

Forced labour: guidance for clients

Key points to be followed:

- >> Workers are free to terminate their employment in accordance with national law
- >> Workers are not placed under debt to employers which is difficult or impossible to repay
- >> Workers are not coerced to work overtime above national limits
- >> Prison labour is not used, unless prisoners are demonstrated to be working willingly and paid in accordance with private sector levels on wages
- >> The client checks the procedures of any agencies used to recruit migrant workers

This information is intended to assist clients of the European Bank for Reconstruction and Development (EBRD) in their capacity as employers.

The EBRD wishes to ensure that the working conditions in the projects that it finances are in compliance 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 (PR 2) on labour and working conditions. The provisions on forced labour are as follows.

PR2.9 Forced labour: The client will not employ forced labour, which consists of any work or service not voluntarily performed that is exacted from an individual under threat of forced or penalty. This covers any kind of involuntary or compulsory labour, such as indentured labour, bonded labour or similar labour-contracting arrangements.

1. What is forced labour?

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. Forced labour can take many different forms, some of which are summarised below.

Coercion in employment

- Coercion leading to forced labour can include:
 - withholding or non-payment of wages
 - the retention of passports or other identity documents
 - threats to denounce a worker to the authorities
 - threats of dismissal to force workers to work overtime
 - locking in of workers at the workplace

Migrant workers and forced labour

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

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 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 box below).
- To ensure that consent has been given, 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-prison workers carrying out similar work.

Using prison labour in the private sector

Compulsory prison labour for private companies is against international standards, including where this involves public works projects. However, 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 - **formal consent** and **wages and conditions**.

1. Formal consent

- The ILO recommends that formal written consent should be obtained from prisoners working for private enterprise to indicate voluntariness.
- Workers should not have been subjected to any pressure or threatened loss of privileges to sign the consent.

2. Wages & conditions

- Employers should offer the same level of health and safety and similar terms and conditions of employment (wages, social security) to those offered to workers in free employment.
- It may not be appropriate for an employer to offer prisoners all of the conditions which are applicable to 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 appropriately identified sums representing food and lodging costs from prisoners' wages.

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

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

Following is a checklist of questions. 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 free to terminate employment?

If the worker does not feel free to terminate their employment as a result of fees incurred to the employer or an agent, this is an indicator of bonded labour.

Are workers free to leave their workplace as they wish?	Workers should be entitled to leave the workplace or accommodation whenever they wish, subject to security issues on remote or dangerous sites. Reasonable limitations on worker movement in the workplace are permitted.
Are wages paid in full and on time? Are wage advances or loans made to workers?	<p>Significantly delaying wage payments can amount to forced labour where the promise of paying back-wages is used to coerce workers to stay in a job or to create a dependency. Where frequency is less than monthly, further questions should be asked to ensure that workers are guaranteed payments for work done and that the infrequency of payment does not adversely affect their livelihood or that of their household. However, this is only a forced labour issue where coercion is involved.</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. Deductions from wages for repayment may only be made where authorised by law or collective agreement.</p>
Are workers provided with non-cash benefits?	Non-cash benefits (e.g. meals and housing) 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

There are a number of things that an EBRD client can do to ensure that it has the appropriate policies and procedures in place to comply with PR2.9.

- Take steps to ensure that all work is carried out voluntarily
- If fees are charged to workers either directly or by recruitment agencies (including for travel or accommodation), make sure that they are appropriate, in line with market levels and do not prevent the worker from leaving employment because they cannot pay off the fees
- Use only legitimate and reputable recruitment and employment agencies, and put procedures in place to check their practices and policies
- If workers' documents are kept in a secure place, ensure that workers have free access to them
- Ensure that workers are free to leave the worksite, subject to appropriate security, logistical or other restrictions
- Ensure that any non-cash benefits are valued appropriately and do not impose substantial debts on workers

- Do not use prison labour without guarantees that it is voluntary (e.g. formal written consent) and ensure that prison labourers are paid and treated the same as non-prison workers
- Ensure that overtime is within national legislation and, where it is not, makes sure it is not compelled by threats, including the threat of dismissal