ministry is also in the process of finalizing a National Action Plan on Business and Human Rights.<sup>34</sup>

The Ministry of Corporate Affairs of the Government of India published National Guidelines on Responsible Business Conduct (2018), which encourages businesses to adopt responsible practices.

<sup>31</sup> ILO. Occupational Safety and Health Convention (1981).

<sup>32</sup> ILO. Social Security convention (1952).

<sup>33</sup> ILO. Violence and Harassment Convention (2019).

<sup>34</sup> Institute for Human Rights and Business. India's Business & Human Rights National Action Plan (2020).

Employers are legally obliged to comply with the above laws and any additional state laws that might apply to them in their state(s) of operation. This Guidebook does not provide an exhaustive list of all relevant international guidelines, standards and laws, which include ILO labour standards in the form of the 47 conventions and one protocol ratified by India.<sup>35</sup> However, for those employers who want to ensure that they are adhering to the best recruitment practices as defined by international standards, this Guidebook will act as a stepping-stone to fair and ethical recruitment.

Key reference documents outlined below are based on international labour standards and human rights standards, including:

- The Convention on the Elimination of All Forms of Discrimination against Women, 1979;
- The International Convention on the Elimination of All Forms of Racial Discrimination;
- ILO's Violence and Harassment Convention, 2019 (No. 190);
- The International Bill of Human Rights consists of the Universal Declaration of Human Rights;
- The International Covenant on Economic, Social and Cultural Rights;
- The International Covenant on Civil and Political Rights and its two Optional Protocols.

**Table 4: International Guidelines and Standards and its provisions**

International Guidelines & Standards	Provisions
United Nations Guiding Principles on Business and Human Rights	The UNGP reaffirms the responsibilities of states and business enterprises to protect and respect the human rights of workers under international law. Human rights refer to recognized human rights understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in ILO's Declaration on Fundamental Principles and Rights at Work. <sup>36</sup> The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size. Business enterprises should have policies and processes in place to meet their responsibilities. The State must ensure that business enterprises respect those obligations.
ILO's General Principles and Operational Guidelines for Fair Recruitment	These Principles establish that human rights be respected during recruitment, which should respond to established labour market needs, comply with relevant legislation; the principles also promote efficiency, transparency and protection for workers. The Operational Guidelines provide that enterprises should not charge recruitment fees or related costs (see Annex 1 for the full definition of fees and related costs) to candidates or workers; should not retain personal or identity documents; and should respect workers' confidentiality. The Operational Guidelines specific to employers provide that employers should: ensure that written contracts of employment are concluded, and that they are transparent and understood by the worker; provide or facilitate effective access to grievance and other dispute resolution mechanisms; ensure that the right to freedom of association and collective bargaining of recruited workers is respected; and should respect the freedom of migrant workers to leave or change employment or to return to their countries of origin, or to their native states in case of internal migrants.

<sup>35</sup> ILO. Ratifications for India (2017).

<sup>36</sup> The Declaration provides that countries have an obligation to promote and realize: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation.

IRIS Standard	<p>The IRIS Standard is a set of global principles that define ethical recruitment. It is based on international labour and human rights instruments and articulates what ethical recruitment means in practice. The Guidance provides that recruitment respect laws, fundamental principles and rights at work; respect ethical and professional conduct; prohibit recruitment fees for jobseekers; respect freedom of movement, respect transparency of terms of conditions of employment; respect confidentiality and data protection; and respect access to remedy.</p>
OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector <sup>37</sup>	<p>This guidance, one of many for different sectors, aims to help enterprises implement the due diligence recommendations contained in the OECD Guidelines for Multinational Enterprises along the garment and footwear supply chain to avoid and address the potential negative impacts of their activities and supply chains. Some of the core objectives include embedding responsible business conduct in policy and management systems; identification of actual and potential harms in the businesses' own operations and in their supply chains; methods to cease, prevent and mitigate those harms through tracking, proper and effective communication of these core objectives and last, provision for and cooperation in remediation wherever needed. The Guidance contains a gamut of modules to risks prevalent in the sector including financial and physical abuse and exploitation.</p>

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<sup>37</sup> OECD Due-Diligence-Guidance-Responsible-Supply-Chains-Textiles-Footwear.pdf ([oecd.org](http://oecd.org)).

## CHAPTER 2

# Best Practice for Employers who Directly Recruit Inter-State Migrant Workers

**Establish policies** that express commitment to respecting the rights of inter-state migrant workers from recruitment to return

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At a minimum, employers must comply with the Constitution of India and all applicable legislation (national and state level) when directly recruiting and employing inter-state migrant workers. The following best practices are compliant with national legal obligations whilst providing recommended best practices based on international standards.

This Chapter is divided into two sections, providing best practice guidance as follows:

Section 1: Employer Policies and Practices

Section 2: Operational Practices for Ethical Recruitment, Employment and Return.

### **Section 1: Employer Policies and Management Practices**

Establishing clear policies shows the commitment of the employer to practices that respect the rights of inter-state migrant workers.

Employers should establish policies that express commitment to respecting the rights of inter-state

migrant workers from recruitment to return, ensuring that policies on the recruitment and employment of inter-state migrant workers:

- Are consistent with the legal obligation to treat all inter-state migrant workers with dignity and respect and ensure that they are not subject to discrimination;
- Are informed and/or developed with input from inter-state migrant workers, including women workers, women's organizations, civil society and trade unions, including through undertaking worker satisfaction surveys and hosting worker consultation meetings;
- Are available publicly in relevant regional languages and dialects and in forms accessible to those with low literacy;
- Are signed off by the highest level of management;
- Include the following minimum commitments:

- Align with the Constitution of India and all applicable national and state level laws and regulations;
  - Align with international standards on the prohibition of child labour and forced labour and demonstrate commitment to eliminate forced labour and trafficking;
  - Ensure the elimination of discriminatory practices;
  - Prohibit sexual and other forms of harassment and violence;
  - Respect freedom of association and the right to collective bargaining;
  - Respect freedom of movement and the right to leave their place of work or accommodation during their free time;
  - Prohibit the withholding of identity or personal documents;
  - Prohibit the charging of recruitment fees and related costs to inter-state migrant workers.
- Are gender-responsive, in particular including the following commitments:
- Equitable recruitment practices and ensuring equal access to opportunity for employment, upskilling and promotion ;
  - Ensuring that women inter-state migrant workers can progress in their careers and are provided with equal opportunities.
  - Address any imbalances in the gender make-up of supervisors and management through plans to recruit and promote more women;
  - Ensure women inter-state migrant workers have access to maternity rights and do not lose their job if they become pregnant or have young children.

**Establish management systems** that integrate policies on the recruitment and employment of inter-state migrant workers into internal management systems, in particular ensuring:

- Management and staff are provided with adequate resources and training on policies on the

## Establish management systems that integrate policies on the recruitment and employment of inter-state migrant workers into internal management systems

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recruitment and employment of inter-state migrant workers to ensure that they are implemented in practice;

- Training to include gender training and prevention of sexual exploitation and abuse training to all management and staff so that they are aware of what constitutes a gender discriminatory practice and/or harmful gender norm and the damage these do;
- Management keeps records to demonstrate conformity with industrial regulations when regular inspections are conducted by the appropriate authorities;
- Policies are communicated to inter-state migrant workers in a language they can understand and accounting for any special communication needs due to lack or low literacy levels;
- Policies are communicated to suppliers, buyers and other sectoral partners, along with information on lessons learned and guidance and tips on procedures and implementation;
- Policies are reviewed internally and updated annually;
- Collect data on recruitment, employment positions, wages and grievances that are disaggregated by sex and age to track the effectiveness of efforts to ensure practices are gender responsive.

# **Undertake due diligence** to identify human and labour rights risks to inter-state migrant workers

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**Undertake due diligence** to identify human and labour rights risks to inter-state migrant workers related to recruitment and employment operations and:

- Ensure that recruitment and employment operations identify and address the risks specific to gender and inter-state migrant workers' vulnerabilities;
- Establish action plans that address the risks and include updating policies or identifying collaborations including with civil society and trade union organizations;
- Monitor progress and revise policies and practices as new challenges and risks emerge.

## **Section 2: Operational Practices for Ethical Recruitment, Employment and Return**

This section outlines the human rights principles and key operational practices employers should follow when recruiting and employing inter-state migrant workers. These principles and key operational practices follow typical stages of the labour migration process, namely recruitment, employment, and return and onward migration.

### **Overarching Principles**

Ensure that inter-state migrant workers are treated equally and without discrimination, in particular:

- Treat inter-state migrant workers equally to local workers in every aspect of employment (such as overtime premium, subsidiaries such as night shift/ evening shift, substance testing and similar), unless required by law for specific components such as pension fund;
- Non-discrimination at the time of recruitment, so that migrant workers do not miss out on viable opportunities due to factors such

as language barriers or because they are newcomers to the state of destination. Such practices are specifically prohibited under the Indian Constitution.

- Payment of wages must be equal, for the same kind of work, and timely, for all workers, whether migrants or local, male or female.
- Accessing health care and social services, especially as such access has become more relevant with the COVID-19 pandemic.
- Respect inter-state migrant workers' religious and cultural identities and make appropriate facilities available for religious observance; enable access to places of worship and meals that conform with religious and cultural requirements.

Ensure that inter-state migrant workers are **treated equally and without discrimination**

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Ensure that inter-state migrant workers have **access to effective remedy** throughout all stages of labour migration by establishing a grievance mechanism that sets out the process for lodging/filing and receiving complaints, in particular:

- Ensure that the grievance mechanism is easy to access at all stages of recruitment and employment and after return;
- Ensure that inter-state migrant workers who are victim of violations and file complaints are supported during proceedings;
- Provide information on grievance mechanisms that is clear, accessible in the workplace and accommodation and presented in a manner that can be understood by the worker;
- Make it clear that the process ensures confidentiality;

# Ensure that inter-state migrant workers have **access to effective remedy** throughout all stages of labour migration by establishing a grievance mechanism that sets out the process for lodging/filing and receiving complaints

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- Ensure that the grievance mechanism is gender sensitive and include information on how to approach female complaint handlers, should women inter-state migrant workers not feel comfortable to share these complaints with male supervisors or management;
- Clarify the timelines that apply to acknowledgement, investigation and response to the complaint, as well as those related to appeals;
- Provide information on the focal departments/people who receive and investigate complaints;
- Clarify whether grievances are handled in-house or in partnership with an external partner such as a trade union or civil society organizations, with impartiality expressed as a preference;
- Publicize alternative grievance mechanisms that are available, including those run by trade unions and civil society organizations, including collective bargaining;
- Provide information on organizations to contact should the grievance mechanism not be successful, and on how to seek more formal legal counsel.

Undertake comprehensive and transparent investigations into complaints and grievances, ensuring that:

- Wishes of inter-state migrant workers who want to remain anonymous are respected;
- Internal Complaint Committees are established to consider complaints related to sexual harassment or violence against women in accordance with the law, including the Sexual Harassment of Women at Workplace Act (2013). In accordance with the law, such Committees should include a Presiding Officer who should be a woman employed at a senior level; at least two members should be employees and one member should be from civil society or trade union organizations;
- Where the investigation finds that harm has occurred, the employer should provide remediation adequate for the violation. Such remediation can include formal apologies, restitutions (putting the worker back in the position that they were in before the harm; for instance by repaying fees or returning identity documents), rehabilitation, financial or non-financial compensation (such as paying for the safe return of the worker home), or punitive sanctions against the perpetrator;
- Inter-state migrant workers can consider the conclusion of any investigation and any offer made and are provided with access to third-party independent advice on the investigation and settlement;
- Inter-state migrant workers have the right to refuse the conclusion of the investigation and the settlement offer and refer the matter to a third-party dispute resolution system.

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## Undertake comprehensive and transparent investigations into complaints and grievances

- IOM has established operational guidelines for businesses for redressal of grievances, which provide that workers be consulted to determine the remedy, to ensure that the remedy was appropriate. Migrant workers should also be consulted afterwards, to ensure that the remedy was fully provided, and to verify whether there have been any positive or negative outcomes. Care must be taken that, remedies are not punitive against the aggrieved and/or the complainant, but aimed to correct wrongdoing, provide restitution and prevent reoccurrence.

Ensure that inter-state-migrant workers' personal data are treated as confidential and protected, in particular:

## Ensure that inter-state-migrant workers' personal data are treated as confidential and protected

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- Collect only personal information from inter-state migrant workers with their informed consent that is legitimately required in relation to their recruitment and deployment, employment and return;
- Treat any personal information collected from inter-state migrant workers as confidential and not share with third parties without prior written permission. If sharing is permitted, only share on a 'need-to-know' basis, such as regarding information relating to medical information, complaints and grievances;
- Store inter-state migrant workers' personal data in a safe and secure way;
- Inform inter-state migrant workers of the purpose for which their personal data is collected and stored. Obtain and document informed consent from inter-state migrant workers at the time of collection and prior to the release of their personal data.

Uphold the rights of inter-state migrant workers during and after crisis:

- In the event of a crisis (environmental, political or public health crisis), conduct a rapid assessment of inter-state migrant workers' safety, health, social security, housing and basic needs; develop a systematic response plan with the involvement of inter-state migrant workers; and monitor and evaluate the effectiveness of responses to inter-state migrant workers' needs for improvement;
- Provide access to official, regular and timely information to help all employer staff and inter-state migrant workers understand the crisis, related risks, measures to protect themselves and available support services;
- Make all efforts, whether independently or in coordination with business partners and other stakeholders, to uphold standards relating to general safety, equality of treatment, health care, wage payment, social protection and living conditions;
- Support inter-state migrant workers' wish to return to their home state by paying all outstanding wages and benefits; organizing and paying for their safe travel to their state of origin; and consulting with local labour departments and consular services where mobility is restricted due to the crisis;
- After the crisis abates, if possible and welcomed by the workers, rehire and arrange for them to return to the same position or an equivalent position remunerated at the same rate.

## Recruitment

Ensure that the notification of vacancy is available in a language the inter-state migrant worker can understand, and sets out comprehensive and transparent information about the employment, including:

- Work location;
  - Job title and position with explanation of tasks (job description);
- 

## Uphold the rights of inter-state migrant workers during and after crisis

- Skills required for the position;
- Working hours, shifts and overtime limits (clearly state that law will be complied with);
- Gross and net salary, specifying legally required deductions and benefits;
- Accommodation options;
- Statement that no recruitment fees or related costs will be charged to the worker.

Ensure that the staff undertaking recruitment are adequately trained in ethical recruitment and in particular:

- Ensure that the employer's staff in charge of the recruitment process display identity badges that clearly show their names and enterprise's name during recruitment, interview and pre-departure processes;
- Prescribe the information that the employer's staff undertaking recruitment must provide to inter-state migrant worker candidates for recruitment, including that recruitment does not involve payment of fees and costs, any pre-departure orientation and training provided, the contents of the employment contract and details of grievance mechanisms.

Selection of inter-state migrant worker candidates must be based on merit, without coercion or discrimination; the selection process must include:

- Interviewing and selecting inter-state migrant worker candidates based on the required skills and qualifications to perform the work;
- Verifying that inter-state migrant worker candidates are older than minimum age of 14 years;<sup>38</sup>
- Ensuring that there is no discrimination based on race, ethnicity, sex, gender and gender identity, national or social origin, nationality, caste, age, political affiliation, religion, sexual orientation, union membership, physical ability, health, pregnancy, marital or family status or any other status;
- Ensuring that at no stage of recruitment and deployment or employment, are inter-state migrant worker candidates subjected to human immunodeficiency (HIV) and pregnancy tests.

## Selection of inter-state migrant worker candidates must be based on merit, without coercion or discrimination

The inter-state migrant worker candidates who are selected for employment should receive pre-departure training and information, including:

- Training and information on the rights and obligations related to their relocation;
- Explanation of the job and tasks involved;
- Shifts, working hours, overtime;
- Salary, rate and regularity along with permitted deductions and benefits;
- The terms and conditions of the employment contract;
- Information on the working and living conditions;
- Grievance mechanisms, their rights and options if things go wrong;
- Assurance that workers are not to pay any fees – if anyone has paid fees at this stage, they must be repaid and the payment investigated;
- Clear explanation of any permitted expenses that can be borne by workers.

Selected inter-state migrant worker candidates must receive the terms and conditions for employment in the form of an employment contract before departure (see best practice recommended minimum terms in the text box below); the contract should:

- Be clear, and written in language the selected inter-state migrant worker candidate understands;
- Be explained to the selected inter-state migrant worker candidate with adequate time for the candidate to consider the offer and terms during the recruitment period before they sign and commit to the employment;
- Not include any blank sections or pieces of paper to sign;

<sup>38</sup> Ministry of Labour, Government of India. Children and Work.

- Be signed well in advance the contract starts, not just before or at the time of departure from the state/place of origin.
- A signed copy of the contract should be provided to the inter-state migrant worker for their own records;
- Not be substituted for another contract unless for better conditions and as agreed in writing by the inter-state migrant workers;
- State that recruitment fees and related costs will not be charged to inter-state migrant workers;
- Not deviate from the terms and conditions advertised in the vacancy notice.

The inter-state migrant worker candidates who are selected for employment should receive pre-departure training and information

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**Table 6: Best practices of minimum standard terms of employment based on international best practices**

<b>Essential components of employment contracts, based on international best practices</b>
<ul style="list-style-type: none"> <li>• Name and address of employer</li> <li>• Address of workplace</li> <li>• Start date and duration of contract</li> <li>• Job title/position</li> <li>• Type of work to be performed, either included in the contract or as an annex and providing a clear list of expectations of the tasks that fall within the scope of the employment</li> <li>• Rate, frequency and method of pay</li> <li>• Overtime provisions, specifying the amount of overtime permitted, the procedure and the rate of overtime pay</li> <li>• Permitted deductions</li> <li>• Normal hours of work and rest, including regularity and length of daily rest</li> <li>• Weekly rest of at least one 24-hour period</li> <li>• Annual leave and public holidays, including number of days and overtime provisions where the worker chooses to work through public holidays</li> <li>• Sick pay, including number of sick days that can be taken on full pay</li> <li>• Maternity leave, including the number of days that can be taken on full and/or reduced pay</li> <li>• Social security/insurance and medical provisions</li> </ul>

## **Essential components of employment contracts, based on international best practices**

- Occupational safety and health requirements, including training and equipment provided
- Details of transportation to and from the employment from home state
- Details of accommodation, meals provided under contract, including commitment to safe and private accommodation
- Commitment to providing an environment free from abuse, violence and harassment
- Right to join unions and bargain collectively, and information about union dues payable
- Clarification of the right to freedom of movement and the prohibition of restrictions
- Access to communications and technology so that workers can freely contact persons outside of the workplace
- Right to keep identity and other personal documents
- Terms of termination, including the conditions under which either party can terminate the contract with or without notice
- Details of the dispute resolution procedure, including right to access national justice systems
- Any additional provisions as required by Indian law

At all times it must be made clear to inter-state migrant worker candidates and selected candidates that they will not be expected to pay recruitment fees and related costs, in particular:

- Texts, emails and other methods of verbal and written communication should be used to assure inter-state migrant worker candidates that no recruitment fees or related costs will be charged to them. These communications should be provided in a language the inter-state migrant worker can understand and should account for any special needs originating from low-literacy levels.
- Inter-state migrant worker candidates should be advised, at the time of the pre departure orientation, that if during the recruitment and migration process, payments of fees and costs are requested or made, then the incident must be reported to management on arrival at the place of employment.
- Upon arrival at the place of employment, the employer, by themselves or through their representatives overseeing the recruitment

process, must inquire from the employees about their migration experience and if any fees in the form of commissions or service charges were paid to recruiters or contractors.

Employers should make all necessary arrangements and cover all expenses to ensure that the selected inter-state migrant worker candidates have safe travel from their home to the employment (or employment accommodation) site and adequate lodging.

**At all times it must be made clear to inter-state migrant worker candidates and selected candidates that they will not be expected to pay recruitment fees and related costs**

## Employment

Provide inter-state migrant workers with a comprehensive post-arrival orientation at the workplace, that should include:

- Comprehensive occupational safety and health training in languages that inter-state migrant workers understand, by ensuring that all relevant instructions are accurately translated, worded simply, so that the inter-state migrant workers, for example, understand how to access adequate health and safety equipment;
- Information specific to women, such as maternity benefits, creche facilities and their addresses, availability of and access to grievance redressal mechanisms in case of gender-related incidents, such as an Internal Complaints Committee.

## Provide inter-state migrant workers with a comprehensive post-arrival orientation at the workplace

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- Information regarding housing rules, accommodation, if any, details of transport, cafeteria/canteen and meal facilities;
- Emergency contacts and what to do in case of an emergency;
- Procedures for accessing information and asking questions;
- How to report a problem or a grievance;
- Information about company policies specifically applicable to migrant workers in the form of flyers, information booklets, scheduled factory meetings and trainings, announcements and any other format;
- Information pertaining to social security, welfare/benefit schemes and policies of the central and state government, formulated for migrant workers, as well as general worker-related provisions and how to access them;

- Names and addresses of migrant resource centres, if any;
- Additional information regarding payment of wages, if any.

Implement a zero-tolerance policy towards violence and harassment in the workplace, in particular:

- Ensure that the commitment made by senior management, is part of company policy and applies to all company staff, regular workers, including inter-state migrant workers, and extends to business partners;
- Define all types of behaviour that are considered violent and constitute harassment and misconduct along with disciplinary rules and procedures in written form, including mechanisms for prompt follow-up and remediation. These rules should apply to situations linked with work, including at workplaces, rest/meal places, sanitary facilities, during travel/ training, through work-related communication (including social media), at employer-provided accommodation and when commuting to and from work;
- Establish women's committees and safe spaces for women, including women inter-state migrant workers and trained personnel that can investigate cases of gender-based violence and sexual harassment.

Provide workplaces that promote the health, safety and welfare of workers and access to all required protective equipment, in particular:

- Comply will all relevant legislation in relation to cleanliness, ventilation, temperature, dust and fumes, overcrowding, lighting, drinking water, latrines and spittoons;
- Ensure that inter-state migrant workers are provided with adequate facilities and resources in the workplace for washing, eating, attending to first aid and meeting pregnancy and childcare needs;

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## Zero-tolerance policy towards violence and harassment in the workplace

## Promote the health, safety and welfare of workers and access to all required protective equipment

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- Comply with all relevant public health guidance related to COVID-19 and undertake proactive steps to identify, prevent and mitigate risks of exposure to inter-state migrant workers in terms of person-to-person infection as well as contact with infected surfaces or objects in line with the World Health Organization's guidance.<sup>39</sup>

Ensure inter-state migrant workers' freedom of movement, in particular:

- The employer shall not retain identity and personal documents of inter-state migrant workers, for such time and reasons beyond what is necessary, such as that needed during completion of official procedures involving identity verification, but not one that would obstruct a person's right to move around freely in a new state or place of destination.
- Whenever the employer does hold such documents, it must be with the written consent of the workers, and workers must be given a clear explanation of why their documents are required, accompanied by a receipt. Documents shall be immediately returned to workers when no longer required;
- Explain the rules for entering and exiting the workplace and accommodation in a language and manner inter-state migrant workers understand, and ensure that they can enter and exit their accommodation freely (for example, workplace and accommodation exits should not be locked);
- Wherever accommodation is provided by the employer, free transportation to and from the place of work should be provided to the inter-state

migrant workers. However, this does not preclude their right to travel independently if they wish to do so;

- Do not prohibit inter-state migrant workers from returning home during periods of annual or personal leave;
- Ensure inter-state migrant workers can terminate their employment without fear of reprisal or penalties.

Ensure that inter-state migrant workers are free to exercise their **right to freedom of association and collective bargaining**, in particular:

- Inform inter-state migrant workers of their right to join or form an association of their choice and of their right to collective bargaining, as per applicable local laws;
- Where local laws and cultural perceptions restrict and hinder inter-state migrant workers' right to freedom of association and collective bargaining, employers must attempt to provide alternative ways for meaningful, collective dialogue. Trade Unions present a great example for initiating collective action on behalf of workers irrespective of their place of origin.
- The employer shall not punish, terminate, threaten, intimidate or harass inter-state migrant workers who take part in union activities;
- Enable trade unions to engage with inter-state migrant workers without the company's management being present.

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## Ensure inter-state migrant workers' freedom of movement

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<sup>39</sup> World Health Organization. Getting your workplace ready for COVID-19 (2020).

# Work must be voluntary and in accordance with legal limits on working hours

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Ensure **wages are fair, regular and equitable**, in particular:

- That inter-state migrant workers receive and retain control of fair and regular wages and benefits;
- That wages are not below the applicable minimum wage or industry standards based on collective bargaining, whichever is higher.
- That inter-state migrant workers receive equal wages for work of equal value and not below the legal minimum wage;
- That payment of wages is regular and paid in the form of the workers' choosing (where this is by bank transfer, workers should be provided with required assistance to open a bank account or with sufficient time off to open a bank account themselves);
- Wage deductions should only be in accordance with the Wage Code 2020.

Ensure that work is voluntary and in accordance with legal limits on working hours, in particular:

- Inter-state migrant workers should have access to sufficient rest time in accordance with the national or state law as applicable;
- Inter-state migrant workers should not work overtime under threat, as part of a disciplinary matter, or to attain minimum wage;
- Inter-state migrant workers should be provided with the same leave entitlements (annual leave, public holiday, sick leave and maternity leave) as local workers in accordance with the national or state law as applicable.

Ensure that inter-state migrant workers have access to communication and contact, in particular:

- Provide 24-hour access to internet and communication services, to enable unhindered contact with families and support networks;
- Provide support to inter-state migrant workers to participate in social activities and events in the local area.

Facilitate the access of inter-state migrant workers to training courses to improve their skills, employability and financial management, in particular:

- Organize skills trainings, programmes or courses inter-state migrant workers can take part in, either during working hours or off time;
- Allow inter-state migrant workers to participate in skills trainings, programmes and courses organized by third parties such as by government agencies.

Where accommodation is provided, ensure that it is healthy, safe, hygienic, decent and gender-sensitive, in particular:

- Provide adequate, suitable and separate accommodation and facilities for men, women and transgender persons, who shall receive the same level of safety and consideration as that provided to members of either sex.
- Provide sufficient, safe and hygienic latrine and urinal facilities for male, female and transgender inter-state migrant workers and those with different access needs;
- Provide secure places to store belongings;
- Ensure privacy, that is, with no surveillance;
- Do not prohibit inter-state migrant workers from living independently of the worker accommodation. The employer may provide an allowance to inter-state migrant workers who choose to live independently;

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**Accommodation should be safe, hygienic, healthy and gender-sensitive.**

- Provide facilities for inter-state migrant workers who need to quarantine in line with public health guidance, either on arrival or due to a suspected risk of COVID-19 transmission.

Provide inter-state migrant workers with full access to health care and social protection, in particular:

- Ensure full compliance with the law including the Code on Occupational Safety, Health and Working Conditions (2020) and The Code on Social Security (2020);
- Ensure access to emergency and preventative health insurance;
- Ensure access to both occupational and non-occupational insurance;
- Provide access to medical services, including for workers infected with COVID-19;
- Pay for regular examinations required by the law;
- Provide the same paid sick leave and other entitlements as local workers;
- Provide information on civil society or government psychosocial care services that are available for workers who need it;
- Provide maternity leave, pay and care in accordance with the law, including the Code on Social Security (2020).

### **Return and/or Onward Migration**

1. Provide full details of the termination procedures including the difference between the right to terminate with and without notice and the different outcomes;
2. Undertake exit interviews with workers to understand their reasons for voluntary exit and to clearly indicate reasons for termination. This opportunity shall also be used to gather workers' feedback and improve conditions if required. The exit interviews can be conducted in multiple ways through the direct and indirect involvement of the employer. One way to do conduct these interviews is through standard surveys.
3. Facilitate the safe and orderly return travel of workers to their home state at no cost to inter-state migrant workers ensuring that all outstanding

Provide full details of the termination procedures including the difference between the right to terminate with and without notice and the different outcomes

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wages, benefits and any other amounts still owed to the inter-state migrant workers are paid in full before the worker departs.

### **Conclusion**

This Guidebook is meant to assist and guide businesses in their recruitment methods. Migrant workers lead precarious lives; however, their situation became a priority to be tackled, following the migrants' exodus in March 2020. These blue-collar workers possess great potential, in terms of their skills and ability to bolster the garment manufacturing sector in a buyer and seller-driven market. The need to address migrant workers' vulnerability is closely related to the current century priorities in terms of business ethics, where human rights considerations have come to be viewed as inviolable and can be woven into a niche component of the product and service supply chains. This Guidebook can prove useful to businesses and stakeholders such as government officials and civil society groups as a reference tool.

Concrete, operational guidance to employers with regards to ethical recruitment and employment of inter-state migrant workers begins with understanding the rights and responsibilities enumerated under national and international laws and policies. The provisions presented in this document will help to steer businesses and employers in the direction of future policies and practices so businesses become relevant and responsible

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Facilitate the safe and orderly return travel of workers to their home state

in the highly dynamic and competitive garment sector. Such is the broader goal of this Guidebook; by helping businesses commit to enhance protection and ensure respect of the rights of migrant workers through fair and ethical recruitment and employment, these businesses will increase their market value. This approach will help them realize and develop their roles and achieve the objective of achieving a forward-looking industry, which is thoughtful and accountable to its customers.

Our age is that of information and open communication. In a globalized world, everyone, irrespective of their geographical location or social status, can communicate with another person in a multitude of ways – among whom are customers. Customers/buyers are increasingly aware of the conditions, migrants face in their life, work and migration process and therefore demand and expect the highest commitments to human rights standards from their favourite brands. Such awareness gives them a considerable degree of power and influence in the market.

As informed consumers, they seek more transparency in the ways their clothes are sourced, produced and made. Businesses have the opportunity to become responsible institutions that can use their influence and power for the benefit of the migrant workers who provide them with invaluable service. By doing so, they will not only be serving their loyal customers, but also increasing their customer base. In the long run, current methods of managing labour, where workers' rights are not respected, will become unsustainable.

As one of the largest employers of migrant and non-migrant labour, the garment sector can set the tone for other businesses, including in other sectors. This Guidebook, enumerates basic rights pertaining to wages, living and working conditions, accommodation, health and safety, consideration in terms of allowing workers freedoms guaranteed to every individual – whether under the Indian constitution or under the Universal Declaration of Human Rights. Adherence to the practices mentioned in this Guidebook will help to address and reduce some of the challenges faced by workers in the process of migration.

# Annex 1 – Breakdown of Recruitment Fees and Related Costs

The below table lists potential recruitment fees and related costs that may be incurred during the inter-state labour migration process. The table uses definitions of individual costs as per ILO's Definition on Recruitment Fees and Related Costs.

The column "Party responsible for covering the cost" indicates whether it is the employer or worker who should pay for specific recruitment costs and related fees described in the left column (according to ILO's Definition on Recruitment Fees and Related Costs).

1. RECRUITMENT			
1.1. VACANCY ANNOUNCEMENT			
1.1.1. ADMINISTRATIVE COSTS	Obtaining initial government permissions for hiring migrant workers	<input checked="" type="checkbox"/> Employer <input type="checkbox"/> Worker	ILO Definition
	Job advertisements and postings/job fairs/community outreach	<input checked="" type="checkbox"/> Employer <input type="checkbox"/> Worker	ILO Definition
	Costs for the employer's attorneys, or other notary or legal fees	<input checked="" type="checkbox"/> Employer <input type="checkbox"/> Worker	ILO Definition
	Costs for ethnic language interpreters or translators (e.g. for translation of employment contracts, vacancy notices, etc.)	<input checked="" type="checkbox"/> Employer <input type="checkbox"/> Worker	ILO Definition
2.2. PRE-SELECTION BRIEFINGS			
2.2.1. TRAINING AND ORIENTATION	Costs of information briefings to workers (including logistics, material costs and language interpreters or translators)	<input checked="" type="checkbox"/> Employer <input type="checkbox"/> Worker	ILO Definition
2.2.2. TRAVEL AND LODGING	Local transportation, lodging and subsistence costs from the worker's home directly to the nearest recruitment centre for the initial briefing and interview	<input checked="" type="checkbox"/> Employer <input type="checkbox"/> Worker	ILO Definition
ADDITIONAL INFORMATION: IF THE INTERVIEW, WHETHER INITIAL OR NOT, IS THE RESULT OF A FORMAL INTERVIEW INVITATION FROM THE EMPLOYER OR THE JOBSEEKER NEEDS TO TRAVEL BEYOND WHAT IS CONSIDERED A 'REASONABLE DISTANCE' TO ATTEND THE INTERVIEW, THE COSTS ARE BORNE BY THE EMPLOYER.			

2.3. SELECTION OF APPLICANTS			
2.3.1. SKILLS AND QUALIFICATIONS	<p>Costs for interviews and skills tests to:</p> <ul style="list-style-type: none"> <li>Verify workers' language proficiency</li> <li>Level of skills and qualifications</li> <li>Location-specific credentialing or licensure</li> </ul>	<input checked="" type="checkbox"/> <b>Employer</b> <input type="checkbox"/> Worker	ILO Definition
3.1. PRE-DEPARTURE ORIENTATION (PDO)			
3.1.1. TRAINING AND ORIENTATION	Costs of PDO courses (including logistics, material costs and language interpreters or translators)	<input checked="" type="checkbox"/> <b>Employer</b> <input type="checkbox"/> Worker	ILO Definition
3.1.2. TRAVEL AND LODGING	Transportation, lodging and subsistence costs	<input checked="" type="checkbox"/> <b>Employer</b> <input type="checkbox"/> Worker	ILO Definition
3.2. TRAVEL			
3.2.2. INSURANCE COST	<ul style="list-style-type: none"> <li>Mandatory government insurance</li> <li>Health and safety of workers</li> <li>Enrolment in Employee Provident Fund</li> </ul>	<input checked="" type="checkbox"/> <b>Employer</b> <input type="checkbox"/> Worker	ILO Definition
3.2.3. ADMINISTRATIVE COSTS	Identity documents needed to obtain employment, including photographs required for such documentation	<input checked="" type="checkbox"/> <b>Employer</b> <input type="checkbox"/> Worker	ILO Definition;
3.2.5. ADMINISTRATIVE COSTS	Background, reference and police/security check	<input checked="" type="checkbox"/> <b>Employer</b> <input type="checkbox"/> Worker	ILO Definition
3.2.7. SKILLS AND QUALIFICATIONS	<p>Certification or licensing:</p> <ul style="list-style-type: none"> <li>Certificate of good conduct</li> <li>Birth certificate</li> <li>Any other certifications (of education transcripts of records and diploma, license, etc.)</li> </ul>	<input checked="" type="checkbox"/> <b>Employer</b> <input type="checkbox"/> Worker	ILO Definition

3.2.8. EQUIPMENT COSTS	Any equipment costs such as uniforms, safety gear, and other equipment needed to travel to perform assigned work safely and effectively	<input checked="" type="checkbox"/> Employer <input type="checkbox"/> Worker	ILO Definition
3.2.10. TRAVEL AND LODGING COSTS	Travel costs from the worker's home to the workplace and/or accommodation provided. These costs include: <ul style="list-style-type: none"><li>• Any costs associated with travel arrangements and service of travel agents</li><li>• Lodging and subsistence related to the administrative processes</li></ul>	<input checked="" type="checkbox"/> Employer <input type="checkbox"/> Worker	ILO Definition
<b>3.3. POST-ARRIVAL ORIENTATION (PAO)</b>			
3.3.5. TRAINING AND ORIENTATION	Costs for conducting PAO, including material costs and language interpreters or translators	<input checked="" type="checkbox"/> Employer <input type="checkbox"/> Worker	ILO Definition
3.3.6. TRAVEL AND LODGING	Associated costs for lodging, transportation and subsistence if training location is outside the work location/dormitories	<input checked="" type="checkbox"/> Employer <input type="checkbox"/> Worker	ILO Definition
3.3.7. TRAINING AND ORIENTATION	New-hire training or job-skills training at the workplace, including material costs and language interpreters or translators	<input checked="" type="checkbox"/> Employer <input type="checkbox"/> Worker	ILO Definition
<b>4. EMPLOYMENT</b>			
4.1. MEDICAL COSTS	Annual medical examinations if required by the employer or law	<input checked="" type="checkbox"/> Employer <input type="checkbox"/> Worker	ILO Definition
4.3. ADMINISTRATIVE COSTS	Replacement of any stolen documentation at the employer premises. This cost also includes photo(s), providing/photocopying documents, etc.	<input checked="" type="checkbox"/> Employer <input type="checkbox"/> Worker	ILO Definition
ADDITIONAL INFORMATION: IF THE DOCUMENTATION HAS BEEN STOLEN OUTSIDE OF THE EMPLOYER'S PREMISES, IT IS WORKERS' RESPONSIBILITY TO COVER THE REPLACEMENT COST.			
4.6. ADMINISTRATIVE COSTS	Any costs associated with paying the worker's salary (e.g. bank fees)	<input checked="" type="checkbox"/> Employer <input type="checkbox"/> Worker	ILO Definition

4.8. TRAVEL AND LODGING COSTS	Accommodation during employment	<input checked="" type="checkbox"/> <b>Employer</b> <input type="checkbox"/> Worker	ILO Definition
ADDITIONAL INFORMATION: IN A NUMBER OF JURISDICTIONS, EMPLOYERS ARE LEGALLY OBLIGED TO PROVIDE AND COVER THE COST OF THE WORKERS' ACCOMMODATION DURING THE EMPLOYMENT PERIOD. IF THERE ARE LEGAL REQUIREMENTS FOR MIGRANT WORKERS TO STAY IN ACCOMMODATIONS PROVIDED BY EMPLOYER OR THIRD PARTY, THE WORKERS SHOULD NOT BE CHARGED (INCLUDING THROUGH DIFFERENTIAL SALARIES). THE INDIAN LABOUR CODES ALLOW EMPLOYER TO DEDUCT THE COST OF ACCOMMODATION FROM WAGES. HOWEVER, IOM ENCOURAGES EMPLOYERS TO ELEVATE THEIR PRACTICES AND ADHERE TO THE INTERNATIONAL STANDARDS			
4.9. TRAVEL AND LODGING COSTS	Costs for transport to and from the workplace including for a transport service (e.g. shuttle service) provided by the employer or labour recruiter	<input checked="" type="checkbox"/> <b>Employer</b> <input type="checkbox"/> Worker	ILO Definition
ADDITIONAL INFORMATION: ANY FEES FOR TRANSPORT TO AND FROM THE WORKPLACE, WHICH IS A MANDATORY REQUIREMENT OF THE JOB (THAT IS, THE ONLY REASONABLE MODE OF TRANSPORTATION TO ARRIVE AT THE PLACE OF WORK) CANNOT BE CHARGED TO THE WORKER (INCLUDING THROUGH DIFFERENTIAL SALARIES). TRANSPORT COSTS CHARGED TO WORKERS IS ONLY ALLOWED FOR TRANSPORT SERVICES THAT ARE TRULY OPTIONAL AND CHARGED AT FAIR MARKET VALUE.			
4.10. TRAVEL AND LODGING COSTS	Relocation costs if migrant workers are asked to move after employment has begun	<input checked="" type="checkbox"/> <b>Employer</b> <input type="checkbox"/> Worker	ILO Definition
ADDITIONAL INFORMATION: AS A GOOD PRACTICE, WHERE THERE IS NO LEGAL REQUIREMENT TO DO SO; THE EMPLOYER SHOULD COVER THE COSTS OF THE WORKERS' HOME LEAVE.			
4.11. EQUIPMENT COSTS	Tools, uniforms, safety gear and other equipment needed to perform assigned work safely and effectively	<input checked="" type="checkbox"/> <b>Employer</b> <input type="checkbox"/> Worker	ILO Definition

## 5. RETURN, REINTEGRATION AND ONWARD MIGRATION

5.1. TRAVEL AND LODGING COSTS	<p>Travel costs from the worker's workplace or provided accommodation to worker's home. These costs include:</p> <ul style="list-style-type: none"> <li>• Domestic transportation to worker's home</li> <li>• Any costs associated with travel arrangements, e.g. travel agents' fees</li> <li>• Lodging and subsistence throughout the entire return travel</li> </ul>	<input checked="" type="checkbox"/> <b>Employer</b> <input type="checkbox"/> Worker	ILO Definition
<b>ADDITIONAL INFORMATION: THE ONLY EXCEPTIONS WHERE THE EMPLOYER DOES NOT COVER THESE COSTS APPLY IF:</b> <ul style="list-style-type: none"> <li>• THE WORKER HAS NOT PROVIDED FULL REASONABLE NOTICE PERIOD</li> <li>• THE WORKER FINDS ALTERNATIVE LEGAL EMPLOYMENT IN THE DESTINATION STATE</li> <li>• THE WORKER IS SUMMARILY DISMISSED FOR GROSS MISCONDUCT, ILLEGALITY OR OTHERWISE INVOLUNTARILY TERMINATED FOR CAUSE IN ACCORDANCE WITH EMPLOYER'S DISCIPLINARY PROCEDURES, BEFORE THE CONTRACT'S END DATE</li> </ul> <p><b>IN SITUATIONS WHERE THE APPLICABLE LAW REQUIRES THAT PREGNANT MIGRANT WORKERS RETURN TO THEIR STATE OF ORIGIN TO GIVE BIRTH, THE EMPLOYER PROVIDES AND PAYS FOR TRANSPORTATION TO THE STATE OF ORIGIN.</b></p> <p><b>THE EMPLOYER SHOULD COVER RETURN COSTS IF A MIGRANT WORKER MUST TEMPORARILY TRAVEL HOME DUE TO UNFORESEEN CIRCUMSTANCES SUCH AS FAMILY EMERGENCY OR CRITICAL ILLNESS. AS A GOOD PRACTICE, IF POSSIBLE AND IF WELCOMED BY THE MIGRANT WORKER, THE EMPLOYER SHOULD FORFEIT THE REQUIRED NOTICE PERIOD AND ARRANGE FOR WORKERS TO RETURN TO THE SAME POSITION OR AN EQUIVALENT POSITION PAID AT THE SAME RATE.</b></p>			
5.2. ADMINISTRATIVE COSTS	Compensation package in case of need to terminate a worker's contract early due to downsizing, facility closure, or other events that could cause early termination of contract	<input checked="" type="checkbox"/> <b>Employer</b> <input type="checkbox"/> Worker	ILO Definition
5.3. ADMINISTRATIVE COSTS	Any costs associated with contract extension	<input checked="" type="checkbox"/> <b>Employer</b> <input type="checkbox"/> Worker	ILO Definition











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