

FI Guidance: How to Meet EBRD's Performance Requirement 2

Introduction

This section provides an overview of the Performance Requirement (PR) 2 requirements FIs must adhere to within their own operations. This requirement is outlined under Paragraph 18 of PR9, which states that FIs must “maintain human resources policies, management systems and practices in accordance with EBRD PR2”. PR2 policies focus on labour issues and labour standards including HR policies, non-discrimination, retrenchment, employee grievance mechanisms, collective bargaining agreements and working relationships. Each section gives an overview the requirements set out by EBRD and key principles FIs should follow.

Please note that this document should only be used in conjunction with national laws and guidance notes. This document provides notes on good practice and should not be relied upon in isolation.

1. HR Policies

1. **EBRD Performance Requirement (PR) 2.5 – human resources policies:** “The client will adopt and/or maintain human resources policies and management systems or procedures appropriate to its size and workforce that sets out its approach to managing the workforce consistent with the requirements of this PR and national law. These policies will be clear, understandable and accessible to workers. At a minimum, the client’s human resources policies, procedures and standards shall be designed to meet the objectives of this PR outlined under paragraph 2 above.”

Further Guidance:

What are HR policies?

Human resources policies are the formal rules and guidelines that FIs should put in place to hire, train, assess, and reward the members of their workforce. These policies should prevent any form of discrimination in the workplace and ensure that all employees are treated fairly and equally. These policies help employers and employees understand their rights and responsibilities and set clear expectations about how to behave within the organisation. Effective HR policies should help to create a more harmonious workplace and improve industrial relations between management and employees.

Key Principles for Drafting HR Policies:

- HR policies should be in written form – they may be documented in company handbooks, collective agreements, and may include dedicated policies on specific issues like non-discrimination. This enables managers and supervisors to apply policies more fairly and transparently.
- HR policies should be written in clear language and made available to all employees.

- It is good practice to make policies available in the indigenous languages of all major groups of employees.

2. Non-discrimination and Equal Opportunity – Key Issues for Financial Intermediaries

EBRD PR 2.11 - Non-discrimination and Equal Opportunity: Projects will comply with EU requirements on non-discrimination related to employment. In particular, with reference to the project, the client will:

- not make employment decisions on the basis of personal characteristics, such as gender, race, nationality, ethnic, social or indigenous origin, religion or belief, marital or family status, disability, age or sexual orientation, unrelated to inherent job requirements;
- base the employment relationship on the principle of equal opportunity and fair treatment, and will not discriminate with respect to all aspects of the employment relationship, including recruitment and hiring, job assignment, compensation (including wages and benefits), working conditions and terms of employment, access to training, promotion, termination of employment or retirement, and discipline, and;
- take measures to prevent and address harassment, including sexual harassment, bullying, intimidation, and/or exploitation.

Special measures of protection or assistance to remedy past discrimination or promote local employment opportunities or selection for a particular job based on the inherent requirements of the job, which are in accordance with national law, will not be deemed discrimination.

Further Guidance:

What is discrimination?

- Discrimination involves treating people differently on the basis of a personal characteristic, as outlined above.
- Practices which appear neutral but result in the unequal treatment of people with certain characteristics are called indirect discrimination, e.g. targeting part-time workers for retrenchment, where women are more likely to be concentrated in this category than men.
- Discrimination can occur at various stages in the employment relationship and take on a number of forms:
 - Discriminatory reasons should not be a factor in hiring, training, promotion, redundancies.
 - Job announcements, application forms or interviews should not refer to an applicant's gender, age, race, or other personal characteristics that are irrelevant to the job.
 - Workers should be treated equally in relation to working conditions (e.g. working hours, health and safety measures, social security) and pay.
 - Consistent with EU non-discriminatory requirements, employers should make necessary adaptations to the workplace to accommodate the needs of disabled workers.

What does it mean to have a policy and practice of non-discrimination and equal opportunity?

- Non-discrimination requires the equal treatment of an individual or group irrespective of their particular characteristics, including race, gender, sexual orientation, religion, political opinion, nationality and social origin.
- Non-discrimination is enshrined in European law through two Directives on Racial Equality and Employment and is also governed by law in many countries around the world.
- Providing for equal opportunities offers significant advantages to employers as it allows work to be carried out by the most suitable people based on skills and helps employees realise their full potential.
- Encouraging diversity in the workforce can benefit employers through diverse thinking, experiences and behaviours that allow companies to better respond to the markets, customers and other stakeholders.

Are there any exceptions to non-discrimination requirements?

- Distinctions based on the inherent requirements of the particular job or task are permissible, although this exception should be applied narrowly.
- Measures to assist or protect some workers: e.g. maternity/paternity leave.

What is positive discrimination?

- Positive discrimination refers to policies that take factors including race, gender, religion etc. into consideration in order to benefit an underrepresented group, usually justified as countering the effects of historic discrimination
- Positive discrimination is legal under some countries' laws while it is prohibited in others – adhere to the respective laws in your country

Suggested Actions to Manage Discrimination:

- Employment decisions should not be made on the basis of personal characteristics.
- Have policies that promote equality of treatment and prohibit harassment in the workplace.
- Train Managers in principles of non-discrimination.
- Job advertisements, job descriptions and applications do not refer to applicants/workers race, gender etc. (except rare cases where legal exceptions apply).
- Women and men are paid the same wages for work of the same value.

3. Retrenchment

EBRD PR 2.16 Retrenchment: “Prior to implementing any collective dismissals in connection with the project, the client will carry out an analysis of alternatives to retrenchment. If the analysis does not identify viable alternatives to retrenchment, the client will develop and implement a retrenchment plan to assess, reduce and mitigate the adverse impacts of retrenchment on workers, in line with national law and good international industry

practice and based on the principles of non-discrimination and consultation. The selection process for redundancy will be transparent, based on fair, objective, consistently applied criteria, and subject to a grievance procedure. Without prejudice to more stringent provisions in national law, consultation will involve reasonable notice of employment changes to workers and their representatives and, where appropriate, relevant public authorities, so that the retrenchment plan may be examined jointly in order to reduce and mitigate adverse effects of job losses on the workers concerned. The outcome of the consultations will be reflected in the final retrenchment plan. All outstanding back pay and social security benefits and pension contributions and benefits will be paid: (i) on or before termination of the working relationship to the workers; (ii) where appropriate, for the benefit of the workers; or (iii) payment will be made in accordance with a timeline agreed through a collective agreement.

Further Guidance:

What is a “collective dismissal” under PR 2?

- Collective dismissal is a dismissal conducted by an employer for reasons which are not related to the individual workers concerned, such as restructuring of the company, or an administration/liquidation commencing.

What is retrenchment?

- Retrenchment and redundancy refers to the dismissal or layoff of workers or removal of positions either because the company no longer needs an employee’s skills or the company has eliminated job roles.

Suggested Actions to Manage Retrenchment:

- Develop a proposed plan for effecting redundancies and to mitigate the adverse impacts of retrenchment. As part of this plan, you should, as a minimum:
 - Consult with trade unions/works councils / workplace representatives over proposed redundancies. Consultation should be about avoiding or reducing redundancies, the method of selection and mitigating the effects of redundancies.
 - Carry out any collective dismissals in accordance with provisions of national law and/or collective agreements.
 - Develop criteria for selection which should be objective, fair and transparent and non-discriminatory.
 - Give reasonable notice of planned redundancies to both workers’ representatives and national authorities.
 - Implement a procedure which provides individuals with the right to challenge their selection.
 - Seek to mitigate adverse effects of the redundancies on individuals and affected communities. This can be achieved by considering alternative positions for the individuals within the organisation or associated organisations; providing retraining; or job search assistance, among others.
 - Develop a retrenchment plan which includes the timescale, how employees will be selected, how severance pay will be calculated, etc.

- Implement the redundancy plan in accordance with the law and ensure there is no discrimination. Put in place monitoring to ensure that the plan is complied with.
- Notify EBRD in advance of all redundancies covered by PR 2.

4. Principles of Employee Grievance Mechanism

EBRD PR 2.17 Grievance Mechanism: “The client will provide a grievance mechanism for workers (and their organisations, where they exist) to raise reasonable workplace concerns. The client will inform the workers of the grievance mechanism at the time of hiring, and make it easily accessible to them. The mechanism should involve an appropriate level of management and address concerns promptly, using an understandable and transparent process that provides timely feedback to those concerned, without any retribution. The mechanism should also allow for confidential complaints to be raised and addressed. The mechanism should not impede access to other judicial or administrative remedies that might be available under law or through existing arbitration procedures, or substitute for grievance mechanisms provided through collective agreements.”

Further Guidance:

What is a grievance?

- Grievances are complaints and problems that employees raise with their employers.
- The spectrum of grievances ranges from major and potentially illegal issues such as discrimination or victimisation in the workplace to more minor day-to-day disputes.
- Grievance procedures provide a clear and transparent framework to deal with difficulties.

Suggested Actions for a Grievance Mechanism:

A grievance mechanism is a structured process that allows employees to address workplace disputes or concerns in a fair, easily accessible and transparent manner. It is recommended that a grievance mechanism has the following:

- *Worker and manager awareness:* Employees must know who they should notify in the event of a grievance and the support that is available to them. Managers should be familiar with procedures. Details about the procedures should be easily available, for example in employee handbooks.
- *Simplicity and necessity:* Procedures should be kept as simple as possible, avoiding unnecessary administrative stages. Lodging a formal grievance should be seen as a last resort after informal methods have been exhausted.
- *Keeping it up to date:* The process should be regularly reviewed.
- *Confidential and impartial process, non-retribution:* The process has to be confidential and impartial, without employees fearing retribution.
- *Reasonable timescale:* Procedures should aim for swift solutions and include right of appeal and a right to be accompanied in meetings.
- *Right of appeal:* An employee should have the right to appeal to a higher level of management if he or she is unhappy with the initial findings.
- *Right to be accompanied* – by a colleague, friend, or union representative / works council representative.

- *Keeping of records:* Written records of proceedings should be kept to aid transparency and allow for review.
- *Relationship to collective agreements and regulation:* Grievance procedures may be included in collective bargaining agreements.
- Workers should not experience retribution for raising concerns through such mechanisms.
- Access to grievance mechanisms should not prevent employees from accessing other procedures to address grievances, such as judicial or administrative mechanisms or methods defined under collective agreements.

5. Workers' organisations

EBRD PR 2.12 Workers' Organisations: "The client will not discourage workers from electing workers' representatives, forming or joining workers' organisations of their choosing or from bargaining collectively, and will not discriminate or retaliate against workers who act as representatives, participate, or seek to participate, in such organisations or bargain collectively. In accordance with national law, the client will engage with such workers' representatives or organisations and provide them with information needed for meaningful negotiation in a timely manner. Where national law substantially restricts the establishment or functioning of workers' organisations, the client will enable means for workers to express their grievances and protect their rights regarding working conditions and terms of employment. These means should not be under the influence or control of the client."

Further Guidance:

What are workers' organisations or trade unions?

These are organisations of employees. These organisations are freely created by employees to protect, defend and promote members' interests in relation to working conditions, pay and terms of employment. They allow workers' views to be heard and are an important means of worker representation and collective bargaining.

What is collective bargaining?

Collective bargaining is a process of negotiations between the employer and a group of employees aimed at reaching agreements that regulate working conditions. The interests of the employees are commonly represented by trade unions. Collective agreements reached by these negotiations usually set out wage scales, working hours, training, grievance mechanisms, etc.

Suggested Actions to Safeguard Workers' Rights to join Workers' Organisations:

- Respect workers' rights to form or join organisations of their choosing freely.
- Ensure there is no discrimination or retaliation against workers who participate or seek to participate in organisations or bargain collectively.
- Ensure there is no interference with the operation of trade unions or other representative organisations.

- Provide worker representatives with access to the workplace to enable them to carry out their representative functions.
- In accordance with national law, engage with workers' organisations and provide them with information needed for meaningful negotiations.
- Where such organisations are prohibited or restricted by law, provide alternative avenues for worker representation, e.g. worker committees or engaging with freely chosen representatives in a manner that does not contravene the law.

6. Working Relationships

EBRD PR 2.6, 2.7 and 2.13 Working Relationships and Conditions of Work:

2.6 “The client will document and communicate to all workers their rights under national labour and employment law and any applicable collective agreements, working conditions and terms of employment including their entitlement to wages, hours of work, overtime arrangements and overtime compensation, and any benefits (such as leave for illness, maternity/paternity, or holiday), and when any material changes occur. Human resources management systems will respect the worker’s right to privacy and data protection.”

2.7 “Worker communications should be managed with a view to providing the workers with: (i) adequate information on changes anticipated that might affect the workforce on a regular basis in accordance with national law and practice and the provisions of any agreement with worker representatives; and (ii) the opportunity to provide comments as part of continuous improvement, including how to raise grievances as detailed in paragraph 17.”

2.8 “Projects are required to comply, at a minimum, with:

- national labour, social security and occupational health and safety laws, and;
- the principles and standards embodied in the ILO conventions related to:
 - a) the abolition of child labour;
 - b) the elimination of forced labour;
 - c) the elimination of discrimination related to employment; and
 - d) the freedom of association and collective bargaining.”

2.13 “Wages, benefits and conditions of work (including hours of work) offered should, overall, be at least comparable to those offered by equivalent employers in the relevant country/region and sector concerned. Where the client is a party to a collective bargaining agreement or is otherwise bound by it, such agreement will be respected.”

Further Guidance:

What is considered under “working relationships and conditions of work”?

- Working conditions encompass the working environment and cover matters such as: the organisation of work and work activities; training, skills and employability; health, safety and well-being; working time and work-life balance; and pay.
- Fair wages, benefits and reasonable working hours are central to decent working conditions.

- Terms of Employment summarise some of the issues above in written form, in particular wages and working hours, and form a contract between the employer and employee.
- Some aspects of working conditions, such as minimum wages or health and safety regulations, are regulated by law in many countries. Others, such as benefits and well-being, are additional features a company can offer to attract and retain staff.

Suggested Actions to Ensure Adequate Working Conditions:

- Document and communicate to all workers their working conditions and terms of employment, including wages, hours of work, benefits, etc.
- Provide wages, benefits and conditions of work that meet minimum statutory requirements and are comparable to those offered by equivalent local / regional employers.
- Honour the terms of collective agreements entered into.

7. Other Labour Issues

This section outlines labour issues that are important and relevant for all businesses, however do not pose a high risk for FIs. In general, FIs are not at high risk of employing child labour or forced labour or providing worker accommodation. Neither do they have significant labour issues related to non-employee workers nor have material issues in their immediate supply chains. However, it is important that your HR policies and practices reflect the standards outlined in PR2.

a) Child Labour

How is child labour defined?

- Child labour is the employment of children under the legal working age. EBRD is largely concerned about *harmful* child labour, which is the employment of children in a manner that is economically exploitative or likely to be hazardous or to interfere with the child's education or be harmful to the child's health or physical, mental, spiritual, moral or social development.
- EBRD requires that individuals below the age of 18 should not be employed in any harmful work (as defined above). All work conducted by anybody below the age of 18 should be subject to an appropriate risk assessment.
- Employing child labour is a criminal offence in almost every country in the world.

b) Forced Labour

How is forced labour defined?

- Forced, or compulsive, labour occurs when people are employed against their will under the threat of punishment, including destitution, detention, violence, or other extreme hardship to themselves or members of their families.
- Forced labour can occur in any sector, but there are higher incidences in domestic work, agriculture, construction, manufacturing and entertainment sectors. Migrant workers and indigenous peoples are particularly vulnerable to forced labour.

c) Non-employee Workers

What are non-employee workers?

- Non-employee workers are those engaged through contractors or other intermediaries to work on company sites or perform work directly related to the core functions of a business.
- Companies utilising non-employee workers need to ensure that the contractor adheres to national and international labour standards.

d) Supply Chain

What are issues in the supply chain?

- Supply chain issues are those that exist in the workplaces of companies that provide goods and services to FIs. EBD's PR 2 provisions on supply chain issues is mainly concerned with issues such as child and forced labour.
- FIs generally do not perform core functions that utilise goods and services with significant supply chain risks as defined by PR 2.

e) Worker accommodation

What are issues related to worker accommodation?

- Worker accommodation must be appropriate for its location, clean, safe and at minimum, meet the basic needs of workers.
- FIs generally do not provide worker accommodation.