



European Bank
for Reconstruction and Development

EBRD Performance Requirement 2

Labour and working conditions

Forced labour

Guidance note

This document contains references to good practices; it is not a compliance document. It should be interpreted bearing in mind the environmental and social policy adopted by the EBRD. In case of any inconsistency or conflict between this document and the environmental and social policy adopted by the EBRD as amended from time to time, such policy shall prevail. Questions of interpretation shall be addressed solely in respect of the environmental and social policy.

The information and opinions within this document are for information purposes only. They are not intended to constitute legal or other professional advice, and should not be relied on or treated as a substitute for specific advice relevant to particular circumstances. The EBRD shall accept no responsibility for any errors, omissions or misleading statements in this document, or for any loss, which may arise from reliance on materials contained in this document. Certain parts of this document may link to external internet sites, and other external internet sites may link to this report. The EBRD is not responsible for the content of any external references.

The European Bank for Reconstruction and Development (EBRD) wishes to ensure that the working conditions in the projects that it finances comply with national labour laws and health and safety regulations and international good practice in these areas. The EBRD's specific requirements are summarised in its Performance Requirement (PR2) on labour and working conditions.

The provisions on forced labour apply equally to non-employee workers (for example, contractors) who “work on project sites or perform work directly related to the core functions of the project” (PR2.21), and they are as outlined in this guidance note.

This document is intended to assist clients of the EBRD in their capacity as employers of directly hired workers and of subcontracted workers.

At-a-glance summary

All EBRD clients should ensure that:

- workers¹ are paid their wages in full and on time
- workers are not charged recruitment, processing or placement fees to obtain employment which entail a significant debt that can only be repaid by continued employment with the same employer
- only reputable recruitment and employment agencies are used, and there are procedures in place to check their practices and policies
- workers are provided with written terms and conditions of employment and benefits for their review and signature before they begin work; and for migrant workers, this should be before they leave their home country
- workers retain control and possession of their passports and other personal documents
- workers are free to leave the worksite and their accommodation when they are not working
- workers are free to leave their employment without penalty on giving reasonable notice (in accordance with national law)
- workers are not forced to work overtime above national limits
- prison labour is only used where prisoners are working willingly and their wages and working conditions are comparable to those of workers who are not prisoners.

EBRD requirements on forced labour (PR2.11)

“The client will not employ forced labour, which consists of work or service not voluntarily performed that is exacted from an individual under threat of force or penalty. This covers involuntary or compulsory labour, such as indentured labour, bonded labour or similar labour-contracting arrangements, or trafficked persons.”

¹ “Workers” refers to direct hires as well as to all contract workers (in other words, “non-employee workers”).

1. What is forced labour?

Forced labour is defined quite broadly and often used alongside or interchangeably with other terms such as human trafficking and modern slavery.

- **Forced labour** is work exacted under the threat of penalty and for which the person has not offered himself or herself voluntarily. Forced labour can involve practices such as threats of dismissal or physical violence, the withholding of identity documents or wages, threats to denounce workers to immigration authorities where their status is illegal, or entangling workers in fraudulent debt.
- **Human trafficking**, or “**trafficking in persons**”, can lead to forced labour. It is defined in PR2 as the recruitment, transportation, transfer, harbouring or receipt of people by means of a threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power, or of a position of vulnerability, or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.
- **Modern slavery** is an umbrella term that covers forced labour, human trafficking, as well as other exploitative practices such as forced marriage.

Forced labour can take many different forms, including the following:

Coercion in employment

Coercion leading to forced labour can include:

- withholding, delay or non-payment of wages
- the retention of passports or other identity documents
- threats to denounce a worker to the authorities
- threats of dismissal or other penalty to force workers to work overtime
- locking-in of workers at the workplace or accommodation.

Migrant workers and forced labour

- There are important links between migration and forced labour because migrant workers are vulnerable to exploitation, particularly if they have no valid work permit or employment contract, or are in breach of the terms of their visa.
- Often migrant workers are hired through a recruitment agent, who may use the coercive practices described above. If trafficked workers are charged recruitment fees this may result in debt bondage (see next point).

Debt bondage

- Debt bondage can arise where a worker takes a loan or wage advance from an employer or labour broker so that they can pay excessive recruitment and processing fees. The size of the loan means that the worker is unable to pay off the loan and is effectively trapped.

Prison labour

- Work carried out by prisoners for private companies does not always amount to forced labour. Forced labour arises where a prisoner is made to work for the benefit of a private company without his or her voluntary consent (see next page).
- Prisoners' conditions of employment (especially wages, social security and health and safety) should be, as far as possible, the same as those enjoyed by non-prisoners carrying out similar work.

Using prison labour in the private sector

Prisoners may undertake *voluntary* work in connection with private commercial activities inside or outside the prison, provided that certain requirements are met in order to ensure true consent.

The primary requirement is voluntariness: a prisoner's work for a private company must be done on a voluntary basis. There are two main indicators of voluntariness:

1. Formal consent

- Formal written consent must be obtained from prisoners working for private enterprise to indicate that they are undertaking the work on a voluntary basis.
- Workers should not have been subjected to any pressure or threatened loss of privileges to sign the consent.

2. Wages and conditions

- Employers should offer the same level of health and safety and similar terms and conditions of employment (such as wages and social security) to those offered to workers who are not in prison.
- It may not be appropriate for an employer to offer prisoners all of the conditions that are applicable in a free market. The wages do not have to be exactly the same as those paid in the open market, but should be approximately the same. However, it is permissible for prison authorities to deduct from prisoners' wages appropriately identified sums to cover food and lodging costs, as long as the process is transparent.

Other factors that should be taken into account to indicate voluntariness include the opportunity to learn new professional or personal skills which may assist the prisoner after release.

2. Checklist: employer actions that can give rise to forced labour

Set out below is a list of questions that provide guidance. If the answer to any of the questions in the left-hand column is yes, immediate and concrete steps must be taken to ensure that the employment in question does not give rise to forced labour.

Are workers not free to terminate their employment?	If the worker does not feel free to terminate his or her employment as a result of fees he or she owes to the employer or an agent, this is an indicator of forced labour.
Are workers not free to leave their workplace as they wish?	Workers should be entitled to leave the workplace or accommodation whenever they wish, subject to reasonable security measures applicable in remote or dangerous sites.
Are wages not paid in full and on time? Are wage advances or loans made to workers?	<p>Delaying wage payments can amount to forced labour where the promise of paying wages in arrears is used to coerce workers to stay in a job or to create a dependency. Pay periods should never be longer than monthly, and wages should be paid in full within one week following the end of the pay period.</p> <p>Excessive wage advances or loans should not be provided to workers. Workers must be clearly informed of the terms and conditions surrounding loans and advances, including the schedule for repayment. Loan payments should not exceed 10 per cent of the worker's wages and the loan term should not exceed six months. Deductions from wages for repayment may only be made where authorised by law or collective agreement.</p>
Are workers provided by their employer with services for which they have to pay?	Where employer-provided services are chargeable to workers, these should be optional, clearly noted as chargeable services and should not make workers indebted to the point that they are unable to freely leave their jobs.
Are workers required to work excessive amounts of overtime?	Forced overtime can become a forced labour situation once it is beyond the number of overtime hours allowed by national law or collective agreement and there is an additional element of coercion, such as threats to fire the worker or never offer the worker overtime again.

3. Employer safeguards against forced labour

EBRD clients should take the following measures to ensure that they have the appropriate policies and procedures in place to comply with PR2.11:

- Take steps to ensure that all work is carried out voluntarily.
- Seek to ensure that no fees are charged to workers either directly or by recruitment agencies or by the client (including for travel or accommodation). The client's "no-fees" policy should be prominently stated in job advertisements and in contracts with recruitment agencies.
- Use only legitimate and reputable recruitment and employment agencies, and put due diligence procedures in place to check their practices and policies before doing business with them and on an ongoing basis.
- Ensure that workers remain at all times in possession of their original passports, visas and other identification documents. Employers should provide workers with individual secure storage facilities for their documents.
- Ensure that workers are free to leave the worksite and accommodation, subject only to appropriate security or logistical restrictions where necessary.
- Ensure that any non-cash benefits (such as accommodation) are valued appropriately and do not impose a substantial financial burden on workers.
- Do not use prison labour without guarantees that it is voluntary (for example, formal written consent from the prisoner) and ensure that prison labourers are paid and treated the same as non-prison workers.
- Ensure that overtime is within the limits imposed by national legislation and is not imposed by using threats, including the threat of dismissal.

4. Forced labour in the supply chain

Under PR2, EBRD clients are also required to take steps to eliminate forced labour from their core supply chain. The specific provisions are stated below:

EBRD requirements on forced labour in the supply chain: PR2.24, 2.25 and 2.26

“As part of the supply chain assessment process the client will identify and assess the risk of forced labour being used in its supply chains of goods and materials which are central to the core functions of the project (core supply chains).

If the client learns that forced labour in contravention of ILO standards are present in a core supply chain, the client will take appropriate steps to remedy this in accordance with the requirement below:

- In relation to forced labour, the client should only continue to procure such goods or materials from that supplier having received satisfactory undertakings or evidence that the supplier has taken appropriate steps to eliminate the conditions that constitute forced labour.
- Where there is a risk of forced labour, the client will monitor its primary supply chain on an ongoing basis in order to identify any significant changes in its supply chain and new risks or incidents of forced labour.
- The ability of the client to fully address these risks will depend on the client’s level of management control or influence over its primary suppliers. The client will shift the affected primary supply chain over an agreed time frame to suppliers that can demonstrate that they are complying with this PR.”

Identifying forced labour in the supply chain may be a difficult process, particularly where there are a large number of suppliers and complex supply chains.

A risk assessment is the first step in detecting and preventing forced labour in the supply chain, with **particular attention given to high-risk countries and sectors** where forced labour is known to occur. The [US Department of Labor’s list of goods produced by forced labour](#) can help to identify products and countries that present a particular risk in this regard. Agriculture is a sector that poses a particular risk, notably where there are large numbers of smallholders² or routine use of labour intermediaries to recruit workers.

Examples of good practice in addressing the risk of forced labour in supply chains include:

- putting in place a clear and transparent company policy that sets out measures to prevent forced labour and trafficking in the supply chain
- providing training for human resources staff and procurement teams in identifying forced labour and seeking appropriate remedies
- carrying out initial screenings of potential suppliers, including checking conditions and practices at their premises and their use of labour recruiters
- making new and existing suppliers aware that the use of forced labour will not be tolerated and providing clear information about what constitutes forced labour
- including in supplier contracts requirements with regard to forced labour
- working with suppliers to improve conditions
- dropping suppliers that fail to make serious efforts to solve forced-labour issues. However, this should be preceded by clear warnings that state the consequences of continued non-compliance.

² “Smallholders” are people who have an agricultural holding that is smaller than a farm.