



# ADDRESSING THE RETENTION OF IDENTITY DOCUMENTS

The retention of worker identity documents has been identified as a common practice among employers and recruitment agencies in many countries and sectors around the world. It represents an infringement of international human rights\* and is a violation of national law in many jurisdictions. Retention of identity documents has also been identified by the International Labour Organization (ILO) as an indicator of vulnerability to forced labour. There are a number of important steps businesses can take to address this practice and its associated risk of labour abuse.

## WHY SHOULD EMPLOYERS TAKE ACTION AGAINST THE RETENTION OF IDENTITY DOCUMENTS?

The retention – or confiscation – of workers' identity documents (e.g. passports, work permits, certificates of qualification or travel documentation) typically affects international migrants, but can also involve those that cross internal borders. It can result in restrictions on workers' freedom of movement and can be used as a means to bind them to a particular job or employer, forcing them to do work that they may not have consented to for fear of losing their documents permanently. The practice can exacerbate migrants' vulnerability to other forms of abuse and prevent them from exercising their fundamental rights and freedoms in the workplace, such as their right to representation and association. In some jurisdictions, migrants may face detention, harassment or even deportation if they fail to produce documentation when asked by authorities. In a worst-case scenario, the retention of documents can be compounded with other factors and result in a situation of forced labour for workers.

## WHY DO SOME EMPLOYERS RETAIN WORKER "IDS"?

In some cases, workers may request employers to provide safe storage for their passports or other personal items for security reasons. In this case, coercion is not involved, but employers must nevertheless establish safeguards to ensure that workers have unrestricted access to their items.

In other cases, although it is frequently against the law, document retention may be used as a deliberate mechanism to restrict workers' freedom of movement. Document retention is sometimes practiced in cases where employers fear a newly recruited or trained worker will leave for a competitor, jeopardizing their "return on investment", e.g., the costs that have been assumed in recruitment and training. Employers may also cite withholding IDs as a requirement of insurance policies, for example when workers handle large sums of money or company goods. Whatever the case, document retention should not be permitted. These challenges should be addressed in a way that respects the fundamental rights of migrant workers.

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### \* Universal Declaration of Human Rights (1948)

Article 13(1): Everyone has the right to freedom of movement and residence within the borders of each State.

Article 13(2): Everyone has the right to leave any country, including his own, and to return to his country

Article 23(1): Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.



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## WHAT CAN EMPLOYERS DO TO PREVENT DOCUMENT RETENTION?

- » As noted above, document retention should be strictly prohibited. In cases where workers fear the theft or loss of personal items (for example, at on-site or dormitory housing), employers should provide a safe, voluntary storage option.
- » To do so, provide individual lockers in a secure location where workers have unrestricted access to their valuables. Provide copies of any stored documentation and obtain written consent from workers. Establish clear, concise and well-communicated procedures for the retrieval of documents in an expedient manner.
- » To meet legal obligations, create and store copies of identification documents, or temporarily request such documents and ensure their prompt return.

## HIRING & EMPLOYMENT PRACTICES

- » Whenever possible recruit, hire and manage migrant workers directly. If one or more of these functions are outsourced to private employment agencies, use licensed, reputable agencies that operate to the highest standard of ethics. Contracts with agencies should include provisions that prohibit document retention and require compliance with all labour and human rights laws.
- » Job candidates should be clearly informed of all terms and conditions of employment. Successful candidates should be provided with a written contract prior to deployment, specifying rights and responsibilities with regard to wages, hours of work, leave entitlements and other conditions. The practice of "contract substitution" should be strictly prohibited, and recruitment and other associated fees should not be charged to workers.
- » Respect migrant workers' freedom of association and their right to bargain collectively. Where such rights and freedoms are restricted by law, respect the self-organization of migrants and engage with representatives of their organizations.
- » Establish an effective grievance procedure to ensure that migrant workers, acting individually or collectively, can submit a grievance without suffering prejudice of any kind.
- » Ensure that pre-departure training and post-arrival orientation is provided for workers to understand their rights and responsibilities at work.

## COLLECTIVE ACTION, PUBLIC POLICY & ADVOCACY

- » Consult with sectoral or employers' organizations on good practice in addressing the issue and support the establishment of a task force or committee therein to focus attention on human trafficking and forced labour.
- » Support advocacy efforts to encourage governments to improve legal protections for migrants, strengthen mechanisms to better regulate employers and recruiters, and address immigration policies that exacerbate the vulnerability of migrants.
- » Encourage dialogue between sending and receiving countries through bilateral and multilateral means to ensure respect for human rights and extend labour and social protection to all migrants.

## CASE EXAMPLE: Tackling Passport Retention in the Supply Chain

The Coca-Cola Company identified the confiscation of workers' passports as a widespread practice in their supplier factories in the Gulf region. The practice was defended by factory representatives as legal and customary, but root cause analysis undertaken by the company revealed that, with only one exception, no country required passport confiscation; in fact, most countries expressly prohibited it. Coca-Cola responded by approaching the ILO, the U.S. Department of State and Labour, and other external stakeholders for assistance. The company implemented remediation procedures through supplier forums, connected suppliers to national government labour ministries so they could be better educated and monitored, and held one-on-one dialogue with suppliers. Subsequent tracking and monitoring by Coca-Cola determined that practices had rapidly changed as a result.

**Source:** IHRB, Fees and IDs: Tackling recruitment fees and confiscation of workers' passports, 2013.

## FURTHER INFORMATION

### RESOURCES

- Business for Social Responsibility, Migrant Worker Management Toolkit
- Institute for Human Rights and Business, Dhaka Principles for Migration with Dignity
- Human Rights and Business Dilemmas Forum: Migrant Workers
- Verité, Fair Hiring Toolkit

### RELEVANT INTERNATIONAL STANDARDS

- Universal Declaration of Human Rights (1948)
- ILO Declaration on Fundamental Principles and Rights at Work (1998)
- ILO Forced Labour Convention No. 29 (1930)
- ILO Private Employment Agencies Convention No. 181 (1997)
- International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families, in particular Article 21 (1990)
- Protocol to Prevent, Suppress and Punish the Trafficking in Persons, especially Women and Children (2000)

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