

1.A Responsible recruitment and entitlement to work

1.A.A Review original photographic identification to validate that all workers (including non-directly hired workers) have the legal right to work, or require any labour provider and on-site subcontractor to do the same, and put in place effective due diligence to monitor that they do so.

Issue Titles Available under this Workplace Requirement:

- No process or system established to validate that workers have a right to work
- Inadequate process or system to monitor if workers have a right to work
- Site requires labour providers/ on-site subcontractors to check right to work, but does not have adequate due diligence in place to monitor such checks.
- Workers engaged in work without the legal right to work – Systemic
- Workers engaged in work without the legal right to work – Isolated

Interpretation guidance

For the purposes of these requirements, **labour provider** include:

Labour provider: An organisation whose principal purpose is to source and supply jobseekers and workers. Labour providers can range from one-person on their own to multinational firms, and may be referred to by various terms such as recruitment agency, labour broker, labour contractor, labour recruiter, labour hire company, gangmaster, employment business, private employment agency, temporary employment services provider or agency, and any individual acting as such.

On-site sub-contractors: Independent businesses contracted to undertake work **on** the site, on a regular basis or which is integral to the production process.

As part of the recruitment process for all directly recruited workers, sites should verify all workers' legal eligibility to work either through original photographic identification such as a passport or ID card, and where necessary, any visa documents or residence/work permits, and/or it could be through an online checking process, as set out in national immigration law and guidance.. Sites also need effective systems to verify eligibility to work for any agency/temporary workers.

Directly employed workers:

Directly employed workers include any workers paid directly by the audited business.

Auditors should request and expect to see evidence that sites have established a process or systems to review the eligibility to work for all workers as set out in national immigration law and guidance. This includes any general requirements (that apply for all eligibility to work checks in that country), and any additional requirements specific to particular visa routes, including:

1. Checking that each presented document and/or online check establishes that the worker is eligible to work in the country, region, and job they will be deployed to, and that passport/visa expiry dates have not passed.
2. Verifying that documents are genuine by checking that they have:
 - a. No reasonably apparent signs that they are pseudo or counterfeited;
 - b. No reasonably apparent signs that they are forged by looking for indicators that pages have been substituted or altered, in particular, any bio-data page, image/photograph or personal details;
 - c. No reasonably apparent signs that they belong to someone other than the document holder (worker).
3. For online checks, that the photograph is of the individual presenting themselves for work (see 2c), and that any relevant visa documents or residence/work permits, allow them to do the work in question.

Third party employed workers:

For the purposes of this guidance third party employed workers covers **Agency or Subcontracted workers:** Agency and sub-contracted workers are workers supplied by a third-party company. Usually, the third-party company is paid by the site and the wages of the individual workers are paid by the third party. The third-party might be a 'contractor' or a 'labour provider', which also known as a recruitment agency, labour broker, labour contractor, labour recruiter, labour hire company, gangmaster, employment business, private employment agency, labour dispatch workers (China), temporary employment services provider, or agency.

Where the site engages labour providers or on-site subcontractors to supply workers on site, auditors should request and expect to see evidence that the site has effective due diligence systems to ensure that this workplace requirement is achieved for all workers on site including:

- Written terms with the labour provider or on-site subcontractor binding them to this requirement and agreeing and assigning responsibilities for establishing right to work, as set out in national immigration law and guidance.
- Undertaking regular random sampling of labour provider's copies of workers' original documents to ensure they have valid right to work and retaining copies of the checks done. The sample size should be sufficient to provide robust assurance that processes are consistently applied for all agency/temporary workers.
- Establishing procedures between the site and labour providers or on-site subcontractors used to ensure the workers who perform the work are actually those who the third party has said it is supplying.

Where the site engages labour providers or on-site subcontractors but does not conduct due diligence, the auditor should request that the agency makes available all third party employed workers' records for sampling. If no records are available on site, an NC should be raised.

Where there is no documentary evidence made available to the auditor which demonstrates that there is a process or system in place to establish eligibility to work, an NC should be raised with the relevant issue title. Where a process is in place but it is insufficient or inadequate (for example, the site does not do sufficient checks to verify that the documents are genuine or there is no process to ensure third party employed workers' eligibility to work is established), or where the site requires a labour provider or on-site subcontractor to check right to work but does not have adequate due diligence in place to monitor such checks (including random sampling), the relevant NC should be raised under the issue titles reflecting these situations.

Where through document checks or worker interviews the auditor identifies actual isolated or systemic cases of worker engaged in work without the legal right to work, an NC should be raised with the relevant issue title.

Auditors should record in 'Systems & Evidence Examined' which documents have been checked for this WR.

1.A.B Retain records necessary to demonstrate that all workers have the legal right to work.**Issue Titles Available under this Workplace Requirement:**

- Documentation demonstrating workers have the right to work not available – Systemic
- Documentation demonstrating workers have the right to work not available – Isolated

Interpretation guidance

Sites should retain records in workers' personnel records to evidence that workers that they employ have the legal right to work. Auditors should request and expect to see evidence for all directly employed workers that sites retain:

- Evidence of legal eligibility to work – this could be a download or print out of an online check, or a clear copy (scanned, photocopy or photograph) of the original ID and visa documents or residence/work permits. The copy should be signed and dated to show who made the check and when, and the copy should include:
 - A record of the type of document.
 - The document's personal details information page (with image).
 - The status and expiration date of any visas.
- A record of the checks carried out, i.e. to establish that the document appears genuine, the jobseeker appears to be the person in the document and the document establishes legal eligibility to work. This could be in the form of a checklist that is completed for each document check.
- Anything else that is required by national law and guidance to establish the worker's legal eligibility to work in the country, region, and job.

Where there is no or a systemic lack of documentation demonstrating workers have the right to work made available to the auditor, an NC should be raised with the relevant issue title. Where the auditor identifies isolated cases of gaps in documentation to demonstrate workers have the right to work, an NC should be raised with the relevant issue title. In both these cases, an NC should also be raised under 1.A.A as evidence of a non-existent or inadequate system to establish eligibility to work.

Where the site engages labour providers or on-site sub-contractors to supply third party employed workers on site, the auditor should request and expect to see evidence that the site has retained records of the random sampling, it has undertaken on the third parties' copies and on workers' original documents to ensure they have valid right to work (see further expectations of due diligence on agencies', labour brokers' and sub-contractors' eligibility to work systems under Workplace Requirement 1.A.A). The sample size should be sufficient to provide robust assurance that processes are consistently applied for all third party employed workers.

When records for right to work are in black & white copies only, contrary to local law, an NC should be raised under 1.A.J.

1.A.C Ensure that the nature of work, working conditions, living conditions, employment terms, living costs, wages and benefits accurately reflect those communicated to workers during recruitment.**Issue Titles Available under this Workplace Requirement:**

- Workers were given false, misleading, or incomplete information at the point of recruitment (e.g. regarding wages and working conditions, or the type of work, housing and living conditions, acquisition of regular migration status, job location, identity of the employer etc.)
- Contractual terms agreed or communicated during recruitment have been changed or replaced with less favourable terms for the worker without the worker's knowledge or consent (i.e. contract substitution or supplemental agreements)
- Job adverts (particularly for jobs requiring migration) are misleading about the job, job location, employer, working conditions, employment contract terms, wages or earnings

Interpretation guidance

The auditor should request and expect to see evidence that information provided by the site to workers at all stages of recruitment is clear, complete and accurate about the nature of work, location, working conditions including working time, living conditions and costs (where relevant), employment terms, wages and benefits, identity of the employer, and any immigration requirements, and that terms do not change to workers' disadvantage during recruitment.

Auditors should request and expect to see evidence of all information communicated to workers at different stages of recruitment, which may include but is not necessarily limited to:

- Job advertisements or any other communication sent to jobseekers prior to application. If provided to jobseekers recruited in their country of origin, pre-departure orientation training.
- If provided, any written agreements between any labour providers or on-site subcontractors and the worker. Any written agreements between the employer and the worker e.g. a job offer letter and the employment contract.

Auditors should review the content of the communications to check that they contain clear, complete and accurate information.

- 'Clear' means using straightforward terms, in a language each jobseeker understands, considering literacy ability.
- 'Complete' means including all key details and terms specific to the job, as well as any others that apply, including the job location, duties and expectations, employer, working conditions, employment contract terms (including whether permanent or temporary), expected working time (including any guaranteed contracted hours and what happens if the actual work available differs from what was expected), wages or earnings (including benefits entitlements and over time compensation), and any immigration requirements.
- 'Accurate' means the information contained in that communication accords with information communicated at other stages of recruitment and employment, actual working conditions and the reality of the employment status between the site and the worker.

Auditors should cross-check the evidence provided, through worker interviews and reviewing actual working conditions, to confirm the evidence provided accords with the information workers have received in practice. No worker should be misinformed, pressured, deceived, or misled into accepting a job offer. Auditors should review in worker interviews that workers:

- Received the information upon the offer of a job, before they started work and/or for migrant workers before they travelled.
- Verify that workers can explain the terms and were aware of them prior to taking up employment. Do they confirm that terms were not changed at any point without the prior consent of the worker?

- Workers have adequate time and space to understand the terms and conditions and full implications of accepting the job, e.g. to consult with family and seek independent advice.
- Migrant workers are not required to sign documents at the airport/point of departure.
- Workers feel comfortable to ask questions about the contract, the nature of work and terms and conditions if they wish to before they accept.
- Ask open questions about whether any aspects of the job are different to what workers expected.

For any third party employed workers on site, the auditor should review the site's systems to ensure that the third party meets the above requirements during recruitment.

Where there is evidence that job adverts are misleading about the job, job location, employer, working conditions, employment contract terms, wages or earnings, an NC should be raised with the relevant issue title.

Where there is evidence that workers have been given false, misleading, or incomplete information (e.g. regarding wages and working conditions, including working time, or the type of work, housing and living conditions, acquisition and maintenance/renewal of regular migration status, job location, identity of the employer etc.) at any point of recruitment (as defined above), an NC should be raised with the relevant issue title.

Where there is evidence that contractual terms agreed or communicated during recruitment have been changed or replaced with less favourable terms for the worker without the worker's knowledge or consent, i.e. contract substitution or supplemental agreements, an NC should be raised with the relevant issue title.

1.A.D Include appropriate requirements and protections for children and young workers within service agreements with labour providers or on-site subcontractors**Issue Titles Available under this Workplace Requirement:**

- Agreements with labour providers or on-site subcontractors do not include sufficient protections for children and young workers

Interpretation guidance

The auditor should request and expect to see evidence that the service agreements in place between sites and labour providers or on-site subcontractors include appropriate requirements and sufficient protections for children and young workers in accordance with the ETI Base Code and local law. Sufficient protections in this context means including at least the following:

- The basic minimum age for recruitment and employment throughout the site and labour supply chain, ensuring that it is no younger than:
 - 15 years old, unless local laws specify an older age or ILO development country exemptions apply.
 - 18 years old (on date of departure from their origin country) for migrant workers, in accordance with IOM's [IRIS Standard](#).
- That no workers younger than 18 years old will be recruited or employed to undertake hazardous work which includes any work that is potentially hazardous or injurious to their health, safety, and development, including night work or work in excess of working time limits, as required by national law and the ETI Base Code.
- The measures that are in place to control risks associated with the particular needs of young workers, which may include any necessary additional supervision and training. It is important to consider risks specific to women with a gendered lens, see Code Area 7 for further information.
- The agreed recruitment and registration process with the defined process for verifying each worker's age and respective roles and responsibilities (either set out directly in the service agreement or in an appended or referred to procedure). See SMETA Workplace Requirements document section 1.A.E for further details on service agreements.

Where there are no or insufficient protections for children and young workers included within service agreements with labour providers or on-site subcontractors, this should be raised as an NC against this Workplace Requirement (one issue title covers both no protections and insufficient protections). Where there is no service agreement in place at all, this should still be raised as an NC against this Workplace Requirement, as there are no defined protections for children and young workers in place, as well as in 1.A.E. Where actual instances of child labour or young workers performing hazardous work are identified, these should be raised as NC in the relevant SMETA Workplace Requirements document section 4.C.

1.A.E. Have systems in place to verify that all workers are recruited legally and fairly, including conducting appropriate due diligence to verify that any labour providers or on-site subcontractors are following ethical practices.

Issue Titles Available under this Workplace Requirement:

- Systems are in place to verify that any labour providers or on-site subcontractors are following ethical recruitment practices, but these are inadequate or not consistently applied/demonstrable
- No systems in place to verify that any labour providers or on-site subcontractors are following ethical recruitment practices.
- Systems are in place to ensure direct recruitment is conducted ethically, but these are inadequate, or not consistently applied/demonstrable.
- No systems are in place to ensure direct recruitment is conducted ethically.
- Documentary evidence necessary to verify third party employed workers' working conditions not available during audit - Systemic
- Documentary evidence necessary to verify third party employed workers' working conditions not available during audit - Isolated
- Site does not have correct legal licences for engagement of third party employed workers
- Labour providers used do not hold the legally required license to operate as a labour provider
- Site does not have an adequate system to assess the compliance of third party employed workers' terms of engagement/employment

Interpretation guidance

The auditor should request and expect to see evidence that sites have systems in place to ensure:

- That direct recruitment is conducted legally and ethically
- That any labour providers or on-site subcontractors are following legal and ethical practices

Direct recruitment systems

The auditor should request and expect to see evidence that the site's own systems ensure direct recruitment is conducted legally and ethically including:

- That the site is set up as a legitimate site entity, meets ongoing requirements to operate legally in all locations and sectors of operation and adheres to any legislation specific to the recruitment of workers, such as immigration requirements (for example holds a relevant license to recruit migrant workers within a particular immigration route or visa scheme).
- That the site implements a system – proportionate to risk and context – to stay up to date on legal, ethical and customer requirements in relation to recruitment. It is important to consider risks specific to women with a gendered lens; see SMETA Workplace Requirements document section 7 for further information.
- That the site communicates to workers on their rights and entitlements (as defined in laws and relevant policies) during recruitment and employment.

As part of worker interviews, auditors should ask questions to understand the recruitment process that workers have experienced, including whether this aligns with all laws and ethical standards (as defined in the site's relevant policies).

Where there is no documentary evidence made available to the auditor that systems are in place to ensure direct recruitment is conducted ethically, or if the systems in place are inadequate or not consistently applied/demonstrable, an NC should be raised with the relevant issue title. Inadequate or not consistently applied can include where worker testimony raises concerns on the consistent application of the site's systems to recruit legally and ethically (for example the site has committed to an ethical standard in a policy but in practice the worker was not recruited consistently with that standard). Where worker testimony flags that there has been a systemic or isolated breach of local law relating to responsible recruitment, which is not covered elsewhere in this SMETA Workplace Requirements document section 1A, the auditor can raise a non-conformance against SMETA Workplace Requirements document section 1.A.J.

Due diligence on labour providers or on-site subcontractors

The auditor should request and expect to see evidence that the site's due diligence on any labour providers or on-site subcontractors is conducted to verify that they operate as legitimate site entities and accord with legal requirements and responsible recruitment standards including:

- That the site has correct legal licences for engagement of third party employed workers
- That the site has developed and annually updates a map of its labour supply chain which identifies all sites and individuals involved at all stages of recruitment and the relationships between them, including:
 - Site name, contact details, and the locations they operate in.
 - Their site type and/or service or function they provide.
 - Their relationship with other sites and/or individuals in the labour supply chain and what 'tier' they are in the chain (first, second, third, etc.).
 - Logging that necessary due diligence has been undertaken on each third party before commencement of services and on an ongoing basis (see below)
- That the site undertakes checks on each labour provider or on-site subcontractor before authorising commencement of services including:
 - Communicating the site's expectations and requirements of the labour provider or on-site subcontractor through relevant written policies and procedures
 - Checking that the labour provider or on-site subcontractor has all legally required licenses – typically, the appropriate state authority will have a list of registered sites available on their website.
 - Checking that the labour provider or on-site subcontractor is not being liquidated/is not in provisional liquidation or has not been declared bankrupt. Typically, the appropriate state authority will have a list of such sites available on their website.
 - Checking that the labour provider or on-site subcontractor can demonstrate that they have the appropriate insurance to cover liabilities, i.e. they should present the appropriate (and up to date) certificates.
 - Checking that the labour provider or on-site subcontractor has no legal proceedings against them related to labour/human rights abuses, e.g. in relation to mistreatment, forced labour, charging recruitment fees, human trafficking or child labour – i.e. by searching the internet for media or NGO reports or any other publicly available information.
 - Negotiating and signing a written legal contract and service agreement which set out the expectations of both parties.
 - Undertaking pre-onboarding assessments (e.g. SAQs, audits) to assess that labour providers or on-site subcontractors' recruitment and where relevant employment/contracting practices accord with local law, relevant policies and responsible recruitment standards.
- That the site undertakes effective and regular due diligence on each agency on an ongoing basis including:

- Undertaking regular checks to verify that the agency continues to operate as a legitimate site entity with the necessary licences.
 - Undertaking regular assessments (e.g. SAQs, audits) to assess that labour providers or on-site subcontractors' recruitment and where relevant employment/contracting practices accord with local law, relevant policies and responsible recruitment standards.
 - Regularly interviewing a sample of workers recruited through/supplied by the labour provider or on-site subcontractor to understand whether they have any complaints or concerns related to the agency's practices. The sample size should be sufficient to provide robust assurance that processes are consistently applied for all third party employed workers
 - Monitoring the feedback mechanisms available for third party employed workers, for example, worker surveys, hotlines, inspections, and other grievance mechanisms available.
- That the site has a defined procedure to investigate and remediate where issues are reported against the labour provider or on-site subcontractor practices.

Where there is no documentary evidence made available to the auditor that systems are in place to verify that any labour providers or on-site subcontractors are following ethical recruitment practices, or if the systems in place are inadequate or not consistently applied, an NC should be raised with the relevant issue title.

Where there is no documentary evidence made available to the auditor necessary to verify third party employed workers' working conditions, either systemic or isolated, or no or inadequate systems to assess the compliance of the third party employed workers' terms of engagement/employment, an NC should be raised with the relevant issue title.

Where there is no documentary evidence that the site has correct legal licences for engagement of third party employed workers, an NC should be raised with the relevant issue title. Where there is no documentary evidence that labour provider or on-site subcontractor used hold the legally required license to operate as a labour provider, an NC should be raised with the relevant issue title.

1.A.F Ensure that payment to labour provider or on-site subcontractor is adequate to cover the costs to the agency of recruitment.**Issue Titles Available under this Workplace Requirement:**

- There is no payment made to labour provider or on-site subcontractor by the supplier to cover legal and contractual costs to the agency of recruitment
- There is no process established to ensure that the amount paid to labour provider or on-site subcontractor is adequate

Interpretation guidance

The auditor should request and expect to see evidence that the payment negotiated between the site and its labour provider or on-site subcontractor is adequate to cover the full costs to the labour provider or on-site subcontractor of recruitment on a sustainable and commercial basis, without charging fees to workers, or engaging in tax avoidance.

The auditor should raise a non-conformance if:

- The site makes no payment to labour providers or on-site subcontractors. The Auditor should review evidence of commercial contracts, invoices and bank statements to verify payments made. Where this is handled at a Head Office level rather than at site level, the site must still request and provide the evidence of payment. The Auditor should record the evidence reviewed in 'Systems & Evidence Examined'.
- The site cannot evidence an established process to ensure that the amount paid to labour providers or on-site subcontractors is adequate to cover all legally required and contractually agreed costs. The site is not expected to have open book costing with its agencies but should be able to demonstrate to the auditor a method to ensure all relevant costs are covered in the rate it pays including:
 - All legally required and contractually agreed costs of recruitment including costs for any Recruitment Intermediaries that have been used in the labour supply chain.
 - (Where relevant- for third party employed workers) All legally required and contractually agreed costs of employment/contracting including paying workers' legal/contractual wages (whichever is higher) and any legally mandated employment taxes, holiday entitlement, other benefits, (if required) worker accommodation, any other applicable employment costs.
 - An indication that some management/operational costs are accounted for, and these are not clearly inadequate.

1.A.G Undertake due diligence to understand the type and value of recruitment fees and related costs of recruitment which workers have paid (legal or otherwise, as defined by the ILO and including travel and visa costs). Where international travel takes place, this must include both the departure and destination countries. This due diligence should include interviews or surveys of a sample of workers.

Issue Titles Available under this Workplace Requirement:

- No due diligence is undertaken to understand the type and value of recruitment fees and related costs of recruitment which workers have paid (legal or otherwise, as defined by the ILO and including travel and visa costs)
- Some due diligence is undertaken to understand the type and value of recruitment fees and related costs of recruitment which workers have paid (legal or otherwise, as defined by the ILO and including travel and visa costs), but this is insufficient to meet the SMETA Workplace Requirements of this code section

Interpretation guidance

In accordance with the ILO Definition, a non-exclusive list of **recruitment fees** that must not be charged to workers are:

- Payments for recruitment services offered by labour recruiters
- Payments made in the case of recruitment of workers with a view to employing them to perform work for a third party
- Payments made in the case of direct recruitment by the employer
- Payments required to recover recruitment fees from workers.

When initiated by an employer, labour recruiter or an agent acting on behalf of those parties; required to secure access to employment or placement; or imposed during the recruitment process, the following should be considered as **related costs** to the recruitment process (non-exclusive list) that must not be charged to workers:

- Medical costs: payments for medical examinations, tests or vaccinations
- Insurance costs: costs to verify workers' language proficiency and level of skills and qualifications, as well as for location-specific credentialing, certification or licensing
- Equipment costs: costs for tools, uniforms, safety gear, and other equipment needed to perform assigned work safely and effectively
- Costs for training and orientation: expenses for required trainings, including on-site job orientation and pre-departure or post-arrival orientation of newly recruited workers
- Travel and accommodation costs: expenses incurred for travel, lodging and subsistence within or across national borders in the recruitment process, including for training, interviews, consular appointments, relocation, and return or repatriation. It applies both for migrant international workers and domestic workers who migrate within their country. An exception is when travel is initiated by the worker, and not "initiated by an employer, labour recruiter or an agent acting on behalf of those parties; required to secure access to employment or placement; or imposed during the recruitment process".
- Administrative costs: application and service fees that are required for the sole purpose of fulfilling the recruitment process. These could include fees for representation and services aimed at preparing, obtaining or legalising workers' employment contracts, identity documents, passports, visas, background checks, security and exit clearances, banking services, and work and residence permits.

- Costs for skills and qualification tests: costs to verify workers' language proficiency and level of skills and qualifications, as well as for location-specific credentialing, certification or licensing

Also, any illegitimate, unreasonable and undisclosed costs, including bribes, tributes, extortion or kickback payments, bonds, illicit cost-recovery fees and collaterals required by any actor in the recruitment chain and paid by workers to secure a job must never be charged to workers.

Auditors should request and expect to see evidence of the due diligence undertaken by the site to understand the type and value of recruitment fees and related costs which its workers may have paid (legal or otherwise, as defined by the [ILO Definition of Recruitment Fees and Related Costs](#)):

- Defined by the [ILO](#) refers to any fees or related costs incurred in the recruitment process in order for workers to secure employment or placement, regardless of the manner, timing or location of their imposition or collection.
 - Recruitment fees are payments for recruitment services offered by labour recruiters; payments made in the case of recruitment of workers with a view to employing them to perform work for a third party; payments made in the case of direct recruitment by the employer; and payments required to recover recruitment fees from workers. These fees may be one-time or recurring and cover recruiting, referral and placement services which could include advertising, disseminating information, arranging interviews, submitting documents for government clearances, confirming credentials, organizing travel and transportation, and placement into employment.
 - Related costs are expenses integral to recruitment and placement within or across national borders, taking into account that the widest set of related costs are incurred for international recruitment. These costs may apply to both national and international recruitment. Related costs are medical costs, insurance costs, equipment costs, costs for training and orientation, travel and lodging costs, administrative costs, and costs for skills and qualification tests.
- Legal recruitment fees and related costs refer to any fees or costs incurred by the worker in the recruitment process within or across national borders which as defined by the relevant local legislation, including migration regulations, are legal for the worker to pay. Note: In some international migration routes, it may be legal for a fee to be charged to the worker in their origin country according to origin country law, but this could contravene the destination country law – and this could apply vice versa. In these cases, even though the fee is legal in either the origin or destination country, the site should not consider it a legal recruitment fee as it contravenes one of the country's relevant laws.

The auditor should request and expect to see evidence of sufficient due diligence undertaken to understand the type and value of recruitment fees and related costs which may include but is not necessarily limited to:

- A mapping of the recruitment fees and related costs defined by the ILO, as well as the legal recruitment fees and related costs, developed in partnership with any labour provider or on-site subcontractor where one is involved, which defines at each stage of recruitment what type and value of recruitment fees and related costs are expected to be incurred, including:
 - Whether these are costs that are fixed and predictable in nature e.g. the cost of a visa application – and if so the known value; or variable due to market dynamics e.g. the cost of a flight – and if so the expected value range.
 - Who is paying for these up front (the site, the agency, the worker), and if the worker, how and when they will be reimbursed. Note: workers should only pay recruitment costs directly where they are legally required to do so. If so, the site should reimburse workers as soon as is practicable.
 - How records will be kept by the relevant sites in the labour supply chain to maintain the burden of proof that the fee/cost has been incurred by the site and not the worker (or where relevant that the worker has been reimbursed)

A robust worker interview and/or survey process with a representative sample of workers, with specific questions to support identification of recruitment fees or related costs.

The mapping should include both the major and most high-risk active recruitment streams of the audited site.

Where there is no documentary evidence made available to the auditor that due diligence is undertaken to understand the type and value of recruitment fees and related costs of recruitment which workers have paid (legal or otherwise, as defined by the ILO and including travel and visa costs), or when there is documentary evidence that the due diligence undertaken is insufficient, an NC should be raised with the relevant issue title. Insufficient due diligence is when it does not meet the points defined above.

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1.A.H. Include provisions within service agreements that hold labour providers or on-site subcontractors contractually responsible to ensure no recruitment fees or related costs are incurred or charged to workers and specifies the responsible party for reimbursing workers accordingly if they incur fees or costs.

Issue Titles Available under this Workplace Requirement:

- CAR: Service agreements do not hold labour provider or on-site subcontractor responsible for ensuring no recruitment fees or related costs are incurred or charged to workers, and/or do not specify the responsible party for reimbursing workers accordingly if they incur fees or costs
- CAR: Service agreements are in place that hold labour providers or on-site subcontractors responsible for ensuring no recruitment fees or related costs are paid, but these are not in line with ILO definitions of recruitment fees and costs

Interpretation guidance

To assess conformance with this Workplace Requirement, the auditor should request and expect to see evidence that service agreements in place with labour provider or on-site subcontractor include both:

- 1) Appropriate provisions to hold the labour provider or on-site subcontractor contractually (see further guidance below).
- 2) Provisions that specify the responsible party for reimbursing workers taking account of the extent to which the agency *caused or contributed* to workers being charged fees or related costs (in accordance with the OECD Due Diligence Guidance for Responsible Business Conduct* – see further guidance below)

The auditor should raise a CAR if:

- Service agreements do not hold labour providers or on-site subcontractors responsible for ensuring no recruitment fees or related costs are incurred or charged to workers, and/or do not specify the responsible party for reimbursing workers accordingly if they incur fees or costs.
- Service agreements are in place that hold labour providers or on-site subcontractors responsible for ensuring no recruitment fees or related costs are paid, but these are not in line with ILO definitions of recruitment fees and costs.

***Further guidance**

ILO Definition of Recruitment Fees and Related Costs

In accordance with the ILO Definition, a non-exclusive list of **recruitment fees** that must not be charged to workers are:

- Payments for recruitment services offered by labour recruiters
- Payments made in the case of recruitment of workers with a view to employing them to perform work for a third party
- Payments made in the case of direct recruitment by the employer
- Payments required to recover recruitment fees from workers.

When initiated by an employer, labour recruiter or an agent acting on behalf of those parties; required to secure access to employment or placement; or imposed during the recruitment process, the following should be considered as **related costs** to the recruitment process (non-exclusive list) that must not be charged to workers:

- Medical costs: payments for medical examinations, tests or vaccinations
- Insurance costs: costs to verify workers' language proficiency and level of skills and qualifications, as well as for location-specific credentialing, certification or licensing
- Equipment costs: costs for tools, uniforms, safety gear, and other equipment needed to perform assigned work safely and effectively
- Costs for training and orientation: expenses for required trainings, including on-site job orientation and pre-departure or post-arrival orientation of newly recruited workers
- Travel and accommodation costs: expenses incurred for travel, lodging and subsistence within or across national borders in the recruitment process, including for training, interviews, consular appointments, relocation, and return or repatriation. It applies both for migrant international workers and domestic workers who migrate within their country. An exception is when travel is initiated by the worker, and not "initiated by an employer, labour recruiter or an agent acting on behalf of those parties; required to secure access to employment or placement; or imposed during the recruitment process".
- Administrative costs: application and service fees that are required for the sole purpose of fulfilling the recruitment process. These could include fees for representation and services aimed at preparing, obtaining or legalising workers' employment contracts, identity documents, passports, visas, background checks, security and exit clearances, banking services, and work and residence permits.
- Costs for skills and qualification tests: costs to verify workers' language proficiency and level of skills and qualifications, as well as for location-specific credentialing, certification or licensing

Also, any illegitimate, unreasonable and undisclosed costs, including bribes, tributes, extortion or kickback payments, bonds, illicit cost-recovery fees and collaterals required by any actor in the recruitment chain and paid by workers to secure a job must never be charged to workers and are in scope for remediation and repayment where the business can be said to have caused or contributed to the charging of such fees according to OECD Guidelines (see below). **However**, it is beyond the auditor's capacity to determine if these OECD guidelines apply, and if the auditor identifies any such illegitimate, unreasonable or undisclosed costs they must raise a finding here for un-remediated recruitment fees in all cases. Whether the OECD guidelines below (regarding cause and contribution) apply and therefore exempt the employer/recruiter from a duty to remediate fees shall be determined by further investigation and discussion between the buyer, supplier and other stakeholders, outside the audit process.

OECD Due Diligence Guidance

In alignment with the OECD Due Diligence Guidance for Responsible Business Conduct, businesses may have caused or contributed to the charging of recruitment fees and related costs when:

- Cause: The business's own activities directly result in charging recruitment fees or related costs to workers e.g. where the agency directly charges a work-finding fee or recruitment cost to the worker.
- Contribute: The impact of the activities of the business, in combination with the activities of other parties, causes the charging of fees or costs to workers, or if the activities of the business cause, facilitate or incentivise another party to do it. The following factors can be taken into account:
 - The extent to which a site may encourage or motivate the charging of fees or costs to workers

- The extent to which a site could or should have known about the charging or potential charging of fees or related costs to workers, i.e. the degree of foreseeability. For example, when the location of recruitment is known to be at high risk of hidden brokers charging illicit fees, or where a high proportion of workers have paid illicit fees, they are systemic and therefore foreseeable.
- The degree to which any site activities actually mitigated the risk of recruitment fees or related costs being charged to workers or decreased the risk of occurring. For example, whether their due diligence controls to mitigate the charging of recruitment fees and related costs were sufficiently robust

1.A.1 Verify that workers who are found to pay recruitment fees or related costs (legal or otherwise, as defined by the ILO and including travel and visa costs), are fully reimbursed in a timely manner.

Issue Titles Available under this Workplace Requirement:

- CAR: Recruitment fees and/or costs have been paid, contrary to law, and there is no plan in place to fully reimburse workers
- CAR: Recruitment fees and/or costs have been paid, not contrary to law, and there is no plan in place to fully reimburse workers
- CAR: Recruitment fees and/or costs have been paid, contrary to law, there is a plan to fully reimburse workers, but the site has not done so fully at the time of audit
- CAR: Recruitment fees and/or costs have been paid, not contrary to law, there is a plan to fully reimburse workers, but the site has not done so fully at the time of audit

Interpretation guidance

In accordance with the ILO, the terms 'recruitment fees' or 'related costs' refer to any fees or costs incurred in the recruitment process in order for workers to secure employment or placement, regardless of the manner, timing or location of their imposition or collection.

Recruitment fees or related costs should not be collected from workers by an employer, their subsidiaries, labour recruiters or other third parties providing related services. Fees or related costs should not be collected directly or indirectly, such as through deductions from wages and benefits.

Recruitment fees and related costs:

- May be one-time or recurring
- Are expenses integral to recruitment and placement within or across national borders
- Apply to both national and international recruitment
- Might be charged by a recruitment agency, employer or by any actor during the recruitment, including third parties not related to the site
- Might be paid directly by the worker

In accordance with the ILO Definition, a non-exclusive list of **recruitment fees** that must not be charged to workers are:

- Payments for recruitment services offered by labour recruiters
- Payments made in the case of recruitment of workers with a view to employing them to perform work for a third party
- Payments made in the case of direct recruitment by the employer
- Payments required to recover recruitment fees from workers.

When initiated by an employer, labour recruiter or an agent acting on behalf of those parties; required to secure access to employment or placement; or imposed during the recruitment process, the following should be considered as **related costs** to the recruitment process (non-exclusive list) that must not be charged to workers:

- Medical costs: payments for medical examinations, tests or vaccinations
- Insurance costs: costs to verify workers' language proficiency and level of skills and qualifications, as well as for location-specific credentialing, certification or licensing

- Equipment costs: costs for tools, uniforms, safety gear, and other equipment needed to perform assigned work safely and effectively
- Costs for training and orientation: expenses for required trainings, including on-site job orientation and pre-departure or post-arrival orientation of newly recruited workers
- Travel and accommodation costs: expenses incurred for travel, lodging and subsistence within or across national borders in the recruitment process, including for training, interviews, consular appointments, relocation, and return or repatriation. It applies both for migrant international workers and domestic workers who migrate within their country. An exception is when travel is initiated by the worker, and not "initiated by an employer, labour recruiter or an agent acting on behalf of those parties; required to secure access to employment or placement; or imposed during the recruitment process".
- Administrative costs: application and service fees that are required for the sole purpose of fulfilling the recruitment process. These could include fees for representation and services aimed at preparing, obtaining or legalising workers' employment contracts, identity documents, passports, visas, background checks, security and exit clearances, banking services, and work and residence permits.
- Costs for skills and qualification tests: costs to verify workers' language proficiency and level of skills and qualifications, as well as for location-specific credentialing, certification or licensing

Also, any illegitimate, unreasonable and undisclosed costs, including bribes, tributes, extortion or kickback payments, bonds, illicit cost-recovery fees and collaterals required by any actor in the recruitment chain and paid by workers to secure a job must never be charged to workers.

Fees and costs that are found to have been paid by workers, as defined in the ILO Definition of Recruitment Fees or Related Costs, **are to be raised as findings, whether legal or illegal**. When assigning issue titles, the auditor should then take account of whether the recruitment fees and/or related costs that have been charged to workers are contrary or not contrary to relevant local law.

Some examples of scenarios where an auditor will need to consider the relevant local law to determine if a fee or cost is contrary to law:

- In some countries, the charging of recruitment fees may be permitted by some parties but not others, for example, by a direct employer, but not by a labour provider or on-site subcontractor that is governed by specific legislation relating to employment agencies.
- In some countries, it may be permitted for migrant workers to pay certain related costs (e.g. transport costs, visa costs) in some immigration routes (e.g. in a visa scheme that provides a route to a permanent residency status), but not in others (e.g. a time-limited seasonal migration route) so auditors will need to take account of any specific immigration requirements.
- In some international migration routes, it may be legal for a fee to be charged to the worker in their origin country according to origin country law, but this would contravene the destination country law – and this could apply vice versa. In these cases, even though the fee is legal in either the origin or destination country, it should be marked as contrary to law for the purposes of the issue title as a law in one of the countries has still been contravened.

Please note, these are illustrative examples, and the relevant local laws should be considered on each occasion for each country (and for international migration for origin and destination countries).

No worker should pay recruitment fees or related costs regardless of how they have been recruited. For the purposes of establishing that workers are 'found to have paid recruitment fees or related costs', evidence can include:

- Worker testimony during worker interviews – where the auditor assesses that the testimony is valid
- Information disclosed by the site or of common knowledge by the auditor that are being paid by workers as standard practice (in contravention of the ILO Definition and/or local law) e.g. where it is common practice for a worker to paid certain related costs for migrant workers' flights and transport costs.

Where workers are found to have paid recruitment fees or related costs, contrary or not contrary to law, the auditor should request and expect to see evidence of the actions the site has taken or plans to take, in collaboration with all linked parties (buyers, employers, agencies, recruitment partners etc), to ensure these are fully reimbursed in a timely manner in accordance with established guidelines ([Consumer Goods Forum Guidance on the Repayment of Worker-paid Recruitment Fees and Related Costs](#)) including to:

- Independently investigate to understand which workers have paid recruitment fees and how much.
- Define who will be reimbursed, which at a minimum should be all affected workers that were employed by the Site on the date the issue was discovered.
- Confirm the fee repayment amount to be fully reimbursed – 'fully' meaning that the amount reflects the actual value of money originally paid by the worker considering interest, inflation, exchange rate and opportunity cost. Where it is not feasible for exact fee-payments to be calculated for each worker, it is recommended to use average fees reported to have been paid per recruitment corridor or other relevant criteria and to use the calculation method which provides the fairest repayment amount to worker.
- Confirm the parties which will be responsible for reimbursing workers – taking account of to what extent they have caused or contributed to the charging of recruitment fees in accordance with the [OECD Due Diligence Guidance for Responsible Business Conduct](#):
 - Cause: When the site's own activities result in charging recruitment fees or related costs to workers.
 - Contribute: When the impact of the activities of the site, in combination with the activities of other parties, causes the charging of fees or costs to workers, or if the activities of the site cause, facilitate or incentivise another party to do it. The following factors can be taken into account:
 - The extent to which a site may encourage or motivate the charging of fees or costs to workers
 - The extent to which a site could or should have known about the charging or potential charging of fees or related costs to workers, i.e. the degree of foreseeability. For example, when the location of recruitment is known to be at high risk of hidden brokers charging illicit fees, or where a high proportion of workers have paid illicit fees, they are systemic and therefore foreseeable.
 - The degree to which any site activities actually mitigated the risk of recruitment fees or related costs being charged to workers or decreased the risk of occurring. For example, whether their due diligence controls to mitigate the charging of recruitment fees and related costs were sufficiently robust.
- Ensure the reimbursement of the agreed amount as quickly as possible, within an agreed timeframe, and no longer than 6 months from when the issue was first identified.
- Engage workers in the repayment process and communicate to workers on the purpose, amount, timeline, and protocol for repayment.
- Independently verify that payments have been made correctly without negative consequences for workers.

If auditors find recruitment fees and/or costs have been paid by workers, contrary to law or not contrary to law, and there is no plan in place to fully reimburse workers, the relevant CAR should be raised.

Commented [pa2]: This makes sense but it overlaps with the third point, and stepping into unknown territory to say that a finding can be raised based on a grievance disclosed by the site - its a grey area.

If auditors find recruitment fees and/or costs have been paid by workers, contrary to law or not contrary to law, and there is evidence made available to the auditor of a plan to fully reimburse workers, in accordance with the guidance above but the site has not done so fully at the time of audit, the relevant CAR should be raised.

Where workers are found to have paid recruitment fees or related costs, contrary or not contrary to law, and there is evidence available to the auditor that these were fully reimbursed, in accordance with the repayment guidelines above, a CAR should not be raised. It is not for the auditor in the context of the audit to undertake an in-depth analysis of whether the repayment was undertaken in accordance with these repayment guidelines – the onus is on the Site to demonstrate evidence that the repayment was done in accordance with the repayment guidelines. Where the Site is unable to present this evidence, a CAR should be raised to support further collaborative investigation.

1.A.J Comply with all other applicable laws that impose conditions on Code Area 1.A**Issue Titles Available under this Workplace Requirement:**

- Agency workers not receiving the same benefits as permanent employees, and this is contrary to law
- Records for right to work in black & white copies only, contrary to local law
- A deliberate, systemic or severe breach of a local law which represents a danger to workers or others, or which denies a basic human right (relating to Code Area 1.A: Responsible recruitment and entitlement to work, but which cannot be captured under another Workplace Requirement)
- A systemic breach of a local law that could present a danger to workers or violate upon a human right (relating to Code Area 1.A: Responsible recruitment and entitlement to work, but which cannot be captured under another Workplace Requirement)
- An isolated breach of local law which represents low risk to workers (relating to Code Area 1.A: Responsible recruitment and entitlement to work, but which cannot be captured under another Workplace Requirement)

Interpretation guidance

Auditors should take account of local law including but not limited to relevant recruitment, employment, immigration, human rights, data protection, health and safety, site, tax and equality and non-discrimination laws. Where the responsible recruitment and entitlement to workplace requirements of this Code Area 1.A differ from local law, the provision that affords the worker the greater protection should be applied.

There are three issue titles to record NCs against local law relating to Code Area 1.A which cannot be captured under another Workplace Requirement. Auditors should assign the relevant issue title depending on whether any breach identified is isolated or systemic, and considering the relative risk to workers.

Specific breaches that would also be raised as an NC against the relevant issue titles are:

- Where agency workers are not receiving the same benefits as permanent employees, and this is contrary to law. To assess this, auditors should request and expect to see evidence that workers receive the same basic pay and employment conditions as if they were engaged directly by the site including reviewing payroll, the service agreement in place with the agency and by interviewing a sample of agency workers to confirm this.
- Where records for right to work are in black and white copies only and this is contrary to law.