Guidance note: Wage protection for migrant workers

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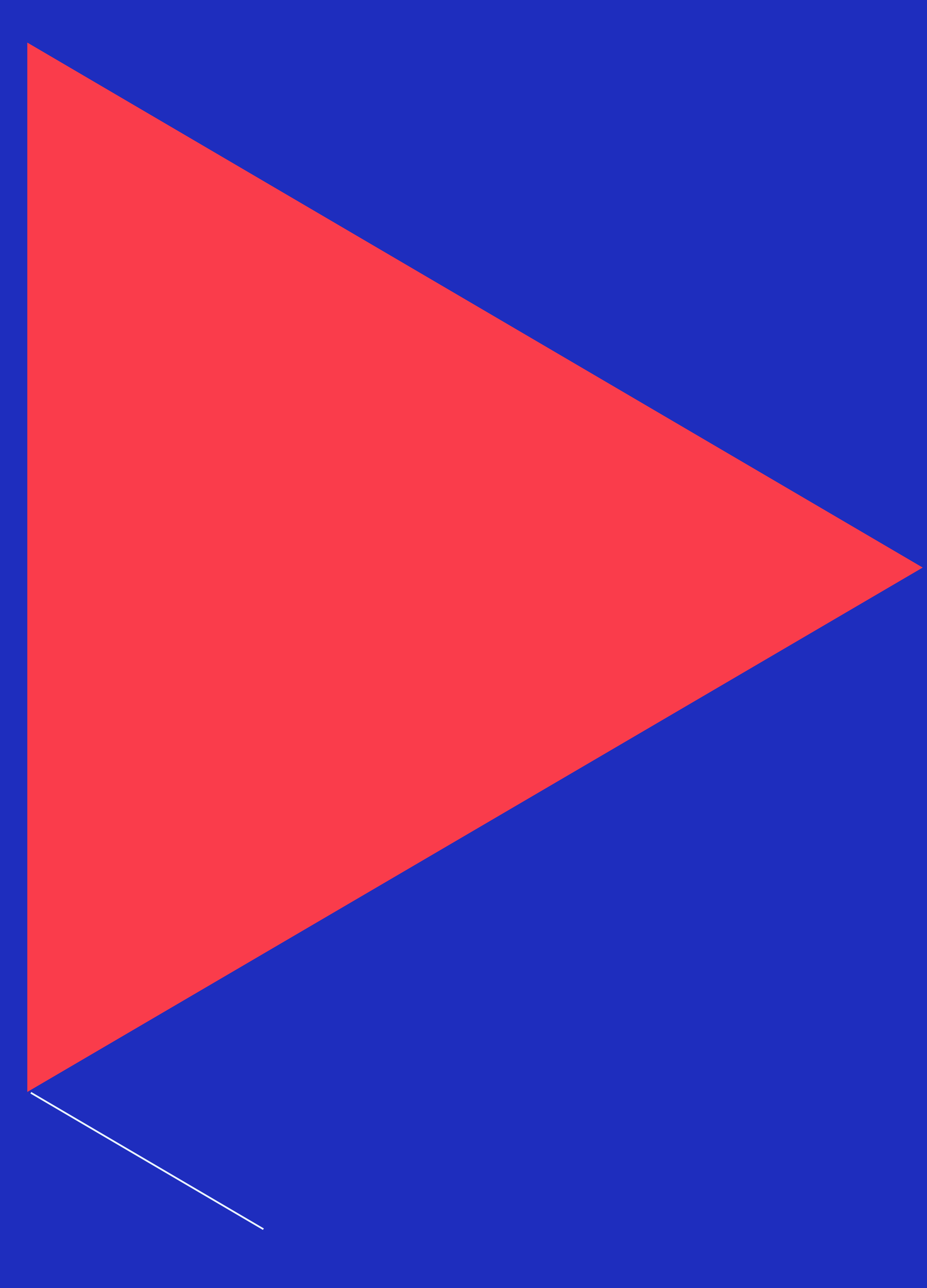

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▶ Background and objective of this Guidance Note

Working time and wages are the working conditions that have the most direct and tangible effect on the everyday lives of workers and employers. Wages can determine job choice, the number of hours worked, and whether or not to migrate for employment. Adequate wages that ensure a fair share of the fruits of progress to all and standards for wage protection lie at the heart of the ILO's mandate on social justice and the promotion of decent work.

Workers need wages not only to pay for all of their own needs (housing, food, clothing and so on), but also to address the needs of their families. For some workers, such as migrant workers, there are additional dimensions to be considered. There is growing evidence that many migrant workers increasingly move through temporary labour migration programmes, including for the purpose of increasing job opportunities and obtaining better wages (ILO 2022i, 24). These wages then go towards remittances to their families in countries of origin, as well as towards expenditures in the communities where they live, including in local businesses. ILO estimates show there are 169 million migrant workers today, who represent 70 per cent of all working age migrants. Seventy million of them are women migrant workers (ILO 2021e).

For workers to receive the expected benefits of the wages they earn, wages need to be paid in full and in a predictable and timely manner. Timely payment of wages requires a wide range of measures, not only at the legislative level but also in practice, as well as an open and continuous dialogue with and between the social partners.

Despite efforts by governments and workers' and employers' organizations around the world to develop wage protection laws and policies, delayed payment, underpayment or non-payment of wages continue to be major challenges for many of the world's workers, particularly migrant workers. Workers who migrate from one country to another may also experience additional problems in collecting any owed wage amounts due to language or legal barriers.

In situations characterized by discrimination, unfair recruitment processes, and/or restrictions based on their migration status[1], migrant workers can be particularly vulnerable to labour and wage-related abuses. Indeed, non-payment of wages is one the most common complaints made by low-wage migrant workers.[2] The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), hereafter the "ILO Committee of Experts",[3] has identified the non-payment of wages and delayed payment of wages as key modern-day wage protection issues that can also lead to debt bondage and forced labour, with migrant workers being especially vulnerable (ILO 2003; ILO 2012).

1 This includes restrictions on a migrant worker's ability to change employers, for example, in sponsorship arrangements or other temporary migration schemes. This matter will be addressed in more detail below.

2 For example, the Qatar Workers' Support and Insurance Fund disbursed over US$320 million in unpaid wages and benefits owed to workers between 2019 to September 2022, demonstrating the scale of the wage-related abuses (ILO 2022a). Studies in Asia show that non-payment of wages is a major challenge. Of the 7,643 complaints received by Migrant Worker Resource Centres in South-East Asia, 31 per cent were related to non-payment or delayed payment of wages (Harkins and Åhlberg 2017).

3 The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) is an independent body composed of 20 eminent jurists appointed by the ILO Governing Body and charged with providing an impartial and technical evaluation of the application of ILO Conventions, Protocols and Recommendations in ILO Member States. Their observations are published in an annual report adopted in December and submitted to and examined the following June by the International Labour Conference Committee on the Application of Standards, made up of government, employer and worker delegates (ILO 2019b).

The objective of this Guidance Note is to outline the position of international labour standards on wage protection, with a particular focus on migrant workers. The Note covers key provisions of relevant international labour standards, including:

- Protection of Wages Convention, 1949 (No. 95)
- Protection of Wages Recommendation, 1949 (No. 85)
- Migration for Employment Convention (Revised), 1949 (No. 97)
- Migration for Employment Recommendation (Revised), 1949 (No. 86)
- Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)
- Migrant Workers Recommendation, 1975 (No. 151)
- Domestic Workers Convention, 2011 (No. 189)
- Domestic Workers Recommendation, 2011 (No. 201)

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Part 1 Defining wage protection

What are the key international labour standards and guidance on wage protection?

ILO standards adopt a broad definition of "wages" as:

> remuneration or earnings, however designated or calculated, capable of being expressed in terms of money and fixed by mutual agreement or by national laws or regulations, which are payable in virtue of a written or unwritten contract of employment by an employer to an employed person for work done or to be done or for services rendered or to be rendered" (Convention No. 95, Article 1).

The term "wages" in this context was intended to generally cover various forms and components of labour remuneration (ILO 2003).

Convention No. 95 and Recommendation No. 85 were the first ILO standards that deal in a comprehensive manner with dimensions of wages, and they seek to provide protections related to workers' remuneration. Their aim is to provide guidance and a framework for the key principles that underlie wage protection. A common principle in both standards is to ensure the prompt payment of wages directly to the worker. Under ILO standards, wage protection may be considered to encompass:

- The right to payment in legal tender at regular intervals, directly to the worker or the worker's chosen bank account.
- The ability of workers to dispose of their wages as they choose.
- Protection with regards to payment in kind and deductions of wages (including prohibiting payments to intermediaries, such as labour contractors or recruiters for obtaining or retaining employment).
- Privileged treatment of worker wage claims in the enterprise insolvency procedure.
- Upon the termination of the employment contract, the right of workers to a swift and final settlement of wages they may be owed.
- The right of workers to be informed of their wages before they enter employment and at the time of each payment of wages (for example, via a written employment contract and wage payment slips or statements).

In addition, Convention No. 189 extends the key principles and rights underlying wage protection specifically to domestic workers, including migrant workers. Wage protection can be achieved through specific regulations or legislation, protections established in collective agreements or arbitration awards, and mechanisms for monitoring and enforcement (including through labour inspection) that may apply adequate penalties and other appropriate remedies as necessary. When workers have experienced wage abuses, there must be effective access to justice and a fair remedy.

A critical first step may be the ratification and implementation of Convention No. 95 and Convention No. 189.[4] Workers' and employers' organizations and social dialogue play a central role in wage protection. *See the section below on "What is the role of workers' and employers' organizations in ensuring wage protection?"*

4 As of 27 October 2022, Convention No. 95 has been ratified by 99 ILO Member States, most recently by Saudi Arabia, and Convention No. 189 by 36 countries most recently by Spain.

▶ What are common wage protection issues?

Wage payment issues that are meant to be addressed by regulatory measures, include:

- total or partial non-payment of wages;
- systematic delayed payment of wages;
- payment of wages below the minimum wage or the contractually agreed rate;[5]
- non-payment of overtime;
- non-payment of benefits and entitlements, including end-of-service benefits;
- non-payment of severance pay;
- unlawful deductions.

▶ What do ILO standards say about the timely and regular payment of wages?

Regular payment of wages is critical for the certainty and security of workers and their livelihoods.

Article 12 of Convention No. 95 states that **wages shall be paid regularly** (and that the intervals for the payment of wages shall be prescribed by national laws or regulations or fixed by collective agreement or arbitration award, except where other appropriate arrangements exist that ensure the payment of wages at regular intervals). Paragraphs 4 and 5 of Recommendation No. 85 provide further guidance on periodicity of wage payments. The Recommendation suggests that workers whose wages are calculated by the hour, day or week should be paid not less often than twice a month, while salaried employees should be paid monthly. In the case of domestic workers, Convention No. 189 is more explicit, with Article 12(1) stating, “Domestic workers shall be paid directly in cash at regular intervals at least once a month.”

With regards to **systematic delayed payment of wages**, the ILO Committee of Experts considers that the application of Convention No. 95 also comprises “the means to redress the injury caused, including not only the full payment of the amounts due, but also **fair compensation for the losses incurred by the delayed payment**” (ILO 2003, para. 368).[6]

If a worker’s contract of employment has been terminated, according to Article 12(2) of Convention No. 95, he or she is entitled to a **final settlement of all wages within a reasonable period of time** (or whatever time limits are set out in the law). This final settlement may extend to overtime wages, paid leave days and end-of-service benefits. *See the section below on “Does wage protection apply to migrant workers whose contracts have been terminated?”*

5 Underpayment of the minimum wage is an important issue addressed under Article 2(1) of the Minimum Wage Fixing Convention, 1970 (No. 131): “Minimum wages shall have the force of law and shall not be subject to abatement, and failure to apply them shall make the person or persons concerned liable to appropriate penal or other sanctions.”

6 The ILO CEACR has made comments with regards to delays in wage payment. See: CEACR, Direct Request – Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) and Protection of Wages Convention, 1949 (No. 95) – Madagascar, 2022; CEACR, Observation – Conventions Nos 26 and 95 – Uganda, 2022; and CEACR, Direct Request – Convention No. 95 – Tajikistan, 2015.

▶ Are wage deductions permitted, and under what conditions?

Convention No. 95 allows for wage deductions but "only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreement or arbitration award" (Article 8), and workers are to be informed of the conditions under which and the extent to which such deductions can be made. This clarification is important as it would imply that an individual agreement between an employer and worker to reduce the worker's wages would not be compatible with the Convention (ILO 2021a; ILO 2003).

Lawful examples of deductions can include trade union dues or social security contributions; however, it has been observed in practice that workers may also find themselves exposed to unlawful deductions.

In some countries, the law seeks to protect workers from excessive deductions not only by prescribing the maximum proportion of earnings that may be deducted, **but also by providing that the minimum wage should remain immune from deductions**. Illegal or unlawful deductions tend to be defined by national laws or courts. All authorized deductions must be limited so that the net amount of wages received by workers should in all cases be sufficient to ensure a decent living income for themselves and their families (ILO 2003, paras 295–297).[7]

Article 9 of Convention No. 95 prohibits deductions for the purposes of obtaining or retaining employment.[8] According to the ILO General Principles and Operational Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs, this prohibition includes recruitment fees or related costs, which are "any fees or costs incurred in the recruitment process in order for workers to secure employment or placement". These fees or 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".[9] Under the Definition, recruitment-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". For example, "medical costs", "costs for skills and qualification tests" or "administrative costs" should be considered to be recruitment-related 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.[10]

Clearly understood and enforceable employment contracts can play a role in limiting wage abuses related to wage deductions, as can wage statements for workers and payroll records for employers. Convention No. 95 and

7 See also: ILO, *Home Truths: Access to Adequate Housing for Migrant Workers in the ASEAN Region*, 2022.

8 "Any deduction from wages with a view to ensuring a direct or indirect payment for the purpose of obtaining or retaining employment, made by a worker to an employer or his representative or to any intermediary (such as a labour contractor or recruiter), shall be prohibited."

9 The General Principles and Operational Guidelines and the Definition, drawing on the Private Employment Agencies Convention, 1997 (No. 181), highlight the principle that "no recruitment fees or related costs should be charged to, or otherwise borne by, workers or jobseekers".

10 The General Principles and Operational Guidelines and the Definition define medical costs as "payments for medical examinations, tests or vaccinations". Costs for skills and qualification tests are defined as "costs to verify workers' language proficiency and level of skills and qualifications, as well as for location-specific credentialing, certification or licensing". And administrative costs include the "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 legalizing workers' employment contracts, identity documents, passports, visas, background checks, security and exit clearances, banking services, and work and residence permits" (paragraph 12(i), (vi) and (vii)).

Recommendation No. 85 call for workers to receive such wage statements and for employers to keep payroll records for these wage payments.

Article 14 of Convention No. 95 requires governments to take effective measures to ensure that workers are informed of their wage conditions before they enter employment and when any changes take place.

Governments must also ensure that at the time of each wage payment, workers are informed of the particulars of their wages for the period concerned (in so far as such particulars may be subject to change). Paragraph 7 of Recommendation No. 85 calls for workers to be informed with each payment of wages of: the gross wage, deductions (amount and reason) and net wages. Most countries' legislation already require that workers should be provided with detailed information in writing indicating the overall amount of the wages due. As well as being important sources of information, wage statements also constitute evidence, and as such, are widely used in the judicial settlement of labour conflicts (ILO 2003).

▶ Are in-kind payments permitted, and under what conditions?

Payment in kind is non-cash remuneration received by a worker for work performed. Partial payment of wages in kind is found among certain groups of workers or sectors of the economy. For example, domestic workers and those in the agriculture sector may receive partial payments in kind. These are sectors generally dominated by migrant workers. Payments in kind for accommodation and food are quite common for migrant workers, especially those under temporary labour migration schemes, but in certain cases the criteria used to determine the value of the food and accommodation provided may not be objective nor fairly determined.[11] Other in-kind payments may include payments for transportation (to the worksite) and clothing.

Article 4 of Convention No. 95 provides guidance on payment in kind. **The partial payment of wages in the form of allowances in kind may be authorized** (by national laws or regulations, collective agreements or arbitration awards) in "industries or occupations in which payment in the form of such allowances is customary or desirable". The Convention states that measures must be taken to ensure that such allowances are "**appropriate for the personal use and benefit of the worker and his family; and … the value attributed to such allowances is fair and reasonable**". Certain groups of migrant workers, especially those under temporary labour migration schemes, are dependent on their employer for accommodation, and there may be a risk that the value of in-kind payments for accommodation may be overestimated and constitute a disproportionate share of the overall wage. Migrant workers should not be bound to stay in employer-provided accommodation if they do not wish to do so (ILO 2022c).

While not addressed in the Convention or Recommendation, in its 2003 General Survey on the protection of wages, the ILO Committee of Experts noted that labour laws in many countries specify the **maximum proportion of wages** that can be paid in kind – which can vary from 20 to 40 per cent between different countries. In its report, the ILO Committee of Experts expressed doubt over a justification for payment in kind that exceeds 50 per cent of the wage (ILO 2003).

11 Although developed in a regional context, the ILO (2022b) report *Home Truths: Access to Adequate Housing for Migrant Workers in the ASEAN Region* offers detailed recommendations that are applicable worldwide. The report proposes over 50 measures towards the provision of minimum standards of adequate housing for all migrant workers – some to be implemented by governments, some by employers – considering UN Committee on Economic, Social and Cultural Rights criteria as well as others such as safety, freedom of movement and accountability. Among the recommendations is that migrant workers should be charged directly for any costs relating to their accommodation (including for food, utilities or transport) rather than by salary deductions, to avoid excessive charges and to ensure transparency.

Article 12(2) of the Domestic Workers Convention, 2011 (No. 189), provides guidance on payment in kind, stating that a limited proportion of remuneration may be in the form of payments in kind, provided that measures are taken to ensure that such payments in kind:

- are not less favourable than those generally applicable to other categories of workers;
- are agreed to by the worker;
- are for the personal use and benefit of the worker; and
- that the monetary value attributed to them is fair and reasonable.

The Domestic Workers Recommendation, 2011 (No. 201), Paragraph 14, provides further details.

Given the wide scope of payment in kind, there is potential for abuse of this practice, and hence the need for effective regulation and enforcement. The ILO Minimum Wage Policy Guide (see here) provides further guidance on safeguards and legislative protection.

▶ What is the relationship between non-payment of wages and forced labour?

Forced labour is defined by the ILO Forced Labour Convention, 1930 (No. 29) (Article 2). It covers a wide variety of coercive labour practices where work is extracted from individuals under the threat of penalty. Those subject to forced labour are not free to leave their work and do not offer their labour voluntarily.

The ILO has identified 11 core indicators of forced labour, which include withholding of wages (and debt bondage). Irregular or delayed payment of wages does not automatically indicate a forced labour situation. However, when wages are systematically and deliberately withheld as a means to compel the worker to remain in the workplace and to deny the worker the opportunity to change their employer, these conditions may suggest forced labour (ILO 2012).

In fact, the withholding of wages (or the threat to do so) is the most common element of coercive behaviour experienced by workers in forced labour: of the 27.6 million people who are in forced labour, more than a third (36.3 per cent) had their wages withheld or were prevented from leaving by threats of non-payment of due wages. Women in forced labour are more likely to be coerced through wage non-payment (ILO, Walk Free, and IOM 2022).

A 2014 ILO report found that (excluding forced sexual exploitation) “the total costs of coercion were approximately US$21 billion, with **the total amount of underpaid wages estimated to be US$19.6 billion**, with the remaining US$1.4 billion attributed to illegal recruitment fees” (ILO 2014, 10).

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Part 2 Who is covered by the right to wage protection?

▶ Does wage protection apply to migrant workers generally (and why is this important)?

Yes, international labour standards relating to wage protection apply to all persons to whom wages are paid or payable, including migrant workers (Article 2(1) of Convention No. 95).[12]

In so far as remuneration is regulated by laws and regulations or is subject to the control of administrative authorities, Convention No. 97 provides additional protection in that it requires ratifying States "to apply, without discrimination based on nationality, race, religion or sex, to immigrants lawfully in its territory no less favourable treatment than that which it applies to its own nationals" (Article (6)(1)(a)(i)). In other words, with regard to remuneration Convention No. 97 prohibits unequal treatment resulting from legislation or administrative practices between regular status migrant workers and nationals. The State must ensure that the relevant legislative provisions are effectively applied in practice.[13]

The issue of non-payment of wages is one of the most common forms of complaint or grievance by low-wage migrant workers. Wage-related problems faced by migrant workers include non-payment, underpayment, delayed payment, repatriation without receiving wages or end-of-service benefits, and unlawful deductions of wages from salaries. The COVID-19 pandemic has amplified these negative conditions (Jones, Mudaliar, and Piper 2021).

Migrant workers are vulnerable to wage abuses due to a number of structural factors.

Labour migration governance regimes that impose employment restrictions on workers can increase vulnerability. For example, workers on employer-sponsored visas, which tie a worker to a single employer, may be reluctant to complain about wage issues, as this could result in the loss of their employment and residence in the country of destination (ILO 2022c).

Migrants are often more likely to be employed in **sectors or certain employment relationships** that are not covered by the labour law and are hence excluded from monitoring and enforcement mechanisms. Migrant workers also may be employed in "hard to reach" sectors and workplaces. These sectors – such as agriculture, domestic work and construction work – experience high levels of exploitation. Migrants may also be engaged in **informal working relationships and insecure forms of employment** – employment relationships that can lead to job insecurity, weaker earnings, and poor social protection and representation (ILO 2017).

Unfair **recruitment processes** can also increase migrant workers' vulnerability to wage abuses – for example, employers deducting recruitment fees and related costs from workers' wages.

ILO research indicates that there is a **link between irregular labour migration and vulnerability to forced labour**. According to 2022 global estimates of modern slavery, the forced labour prevalence of adult migrant workers is more than three times higher than that of adult non-migrant workers. This figure makes clear that when migrant workers are not protected by law or are unable to exercise their rights, when migration is irregular or poorly governed, or where recruitment practices are unfair or unethical, migration can lead to situations of vulnerability to forced labour (ILO, Walk Free and IOM 2022).

A further factor is **discrimination, xenophobia and racism** against migrant workers, which creates a social and political environment in which wage abuses against migrant workers are normalized and tolerated. Individuals may face multiple and intersecting discriminatory attitudes and practices based on race, ethnicity, gender, religion, being indigenous, and disability, among others. The ILO supervisory bodies have raised concerns

12 However, Article 2(2) of Convention No. 95 provides, "The competent authority may, after consultation, exclude from the application of all or any of the provisions of the Convention categories of persons whose circumstances and conditions of employment are such that the application to them of all or any of the said provisions would be inappropriate and who are not employed in manual labour or are employed in domestic service or work similar thereto."

13 The ILO supervisory bodies have addressed wage-related issues including wage deductions, underpayment or non-payment of wages of migrant workers, resulting in unequal treatment, under Article 6(1)(a)(i) of Convention No. 97. See for example: CEACR, Direct Request – Convention No. 97 – Netherlands, 2021; CEACR, Direct Request – Convention No. 97 – New Zealand, 2021; CEACR, Observation – Convention No. 97 – Malaysia (Sabah), 2021; CEACR, Observation – Convention No 97 – China (Hong Kong SAR), 2015 and CEACR, Direct Request – Convention No. 97 – China (Hong Kong SAR), 2021.

about wage-related abuses in the context of discriminatory practices against migrant workers – including those with irregular status – that are contrary to the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).[14]

▶ What categories of migrant workers are most vulnerable to wage-related abuses?

- Migrant workers in **subcontracted or labour outsource arrangements** where responsibility for wage payments may be unclear or where there may be delayed payments from principal contractors to the immediate employer of the worker. In such instances, workers often have little recourse against the principal contractor or client. This may, for example, be the case for **workers in the construction sector**, where a major factor in delayed or non-payment of wages is the time lag between client payments for executed work and the receipt of payment down the supply chain by the contractors and subcontractors who ultimately pay the workers (so-called "pay when paid" subcontracting arrangements) (Wells 2018).
- Migrant workers under **temporary labour migration schemes** (including sponsorship arrangements) or migrant workers for whom large recruitment costs have been paid by employers, as both scenarios create incentives for certain employers to withhold wages until the end of the contract period in order to prevent workers from resigning.[15]
- **Migrant workers in sectors that are excluded from the labour law and resulting wage protections**, such as domestic workers or agricultural workers in some countries, or workers in disguised employment (ILO 2021b).

▶ Does wage protection apply to migrant workers in an irregular situation?

Yes. Article 2(1) of Convention No. 95 states, "This Convention applies to all persons to whom wages are paid or payable." The ILO supervisory bodies have considered that the principles of wage protection outlined in ILO Convention No. 95 apply **irrespective of the existence of a valid employment permit or a formal contract** (ILO 2003, para. 392).

Under the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), and its accompanying Recommendation No. 151, States must ensure that **an irregularly employed migrant worker** enjoys equal treatment with migrant workers in a regular situation for purposes of rights arising out of past employment in respect of remuneration, social security and other benefits, trade union membership and exercise of trade union rights, as well as access to justice to claim those rights (Convention No. 143, Article 9(1–2); Recommendation No. 151, Para. 8(3–4)). This means that with regard to the timely and regular payment of their wages and additional allowances, migrants with irregular status should be treated equally with regularly admitted and lawfully employed migrants.[16]

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14 See for example: CEACR, Observation – Convention No. 111 – Greece, 2021; CEACR, Direct Request – Convention No. 111 – Jordan, 2021; CEACR, Direct Request – Convention No. 111 – Australia, 2021; CEACR, Observation – Convention No. 111 – Malta, 2021; CEACR, Direct Request – Convention No. 111 – Seychelles, 2022; CEACR, Direct Request – Convention No. 111 – Republic of Korea, 2019; CEACR, Observation – Convention No. 111 – Saudi Arabia, 2022.

15 See, for example, ILO, *Temporary Labour Migration: Unpacking Complexities – Synthesis Report*, 2022.

16 See for example: CEACR, Observation – Convention No. 143 – Greece, 2022; CEACR, Observation – Convention No. 143 – Italy, 2021

Further, and more generally, under Recommendation No. 151 (Para. 34(1)), any migrant worker, regardless of status, who leaves the country of employment should also be entitled to:

- any outstanding remuneration for work performed, including severance payments normally due;
- benefits for employment injuries suffered;
- compensation in lieu of any holiday entitlement acquired but not used (in accordance with national practice); and
- reimbursement of certain social security contributions.

In practice, while many migrant workers across the globe face critical wage-related issues, these are often more prevalent among migrant workers in irregular situations. Migrant workers in irregular situations who have experienced wage-related abuses face numerous barriers to claiming their owed remuneration – including challenges in accessing grievance and justice mechanisms, and the threat of deportation. Migrants also face barriers to securing unpaid wages once they have left the country of employment. In order to ensure equality of treatment, migrant workers should be able to make claims against their employer for compensation of unpaid wages, including after return to their country of origin (if necessary).

Learn more:

ILO, *Protecting the Rights of Migrant Workers in an Irregular Situation and Addressing Irregular Labour Migration: A Compendium*, 2021.

▶ Does wage protection apply to domestic workers and other workers who may be excluded from the labour law?

Despite a growing tendency to cover domestic workers through labour laws, in a number of countries where a sizeable number of migrant domestic workers are employed, domestic workers are specifically wholly or partially excluded from protections found in national labour legislation and, by extension, from wage protections available to other workers in the country (ILO 2021d).

Convention No. 189 solidified the right of domestic workers to wage protection. For example, it states that domestic workers must be **paid directly in cash at regular intervals at least once a month**. Payment may be made via bank transfer or similar means, with the consent of the worker (Article 12(1)). Recommendation No. 201 calls for domestic workers to receive an easily understandable written account of the total remuneration due to them and the specific amount and purpose of any deductions that may have been made. Upon termination of employment, any outstanding payments should be made promptly (Para. 15(1–2)).

Convention No. 189 also calls for domestic workers to be informed of the terms and conditions of their employment, including the remuneration, the method of calculation and the periodicity of payments (Article 7(e)). These principles are further elaborated in Recommendation No. 201, which covers: the rate of pay or compensation for overtime and standby; any other payments the worker is entitled to; any in-kind payments and their monetary value; and any authorized deductions (Para. 6(2)).

In-kind payments are quite common for domestic workers, especially live-in migrant domestic workers, leaving them particularly dependent on their household employers. Taking into account the principle of equality of treatment, Convention No. 189 provides that a limited proportion of remuneration can be paid in the form of **payments in kind** that are not less favourable than those generally applicable to other categories of workers, "provided that measures are taken to ensure that such payments in kind are agreed to by the worker, are for the personal use and benefit of the worker, and that the monetary value attributed to them is fair and reasonable" (Article 12(2)). Paragraph 14 of Recommendation No. 201 provides further guidance on payment in kind.

For migrant workers, the payment of high recruitment fees and related costs to access jobs abroad can also have a significant impact on wages, as they can be obliged to repay these debts through wage deductions, at times leading to situations of forced labour. Therefore, Convention No. 189 calls for Member States to take measures to **ensure that fees charged by private employment agencies are not deducted** from the remuneration of domestic workers (Article 15(1)(e)).[17]

The adoption of Convention No. 189 clearly illustrates ILO constituents' commitment to also extending protection of wages to domestic workers, including migrant domestic workers. However, national legislation in some countries may need to be updated to reflect the protections offered in the Convention.

ILO Convention No. 95, though it clearly aims to protect workers in general, does afford some flexibility in allowing the exclusion of certain categories of non-manual or domestic workers, subject to specific conditions, after consultation with the organizations of employers and employed persons directly concerned, if such exist (Article 2(2)). Notwithstanding this, the government is still bound, in accordance with Article 2(4), to regularly indicate in its reports the categories of persons for which it waives the exclusion from the application of the Convention. The government also has to report on any progress made with a view to applying the Convention to those categories of workers.

When read together, international labour standards on wage protection, migrant workers and domestic workers address most of the wage concerns of migrant workers.

Learn more

ILO, *Making Decent Work a Reality for Domestic Workers: Progress and Prospects Ten Years after the Adoption of the Domestic Workers Convention, 2011 (No. 189)*, 2021.

Section 8.10 of the Minimum Wage Policy Guide

Does wage protection apply to workers whose contracts have been terminated?

Yes. Workers, including migrant workers, are entitled to swift and final settlement of wages upon termination of employment, in accordance with national laws or regulations, collective agreement or arbitration award, or if none exist, within a reasonable period of time, having regard to the terms of the contract Convention No. 95, Article 12(2).

Drawing on Convention No. 95's broad definition of wages, this settlement of wages would extend, for example, to overtime wages and, depending on national legislation, to paid leave days and end-of-service benefits.

Deportation, repatriation and sudden voluntary return in the context of economic crisis, war or pandemic can have a significant impact on migrant workers' ability to recover wages. The **ILO supervisory bodies have noted that in cases where migrant workers are deported or have to leave the country rapidly – regardless of the reasons for the departure – the government of the country of destination is responsible for ensuring that wages are paid regularly and in full and that any claims in respect of existing wage debts are promptly settled**.[18] This right extends to migrant workers in an irregular situation. As mentioned above, the ILO Committee of Experts has noted that workers must receive wages owed, even if the workers do not have a work permit or formal employment contract.[19]

17 Moreover, Article 11 of Convention No. 189 states, "Each Member shall take measures to ensure that domestic workers enjoy **minimum wage coverage**, where such coverage exists, and that remuneration is established without discrimination based on sex" (emphasis added).

18 CEACR, Observation – Convention No. 95 – Libya, 2013; See also CEACR, Observation – Convention No. 95 – Iraq, 1992, and CEACR, Observation – Convention No. 95 – Iraq, 1993.

19 See CEACR, Observations – Convention No. 95 – Libya, published between 1995 and 2001, and 2013, as well as Conference Committee on the Application of Standards (CAS), Individual Case – Discussion: Convention No. 95 – Libya, 1996. Convention No. 143 further provides that when migrant workers who cannot be regularized leave the country, they should enjoy equality of treatment with regular status migrant workers with regards to any outstanding wages due. Recommendation No. 151 provides that irrespective of legality of stay, migrant workers who leave the country should be entitled to any outstanding wages.

▶ Does wage protection apply to workers whose company has become insolvent or bankrupt?

International labour standards are clear on the status of worker wage claims if an enterprise enters into insolvency: **in the event of enterprise insolvency,[20] workers are to be treated as privileged creditors regarding wage debts in such procedures**.

There are different approaches to wage and related compensation claims during insolvency. Insolvency procedures in some countries address worker wage claims through a system of priority or preference for claims for wages and other compensation if an enterprise enters insolvency. Other countries have set up wage or compensation guarantee funds or insolvency insurance schemes to pay out wage claims to employees (ILO 2020a).[21] International standards on this topic are contained in the Protection of Wages Convention, 1949 (No. 95), Article 11, and the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173). Under these standards, in the event of an employer's insolvency, workers' claims arising out of their employment shall be protected by a privilege so that they are paid out of the assets of the insolvent employer before non-privileged creditors can be paid their share, or the payment of workers' claims shall be guaranteed through a guarantee institution, such as a wage protection fund.

The broad definition of wages set out in ILO Convention No. 95, which covers most forms of compensation, is important here – as it means that payment of wage debts must be extended to cover the full package of wages owed to the worker. Article 6 of Convention No. 173 privileges pay, holiday pay, amounts due in respect of paid absences, and severance pay upon termination of employment.

Also, critically, Article 1(2) of Convention No. 173 states that that a Member State may extend the term "insolvency" to other situations in which workers' claims cannot be paid by reason of the financial situation of the employer, for example, where the amount of the employer's assets is recognized as being insufficient to justify the opening of insolvency proceedings.

The ILO Committee of Experts has also commented on the right of workers to receive "appropriate compensation for the injury suffered" in addition to full payment of wages due, which is particularly relevant in situations where claims may go unpaid for months or years (ILO 2003, para. 372).

Learn more:

ILO, "Protection of Workers' Wage Claims in Enterprise Insolvency", 2020.

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20 **What is insolvency?** A situation in which a company may owe outside creditors payments for outstanding debt, as well as to workers for wage payments. A **definition of insolvency as it relates to worker wage claims** can be found in Article 1 of the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173): "The term insolvency refers to situations in which, in accordance with national law and practice, proceedings have been opened relating to an employer's assets with a view to the collective reimbursement of its creditors." In the context of Convention No. 173, this means worker wage claims are treated as privileged debt among creditor claims, covered by a guarantee institution, or both.

21 Some examples of similar funds, particularly in the context of migrant workers, can also be found in ILO, *Recommendations on the Establishment of the Workers' Support and Insurance Fund in Qatar: Drawing from International Experience*, 2019.

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Part 3

Implementation and enforcement –

What are the roles of government, employers and employers' organizations, workers' organizations and countries of origin?

▶ What is the role of the labour inspectorate in ensuring wage protection?

Effective monitoring and enforcement is critical for the realization of wage protection. Compliance in wage protection can be promoted through a range of measures, including awareness-raising/ information/advice on the law and regulations, capacity-building of workers' and employers' organizations, sanctions against violations, and critically, **a well-resourced and empowered labour inspectorate**. While the court system also has a key role in wage-related cases, labour inspectors are the first-line responders in addressing and enforcing wage protection (Ghosheh 2012).

The Labour Inspection Convention, 1947 (No. 81), requires ratifying States to maintain a system of labour inspection for workplaces. It sets out a series of principles for:

- the determination of the fields of legislation covered by labour inspection;
- the functions and organizations of the system of inspection;
- recruitment criteria;
- the status and terms and conditions of service of labour inspectors; and
- their powers and obligations.

It also obliges ratifying States to publish and communicate an annual report on the issue to the ILO (ILO, n.d.-a).[22]

Convention No. 95 is clear on the means for enforcement of wage protection: national legislation must define the persons responsible for compliance and prescribe adequate penalties or other appropriate remedies for any violations (Article 15). The ILO Committee of Experts has highlighted the importance of:

- supervision and inspection mechanisms, including through the labour inspectorate;
- the imposition of effective sanctions in the event of infringements; and
- the need for an accessible and effective judicial system (ILO 2003, para. 462).[23]

Challenges for labour inspectors with regard to monitoring and enforcement of wage protection include issues regarding their mandate, capacity and resources (including issues of understaffing and underfunding), as well as their access to vulnerable and hard-to-reach groups of workers or sectors, including those in the informal economy and migrant workers in an irregular situation.

To address some of these issues, the ILO Approach to Strategic Compliance Planning for Labour Inspectorates supports countries to develop proactive, targeted and tailored interventions engaging multiple stakeholders, in light of limited resources, mismatched powers and the need to shoulder greater responsibility for promoting compliance in the ever-evolving world of work (ILO 2022g).

Given the interrelated nature of wage concerns with other negative practices that may take place, the labour inspectorate should ensure cooperation with other relevant government departments, in particular to facilitate justice and grievance mechanism processes as necessary. However, States should take steps towards ensuring that such cooperation between the labour inspectorate and other departments does not jeopardize the situation of migrant workers in an irregular situation (see also the following section).

22 Another relevant Convention in this respect is the Labour Inspection (Agriculture) Convention, 1969 (No. 129).

23 With respect to sanctions, the ILO Committee of Experts "places particular emphasis on the need for truly dissuasive penalties, such as harsh monetary fines, so that employers no longer find it preferable to pay what may be no more than a symbolic fine rather than releasing wage funds on time" (ILO 2003, para. 371).

▶ What are the specific considerations for the labour inspectorate in ensuring wage protection for migrant workers?

The ILO Guidelines on General Principles of Labour Inspection (2022) outline the broad range of workplaces that labour inspectors should have the right to inspect (including private or public, in the formal or informal economy). However, in practice, it can be challenging for labour inspectorates to adequately address wage abuses against migrant workers.

Low-wage migrant workers, in particular, are more likely to be employed in sectors that may not be covered by the labour law or that generally lack effective labour inspection, such as agriculture, domestic work and the informal economy. Weak law enforcement in these sectors contributes to making migrant workers vulnerable to exploitation, including wage-related abuses (ILO 2022d).

Additionally, in some countries, labour inspectors are required to enforce immigration law, though this has been critiqued by the ILO Committee of Experts, which has noted that "**the primary duty of labour inspectors is to protect workers and not to enforce immigration law**" (ILO 2016, para. 477), and that "cooperation between the labour inspectorate and immigration authorities should be carried out cautiously keeping in mind that the main objective of the labour inspection system is to protect the rights and interests of all workers, and to improve their working conditions, rather than the enforcement of immigration law" (ILO 2016, para. 482). States should therefore work towards guaranteeing a "**firewall**" that considers labour abuses independently of immigration law violations – a right which then must be maintained by the labour inspectorate, in accordance with Convention No. 81 (ILO 2022c).

The important role of labour inspectorates in ensuring the fair recruitment of and decent work among migrant workers is also highlighted in the (non-binding) ILO General Principles and Operational Guidelines for Fair Recruitment. As stated in Guideline 5:

> Regulation of employment and recruitment activities should be clear and transparent and effectively enforced. The role of the labour inspectorate and the use of standardized registration, licensing or certification systems should be highlighted. The competent authorities should take special measures against abusive and fraudulent recruitment methods, including those that could result in forced labour or trafficking in persons.

▶ What is the role of workers' and employers' organizations in ensuring wage protection?

In developing wage protection systems, governments should make every effort to ensure the full consultation and, as far as possible, the direct participation, on an equal basis, of the social partners. This is important because social dialogue recognizes a common interest in the well-being of businesses and workers and their families. For decision-makers, social dialogue is also an important opportunity for obtaining useful information and for involving the relevant social partners in an effective policy design. This improves ownership and buy-in from the social partners, which will permit more successful implementation. Social dialogue is also crucially important in minimizing misunderstandings and tensions, thereby contributing to the maintenance and strengthening of social and industrial peace. As the various participants in social dialogue need

to have advance access to relevant information in order to formulate their views on wage protection and recovery mechanisms, governments should devote sufficient resources to the collection of statistics on wages and other relevant data (ILO 2020b). This is particularly important in relation to migrant workers.

In addition to the role they can play in the design of wage protection systems, social partners can also play an important role with respect to their implementation and enforcement. For example, **trade unions can help to monitor the implementation of wage provisions negotiated in collective agreements and support wage recovery** through direct engagement with the employer. Additionally, trade unions can help individual and groups of migrant workers – particularly those in informal employment and insecure forms of work – to recover unpaid wages through administrative and judicial mechanisms. Trade unions' commitment to ensuring wage protection can provide a concrete incentive to join unions, hence contributing to recruitment and membership growth (Ghosheh 2012).

Employers and employer organizations can also play a critical role. In addition to what individual companies can do (see the below section on "*What can companies do to ensure wage protection, including in a supply chain context?*"), employer organizations can take a number of initiatives to support wage protection and recovery, including:

- training companies on national laws and international standards regarding wage protection;
- providing practical guidance on setting up grievance mechanisms; and
- providing opportunities for dialogue and exchange between companies.

Additional measures could include pooling member contributions in order to provide a fund for migrant workers who have not been paid (similar to the guaranteed fund method in insolvency), including as part of a co-financing arrangement with government.[24]

▶ What can enterprises do to ensure wage protection, including in a supply chain context?

All governments:

- have the obligation to respect, protect and fulfil human rights and fundamental freedoms, including the fundamental principles and rights at work;
- have the duty to adopt, implement and effectively enforce national laws and regulations to protect human rights; and
- must take appropriate steps to ensure access to effective remedy, including through judicial, administrative, legislative or other appropriate means.

Similarly, all enterprises, regardless of their size, sector, location, ownership and structure must comply with national law and should respect human and labour rights. The responsibility to respect human rights requires that enterprises avoid causing or contributing to adverse human rights impacts through their own activities, and seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, including by suppliers.

24 One possible idea is that employers could deposit the equivalent of the first month's wages into an account from which compensation could be paid should tripartite or bipartite institutions so determine (ILO 2022c). Similar initiatives exist, such as in Germany, where the employers' associations require payments from any enterprise for such a purpose, with the share depending on the total sum of wages of all socially insured employees, including quarterly advance payments and one final payment (ILO 2020a).

Uniquely among ILO instruments, the ILO Tripartite Declaration concerning Multinational Enterprises and Social Policy (MNE Declaration) goes beyond government and social partners to also directly address enterprises, highlighting the distinct but complementary roles of all actors in harnessing foreign direct investment, international trade and international production processes, including supply chains. The UN Guiding Principles on Business and Human Rights (UNGPs), which were endorsed by the Human Rights Council in 2011, state that, in order to meet their responsibility to respect human rights, enterprises should have in place policies and processes appropriate to their size and circumstances, including:

- a policy commitment to meet their responsibility to respect human rights;
- a human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights; and
- processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.[25]

As part of these policies and processes, companies should ensure that wages are paid accurately and on time within their own operations, and should address the risk of wage-related abuses in their **due diligence processes**. Additionally, where enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes. Where adverse impacts are directly linked to its operations, products or services by a business relationship, the enterprise itself is not required to provide remediation, though it may take a role in doing so. As noted above, Convention No. 95 and Recommendation No. 85 also call for workers to receive wage statements that include the gross and net wages paid to the worker as well as any deductions, and require employers to keep payroll records for these wage payments.

According to the ILO Guiding Principles to Combat Forced Labour,[26] which address business actors with the goal to provide clear and practical interpretation of international labour standards relating to forced labour:

(a) Wages shall be paid regularly and methods of payment are prohibited that deprive workers of the genuine possibility of terminating employment. Wage payments shall not be delayed or deferred such that wage arrears accumulate.

(b) Wages shall be paid directly to the worker and should be paid in legal tender, or by cheque or money order where permitted by law, collective agreement or with the consent of the worker. Payment in the form of vouchers, coupons or promissory notes is prohibited.

(c) Payments in kind, in the form of goods or services shall not be used to create a state of dependency of the worker on the employer. In-kind payments should only be partial to ensure that the worker is not totally deprived of cash remuneration and are permitted only if authoris ed by national law, regulation or collective agreement. ...

(f) Deception in wage payment, wage advances, and loans to employees shall not be used as a means to bind workers to employment. Advances and loans, and deductions from wages made for their repayment, shall not exceed the limits prescribed by national law. Workers shall be duly informed of the terms and conditions surrounding the granting and repayment of advances and loans.

(g) No deductions from wages shall be made with the aim of indebting a worker and binding him or her to employment, and measures should be taken to limit wage deductions to prevent such conditions. Workers shall be informed of the conditions and extent of wage deductions, and only deductions authorized by national law, collective agreement or arbitration award shall be made (ILO 2015, 3).

25 UN Guiding Principles on Business and Human Rights, Principle 15.

26 These guiding principles to combat forced labour are drawn from:

- ILO Conventions, Protocols and Recommendations;
- ILO instruments such as the Declaration on Fundamental Principles and Rights at Work and the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy;
- the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; and
- the UN Guiding Principles on Business and Human Rights (ILO 2015).

The ILO (2015) publication *Combating Forced Labour: A Handbook for Employers & Business* makes several practical recommendations to avoid wage payment issues, which are of particular importance to migrant workers.[27] It suggests steps such as to:

- Examine wage slips to determine whether coercion has been used at any time in the payment or non-payment of wages, or whether there is evidence of unlawful or unexplained deductions. In examining wage records, consider whether workers paid at piece-rate receive at least the legal minimum wage.
- Speak with workers about: wage payment practices (that is, whether wages are paid on time and calculated correctly, taking into consideration overtime and legal deductions); how they were recruited; and whether or not they were required to lodge a deposit or pay a recruitment fee, either to the employer or to a third party.
- Ensure that a representative cross-section of workers are interviewed, for example, those on indefinite and fixed duration contracts as well as those paid hourly and piece-rate wages
- Speak with managers and human resource personnel about recruitment and payment policies and practices.
- Determine whether the sale of company goods, tools or uniforms is used as a means to create a state of dependency of the worker on the employer.
- Examine financial records relating to wage advances and loans, if applicable.
- Review a random selection of payroll and other wage-related records to consider whether there is evidence of malpractice. Take appropriate measures to ensure that the company is not using a double set of "books" to mislead auditors.

▶ How can workers claim redress for wage-related abuses?

Access to justice is central to making human rights, including labour rights, a reality for all workers and individuals. When pursuing claims for non-payment of wages (and other wage abuses), workers may have the option to pursue individual or collective complaints, and to pursue them through non-state-based grievance mechanisms (such as corporate complaints mechanisms) as well as state-based non-judicial (or administrative) and judicial mechanisms.

Individual disputes are those involving a single worker; whereas collective disputes involve groups of workers – usually represented by a trade union. Practitioners advocate for dispute resolution mechanisms that permit similar claims of multiple workers against the same employer to be grouped together for the purpose of lodging the claim and for mediation or adjudication. This addresses concerns over multiplying costs, burdens and delays in wage recovery mechanisms in cases where workers are required to submit separate claims for similar underpayment claims against the same employer (Farbenblum and Berg 2021).

The ILO has partnered with governments, trade unions and civil society organizations to establish Migrant Worker Resource Centres (MRCs) that function as physical, mobile or virtual spaces that provide a range of services for migrant workers, including potential and returnee workers and their families. In particular, MRCs can help to ensure workers have access to information and education about their rights, as well as legal aid and other types of support in claiming redress, including for non-payment or delayed payment of wages (Bernardo Villar and Ahn 2022).

27 See the "Checklist & Guidance for Assessing Compliance" on pages 7–8 of ILO, *Combating Forced Labour: A Handbook for Employers & Business*, 2015.

i. Judicial processes

Formal judicial processes, such as through courts and tribunals, may include a specialized labour tribunal, which may, in some cases, handle to wage claims. As complainants, workers generally bear the burden of proving the wage abuse, and therefore face evidentiary barriers to proving the employment relationship, the hours worked and the wages (un)paid.[28] Even if workers are able to achieve a successful judgment or determination of wages, they frequently face a further hurdle in enforcement of the judgments – that is, actually receiving the wages owed – for example, in cases where employers choose to liquidate assets, disappear or simply refuse to pay (Farbenblum and Berg 2021).

ii. State-based administrative/ non-judicial mechanisms

State-based non-judicial mechanisms are mechanisms operated by state institutions outside of a judicial process, meaning they exist in parallel to traditional judicial avenues. These include, for example, government-run complaints offices, national human rights institutions or ombudsperson offices. These forms of administrative or non-judicial mechanisms are often seen as potentially faster, cheaper and more easily accessible than judicial mechanisms (ILO 2022e). These processes may include grievance mechanisms by mediation, arbitration or conciliation. Workers may be required to pursue claims through these channels first, before seeking judicial remedies.

iii. Non-state-based (including company-level) grievance mechanisms

Workers may appeal to non-state-based grievance mechanisms, such as those operated by private or non-government actors without the involvement of the State – for instance, company-level grievance mechanisms. These mechanisms may also serve as an optional first step for resolving grievances, in some cases, before moving to state-based non-judicial and judicial processes. Grievance procedures are a common feature in most collective agreements and can be effective if due process and procedural fairness is ensured (ILO.2018).[29]

▶ What are the considerations for migrant workers in seeking redress for wage-related abuses?

Migrant workers, in particular low-wage migrant workers, may face legal and practical barriers to accessing justice mechanisms. Practical barriers migrant workers likely face include language barriers and a lack of knowledge about their rights and the legal system. They may also face unequal access to legal aid services, challenges related to the high cost and slow pace of processes, and discriminatory attitudes from government officials, among numerous other practical barriers (ILO 2022e; Harkins and Åhlberg 2017).

In the case of migrants in temporary labour migration programmes, they may fear loss of residence rights if they lodge a complaint against their employer, as their immigration status is usually tied to that employer. If a migrant worker opts to remain in the country of destination while

28 Emerging good practices include the introduction of digital documentation of employment contracts and wage statements. Another good practice that has been introduced in some countries already is the shifting of the burden of proof in disputes concerning the payment of wages so that employers now need to prove that they did indeed pay what they owed to the complainants.

29 Criteria that may be considered to ensure procedural fairness and due process include uncomplicated and rapid procedures, with time limits; the right to be present and participate directly; the right to be represented or assisted; no loss of earnings as result of participation in the procedure; and no prejudice whatsoever against workers who file grievances in good faith.

they pursue the case, they should be granted the right to remain and work. If a worker leaves the country where the case is being pursued, there should be provisions in place to allow such workers to continue to pursue their case, including through a representative in the country of destination or in the country of origin.

These challenges are exacerbated further for migrant workers in an irregular status, who may fear that any involvement with the authorities would result in their arrest, detention, and deportation without their being able to enjoy their rights arising out of past employment. These barriers will also be higher for workers who face intersecting vulnerabilities, such as migrant domestic workers, women migrant workers and indigenous workers.

There may also be barriers in the formulation of a migrant worker's case, with lack of evidence due to inadequate documentation being a particular issue. For example, low-wage migrant workers may lack a written employment contract listing the terms and conditions of employment, including wages and benefits, or pay slips. Although some countries have introduced electronic wage transfer systems, migrants may not have the digital literacy to check the amounts being transferred or to check whether these amounts are accurate. If employers are not able or are not required to provide a comprehensive wage slip setting out the details of the wages being paid (including base wages, overtime, deductions, and so on), this may add further complications for workers in determining how much they are being paid for their work, and the degree to which these payments may be insufficient.

If migrant workers are able to pursue claims and obtain a successful judgment or determination of wages, they may face a further hurdle in enforcement of that judgment, that is, actually receiving the wages owed – with some employers liquidating assets, disappearing or simply refusing to pay (Farbenblum and Berg 2021). ILO research has found that "even when compensation is ordered by government officials, there is limited recourse available to migrant worker complainants should recruitment agencies or employers decide not to pay all or a portion of the amount. It may happen that payments are delayed, with the knowledge that migrants must eventually return home and the order is unlikely to be enforced further" (Harkins, Benjamin, and Meri Åhlberg, 31). Hence, these challenges are heightened for migrant workers who may no longer be in the country where the case was filed.

A number of positive steps have been taken to improve access to justice-related mechanisms for migrant workers. Examples include:

- extending access to mechanisms for migrants regardless of legal status;
- provision of legal aid and translation and interpretation services;
- introduction of mobile courts for hard-to-reach sectors or workers; and
- allowing workers to pursue cases even if they have returned home.

Further examples of emerging good practices can be found in *Migrant Workers' Access to Justice for Wage Theft: A Global Study of Promising Initiatives* (Farbenblum and Berg 2021).

▶ What is the role of countries of origin of migrant workers in protecting workers' wages?

Bilateral labour migration agreements (BLMAs) between countries of origin and destination can be important tools to ensure labour protection, including in the context of wages. The United Nations Network on Migration's Guidance on BLMAs, developed through multi-stakeholder dialogue co-led by the ILO and the International Organization for Migration, and including employers' and workers' organizations, can assist countries in designing rights-based and gender-responsive BLMAs . The Guidance focuses on the importance of addressing:

- conditions for in-kind payments, allowable deductions, overtime payments, payment schedule and means, and issuing of receipts;
- provisions to ensure the swift and final settlement of outstanding wage payments due upon termination of the contract, as well as provision of legal assistance in the case of disputes – both in the country of destination and upon return to the country of origin (UN Network on Migration 2022).

Where a system of model contracts is being used, the Model Agreement on Temporary and Permanent Migration for Employment, annexed to Recommendation No. 86, suggests that the individual employment contract of a migrant worker be based on a model contract drawn up by the Parties to the BLMA. Further, the individual employment contract shall contain information on: remuneration for ordinary hours of work, overtime, night work and holidays, and the medium for wage payment; bonuses, indemnities and allowances, if any; and conditions under which and extent to which the employer may be authorised to make any deductions from remuneration (Article 22(1) and (3)(d–f)).

Countries of origin can also help to support wage protection for their nationals in a range of ways, including through **pre-departure training and orientation programmes** that highlight wage protection and access to justice measures. A further role of countries of origin governments relates to measures they can take in the country of destination, including through **consular assistance** and **legal services for wage claims**.[30] For example, **labour attachés** can provide information on dispute mechanisms to workers who face wage-related abuses, and offer mediation and support to access to justice for migrant workers who have experienced wage abuses. A promising practice documented by the Migrant Justice Institute is for a departing migrant worker to grant power of attorney to a labour attaché, thereby enabling the labour attaché to continue to pursue wage claims on behalf of the worker once they have left the country of employment (Farbenblum and Berg 2021).

Upon return, workers should be systematically interviewed in the origin country to assess the fulfilment of promises regarding working conditions and to collect data on rights violations such as non-payment of wages or owned benefits, in order to work towards improvements and the reduction of any gaps that arise. This data collection exercise would also enrich labour market information systems, contributing to evidence-based policymaking (ILO 2022c).

Learn more

UN Network on Migration, *Guidance on Bilateral Labour Migration Agreements*, 2022.

30 The right of migrant workers to benefit from information, assistance and protection from consular and diplomatic authorities throughout the migration cycle is recognized in international standards, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Global Compact on Migration. Guideline 12.8 of the ILO Multilateral Framework on Labour Migration calls for "establishing effective consular services in countries of destination with, where possible, both female and male staff to provide information and assistance to women and men migrant workers".

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