

Human Rights Due Diligence Policy for Fair Wear Members

As of September, 2021

Introduction

Fair Wear expects its member brands to respect human rights and have a human rights due diligence (HRDD) process in place.¹ In this policy Fair Wear outlines 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 implementation of this policy will be assessed throughout several indicators in Fair Wear's renewed performance check guide when evaluating financial years starting in 2022 and beyond.

Definition of Human Rights Due Diligence and Responsible Business Conduct (RBC)

This Fair Wear HRDD policy uses the definition as introduced in the United Nations Guiding Principles on business and human rights (UNGP, 2011). The concept of human rights due diligence is described in guiding principle 17 and 18 of the UNGP:

UNGP Guiding Principle 17.

To identify, prevent, mitigate, and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence:

(a) Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its activities, or which may be directly linked to its operations, products or services by its business relationships;

(b) Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations;

¹ This policy for Fair Wear members concerning human rights due diligence is building on several international guidelines: the United Nations Guiding Principles on business and human rights (UNGP, 2011); The OECD Guidelines for Multinational Enterprises (2011), the OECD Due Diligence Guidance for Responsible Business Conduct (2018) and the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector (2017).

(c) Should be ongoing, recognising that the human rights risks may change over time as the business enterprise's operations and operating context evolve.

Guiding principle 18:

To gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should:

(a) Draw on internal and/or independent external human rights expertise;

(b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.

HRDD is integrated in so-called responsible business conduct (RBC). RBC encompasses: "Human rights, including workers and industrial relations, environment, bribery and corruption, disclosure, and consumer interests" (OECD, 2018).²

Scope of Fair Wear

Since its establishment, Fair Wear has focused on the core ILO Labour standards and standards included in the Fair Wear Code of Labour practices. Within the scope of Fair Wear, human rights due diligence in "the world of work" is applicable (everything arising out of work, such as the commute to and from work, see the footnote for further definition).³

In terms of the scope of responsibility on Human Rights, the UNGP Guiding principle 12 refers to the following human rights:

Guiding principle 12:

Since business enterprises can impact virtually the entire spectrum of internationally recognised human rights, their responsibility to respect applies to all such rights. In

² Defined in the OECD Due Diligence Guidance for Responsible Business Conduct (RBC) (2018)

³ In article 3 of the ILO C190 - Violence and Harassment Convention, 2019 the 'world of work' includes:

- A) in the workplace, including public and private spaces where they are a place of work;
- B) in places where the worker is paid, takes a rest break or a meal, or uses sanitary, washing and changing facilities.
- C) during work-related trips, travel, training, events or social activities;
- D) through work-related communications, including those enabled by information and communication technologies;
- E) in employer-provided accommodation; and
- F) when commuting to and from work

See also the In brand performance check guide edition 2022

practice, some human rights may be at greater risk than others in particular industries or contexts, and therefore will be the focus of heightened attention. However, situations may change, so all human rights should be the subject of periodic review.

The International Bill of Human Rights contains an authoritative list of the core internationally recognised human rights (consisting of the Universal Declaration of Human Rights and the main instruments through which it has been codified: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights). It also contains the principles concerning fundamental rights in the eight ILO core conventions set out in the Declaration on Fundamental Principles and Rights at Work. These are the benchmarks against which other social actors assess the human rights impacts of business enterprises.

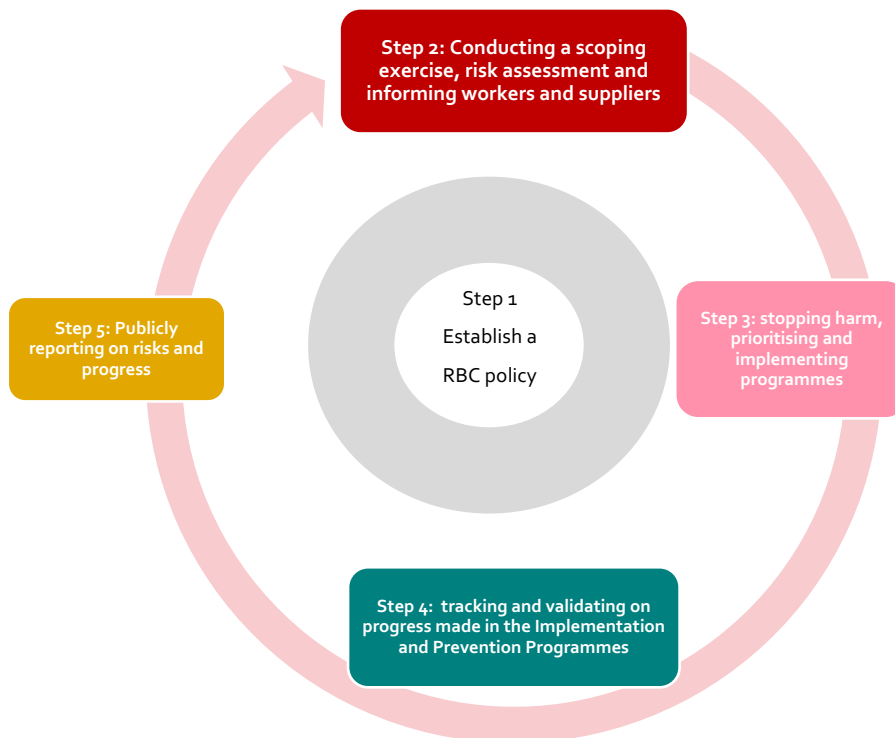
The responsibility of business enterprises to respect human rights is distinct from issues of legal liability and enforcement, which remain primarily defined by national law provisions in relevant jurisdictions. Depending on circumstances, business enterprises may need to consider additional standards. For instance, enterprises should respect the human rights of individuals belonging to specific groups or populations that require particular attention, where they may have adverse human rights impacts on them. In this connection, United Nations instruments have elaborated further on the rights of indigenous peoples; women; national or ethnic, religious and linguistic minorities; children; persons with disabilities; and migrant workers and their families. Moreover, in situations of armed conflict, enterprises should respect the standards of international humanitarian law.

While Fair Wear's scope concerns cut-made-trim and support processes, Fair Wear fully acknowledges that companies face a broader range of RBC risks and impacts across their operations and full supply chain, which they should identify and address in line with a risk based due diligence approach (prioritising most severe risks and impacts to which they are linked, as well ceasing, preventing and mitigating those impacts that they cause or contribute to). This policy guidance seeks to enhance and support member companies' broader Human Rights DD, by harmonising and aligning Fair Wear's expectations of members with their existing business responsibility to Human Rights in the supply chain. It does not create a competing or duplicative expectation. Indeed, Fair Wear expects that companies adopt HRDD policies *tailored to their operations and supply chain*. Fair Wear's role will be to: check that its member companies have adopted and are implementing a HRDD policy, review (via the Brand Performance Check) the aspects of the implementation of that policy that fall within the scope of the Fair Wear initiative.

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Fair Wear member requirements

Fair Wear requires its member brands to review their own practices to avoid negative impact, conduct a risk assessment, do a prioritisation, and accordingly engage in prevention and improvement. This is called the risk-based supply chain improvement cycle. Members are expected to carry out the work through the below steps according to the requirements, while Fair Wear's role is to guide them, support them, connect them with local stakeholders, and assess their performance.



The risk-based supply chain improvement cycle is based on the OECD due diligence cycle, except for a separate step 6. In the OECD due diligence cycle there is a sixth step: provide for or cooperate in remediation when appropriate. Fair Wear expects its members to provide for remediation, including working on improving labour rights, and to cooperate with other member brands and non-member brands throughout all steps, particularly step 2,3 and 4.

Step 1: Establish a Responsible Business Conduct (RBC) policy

Fair Wear member brands have a Responsible Business Conduct policy in place that describes its commitments to human rights due diligence and upholding international standards and explains how this is embedded in the company structures.

The RBC policy should clarify the member brands' commitments regarding its own activities and articulate its business partners' expectations – including suppliers, licensees and intermediaries – across the full length of its supply chain. The RBC policy clarifies the brands' view and implementation of human rights due diligence for their company and how that is embedded in the corporate structure. The policy helps brands to stay accountable and committed to human rights principles. Top management approves the RBC policy.

A member brands RBC policy:

- Is adapted and tailored to the specificities of the activities of the member and its supply chain
- Includes a commitment to responsible purchasing practices to prevent and mitigate negative impacts. Examples of responsible purchasing practices are the implementing equal partnership models, collaborative planning, fair payment terms, sustainable costing.
- Holistically integrates the due diligence process in business practices.
- Commits to upholding international standards on sector risks and sub-sector risks relevant to the enterprise
- Supports the implementation of the Code of Labour Practices
- Explains how the company assesses and mitigates risks, and prevents and remediates adverse impact in their supply chain
- Includes the willingness of a member brand to cooperate with other Fair Wear member brands and non Fair Wear member brands in risk identification, mitigation, remediation and prevention
- Is an inclusive approach and explicitly addresses how to organise social dialogue: member brands do not just improve workers' human rights but also involve collective worker voice when working on prevention of risks and remediation of adverse impacts. This means that voices of those who are affected by adverse human rights impact are structurally included. Freedom of association and collective bargaining are 'enabling rights.' When these rights are

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respected, they pave the way for garment workers and their employers to address and implement other standards.

- Has a gender lens: Fair Wear sees gender inequality as a high risk in the textile and garment supply chains in different production countries. Therefore, the inclusion of a gender lens throughout the due diligence process is expected. A brand can for example conduct a gender mapping, or consult the Fair Wear country-specific gender fact sheets
- Is adopted by top management and
- Includes an operationalisation of the policy; how it is rooted into different departments and decision-making processes

The RBC policy is engrained in the brands' sourcing strategy, with a focus on increasing influence to improve working conditions meaningfully.

Step 2: Conducting a scoping exercise, risk assessment and informing workers and suppliers

Step 2.1 conducting a scoping exercise

Members should scope human rights risks on various levels, such as the country, sector, business model, sourcing model, and product level to identify the most significant risks of harm in its supply chain. From the OECD guidance: "The scoping should build on known sector risks and take into consideration relevant risk factors. It should be periodic, informed and documented. The company is encouraged to draw from the known sector and sub-sector risks to determine the likelihood of risks and severity of harm in its own operations and in its supply chain based on the countries that the enterprise operates in or sources from, the products that the enterprise produces or sells and its business and sourcing practices".

Through the scoping exercise, members should form a basic understanding of the risk of harm they will encounter in their supply chain. The scoping exercise provides information for members to take further actions. When additional information is needed, members should conduct enhanced due diligence risk assessments, consult stakeholders, workers and their representatives. During the scoping exercise, Fair Wear members sourcing at the same production location, are encouraged to share information, cooperate or even organize a joined scoping exercise.

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The scoping exercise provides also information for members to make sourcing decisions. For example, implementing a sourcing strategy that privileged countries and suppliers where workers are free to form and join a trade union and bargain collectively

The scoping exercise aims to identify which human rights are at risk in a specific context and how severe human rights impacts are for this specific brand. Some impacts are clearly severe, such as the general status on fire and building safety or a high risk of forced labour. A high rate of migrant workers may flag risks of non-compliances in wage legislation. A national restriction on freedom of association also flags the risk of payment below the living wage, excessive overtime, and violence and harassment. However, while high rates of migrant workers may flag an increased risk on human rights, companies are not encouraged to disengage from these countries/factories. Instead, they should tailor their due diligence to ensure that the employment of migrants is responsible.

In this scoping exercise, the following guiding questions are helpful:

- **Scale:** the gravity of the adverse impact. How serious is the harm?
- **Scope:** number of individuals that are/will be affected. How widespread is the harm?
- **Irremediable character:** limits on the ability to restore. If the harm occurs, can it be put right?

In this scoping exercise, member brands should specify the members' relationship to the impacts, whether it is has caused, is contributing to, or is linked to a possible adverse impact.

Step 2.2: Conducting pre-order due-diligence sourcing dialogue

Members should engage in sourcing dialogue starting prior to finalising the first purchasing order to ensure all potential suppliers in the scope of Fair Wear membership are aware of their commitments and expectations. For existing suppliers, members should know the knowledge level of the suppliers (factory management as well as worker representation) on compliance requirements and decide if a due-diligence sourcing dialogue is needed.

Before a business relationship is established, this step involves mutual information-sharing and commitment-pledging between the member and the potential supplier. Members are expected to gain a basic level of insight into the human rights situation at a potential factory to inform sourcing decisions. The result of this dialogue should be increased transparency between the member and the potential supplier, which would benefit possible improvement efforts going forward.

Step 2.3: Onboarding workers and managers

Upon the start of the business relationship, members should:

- Raise awareness of the workers and the management on human rights
- Stress the importance of gender-representative social dialogue (with democratically elected worker representatives)
- Assess whether there is an effective operational-level grievance mechanism established through social dialogue with worker
- Establish the Fair Wear helpline as a safety net

Onboarding workers and managers is a preliminary form of risk mitigation and a key step towards sustainable improvements in working conditions and the development of social dialogue.

Step 2.4: Conducting a risk assessment

A good risk assessment provides the necessary information for Fair Wear members to prioritise and take appropriate follow-up actions. Members are expected to conduct risk assessments on their own purchasing practices and at all production locations, owned or external.

Keeping up to date is important as developments in regions/countries might change over time, which can impact certain risks becoming more or less significant. The outcome of the scoping exercise (step 2) serves as input to the risk assessment of individual factories. The risk assessments should include both the general risk (the scoping exercise include the general risk)) and factory-specific risk for possible adverse human rights impact, which is linked to the characteristics and operations of a supplier. Fair Wear policies, such as the enhanced monitoring programmes, provides information on risks as well as guidance to mitigate risks. Fair Wear supports members by providing multi-stakeholder information from different sources that, combined with the data from audits, complaints and other activities, feeds the members' risk assessment. In the sourcing dialogue between member brands and suppliers the identified risks are shared and discussed.

Step 3: stopping harm, prioritising and implementing programmes

Step 3.1: Stopping harm and prioritise follow-up actions

When the risk assessment determined the existing harm and adverse impact, the member should take immediate action to remediate and stop the existing impact. Members should provide for or cooperate in remediation whenever they cause or contribute or are linked to adverse human

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rights impact. Based on the outcomes of the risk assessment, members should prioritise follow up actions.

Based on the factory's risk profile, the member formulates a plan to implement the corresponding improvement or prevention programmes, including a timeline and capacity estimation.

Step 3.2: Implementing the improvement programmes (IP) and prevention programmes (PP)

Together with their suppliers and worker representation, member brands are expected to develop and implement an improvement or prevention programme for their own practices and for each factory where risks or problems are determined. The Improvement Programmes (IP) include both remediation and prevention activities. When adverse impact is found, remediation needs to be taken. When risk is found, prevention should be implemented.

For programmes at the factory level to be successful, four elements need to be taken into consideration:

- Participation of the factory management: The members should involve the right people at the suppliers in different steps. If improvements (both remediation and prevention results) are not up to expectation, members should engage with top management or the owner of the supplier.
- Engagement with workers and their representatives; workers right to freedom of association and collective bargaining should be respected to enable them to use their collective voice. Elected worker representatives should be in place, trained and protected, and should be involved in the programme. The time for them to participate in the programmes should be compensated.
- Consultation and involvement of stakeholders; Relevant stakeholders should be involved. It is a process that will be supported by Fair Wear and multi-stakeholder structures in place. In case of remediation the worker involved is consulted to reflect on the investigation and remediation process.
- Continuous monitoring and evaluation: collective worker and factory management feedback are an essential part of the data collected for monitoring and evaluation purpose. Members should collect information timely and regularly to adjust their programmes to achieve the best outcomes.

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These four factors and brands' responsible purchasing practices and meaningful engagement in sourcing dialogue should be integral to all prevention and improvement programmes of Fair Wear members.

Remediation must meet national laws and international guidelines, and where standards are not available, the remedy is consistent with previous cases. In case international guidelines contain higher standards, those prevail.

To increase leverage and provide an enabling environment for factories to make improvements, members are required to cooperate with other member brands sourcing at the same location to implement the various programmes. At the same time, members are encouraged to cooperate with non-member buyers sourcing at the same location.

Where there is no capacity, Fair Wear expects members to seek external support for remediation of harm, preferably in engagement with local stakeholders through local multi-stakeholder initiatives.

Step 4: tracking and validating on progress made in the Implementation and Prevention Programmes

Members are expected to have a system in place to track implementation and validate the progress made. It should seek assurances that the measures/actions taken by the member and their supplier have been effective in preventing and remediating human rights violations. Workers and suppliers should play an integral role in monitoring progress against goals.

Tracking and validation are included in the sourcing dialogue between member brands and suppliers. Member brands with shared production cooperating in step 2 and 3, actively communicate, share and update the progress which is made.

Step 5: Publicly reporting on risks and progress

Members report internally and to Fair Wear to demonstrate how progress is monitored and made. Reporting includes information on which organisations they work with, how workers and unions are involved, the programmes' outcomes, and which progress is made. Having a system in place to evaluate progress per factory is part of the assessment in the brand performance check.

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Beyond internal reporting Fair Wear expects its member brands to publicly report on its HRDD in line with OECD Guidelines and UNGPs. Fair Wear encourages and does not prevent members to draw from their reporting via Fair Wear in their broader HRDD reports