



RESPONSIBLE SOURCING TOOL

Base Tool 9: Monitoring the Performance of Labor Agents

PROTECTIONS AGAINST TRAFFICKING IN PERSONS: Monitoring the Performance of Labor Agents

The risks of human trafficking¹ in supply chains can be controlled by properly designed and implemented processes for the recruitment, selection, and hiring of workers. Those risks are greater and more difficult to control when recruitment, selection, and hiring are outsourced to third-party labor recruiters/agents² The risk increases when these responsibilities are passed to informal agents who gather workers through social and familial networks. Therefore, whenever possible, companies should recruit, hire, and employ workers directly.

When direct recruitment is not possible, companies must exercise careful due diligence in the selection of labor agents to minimize the risk of forced labor as a result of fraudulent or misleading recruitment practices (refer to Tool 7, Criteria for Screening and Evaluating Labor Recruitment Candidates). Once a company has engaged a labor agent, regular monitoring of the agent's performance against the company's Code of Conduct and legal requirements is essential to help ensure ongoing compliance.

The following sample tool recommends a general approach to monitoring labor agent performance but is not intended to ensure compliance with specific legal requirements, such as the Federal Acquisition Regulation (FAR): Combating Trafficking in Persons.³

¹ **Note:** The United States recognizes two primary forms of trafficking in persons: forced labor and sex trafficking. For the purposes of this and other tools in the set, several terms are used such as "trafficking in persons," "human trafficking," and "forced labor." In relation to these tools, they refer to a crime whereby traffickers exploit and profit at the expense of adults or children by compelling them to perform labor.

² **Note:** The combination of services provided by third parties to find, place, and/or directly contract labor to work in company owned or supplier operations are varied, as are the terms used by different industry sectors and standards organizations to describe the providers. These include: labor agents, recruiters, recruitment agents, sub-agents, labor providers, private employment agencies (PEAs), staffing agents, manpower agents, brokers, contractors, crew leaders, and gangmasters. For the purposes of these tools, "labor agent" is generally used as the umbrella term, with "recruitment agent" used as a subset.

³ For guidance on complying with the Federal Acquisition Regulation (FAR): Combating Trafficking in Persons, please review Tool 12, RST's Sample Compliance Plan Guide.

Introduction

Labor agent performance assessment is an important part of a comprehensive due diligence system and is used to verify whether the agent is performing according to legal requirements, fundamental international labor rights, and to the human rights requirements that the company or its customer has defined. Because agents sometimes manage or supervise the work of migrant workers at the worksite, many of the criteria below go beyond assessing agent performance during the recruitment period to a more comprehensive assessment of agent performance throughout the employment lifecycle.

Companies need visibility into how their labor agents are performing against legal requirements and human rights benchmarks. Performance assessment is especially critical where the protection of migrant workers against human trafficking is concerned. Note that although this tool uses the term “agent,” these assessment criteria could apply to any party hiring and engaging workers, including those acting as the supervisor or employer at the worksite.

Having an assessment procedure in place gives companies an objective basis for management decisions and helps protect against hidden abuses. It also drives labor agents to improve their performance and conformance with business and human rights requirements.

Where recruitment and hiring of workers is outsourced, an assessment of the labor agent should be conducted soon after workers arrive at the work site. Assessments should also be conducted prior to contract renewal or in advance of subsequent deployment of workers. Labor agents responsible for aspects of on-site management of workers should be assessed regularly, and issues that have been identified should be promptly addressed. A company’s contracts with its subcontractors and suppliers should require them to similarly evaluate and manage the performance of their recruitment agents.

As discussed in Tool 7 on screening and evaluating labor agents, participation in certification programs allows agents to demonstrate their commitment to ethical recruitment practices and increased transparency and oversight. Selecting agents who are certified, or pursuing certification, will reduce the amount of due diligence required by the company.

Similarly to screening potential agents before contracting, each company will have its own specific criteria when monitoring a labor agent’s performance. To determine criteria, a company should undertake a careful review of the following documents and guidance:

- Legal requirements in the origin country, transit country, and country of operation (Tool 4);

- Any other applicable legal requirements, including international labor standards;
- Recruitment agent service agreement (contract) terms and conditions;
- Company Code of Conduct or other high-level policy;
- Client Code of Conduct or other high-level policy; and
- Fair recruitment standards and certification schemes such as:
 - [International Organization for Migration’s International Recruitment Integrity System \(IRIS\)](#);
 - The [Dhaka Principles for Migration with Dignity](#);
 - [On The Level’s Core Principles and Standards of Ethical Recruitment](#); and
 - [Clearview Global Labor Provider Certification Scheme](#).

The performance assessment itself requires a process of triangulation – gathering and analyzing information from multiple sources (e.g., document and records, management and staff interviews, observations, and interviews with job candidates and workers). Ultimately, the most valuable information will come from the workers and job applicants themselves as they are the ones directly impacted by the agent’s practices. For more information on conducting worker interviews, see Tool 10.

Information should be gathered from all the following sources, where possible and relevant:

- Worker interviews (the sample of workers interviewed should include representation from different genders, nationalities, languages, and job assignments and labor agent used);
- Recruitment agency management and staff;
- External stakeholders, such as government agencies accrediting labor agents, unions, and local civil society organizations, including worker centers;
- Internet search for evidence of engagement in illegal or unethical activities;
- Agent documents, including:
 - Business records - license, registration, certifications, etc.

- Service agreements with employers showing how much the employer pays the agent for its services
 - Records of payment for visas, work permits, medical testing and other legally-required fees and expenses
 - Records of payment for worker transportation and lodging expenses
 - Payroll records – with attention to any records of fees or wage deductions
 - Discipline records
 - Records from any applicable grievance mechanisms
 - Records of audits and assessments performed by other clients and certification organizations
- Visual observation of living and dining areas provided by agents (if applicable);
 - Visual observation of the offices of the recruitment agency.

Worker Interviews and Origin Country Recruiter/Agent Audits

Interviewing workers as part of an origin country labor recruiter audit requires careful planning. Unlike a worksite audit, there are likely to be few workers and job candidates available for interviews at the labor agent's offices. Those that are present – job applicants and workers awaiting deployment – may be reluctant to be interviewed for fear of impacting their selection for a job or deployment.

Therefore, worker interviews as part of a labor recruiter/agent audit must include workers that have already been deployed to the employment site. This will require coordination with both the agent and employer to obtain the names of the workers sourced by the agent to be audited and permission from the employer to conduct interviews with the workers.

The following sections address the typical assessment areas for agent audits, including the need and context for screening, followed by a list of information to gather, and an articulation of key red flags and risks to look out for.

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

Assessment Area 1: Recruitment Fees

There is a risk that a labor agent has charged jobseekers recruitment fees or other expenses for its services.

In such cases, workers may have borrowed money to pay the recruitment fees which increases the likelihood that they could be entering a situation of debt bondage before they set foot at the work site.

It is therefore important that companies clearly communicate to their labor agents that jobseekers cannot be charged recruitment fees and that the employer must pay for their recruitment. This “employer pays” requirement should be included in a company’s Supplier Code of Conduct, service agreements, contracts, and purchase agreements with all suppliers and subcontractors. Oversight must also be in place to ensure that the labor agent abides by this requirement.

An important starting point for any evaluation of recruitment fee violations is the service agreement between the labor agent and the customer. The agreement needs to clearly describe how much the customer pays the agent for its services, including a delineation of what is included in the agent’s service fee:

- The type and amount of each government-required fee (e.g., recruitment permit, calling visa, work permit, medical testing, exit visa, etc.)
- The cost of lodging and transportation from the time the job offer is accepted to arrival of the worker at the worksite
- Repatriation costs upon completion of the contract
- The agent’s fee for performing the above services

Of course, even with service agreements in place, it is still possible that an agent will charge workers recruitment expenses. Finding hard evidence of this is difficult as fee-charge violations rarely have a paper trail, or the paper trail is falsified to hide payments by workers.

Workers are often the only source of information regarding violations of this standard. Workers must have a safe means for reporting violations directly to the company, and a credible and well-communicated procedure must be in place to investigate and respond to such reports, including making sure that the practice is stopped and workers are reimbursed for any fees paid.

Information to Collect:

- A description of how the labor agent ensures compliance with the “employer pays” policy (e.g., the policy is included in service agreements and employment contracts, and sanctions are in place for noncompliance)
- Contracts and service agreements with any sub-agents or other recruitment intermediaries containing the “employer pays” policy
- Service agreements listing fees and costs that must be paid by the employer or labor agent, such as: agent service fees, recruitment or placement fees in both origin and destination countries, airfare or cost for other modes of transportation from the worker’s home to the employment location, cost for passport and visa, work permits, residency permits, skills tests, medical exams, pre-departure training, arrival training, security deposits or bonds, government-required fees, etc.
- Records of payments by the agent’s customers for its services and of payments by the agent for the fees and cost listed above
- Mechanisms for jobseekers to report violations of company policy on recruitment fees
- Agent procedures for refunding fee charges
- Worker experiences of paying fees, including supporting receipts provided by workers, if available

Common Risks and Red Flags:

- No written commitment by the labor agent to adhere to the “employer-pays” policy
- No service agreement in place between the agent and client company that includes how the agent is paid for its service and what is included in the service fee
- No records verifying the customer paid the agent for its services
- No records of payment of legally required fees and expenses by the agent
- Lack of an effective and safe procedure for workers to report ethical violations by company staff, subcontractors, or labor agents of the employer-pays policy (for example, workers are coached to lie about fees and expenses)
- Jobseekers are charged fees for items such as mandatory skills training, processing deployment documentation, or reservation fee and/or deposits

- Jobseekers are charged fees beyond market rates for agent-owned or -operated accommodations during the pre-job offer period or during employment

Assessment Area 2: Contracts, Orientation, Training and Grievance

By assessing contracts, orientation, training and grievance management, companies will understand how workers are informed about their legal rights and responsibilities, company policies, and employment conditions; whether these policies and conditions are explained and provided to workers in a language they understand, and how the agent ensures workers clearly understand the policies, terms, and conditions of their employment, and whether workers have a means of raising concerns and accessing remedy in the course of the recruitment process or employment in the case where the agency manages workers on-site.

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

Workers should have signed a contract in a language they understand in their country of origin which was likely approved by their origin country authority. In most cases, these contracts are patterned after standard government contracts to expedite workers deployment abroad.

However, upon arrival in the destination country, some companies ask workers to sign supplemental or new agreements. These agreements may contain additional terms and conditions that can be unfavorable to workers. However, upon arrival, workers are typically not in a position to renegotiate terms or refuse to sign supplemental agreements.

Companies must be aware of who provides worker training, whether the training meets legal and Code of Conduct requirements, and whether it is effective, meaning workers demonstrate the desired level of knowledge.

Workers must have access to effective grievance channels that they face no barriers to using and that protect them from negative consequences if they complain.

Information to Collect:

- Employment Contracts
 - ✓ Blank origin country contracts

- ✓ Contract amendments
- ✓ Random sampling of signed worker contracts (ensure that sampling includes representation of workers from all countries of origin, languages spoken, job assignment, etc.)
- ✓ Worker interviews to verify understanding of contract terms and conditions
- Training Programs
 - ✓ Description and content of training programs provided by the agent or the facility
 - ✓ Pre-departure and arrival training; documentation and training materials
 - ✓ Skills development training materials and records
 - ✓ Records of training attendance and knowledge measurement
 - ✓ Trainer qualifications and language capability
- Verification of Worker Understanding
 - ✓ Languages spoken by the workers
 - ✓ Native language handouts, worker's copy of training materials
 - ✓ Worker interviews to understand how much they remember from both pre-departure and arrival training
 - ✓ Records of training attendance and knowledge measurement
- How workers are guaranteed a safe and effective means of raising grievances

Common Risks and Red Flags:

- No clear procedures for conducting pre-departure and arrival training of new hires
- Information provided to workers is not consistent with employment contracts, applicable legal requirements, and company policies and procedures
- Contracts are not in a language worker understands
- Contract terms not explained verbally to workers who cannot read
- Contracts provided by workers and employers are inconsistent

- Contracts do not contain all detail required by law or company policy
- Contracts are not provided to migrant workers for review and signature prior to departing for the destination country
- Training is conducted by agent or subcontractor, which may result in inconsistent messaging and insufficient information
- Training is conducted in a language workers do not understand
- Labor agents charge training fees to workers
- Workers are required to post a training bond (can result in workers being unable to terminate their contract freely)
- Workers have no access to, or are not informed about, how to raise a grievance, including assurance of non-reprisal

Assessment Area 3: Compensation and Benefits

Compensation and benefits can be a factor in the risks of forced labor as workers can be held in the job due to a labor agent's wage practices. Specific practices that should be evaluated include underpayment of wages, delayed payment or withholding of wages, and unauthorized deductions. An assessment will help companies determine if workers are paid the wage rate that was promised; if their wages are paid in the manner to which the workers agreed; and if workers are able to terminate their employment without sacrificing pay for hours previously worked or other financial penalties. If deductions or withholdings are made from workers' pay, an assessment will help companies determine if the deductions are required or allowed by law, and, if not, whether the practice could result in forced labor. This is of heightened importance in the agricultural sector where workers are often paid via piece-rate or quota systems that can incentivize child labor or illegal overtime.

Information to Collect:

- Copies of payroll documents, timecards, and pay slips, including those of any workers who are paid on a piece rate or quota basis
- Legal minimum wage or collective bargaining agreement wage applicable to the worksite
- Legal requirements on wages and benefits, including overtime pay, holidays, leave, and social insurance

- Pay practices:
 - ✓ Method of paying wages
 - ✓ Forms of wage payments (e.g., cash, deposit in worker's bank account, etc.)
 - ✓ List of who has access to workers' bank accounts
 - ✓ Details of payroll period and cycle
 - ✓ Pay dates (number of days lapsed from last day of payroll period to pay day)
- Pay structure:
 - ✓ Basic pay rate
 - ✓ Overtime rates and other non-regular rates (holiday, rest day, etc.)
 - ✓ Whether cash allowances or advances given
 - ✓ Whether piece-rates or quota systems used and their terms
 - ✓ Structure and terms of any bonus system
 - ✓ Structure and terms of any share system
- Pay deductions:
 - ✓ Legally mandated deductions (e.g. social insurance premiums)
 - List of all wage deductions (disciplinary penalties and fines, meals, housing, uniforms, tools, personal protective equipment, etc.)
 - ✓ Whether pay deductions are recorded in pay slips
 - ✓ Details of any savings program implemented; in particular, whether savings programs are mandatory and who controls access to workers' accounts
- Benefits provided
- Evidence (through worker interviews) to verify of worker understanding of wage and benefit structure

Common Risks and Red Flags:

- Underpayment or delayed payment of wages

- Evidence that workers paid on a piece rate or quota basis do not earn at least the legal minimum wage during normal working hours
- Labor agents or employers have access to workers' bank accounts
- Evidence of forced savings programs
- Evidence of illegal deductions
- Workers are uninformed or misinformed about wage rates and deductions
- No pay slips are provided
- Pay slips are inaccurate or do not contain critical information about how wages are calculated
- Pay slips are not provided in a language workers understand
- Workers' pay slips do not correspond to records provided by the employer or agent
- Workers have not signed to acknowledge receipt of earnings

Assessment Area 4: Loans, Deposits, and Deductions

To have a clear picture of the vulnerability of the workforce to forced labor, companies will want a full accounting of all loans, deposits, and deductions to which migrant workers are subject. To determine worker vulnerability, companies must understand the purpose, legality, and methods of levy for each of the fees, deposits, and deductions. In addition, companies will need to know how workers repay these fees, and whether repayment schemes restrict workers' ability to terminate their employment.

Information to Collect

- Fees and loan payments to agents;
 - ✓ Do workers owe money to agents at any point in the employment cycle?
 - ✓ What is the purpose of any loans or advances?
 - ✓ What is the schedule of payments?
 - ✓ What are the terms of repayment (interest rate; number of payments; percentage of wages)?

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

Common Risks and Red Flags:

- Workers are charged fees by agents for on-site services and management (for example, payroll processing fee)
- Workers are induced or encouraged to take loans or advances from the agent at excessive interest rates or unreasonable terms of payment
- Workers are required to lodge deposits or post bonds pre-deployment and/or during employment
- Workers (or their families) are provided with cash advances and in-kind supplies, the value of which is deducted from their pay at high interest
- Workers are ill-informed about the terms or the full amount of loans or deductions
- Automatic deductions for loan payments are made against workers' salary
- Workers do not have access to earnings or bank account at any point
- Worker do not give informed consent for any savings program

Assessment Area 5: Accommodation

Companies will want to know the full details of the housing provided to migrant workers, especially if these workers have no choice but to rely on the labor agent to secure their housing.

Companies should check if the labor agent has implemented a housing plan; that the housing provided to workers meets local housing and safety standards, is comfortable, safe, and secure; and whether workers can freely enter or leave the premises. Companies need to check the house or dormitory rules and regulations, and whether there are unreasonable restrictions on workers' freedom of movement.

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

Information to Collect:

- Manager of living quarters
- Who bears the overhead expenses of the accommodations
- Accommodation inspection and maintenance procedures to ensure compliance with applicable health and safety and housing standards
- Rules for leaving and entering the living quarters, including any restrictions on a worker's ability to freely enter and exit housing
- Other housing security procedures
- Rules while in agent provided or arranged housing
- Number of workers per sleeping room
- Amount of personal space per worker
- Availability of individual locked storage for identity documents and other personal valuables
- Adequacy of exit facilities (number, location and accessibility of exits)
- Smoke and heat detection, fire alarms, and emergency lighting
- Adequacy of light, heat, and ventilation
- Description of toilet and shower facilities
- Structural integrity
- Housekeeping and hygiene practices
- Emergency preparedness procedures, including records of evacuation drills
- Whether workers feel safe and secure in provided housing
- Cost of provided housing to workers

- Market rate of similar housing in area

Common Risks and Red Flags:

- Workers do not have a choice of accommodations (unless required by law)
- Labor agents require workers to stay in agent-controlled housing facilities
- Curfews are implemented in provided housing and workers are unable to enter or leave the premises freely
- Workers must make cash deposits or turn over their identity documents in order to leave their accommodation during non-working hours
- There are penalties for staying out, or for not returning to the dormitory or housing facility at a designated time;
- Gates are closed/locked at designated times; or
- Security personnel are instructed to restrict workers from leaving or entering the accommodation
- Worker accommodation and business operations (for example, production, processing, warehousing, etc.) are in the same building
- Accommodations are in visibly poor physical condition, poorly maintained, dangerous, or unsanitary
- Workers on different work shifts share the same bed
- The company or agent has not addressed worker-reported unsafe, unsanitary, or dangerous conditions
- Costs of provided housing are outside of prevailing market rates for similar accommodation
- Costs of provided housing contribute to worker debt

Assessment Area 6: Discipline And Termination

When the labor agent is the employer, the labor agent's disciplinary procedures should be based on a clear set of rules and regulations that apply to all workers, regardless of employment status, or nationality and should include the right to due process. The process for termination should be legal and fair. Workers should be able to refuse

overtime, for example, without fearing early termination of their contract. Further, conditions for voluntary termination of the contract should not be so prohibitive that workers are unable to leave their job.

Information to Collect:

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

Common Risks and Red Flags:

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

Assessment Area 7: Personal Identity Documentation

It is critical to determine whether the labor agent holds workers' original personal identity or immigration documents, such as passports. Without access to such documents, workers are effectively bound to the worksite.

These documents should be held only:

- For the time required to process the worker's immigration documentation, and
- In those few countries where it is required by law (in such cases, workers should have unrestricted access to them)

As a general practice, workers should be in possession of their own documents and be provided with individual locked storage space to which they have unencumbered access.

The key question to consider is whether practices around worker documentation retention create situations where the workers' freedom of movement, or ability to voluntarily terminate an employment agreement, are restricted.

Information to Collect:

- Document requirements when applying for the job. Are workers required to submit original documents or photocopies?
- Location of all personal documents. Are they in the possession of the worker, the agent, or the facility?

- How are they stored? Do workers keep them in personal, locked storage or are they stored by the agent or accommodation manager?
- If documents are stored by the agent, or accommodation manager, what is the process and timeline for workers to access them?
- Which personnel have access to worker personal documents?
- If the agent is required by law to keep worker travel and work documents, and the process for workers to access documents

Common Risks and Red Flags:

- Workers are required to surrender their passports and other key documents to the agent or employer as a condition of employment
- Passports are taken from workers for safekeeping, and workers are made to sign a waiver indicating their consent
- There are procedures in place that limit the ability of workers to readily access their documents (e.g., completion of an access request form, waiting period).
- Workers are required to post a bond or pay a deposit to retrieve passports
- Workers are required to provide their passports as a deposit in order to leave their accommodation during non-working hours
- Workers are misinformed about their right to secure their own documents
- Workers are not provided means to secure their own documents
- Workers do not have any access to personal documents
- Workers report that their ability to move freely or terminate their employment has been limited by their inability to access their documents in a timely fashion