



Chapter 3.1 Fair Labor and Terms of Work

BACKGROUND

Responsible employers provide fair wages and respectful workplaces. However, historically, a portion of the labor force has been the subject of mistreatment such as child and forced labor, discrimination, inadequate wages, and lack of respect for workers' rights.

In 1919, the International Labour Organization (ILO) was formed to protect workers' rights. Since that time, a number of internationally recognized human rights of workers have been enumerated and incorporated into laws world-wide. These include the United Nations *International Bill of Human Rights*, and the ILO *Declaration on Fundamental Principles and Rights at Work* and eight core ILO conventions that cover: freedom of association and the right to collective bargaining; the elimination of all forms of forced or compulsory labor; the abolition of child labor; and the elimination of discrimination in respect of employment and occupation. In addition to acknowledging the need to safeguard those human rights of workers, companies are increasingly recognizing the need to provide working hours and wages that promote a high quality of life for workers and their families.

The fundamental principles and rights of workers have been incorporated into various voluntary standards to protect labor rights and ensure fair working conditions (e.g., International Finance Corporation Performance Standard 2; Social Accountability International SA8000; Global Reporting Initiative). Within any responsible labor standard and verification system, there is an inextricable link between the role of workers and the practice of freedom of association. Workers with first-hand knowledge of environmental, human rights and labor practices must have the right to participate in the verification process without fear of employer retribution. This can be best guaranteed by workers having the right to freely establish or join trade unions of their choosing without employer interference and through protections provided in collective bargaining agreements.

OBJECTIVES/INTENT OF THIS CHAPTER

To maintain or enhance the social and economic well-being of mine workers and respect internationally recognized workers' rights.

SCOPE OF APPLICATION

RELEVANCE: This chapter is applicable to all mines applying for IRMA certification. IRMA recognizes that some of the requirements of this chapter may be included in a collective bargaining agreement (CBA). If such an agreement is in place, the operating company will not be expected to meet the IRMA requirements that overlap with those in the CBA.

As per IRMA Chapter 1.1, the operating company is responsible for ensuring that contractors involved in mining-related activities comply with the IRMA Standard.

TERMS USED IN THIS CHAPTER

Child Labor ■ Company Union ■ Consultation ■ Contractors ■ Corporate Owner ■ Forced Labor ■ Grievance ■ Grievance Mechanism ■ Hazardous Work ■ Host Country Law ■ Indigenous Peoples ■ Living Wage ■ Mining Project ■ Mining-Related Activities ■ Operating Company ■ Practicable ■ Remediation/Remedy ■ Retrenchment ■ Stakeholders ■ Suppliers ■ Trafficking in Persons ■ Worker ■ Workers' Organizations ■ Workers' Representative ■

These terms appear in the text with a dashed underline. For definitions see the Glossary of Terms at the end of the document.

Fair Labor and Terms of Work Requirements

3.1.1. Human Resources Policy

3.1.1.1. The operating company shall adopt and implement human resources policies and procedures applicable to the mining project that set out its approach to managing workers in a manner that is consistent with the requirements of this chapter and national (i.e., host country) law.⁹²

3.1.2. Workers' Organizations and Agreements

3.1.2.1. The operating company shall respect the rights of workers to freedom of association and collective bargaining.

3.1.2.2. Where national law substantially restricts workers' organizations, the operating company shall not restrict workers from developing alternative mechanisms to express their grievances and protect their rights regarding working conditions and terms of employment. The operating company shall not seek to influence or control these mechanisms.

3.1.2.3. The operating company shall engage with workers' representatives and workers' organizations and provide them with information needed for meaningful negotiation in a timely manner.

3.1.2.4. Workers' representatives shall have access to facilities needed to carry out their functions in the workplace. This includes access to designated non-work areas during organizing efforts for the purposes of communicating with workers, as well as accommodations for workers' representatives at fly-in/fly-out or other remotely located mine sites, where relevant.

3.1.2.5. The operating company shall remain neutral in any legitimate unionizing or worker-organizing effort; shall not produce or distribute material meant to disparage legitimate trade unions; shall not establish or support a company union for the purpose of undermining legitimate worker representation; and shall not impose sanctions on workers' organizations participating in a legal strike.⁹³

3.1.2.6. Upon employment, the operating company shall:

- a. Inform workers of their rights under national labor and employment law;
- b. Inform workers that they are free to join a workers' organization of their choosing without any negative consequences or retaliation from the operating company;
- c. If relevant, inform workers of their rights under any applicable collective agreement; and
- d. If relevant, provide workers with a copy of the collective agreement and the contact information for the appropriate trade union (or workers' organization) representative.

3.1.2.7. The operating company shall not discriminate or retaliate against workers who participate, or seek to participate, in legitimate workers' organizations or in a legal strike.⁹⁴

⁹² IRMA recognizes that for larger companies, human resources policies may be developed at the corporate level. In these cases, IRMA does not expect the operating company to have developed its own policies, but the operating company will be expected to demonstrate that the mine site is operating in compliance with the corporate policies (e.g., site-level management understand the corporate policies, and have integrated them into the mine site's procedures).

⁹³ Nothing in this requirement shall remove the right of an operating company to seek enforcement action when workers, workers' representatives or workers' organizations are operating in contravention to laws or regulations.

⁹⁴ Nothing in this requirement shall remove the right of an operating company to seek enforcement action when workers, workers' representatives or workers' organizations are operating in contravention to laws or regulations.

3.1.2.8. Where the operating company is a party to a collective bargaining agreement with a workers' organization, the terms of the agreement shall be respected. Where such an agreement does not exist, or an agreement does not address specific requirements in this chapter, the operating company shall meet the relevant IRMA requirements.

3.1.2.9. The operating company shall not make use of short-term contracts or other measures to undermine a collective bargaining agreement or worker organizing effort, or to avoid or reduce obligations to workers under applicable labor and social security laws and regulations.

3.1.2.10. The operating company shall not hire replacement workers in order to prevent, undermine or break up a legal strike, support a lockout, or avoid negotiating in good faith. The company may, however, hire replacement workers to ensure that critical maintenance, health and safety, and environmental control measures are maintained during a legal strike.

3.1.3. Non-Discrimination and Equal Opportunity

3.1.3.1. The operating company shall base employment relationships⁹⁵ on the principles of equal opportunity and fair treatment, and shall not discriminate or make employment decisions on the basis of personal characteristics unrelated to inherent job requirements.⁹⁶

3.1.3.2. Exceptions to 3.1.3.1 may be made with respect to hiring and recruitment in the case of:

- a. Targets or quotas mandated by law;
- b. Targets developed through local agreements for the employment of local residents, indigenous peoples, or individuals who have been historically disadvantaged; or
- c. Operating company targets for the employment of local residents, indigenous peoples, or individuals who have been historically disadvantaged that are expressed in publicly accessible policies with explicit goals and justification for such targets.

3.1.3.3. The operating company shall take measures to prevent and address harassment, intimidation, and/or exploitation, especially in regard to female workers.

3.1.4. Retrenchment

3.1.4.1. Prior to implementing any collective dismissals,⁹⁷ the operating company shall carry out an analysis of alternatives to retrenchment.⁹⁸ If the analysis does not identify viable alternatives to retrenchment, a retrenchment plan shall be developed in consultation with workers, their organizations,

⁹⁵ Employment relationships include: recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment, access to training, job assignment, promotion, termination of employment or retirement, and disciplinary practices.

⁹⁶ Personal characteristics unrelated to inherent job requirements may include: gender, race, nationality, ethnicity, social and indigenous origin, religion or belief, disability, HIV status, age, sexual orientation, marital status, parental status, worker status (e.g., local vs. migrant workers, temporary versus permanent workers), political affiliation, union membership and veteran status.

⁹⁷ Collective dismissals cover all multiple dismissals that are a result of an economic, technical, or organizational reason; or other reasons that are not related to performance or other personal reasons.

⁹⁸ Examples of alternatives may include negotiated working-time reduction programs, employee capacity-building programs; long-term maintenance works during low production periods, etc. (Source: IFC. 2004. Managing Retrenchment. Good Practice Note No. 4. <https://www.ifc.org/wps/wcm/connect/8b14b600488555db65cf66a6515bb18/Retrenchment.pdf?MOD=AJPERES>)

and, where appropriate, the government. The plan shall be based on the principle of non-discrimination,⁹⁹ and be implemented to reduce the adverse impacts of retrenchment on workers.

3.1.4.2. The operating company shall ensure that all workers receive notice of dismissal and severance payments mandated by law and collective agreements in a timely manner. All outstanding back pay, social security benefits, and pension contributions and benefits shall be paid on or before termination of the working relationship, or in accordance with a timeline agreed through a collective agreement. Payments shall be made directly to workers, or to appropriate institutions for the benefit of workers.¹⁰⁰ Where payments are made for the benefit of workers, they shall be provided with evidence of such payments.

3.1.5. Grievance Mechanism

3.1.5.1. The operating company shall provide a grievance mechanism for workers (and their organizations, where they exist) to raise workplace concerns.¹⁰¹ The mechanism, at minimum:

- a. Shall involve an appropriate level of management and address concerns promptly, without any retribution, using an understandable and transparent process that provides timely feedback to those concerned;
- b. Shall allow for anonymous complaints to be raised and addressed;
- c. Shall allow workers' representatives to be present, if requested by the aggrieved worker; and
- d. Shall not impede access to other judicial or administrative remedies that might be available under the law or through existing arbitration procedures, or substitute for grievance mechanisms provided through collective agreements.

3.1.5.2. The operating company shall inform the workers of the grievance mechanism at the time of recruitment and make it easily accessible to them.

3.1.5.3. The operating company shall maintain a record of grievances and the company's actions taken to respond to and/or resolve the issues.

3.1.6. Disciplinary Procedures

3.1.6.1. The operating company shall have documented disciplinary procedures (or their equivalent) that are made available to all workers.

3.1.6.2. The operating company shall not use corporal punishment, harsh or degrading treatment, sexual or physical harassment, mental, physical or verbal abuse, coercion or intimidation of workers during disciplinary actions.

⁹⁹ Ibid. Selection criteria for those to be laid off should be objective, fair, and transparent. The retrenchment should not be based on personal characteristics unrelated to inherent job requirements.

¹⁰⁰ In some jurisdictions companies may be obligated by law to transfer certain payments to specific institutions such as pension fund administration, health funds, etc. In such cases companies would not provide payments directly to the worker but, for the benefit of the worker, to the appropriate institution. In cases where payments to certain institutions are optional the company should allow the worker to choose either a direct cash payment or payment to a defined institution.

¹⁰¹ If worker complaints/grievances involve the infringement of human rights, they should either be handled through the general operational grievance mechanism (see IRMA Chapter 1.4), which is required to conform with the effectiveness criteria laid out in the UN Guiding Principles on Business and Human Rights (UNGP) (See pp. 33 -35 of http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf) or be addressed through a different procedure that is compatible with the UNGP effectiveness criteria. If the grievance mechanism in 3.1.5.1 meets the UNGP effectiveness criteria, then that shall suffice.

3.1.6.3. The operating company shall keep records of all disciplinary actions taken.

3.1.7. Child Labor

3.1.7.1. The operating company shall document the ages of all workers.

3.1.7.2. Children (i.e., persons under the age of 18)¹⁰² shall not be hired to do hazardous work (e.g., working underground or where there may be exposure to hazardous substances).¹⁰³

3.1.7.3. The minimum age for non-hazardous work shall be 15, or the minimum age outlined in national law, whichever is higher.

3.1.7.4. When a child is legally performing non-hazardous work, the company shall assess and minimize the risks to their physical and mental health, and ensure that regular monitoring of the child's health, working conditions and hours of work occurs by the national labor authority, or if that is not possible, by the company itself.

3.1.7.5. If the operating company discovers that a child under the minimum ages outlined in 3.1.7.2 or 3.1.7.3 is performing hazardous or non-hazardous work:

- a. The child shall be removed immediately from his or her job; and
- b. Remediation procedures shall be developed and implemented that provide the child with support in his or her transition to legal work or schooling, and that take into consideration the welfare of the child and the financial situation of the child's family.

3.1.7.6. Where there is a high risk of child labor in the mine's supply chain,¹⁰⁴ the operating company shall develop and implement procedures to monitor its suppliers to determine if children below the minimum age for hazardous or non-hazardous work are being employed. If any cases are identified, the operating company shall ensure that appropriate steps are taken to remedy them. Where remedy is not possible, the operating company shall shift the project's supply chain over time to suppliers that can demonstrate that they are complying with this chapter.

3.1.8. Forced Labor

3.1.8.1. The operating company shall not employ forced labor or participate in the trafficking of persons.

¹⁰² Age 18 is the dividing line between childhood and adulthood according to the major ILO child labour conventions (Nos. 138 and 182), and the United Nations Convention on the Rights of the Child (CRC).

¹⁰³ Examples of hazardous work activities include work (i) with exposure to physical, psychological, or sexual abuse; (ii) underground, underwater, working at heights, or in confined spaces; (iii) with dangerous machinery, equipment, or tools, or involving handling of heavy loads; (iv) in unhealthy environments exposing the worker to hazardous substances, agents, processes, temperatures, noise, or vibration damaging to health; or (v) under difficult conditions such as long hours, late night, or confinement by employer. (Source: IFC. 2012. Performance Standard 2. Footnote 12. https://www.ifc.org/wps/wcm/connect/2408320049a78e5db7f4f7a8c6a8312a/PS2_English_2012.pdf?MOD=AJPERES)

¹⁰⁴ The determination of whether or not there is a high risk of child labor in the supply chain should occur as part of the operating company's human rights due diligence in Chapter 1.3. If child labor in the supply chain is identified as being a salient risk during the human rights impact assessment, the company will be required to carry out the remaining due diligence as per Chapter 1.3, and also the requirements in 3.1.7.6. Additionally, if the mine is operating in or sourcing minerals from a conflict-affected and high-risk area, child labor should be one of the issues assessed in the conflict risk assessment. If child labor is identified as a risk, the due diligence outlined in Chapter 3.4 apply.

3.1.8.2. Where there is a high risk of forced or trafficked labor in the mine's supply chain,¹⁰⁵ the operating company shall develop and implement procedures to monitor its suppliers to determine if forced labor or trafficked workers are being employed. If any cases are identified, the operating company shall ensure that appropriate steps are taken to remedy them. Where remedy is not possible, the operating company shall shift the project's supply chain over time to suppliers that can demonstrate that they are complying with this chapter.

3.1.9. Wages

3.1.9.1. The operating company shall pay wages to workers that meet or exceed the higher of applicable legal minimum wages, wages agreed through collective wage agreements, or a living wage.¹⁰⁶

3.1.9.2. Overtime hours shall be paid at a rate defined in a collective bargaining agreement or national law, and if neither exists, at a rate above the regular hourly wage.

3.1.9.3. All workers shall be provided with written and understandable information about wages (overtime rates, benefits, deductions and bonuses) before they enter employment, and for the pay period each time they are paid.

3.1.9.4. The operating company shall pay wages in a manner that is reasonable for workers (e.g., bank transfer, cash or check).

3.1.9.5. The operating company shall ensure that deductions from wages are not made for disciplinary purposes unless one of the following conditions exist:

- a. Deductions from wages for disciplinary purposes are permitted by national law, and the law guarantees the procedural fairness of the disciplinary action; or
- b. Deductions from wages for disciplinary purposes are permitted in a freely negotiated collective bargaining agreement or arbitration award.

3.1.10. Working Hours and Leave

3.1.10.1. The operating company shall ensure that:

- a. Regular working hours do not exceed eight hours per day, or 48 hours per week. Where workers are employed in shifts the 8-hour day and 48-hour week may be exceeded provided that the average number of regular hours worked over a 3-week period does not exceed eight hours per day and 48 hours per week;
- b. Workers are provided with at least 24 consecutive hours off in every 7-day period; and
- c. Overtime is consensual and limited to 12 hours a week.
- d. Exceptions to 3.1.10.1.b and c shall be allowed at mines in remote locations if:

¹⁰⁵ The determination of whether or not there is a high risk of forced labor in the supply chain should occur as part of the operating company's human rights due diligence in Chapter 1.3. If forced labor in the supply chain is identified as being a salient risk during the human rights impact assessment, the company will be required to carry out the remaining due diligence as per Chapter 1.3, and also the requirements in 3.1.8.2. Additionally, if the mine is operating in or sourcing minerals from a conflict-affected and high-risk area, forced labor should be one of the issues assessed in the conflict risk assessment. If forced labor is identified as a risk, the due diligence outlined in Chapter 3.4 apply.

¹⁰⁶ Living wage has been defined as: "Remuneration received for a standard work week by a worker in a particular place sufficient to afford a decent standard of living for the worker and her or his family." Elements of a decent standard of living include food, water, housing, education, health care, transport, clothing, and other essential needs, including provision for unexpected events. (Ankar, R. and Ankar, M. 2013. *A Shared Approach to Estimating Living Wages*. Prepared for the Global Living Wage Coalition. http://www.isealliance.org/sites/default/files/Global_Living_Wage_Coalition_Anker_Methodology.pdf)

- i. A freely negotiated collective bargaining agreement is in force that allows variances to the rest and/or overtime hours above; and
- ii. Through consultations with workers' representatives a risk management process that includes a risk assessment for extended working hours is established to minimize the impact of longer working hours on the health, safety and welfare of workers.

3.1.10.2. Where neither national law nor a collective bargaining agreement includes provisions for worker leave, the operating company shall, at minimum, provide:

- a. An annual paid holiday of at least three working weeks per year, after the worker reaches one year of service;¹⁰⁷ and
- b. A maternity leave period of no less than 14 weeks.

NOTES

This chapter uses, as its basis, the International Finance Corporation's (IFC) Performance Standard 2 – Labor and Working Conditions. In addition to aligning with IFC performance standard requirements, this chapter contains two additional criteria related to Wages (3.1.9) and Working Hours and Leave (3.1.10), with requirements that are based, in part, on ILO conventions.

CROSS REFERENCES TO OTHER CHAPTERS

CHAPTER	ISSUES
1.1—Legal Compliance	<p>As per Chapter 1.1, if <u>host country laws</u> are more protective of <u>workers' rights</u> or provide more favorable terms of work, those requirements shall supersede IRMA requirements. But if IRMA requirements are more stringent than <u>host country law</u>, the company is required to also meet the IRMA requirements, as long as complying with them would not require the company to violate <u>host country law</u>.</p> <p>Also, as per 1.1.5.1 the <u>operating company</u> is responsible for ensuring that <u>contractors</u> involved in <u>mining-related activities</u> comply with the requirements of this chapter of the IRMA Standard, i.e., <u>contract workers</u> and any other workers who provide project-related work and services should be apprised of labor rights and provided fair terms of work. Additionally, Chapter 3.1 requires companies to take steps to identify instances of <u>child labor</u> and <u>forced labor</u> within their primary supply chain. This should also apply to <u>contractors</u> as per 1.1.5.1. Similarly, if <u>contractors</u> place <u>worker health and safety</u> at risk, procedures and mitigation measures will need be taken to <u>remedy</u> this.</p>
1.2—Community and Stakeholder Engagement	<p><u>Workers</u> are <u>stakeholders</u>, and also often members of the <u>affected communities</u>. As such, the engagement process with <u>workers</u> on issues related to <u>affected communities</u> should align with the requirements in Chapter 1.2.</p>

¹⁰⁷ A worker whose length of service in any year is less than that required for the full entitlement shall be entitled to a holiday with pay proportionate to his or her length of service during that year. (Based on ILO C132 – Holidays with Pay Convention (Revised), 1970 (No. 132). http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100::NO:12100:P12100_ILO_CODE:C132:NO)

CROSS REFERENCES TO OTHER CHAPTERS	
1.3—Human Rights Due Diligence	<p>The <u>grievance mechanism</u> in Chapter 1.3 may also be used by <u>workers</u> seeking <u>remedy</u> for perceived infringements of their human rights (e.g., core labor rights are considered human rights).</p> <p>Also, if there are instances of <u>child labor</u> or <u>forced labor</u> at the mine, both of which are considered infringements of human rights, companies shall ensure that the remedy section of Chapter 1.3 is followed (see requirement 1.3.3). The risks that <u>child labor</u> or <u>forced labor</u> might occur at the mine or in its supply chain should be assessed as part of the human rights assessment in Chapter 1.3.</p>
1.4—Complaints and Grievance Mechanism and Access to Remedy	<p>It is possible that one <u>grievance mechanism</u> may be suitable to address <u>grievances</u> raised in relation to the <u>mining project</u> from all <u>stakeholders</u> including <u>workers</u>,¹⁰⁸ however, typically labor <u>grievances</u> are dealt with through a separate mechanism established through collective bargaining agreements or human resources policies.¹⁰⁹ If <u>worker-specific grievance mechanisms</u> are developed, they need to be consistent with the effectiveness criteria in Chapter 1.4.</p>
3.2—Occupational Health and Safety	<p>Although there are some requirements in this chapter that have a health and safety aspect (such as <u>child labor</u> and working hours), <u>worker</u>-related issues related to occupational health and safety issues are specifically covered in Chapter 3.2. Compensation for work-related injuries are also addressed in Chapter 3.2 (requirement 3.2.3.5).</p> <p>The <u>grievance mechanism</u> in 3.1.5 may be used to hear worker’s OH&S-related grievances.</p>
3.3—Community Health and Safety	<p>Requirement 3.1.3.1 mandates fair treatment in employment relationships, and prohibits <u>operating companies</u> from making discriminatory employment decisions on the basis of personal characteristics unrelated to inherent job requirements, such as HIV/AIDs status, which is also addressed in Chapter 3.3 (see requirement 3.3.4.2).</p>
3.4—Mining and Conflict Affected Areas	<p>Incidents of <u>child labor</u> or <u>forced labor</u> are addressed in Chapter 3.1. However, if the mine is in a conflict-affected or high-risk area the potential for <u>child labor</u> and <u>forced labor</u> should also be considered during the <u>conflict risk</u> assessment in Chapter 3.4.</p>

¹⁰⁸ The UN Office of the High Commissioner of Human Rights has elaborated that, “As discussed in the context of Guiding Principle 22, it is fairly usual to have separate grievance mechanisms for direct employees and for external affected stakeholders, though it is not always necessary to separate the two. (UN Office of the High Commissioner for Human Rights. 2012. The Corporate Responsibility to Respect Human Rights: An Interpretive Guide. pp. 69, 70. www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf)

¹⁰⁹ IFC. 2009. Good Practice Note: Addressing Grievances from Project-Affected Communities. p. 21. www.ifc.org/wps/wcm/connect/cbe7b18048855348ae6cfe6a6515bb18/IFC+Grievance+Mechanisms.pdf?MOD=AJPERES&CACHEID=cbe7b18048855348ae6cfe6a6515bb18