

Ukraine Heightened Due Diligence

The following joint Ethical Trade Initiative (ETI) and Fair Wear guidance is made for brands that source in Ukraine, it outlines ETI's and Fair Wear's expectations and recommendations on how to conduct human rights due diligence in Ukraine.

Situation Ukraine:

The conflict in Ukraine escalated on 24 February 2022 when the Russian military entered the country and invaded Ukraine. Since then, heavy fighting is reported throughout the country, particularly in Kyiv, but across bigger cities in the east, south, and north part of Ukraine. Fighting is resulting in civilian casualties and has significant damage to infrastructure and buildings.

Insecurity is forcing people to leave their homes; most of them are women, children, and elderly people. About 66% of the displaced people fled to Poland, Moldova, Hungary, Slovakia, and Romania. Over 4.3 million refugees left their homes in Ukraine and headed toward other countries as of April 7, 2022, another 6.5 million people are thought to be displaced inside the war-torn country itself¹. The numbers are expected to increase quickly because of the hostilities. Some people chose to stay or are not able to flee and need hide in basements or subway stations. Shelling led to water and electricity cuts and is limiting people's movement and ability to access basic goods and services.

As a result of the Russian invasion, many Ukrainian businesses have been destroyed, have stopped work or their workers have been forced to flee from hostilities to other regions in Ukraine or abroad. Another number of enterprises and employees have ended up in territory occupied by Russian forces, where the implementation of Ukrainian labour legislation has been curtailed. In addition, many Ukrainian enterprises are involved in defence activities coordinated by local military administrations, and their employees are doing work which is not covered by regular employment contracts.

Labour Laws implications

On 24 February 2022, martial law in Ukraine was imposed as a response to Russian invasion. Martial law implies limitation of certain constitutional rights, *inter alia*, the right to work and the right to rest.

To implement these limitations, on 15 March, the Parliament of Ukraine adopted the Law "On Organizing of Employment Relations During Martial Law" (the "**Law**") which entered into force on March 24, 2022. It is worth reviewing its main provision based on the currently available text.

The Law introduces certain limitations of labour and employment rights and envisages specific regulation for some aspects of employment relations. The new law significantly curtails employees' rights (on working hours, working conditions, dismissal, and compensation after dismissal) and increases employers' leverage over their workforce. The said act will be in force only during martial law and will cease to exist after the termination of the latter. (*see more information: annex II*)

¹ <https://www.bbc.com/news/world-60555472>

Heightened Due Diligence

Fair Wear and ETI's Human Rights Due Diligence Policies outline the responsibility of brands in relation to human rights due diligence, including prevention of harm to workers and improvement of working conditions where rights are at risk or violated. The policies are driven by the definition as introduced in the [United Nations Guiding Principles on business and human rights \(UNGPs, 2011\)](#), where the concept of human rights due diligence is described in guiding principle 17 and 18 of the UNGP.

The UNGPs are built around a concept of proportionality: the higher the risk, the more complex the processes. Hence, "because the risk of gross human rights abuses is heightened in conflict-affected areas", action by States and due diligence by business should be heightened accordingly. Related to doing business in conflict areas, the UN has provided specific principles for **heightened actions** for governments and brands. For business, the UN principles relevant to heightened due diligence in conflict zones are:

- **Principle 12** clarifies that the scope of the corporate responsibility to respect may be broader in conflict-affected contexts, as "in situations of armed conflict enterprises should respect the standards of International Humanitarian Law (IHL)²." For more information on the implications of IHL on business see: <https://www.icrc.org/en/doc/resources/documents/misc/business-ihl-150806.htm>
- **Principle 17** addresses the question of corporate "complicity" (legal and otherwise)³.
- **Principle 23** recommends business enterprises to treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue.

Considering the current situation in Ukraine, ETI and Fair Wear require members to conduct human rights due diligence as much as possible and to:

- 1 Be assured of which suppliers and subcontractors are being used for their production and where they are located.
- 2 Continue with responsible purchasing practices and support suppliers as much as possible in this crisis. Good communication with suppliers and customers is essential. Ask them about their needs. Some regions lack food, some electronics, some medicine. Ask your business partners how you can support them Agree a protocol and process for supplier communication with you to keep updated on the impact of the conflict. This could include for example use of direct messaging via WhatsApp or alternative encrypted platforms. *(Please check Annex I for examples of questions for suppliers).*
- 3 Continue assessing the impact on workers, for instance worker turnover, job, and wage loss, and explore means for access to remedy. (FW member should seek to actively raise awareness

² International Humanitarian Law (IHL) is a set of rules that seek to limit the effects of armed conflict. It protects people who are not or are no longer participating in hostilities and restricts the means and methods of warfare. IHL has important implications on business that operate in countries experiencing armed conflict.

³ In addition to the risk of becoming a military target, brands operating in conflict zones are exposed to the surrounding conflict dynamics. Not only their operations, but also their personnel, products or services may become part of the ongoing conflict. In the worst-case scenario, any of these could result in or facilitate violations of international humanitarian law. Business enterprises therefore run legal risks, whether based on criminal responsibility for the commission of or complicity in war crimes or on civil liability for damages. The nature, implications and extent of these risks are of particular importance to business enterprises operating in conflict zones' International Committee of the red cross. 2022. <https://www.icrc.org/en/doc/resources/documents/misc/business-ihl-150806.htm>

for the FW complaint helpline). Ensure that the safety of workers, livelihoods and income are protected. On sight considerations: – check on safe spaces, emergency preparedness and procedures to protect workers and physical assets.

- 4 Anticipate changes or delays in production and be flexible about delivery dates, payment terms, and financial liability. Do not cancel orders that are (almost) ready to be shipped, that are already in production or for which fabric is already bought and/or cut.
- 5 If production is no longer viable due to escalation of conflict and/or physical damage, a responsible exit needs to be prepared with planning done in dialogue with the supplier and other stakeholders such as trade unions or worker representatives. Whenever deciding to stop, decrease or pause sourcing from a supplier, the utmost care must be taken to assess the impact on workers. Workers' rights need to be respected and, in case of lay-offs, workers need to receive their legal entitlements, including severance pay. The timeline for exiting a factory should be proportional to the percentage volume the brand has within the factory. Please see the Fair Wear responsible exit strategy available on our [website](#).
- 6 Check with suppliers whether they follow martial law (if this still applies). Under martial law, Ukrainian men aged 18-60 have mandatory military service. When men get drafted for the war, it is important that their jobs and income are protected. This is also required by law:

"All places of work are required by law to keep records of employed civil defense conscripts. The employer of a woman conscripted for civil defense must keep her position for her until she returns – including if she's injured or declared missing. She will be paid a salary, covered by the state" ([Slipchenko 2021](#)).

Compliance with the law is required, but leniency towards workers beyond the legal requirements is recommended as well.

Furthermore, ETI and Fair Wear expect their members to:

- **Investigate and stay updated on the situation.**

Work even more closely with other brands and local stakeholders to collect all relevant documentation. If possible and safe, perform on site monitoring. Pay close attention to the risks and concerns being flagged by local trade unions.

- **Provide advance payment to suppliers**

Suppliers may be making advance payments of wages to workers which may put more pressure on their own financial liquidity. By providing advance payments to your supplier in Ukraine this pressure may be relieved and the continuation of payment of wages is ensured.

- **Provide financial support**

If a factory is forced to close or is struggling to pay its workers, assess whether it is possible to support your supplier financially to help pay wages, especially if you take up a high percentage of their production capacity or if you own the factory. It is important that brands share the responsibility of ensuring that wages already earned by workers are paid and that arrangements are made to provide support for workers. The protection of job and income is

also important for workers who cannot travel to work due to safety, sickness, care responsibilities, or drafting.

- **Local civil society**

Suggest factories to provide workers with contact information for local civil society organisations that can help them with additional concerns they may be facing at this time. Examples include support for victims of domestic violence and sexual assault, sexual and reproductive healthcare, food packages or medical supplies.

ETI and Fair Wear recommend their members to:

- **Look for humanitarian actions to join, or start one yourself**

There are a lot of great initiatives already, including some started by our member brands. Follow their example or take the lead!

Population movement, refugees internally displaced (Ukraine)

The ongoing conflict has forced numerous Ukrainians to flee to regions where there is less conflict or to other countries. This has implications for the worker population within Ukraine, but also in neighbouring countries. In Ukraine, this could lead to a shortage of workers in the workplace, which could lead to a delay in orders. Please be aware of the situation and try to accommodate suppliers in this situation. For neighbouring countries, we have heard examples from suppliers accommodating Ukrainian refugees and offering them a job. The influx of immigration may also bring increased risks with it that we ask you to be mindful of:

- Risk on Human trafficking
- Risk on exploitation of displaced migrant workers

Under these circumstances, we envisage that brands may consider moving their production to neighbouring countries. The risk of overtime for workers in the newly contracted factories is probable. We explicitly expect from members who will responsibly exit from Ukraine supply chains to fully comply with the ETI / Fair Wear HRDD policies when starting new business relationships and conduct proper assessment before starting new business relationships.

Annex I

Examples of questions you can ask your supplier

- Is there fighting in your area?
- To what extent your factory operation has been affected with this invasion?
- Has the worker population in the factory changed? How?
- Are all workers still coming to the factory? If not, why not?
- Are there workers that have been drafted for the military?
- Is the factory able to assure safety to workers during working hours?
- Is the factory able to assure safe transport for the workers?
- Is the factory able to pay timely monthly wages for all workers?
- Is the factory able to ensure workers voice is heard during this war situation?
- What is the situation with workers' children? (This is especially relevant for families of which a parent got drafted). Can they still go to school? Can they go to a day-care? Can they come to the factory and is there a safe space for them there?
- Do workers have access to basic needs (like water and food)?
- What is the situation related to raw materials to continue with production?
- Are you facing with in process, or pre orders cancelations due to this invasion?
- Do you have outstanding invoices?
- What are the other challenges your workforce is facing?
- What kind of support would be needed for you?

Annex II

Details on the new law addressing the workers rights

To implement limitations imposed with the Martial law, on March 24, 2022, the Law of Ukraine “On Organization of Labor Relations under Martial Law,” dated March 15, 2022, entered into force.

This Law, save for a few exceptions, is effective for the duration of martial law. Martial law has been extended until April 25, 2022.

The proposed “Law” introduces certain limitations of labour and employment rights and envisage specific regulation for some aspects of employment relations. The said act will be in force only during martial law and will cease to exist after the termination of the latter.

The [new law has been complained by labour rights organization, and](#) trade unions, thus this law significantly increases the rights of both private business owners and state-run services and institutions while reducing the rights of employees.

If, as a result of the hostilities, a company is destroyed or can no longer function, it can dismiss employees with ten days’ notice (instead of two months) and the payment of one month’s salary.

One of the most controversial provisions of the bill concerns the ability to involve women in physically strenuous labour and work underground (in mines, for example), which is currently prohibited by Ukraine’s labour laws. This could lead to a violation of the 45th convention of the International Labour Organisation, dating from 1935, which prohibits underground work for all women.

Suspension of employment agreements and CBAs

Employers may suspend employment agreements with their employees for the reasons, triggered by the military aggression. They will not have an obligation to render work to employees and pay salaries or provide other employment benefits. The Law provides that the obligation to pay salaries and other employment-related payments will rest with the Russian Federation.

Likewise, employers may suspend certain provisions of collective bargaining agreements, for instance, those related to certain benefits or extra payments.

Termination of employment

The Law envisages special relaxed rules for involuntary termination of employment, but only for those entities that face liquidation in view of destruction of all their facilities or property due to army actions. Such employers will be able to dismiss employees with 10 days' notice and payment of a severance of one monthly salary. Current limitations on prohibitions of dismissals during an employee's sick leave or vacation would not apply.

In return, employees who work in territories that suffer from military actions would be entitled to resign voluntarily without any notice period (usually, two weeks' notice period applies to voluntary resignations in Ukraine). However, this rule would not apply if the employee is involved into performance of socially useful works in connection with the military actions or works at an object of critical infrastructure, for example, a hospital.

Temporary and verbal employment agreements

The Law allows employers to enter into temporary employment agreements for the duration of martial law or to replace a temporary absent employee (e.g., an employee who fled the territory or location of the entity or who is unavailable for unknown reasons).

The parties may execute verbal employment agreements, if they so agree, irrespective of the category of the employee. Employers are also allowed to set probation for all employees, whom they hire during martial law.

Temporary transfer of employees and change of essential work conditions

Employers may temporarily transfer employees to other job without the employee's consent, if this is necessary to prevent or extinguish consequences of army actions or other related matters. However, it is not allowed to transfer employees to territories, where active army action currently take place (e.g., Kyiv Region).

Also, during martial law, the usual two-weeks' notice period for change of essential work conditions by employers does not apply.

Extended working day and limited time of rest

The Law stipulates that during martial law, the normal duration of working week may be 60 hours instead of common 40 hours. Employers would have a right to establish five- or six-days working weeks and establish specific time of beginning and end of workday.

Weekly time of rest may be limited to 24 hours. Also, the provisions of the Labour Code on public holidays would not apply during martial law. In addition, employers are authorized to refuse to provide leaves to employees who work at the objects of critical infrastructure (except for maternity and parental leaves).

Suspension of guarantees for women and employees with children

The Law allows involving women to heavy and underground works, as well as works with dangerous and harmful conditions, except for pregnant women or those who have a child below one year of age. The Law also suspends certain restrictions regarding overtime, night, weekend and holiday works and business trips of employees with small children.

Payment of salary and unpaid leaves

Employers (except for those that suspend employment agreements) shall continue paying salaries. However, if an employer is affected by military actions, it may suspend payment of salary and repay relevant amounts later.

Upon agreement with employees, employees may take unpaid leaves for the whole duration of martial law.

Trade union rights

The Law also limits certain rights of trade unions. Specifically, employers do not need to seek for consent of a trade union before dismissal of a trade union member, unless the relevant employee is a member of the trade union management. Also, employers may suspend financial contributions for trade unions' activities

Source: <https://www.opendemocracy.net/en/odr/ukraine-suspends-labour-law-war-russia/>