

Frequently Asked Questions

Impactt Guidance: Rectification of Non-Payment of Wages

The following document provides answers to questions submitted prior to and during Impactt's Webinar.

Q: Who should be responsible for the repayment of wages? Should it be a shared responsibility between supplier and buyer, or is one party fully responsible?

A: Payment of wages according to the law is a fundamental responsibility of the employer. Under Principle 22 of the UNGPs, businesses, including buyers, also have a responsibility to "provide for or cooperate in" remediation where they have caused or contributed to adverse impacts on workers, communities, or human rights generally. This entails that:

- *the direct employer and/or labour provider, employment agency or payroll intermediary that has "caused" the non-payment of wages is responsible for repaying its employees and;*
- *buyers that may have "contributed" to the situation, or that are "directly linked" by a business relationship, should:*
 - *Fund or contribute to funding the investigation (Step 3) and verification (Step 8). Buyers may also fund technical support to implement the remediation process where this is required. Buyers have a responsibility to investigate and contribute to remediation as part of their due diligence process.*
 - *Cooperate with the employer in ensuring remedy is provided as quickly and effectively as possible. This may include supporting repayment in cases where the employer is unable to pay (e.g., due to company closure or bankruptcy) or is only able to pay over a time period that is longer than the 3-month maximum specified in this document (with the employer then repaying the buyer/investor).*

Please refer to p16 of the full guidelines for further details.

Q: How can we handle big supplier sites with multiple activities concerning workers not only being engaged by our own company? How do we scope?

A: Ideally, companies will group together to create a coalition or 'buyers group', which can cover the entire workforce which has been adversely affected. This can also help to share efficiencies in the investigation process.

Please refer to p26 of the full guidelines for further details.

Q: How can we handle historic remedy issues that started long before our engagement with a supplier? How to set a "cut-off date" for remedy if that is a solution?

A: Any current workers adversely affected will automatically be included in scope for repayment. If applicable, data on wage practices related to former workers should have been gathered during the investigation stage (Step 3). In cases where it was not possible to interview affected former workers, a "date of first diagnosis" (similar to the 'cut-off date' being mentioned here) should be identified to establish former workers' eligibility. For example, where the investigation finds that specific management systems, or staff members carried out underpayment over a certain period of time, this may create a "date of first diagnosis" to determine the eligibility of former worker applicants.

Please refer to p40 of the full guidelines which provides further details on this, including details of a contingency fund for ringfenced funding to repay successful applicants.

Q: What role did workers/rights-holders have in setting these guidelines? Were they consulted at all?

A: Yes, we engaged with workers in multiple ways: via consultation and engagement with a number of worker unions, and via development of the Principles and Guidelines based on ground-level site visits over the past 3 years, in which worker interviews around pay and hours have been the primary source of information. The intention is to gather further feedback from workers as the guidelines are field tested.

Q: How should engagement with workers be managed securely during the repayment process in the absence of worker representatives?

A: Where no legitimate and or credible form of worker representation exists, third parties with expertise in negotiation and worker engagement, and/or local civil society organisations with relevant expertise may support this process.

Please refer to Step 5 of the guidelines for further detail on the recommended engagement process.

Q: How should the requirement for action on wage theft along with repayment of recruitment fees be articulated?

A: Repayment of wages that have been withheld, and repayment of recruitment fees, are both essential. Where recruitment fees have been identified as an issue, it is important to ensure that this is investigated alongside the withheld wages. Depending on the context, and level of complexity of the case, it might be possible to investigate non-payment of wages and recruitment fees at the same time. Where this is not possible, a separate investigation on this topic should be carried out. Any calculation of the repayment

amount should then factor in wages, as well as recruitment fees that must be repaid.

Impactt has issued separate [Principles and Guidelines on the Repayment of Migrant Worker Recruitment Fees](#), which provides guidelines on how to do this.

Q: How can supply chain actors ensure meaningful stakeholder engagement in the remediation process?

A: There are a number of considerations here, but in short, the repayment plan should be developed collaboratively, ensuring engagement with and inputs from workers, their representatives, and other stakeholders including employers, labour recruiters, buyers, investors, and CSOs. Collaboration and inclusiveness across all stakeholders (and not just a select one or two) will help to ensure meaningful progress. Workers should know where they can access key information to fully understand the payments they receive, and where they can provide feedback, ask questions, and report any issues.

Q: Buyers can not compensate all statutory payments of suppliers' workers in case of bankruptcy or unusual situations. What are recommended guidelines to define actions of buyers and how much they voluntarily contribute in cases they do decide to cover?

A: On p16 of the full guidelines, we outline some key considerations around 'who should pay', and we note that buyers and employers should cooperate in cases of bankruptcy, company closure, or financial hardship to ensure that remedy is provided as quickly and effectively as possible, as underpinned by the UNGPs. However, this may vary widely on a case-by-case basis. It may also be advisable to create buyers' groups to share in such repayment support where necessary.

Q: Would any local laws and practices be important in calculating remedy and balancing that with a standardised approach of sorts?

A: Absolutely. Ultimately, as outlined on p19 of the full guidelines: "...employers have a legal duty to pay wages in accordance with the law. Criminal and civil justice systems (with consequences including imprisonment, loss of business licenses, or financial penalties as prescribed by local laws) should therefore be used against employers that do not take steps to investigate allegations of non-payment of wages once these have been raised, do not provide back-pay for the full amount once calculated, or do not update management systems to avoid reoccurrence. Buyers and other stakeholders may have a legal duty to notify authorities in cases of identified or unresolved wage theft." As such, use of local law will help to drive a standardised approach to legal compliance. However, importantly, legal compliance around repayment alone may not necessarily ensure that workers are a) repaid an amount that reflects fair compensation for harms suffered (depending on the specific laws in place in the relevant country), or b) that workers are not compelled to remain with their employer. We therefore recommend cross-checking local laws related to wage-payment and

remediation against best-practice as outlined in the full guide to identify the approach that will result in the best outcome for workers.

Q: What's the role of certifications in this context?

A: Certification bodies should take steps to increase the effectiveness of their assessments related to wage payment mechanisms (where this is in scope of their remit), and check that wages are paid correctly prior to issuing labour-related certification. In addition, it would be useful if certification bodies could increase their expectations related to remedy. A key strength of certification is that it holds the key for access to markets, in particular where customers require specific types of certification. There is therefore an opportunity for certification to require remedy where issues have been identified, as well as evidence of effective implementation of required remedy actions in order for certification to be provided/continued. In addition, it is important for certification bodies to review how they categorise companies where issues have been identified and addressed to ensure that companies which have positive steps to address issues in a systemic way are not disadvantaged so as to promote open dialogue on this issue.

Q: A question related to who is going to pay the cost. States, through public procurement, are often the biggest buyers in many markets. Shared responsibility as a fundamental principle in the UNGP is all about not passing the buck. One argument within public procurement is that we are only linked to the violations in our supply chains, rather than causing or contributing. However, our purchasing practices and pricing is of course affecting working conditions in our supply chain. What are your thoughts on the responsibility of states when they are acting as buyers (i.e. public procurement)? Especially connected to who is going to pay the cost for non-payment of wages?

A: Within the context of public procurement, governments act as buyers, and therefore hold the same responsibilities as buyers under the UNGPs. This entails that governments/buyers are responsible for ensuring that remedy is provided (whether directly or in collaboration with others) where they are linked to the violation in the supply chain. In addition to this, government buyers may be in a unique position to support fast repayment through existing state funds that may be dedicated to repayment initiatives.

Q: How can international lenders/companies exercise leverage when non-payment happens at the subcontractor level in a construction project? In that case a grievance mechanism at the project level is important, but a residual problem is the lack of leverage/contractual relationship with the party withholding the payments.

A: It is important to require tighter due diligence requirements down the supply chain. This means requiring contractors to have in place well-written clauses in their service level agreements (SLA) with their own suppliers, which allow them to check wage payments, and which require the subcontractors to share

*adequate and effective grievance mechanisms with the subcontracted workers. Due diligence should be a requirement, and a fundamental part of suppliers making sure that **their** suppliers are sticking to these SLAs. The UNGPs are clear that a lack of knowledge due to poor due diligence will not absolve requirements for remedy.*

Q: What is background for using repayment on an individual basis here, while in Impactt's recruitment fees guideline we are basing the repayment on averages?

A: The key rationale is that wages are legally owed, as a result of which each individual has a specific legal entitlement, while recruitment fees are more contentious, with these being legal in various jurisdictions. The guidelines recommend repayment on an individual basis whenever possible, but recognise that in some cases (e.g. with very large workforces) this may not be feasible, in which case average approaches can also be used to ensure repayment is made (similar to the recruitment fee guidelines).

As such, key considerations should be taken around practicality versus perfection, and whether a 'best practice' approach is being sought: please refer to p35 of the full guidelines for more details.

Q: Are there any examples of public disclosure of wage thefts?

A: There is some public disclosure out there around detailed reimbursement on backpay of wages from various big brands, including for example 7-Eleven:

<https://www.migrantjustice.org/highlights/2018/10/10/article-lessons-from-the-7-eleven-wage-repayment-program-for-remedying-migrant-worker-exploitation-in-australia>

Q: Can these guidelines be applied to cases from the recent past e.g. pandemic era cases?

A: Yes. These Principles and Guidelines were developed during this period, with live examples from this timeframe.