

Freedom of Association and Collective Bargaining Policy

As of November 2020

The Standard

Fair Wear's Code of Labour Practices (CoLP) forms the foundation of collaboration between Fair Wear and our members. Fair Wear's CoLP is based on internationally recognised standards that have been set through tripartite negotiation (between representatives of governments, workers, and employers) at the International Labour Organisation (ILO), which is the United Nations agency that specialises in labour.

Fair Wear's CoLP standard on 'freedom of association and the right to collective bargaining' is based on three fundamental ILO Conventions:

- ILO Convention 87 protects the right of workers to form and join the trade union of their choosing;
- ILO Convention 98 protects workers' right to bargain collectively with their employers and to remain free of employer interference and dominance; and
- ILO Convention 135 protects worker representatives from discrimination and recognises the right of worker representatives to access to workplaces in order to carry out their representation functions.

Member companies of Fair Wear Foundation have committed to source from production facilities that produce under decent working conditions, in accordance with their code obligations. This responsibility applies globally, including in countries where the government is unwilling or unable to adhere to international labour standards. In accordance with the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work (1998), ILO Conventions No. 87 and

98 (on freedom of association and collective bargaining) are core conventions that countries are required to obey, even if they have not ratified the convention.

These rights help ensure an environment in which there is strong two-way communication between workers and management as workers are best placed to advocate for their own rights. To do this, workers need the freedom to organise themselves, express their voices collectively, and defend their interests. Freedom of association and collective bargaining are 'enabling rights.' When these rights are respected, they pave the way for garment workers and their employers to address and implement the other standards in Fair Wear's Code of Labour practices. They are key rights that facilitate ownership and give the possibility to workers to express their voices and be heard, giving space for dialogue channels where problems can be addressed and parties share responsibility. If workers have these rights in place and are able to exercise them, they can speak out about conditions of work and grievances – including health and safety, working hours, equal pay, protection against violence and harassment, leave time and benefits, for example.

Garment workers are predominantly women – often in low-pay, low power positions, but they are underrepresented in social dialogue structures. Ensuring women's right to freedom of association and collective bargaining is vital in order to allow workers' representative voices to be heard and support their bargaining power. Women often have lower rates of unionisation and union leaders tend to be male; therefore, women's rights issues may not be well represented or considered to be important priorities. It is important to ensure that social dialogue structures are appropriately representative of the workers.

The right to freedom of association and the right to bargain collectively form the cornerstone of effective and mature industrial relations. Respect for these rights is a pre-requisite for the sustainable improvement of labour conditions in the garment industry; if the rights to organise and bargain collectively are respected, it becomes easier to address all of the other standards in Fair Wear's Code of Labour Practices, as workers themselves can monitor their application and, if necessary, negotiate for improvements.

What this means for production locations

Fair Wear considers *a production location* to be in compliance with this labour standard if trade union rights can be exercised in normal conditions with respect for basic human rights and in a climate free

of violence, pressure, fear and threats of any kind, and if no signs of violations of the right to freedom of association and the right to collective bargaining are found.

This means production locations must:

- allow workers to join or form trade unions (confirmed by workers)
- allow unions access to the factory or workers to share information
- allow paid time and provide space for workers' representatives to engage in union activities
- not interfere with or try to influence any of the functions of the unions
- not terminate contracts, punish, threaten, intimidate, or harass workers and workers' representatives due to their union membership or their participation in union activities
- be willing to bargain in good faith with a representative union
- implement the collective bargaining agreement, where there is one
- not interfere with the right to strike, in line with international standards
- where one or more of these **rights are restricted under national law**, uphold international standards *as much as possible* without violating national laws. Where national legislation makes adherence to international laws impossible, management must 1) make clear to workers that they will engage workers in collective dialogue, and 2) ensure that workers have the opportunity and choice to participate in such collective dialogue through some form of representative structure.

It is important that factory history is taken into account when evaluating production locations, because past experiences of workers, previous complaints or violations, might influence the current attitudes towards trade union organising.

What this means for member brands

Fair Wear Foundation requires member brands to ensure the above conditions are met in all their production locations. A brand is only in full compliance with the standard in Fair Wear's Code of Labour Practice when freedom of association and the right to collective bargaining can be exercised in all facilities in a brand's supply chain. This does not mean that trade unions MUST be present in all production locations, but these rights must be available to be exercised in all locations.

Fair Wear member brands have an obligation to ensure that their practices do not interfere with the ability of workers to exercise their rights to freedom of association and collective bargaining and to pro-actively promote an enabling environment for these rights in their supply chain. Additionally, brands, with suppliers, must make remediation efforts when violations of these rights are found.

The reality is that the ability of workers to organise and bargain collectively depends on local and global factors often beyond the influence of any single brand. Nevertheless, brands still have a critical role to play in individual factories – as well as in global efforts that contribute to an enabling atmosphere.

Although the decision to join or form a trade union is up to the workers themselves (and brands should never try to force or organise workers themselves) the purchasing practices of brands can have a direct impact on whether or not workers are able to exercise those rights. Brand decisions, such as where to source from and length and stability of contracts provided to suppliers, as well as working jointly with other brands at common suppliers, have a clear impact on the ability of these rights to be realised. As such, the below are the steps that **member brands** need to take to promote and ensure an enabling environment for workers to freely exercise their rights to freedom of association and collective bargaining and protect trade union organisers:

- 1** Commit to a sourcing strategy that privileges countries and suppliers where workers are free to choose to form or join a trade union and/or to bargain collectively.
- 2** Participate in direct agreements with trade unions that ensure worker participation in identifying, addressing and remediating issues related to the conditions of their work.
- 3** Use your brand's voice and influence to encourage governments to promote and protect – and certainly to halt violations of – international standards on freedom of association and collective bargaining (ILO Conventions 87 and 98).
- 4** Develop contractual agreements with suppliers in which 1) your brand commits to orders in the long-term (several years or more) so as to provide the financial stability/predictability needed for workplace dialogue and freedom of association to thrive; 2) suppliers contractually agree to provide all workers stable contracts to make it possible for them to join a union and 3) supplier and brand jointly distribute non-interference and non-retaliation letters or a declaration to the workforce, underscoring workers' right to organise.

- 5** Urgently address violations of freedom of association and collective bargaining (from complaints, audit findings or other sources), including a strategy for addressing the root cause of violations.
- 6** Support and finance workplace training for workers and management to build understanding of their rights and skills to engage in workplace dialogue and collective bargaining. Recognising that women garment workers are under-represented in union structures, extra emphasis should be placed on encouraging and supporting women in this process.

Fair Wear's publication, 'Freedom of Association and the right to Collective Bargaining: A Guide for Brands' provides further guidance for brands on how to implement this policy. This policy will be reflected in the Brand Performance Check starting in 2022 and brands efforts will be verified for 2021 as the first year. Specific indicators are currently under development.