

PROTOCOL

between the Ministry of Labour, Invalids, and Social Affairs (MoLISA) and the Better Work Programme (Better Work) on Handling Zero Tolerance Issues in Better Work participating factories

Based on the Memorandum of Understanding between the MoLISA, Vietnam Chamber of Commerce and Industry; the Vietnam General Confederation of Labour; the International Labour Organization, and the International Finance Cooperation on the formulation and implementation of the Better Work in Vietnam signed on April 24, 2009;

Based on the Memorandum of Understanding between the MoLISA, Vietnam Chamber of Commerce and Industry; the Vietnam General Confederation of Labour; the International Labour Organization, and the International Finance Cooperation on the formulation and implementation of the Better Work in Vietnam for the period from 2014 to 2019;

Based on the Decree No. 106/2012/NĐ-CP by the Government dated December 20, 2012 on the function, mandates, rights and structure of the MoLISA;

With the purpose of prevention and sanctions on serious violations of the Vietnam labour legislations in Better Work Vietnam participating factories

The MoLISA and the Better Work Program agrees to sign the hereinafter called the "Protocol" under the following conditions:

Background

1. Better Work Enterprise Advisors may uncover serious rights violations when undertaking factory visits for either assessment or advisory purposes. In general, Better Work staff hold information learned through factory visits confidential, and only share information in line with the Terms and Conditions agreed by Better Work and participating factories. However, immediate action must be taken where critical issues, or circumstances that pose an imminent and significant threat to worker health and safety, are found. Thus, the Better Work Program and the MoLISA need to collaborate to have timely actions when serious violations at the enterprises are discovered. This document defines which issues will be considered zero tolerance when found or suspected, in the mean time, transfer the informations relating to violations to the MoLISA (through the MoLISA Inspectorate) to investigate and monitor to correct, stop, and prevent these violations at the enterprises.

2. Better Work and MoLISA will consider violation of Fundamental principles and rights at workplace and issues that pose an imminent threat to worker health and safety to be zero tolerance issues. In particular, suspected non-compliance on the following issues from the Compliance Assessment Tool will trigger the protocol identified below:

Definition of Zero Tolerance Issues

Child Labourers

- Workers under the age of 15 (except the cases that Vietnamese labour code allows)
- Workers under age 18 subjected to worst forms of child labour (forced labour, working in the heavy, hazardous, dangerous or extremely heavy, hazardous and dangerous working environment; and illegal activities in which the Vietnam labour law prohibits)

Forced Labour

- Not allowing workers to leave the workplace at all times, including during overtime in order to force them to work against their will
- Use of violence or the threat of violence to intimidate workers and force them to work

Corporal punishment, physical abuse, and sexual violence

- Corporal punishment, physical abuse
- Sexual violence or imminent threat of sexual violence

Occupational Safety and Health (OSH)

- Punishment of workers who remove themselves from work situations they believe present an imminent and serious danger to life or health
- OSH violations that pose an imminent and significant threat to worker health and safety.¹

Freedom of Association (FOA)

Egregious violations of freedom of association may be determined by Better Work Programme Manager and MoLISA to constitute a zero tolerance issue, aligning with the national labour law and the international labour standards of the ILO.

This protocol also applies if any of the above conditions are found in employer-provided housing that is checked as part of a factory visit.

Protocol when Zero Tolerance Issues are Identified

1. Enterprise Advisors will immediately report directly to the Better Work Programme Manager any violations or suspected violations of the zero tolerance issues identified above, which they may find while undertaking factory visits. In the event that Enterprise Advisors identify victims of sexual violence, they inform the victims of their options to seek assistance and provide referral information.
2. If the Better Work Programme Manager considers that a violation has occurred, s/he will, within 48 hours, inform the MoLISA Inspectorate and DoLISA Inspectorate in writing of the violation. Instances of sexual violence and the identity of victims of sexual violence are disclosed **only** upon their request.
3. Within 12 hours since being officially informed by the Better Work Program, MoLISA Inspectorate will inform relevant DoLISA in order to investigate and handle the violations within 03 working days since receiving information and report to the MoLISA Inspectorate and DoLISA Inspectorate accordingly
4. The Better Work Programme Manager will follow up with the MoLISA Inspectorate within 05 working days of informing the MoLISA Inspectorate of the violation to agree on an action plan. Action Plans will vary dependent on the violation identified and the underlying circumstances, but always include both investigation and remediation. The Action Plan for each specific zero tolerance issue is aligned with the process agreed between the Better Work Program and the MoLISA if the case cannot be handled by the DoLISA Inspectorate. See Annexes 1, 2, 3, 4 for examples of recommended remediation approaches²

¹Note: Better Work will conduct national level risk assessments in all Better Work countries, in order to identify the areas of greatest risk in relation to building and fire safety at a national level. Based on the risk assessment, Better Work will discuss potential additional zero tolerance issues with the MoLISA.

²In the framework of this protocol, annexes are recommended approaches based on international good practices. For each specific zero tolerance issue, Better Work Program will work with a designated technical department of the MoLISA to develop and implement a process that aligns with national laws and ILO conventions

5. The MoLISA Inspectorate will inform Better Work in writing of the findings of the investigation and the outcome of the remediation.
6. The Better Work Programme Manager will follow up the implementation of the Action Plan, correction, and remediation at the enterprises and update the MoLISA accordingly.
7. Throughout the investigation and remediation efforts, the well-being of the victim(s) of the violation is safeguarded and any action taken must not in any way place the victim in any further danger or make him or her vulnerable to any retribution.
8. The MoLISA will not disclose information provided to it by Better Work in connection with this Protocol, or disclose information collected in connection with the implementation of the Protocol to parties other than Better Work beyond that necessary to implement the Protocol, including carrying out appropriate remediation.

(Note: The timeframes stated represent the maximum timeframe for action. Where necessary, actions will be completed sooner)

Implementation

1. This Protocol shall be effective since September 1st, 2016.
2. This Protocol is subjected to be reviewed and revised as agreed between the MoLISA and the Better Work Program to adapt with reality during its implementation
3. Besides this Protocol, the Better Work Program agrees with international buyers who are partners of the program on a specific zero tolerance protocol at their suppliers (see Annex 5)
4. Nothing in this zero tolerance protocol or relating thereto shall be construed as constituting a waiver of the privileges and immunities of the ILO.

This Protocol is agreed and signed in Hanoi by the MoLISA and the Better Work Program on August 9th, 2016 and made in 02 copies in both English and Vietnamese with equivalent validity.

Ministry of Labour, Invalids, and Social Affairs



Phạm Minh Huan
Phạm Minh Huan
Vice Minister

Better Work Global

Dan Rees
Director

Annex 1: Recommended approach for remediating cases of underage workers

1. The case is immediately referred to the relevant departments within the MoLISA. A full investigation is carried out, and the employer is subject to appropriate sanctions. If necessary, the child's age is confirmed through interviews and documentation. If it is not possible to confirm the worker's age, the worker is presumed to be a child.
2. The child immediately ceases to work at the factory.
3. Key people and institutions whose assistance is required for remediation are identified. Depending on the circumstances, these may include relevant departments within the MoLISA and other ministries, the employer, the recruitment agent (if any), the worker, the child's family, trade union representatives, buyers, NGOs, and healthcare and counselling service providers.
4. If necessary, a guardian is appointed to represent the best interests of the child. Children of sufficient age and maturity participate in any decisions that may affect them.
5. The child is placed in suitable education/vocational training schemes in accordance with the principle of the best interest of the child, until s/he turns 15.
6. The employer pays any fees associated with the placement of the child in the education/vocational training schemes, and housing costs if the child will not reside with family.
7. The employer provides the child with a monthly compensation payment until s/he turns 15, calculated based on previous earnings.
8. Payment of the compensation payment is made directly to the child or her/his parents/legal guardian and takes place one day after each normal monthly pay-day, or on the day after when this falls on a weekly rest day or a public holiday.
9. Any outstanding disciplinary fines or other monies owed by the child to the employer are forgiven.
10. Monitoring is undertaken to verify that the child is attending the educational courses and receiving the relevant payments.
11. Should the child wish, the employer will re-employ her/him when s/he has turned 15.
12. The employer ensures that the age of all workers will be verified against reliable documents prior to recruitment (including workers recruited through agents).
13. The employer ensures that workers who are between 16 and 18 years of age are not subject to the worst forms of child labour, including hazardous work.
14. Better Work works with the factory during advisory services to ensure that non-compliances relating to child labour are addressed in a sustainable manner, and that all measures taken are in the best interest of the child.

Annex 2: Recommended approach for remediating issues relating to forced labour

1. Appropriate remedial action is taken to assist/protect workers, depending on the violation. For example,
 - the employer removes restrictions on workers' freedom of movement, and workers are informed about the change in policy
 - persons accused of threat or violence in the workplace are suspended immediately pending the outcome of the investigation; persons found to be responsible for threat or violence are disciplined appropriately by the employer (and through government prosecution if appropriate).
2. Egregious cases of worker confinement, or physical or psychological abuse are referred to law enforcement authorities and/or NGOs. For example,
 - law enforcement authorities and/or NGOs provide workers a safe place to stay and link them to needed services, including healthcare, counselling, shelter, legal aid and other services; the employer bears the cost of any necessary services, including housing
3. The MoLISA pursues appropriate enforcement action against the employer, in coordination with other governmental authorities if appropriate under the circumstances.
4. Better Work works with the factory during advisory services to ensure that noncompliances relating to forced labour are addressed in a sustainable manner, and that all measures taken are in the best interest of the victim.

Annex 3: Recommended approach for remediating sexual violence

1. Instances of sexual violence and the identity of victims of sexual violence are disclosed only upon the victim's request. If disclosed, confidentiality is maintained to the extent practical and appropriate under the circumstances.
2. Law enforcement authorities are notified (**only** upon the victim's request).
3. Law enforcement authorities and/or NGOs provide victims a safe place to stay and link them to needed services, including healthcare, counselling, shelter, legal aid and other services; the employer bears the cost of any necessary services, including housing.
4. The worker is given the option of moving to another section of the factory (away from the perpetrator). Any associated costs are covered by the employer.
5. Persons accused of violence in the workplace are suspended immediately pending the outcome of any investigation; persons found to be responsible for violence are disciplined appropriately by the employer (and through government prosecution if appropriate).
6. The employer ensures that all employees, including management and workers, participate in training on sexual harassment/sexual violence.
7. The factory adopts a sexual harassment policy, and develops transparent, impartial and reliable grievance mechanisms to effectively address sexual harassment/sexual violence.

Annex 4: Recommended approach for remediating Occupational Safety and Health (OSH)

1. Workers are removed from situations involving serious and imminent risk.
2. The MoLISA pursues appropriate enforcement action against the factory, in coordination with other appropriate governmental authorities if appropriate.
3. The factory joint worker/management OSH Committee addresses issues of health and safety and recommends correction of unsafe or harmful conditions and practices, and factory rules and procedures to prevent accidents and disease.
4. Better Work works with the factory during advisory services to ensure that noncompliances relating to occupational safety and health are addressed in a sustainable manner.

Annex 5: Protocol with Buyers

1. Better Work will notify all buyers subscribing to the factory at which the violation took place within 48 hours of identifying the issue. Instances of sexual violence and the identity of victims of sexual violence are disclosed **only** upon their request.
2. Better Work will notify all buyers subscribing to the factory of the action plan with the MoLISA, within 24 hours of agreeing it with the Ministry.
3. Better Work will seek to involve buyers in remediation efforts, where appropriate, and will keep buyers regularly updated throughout remediation efforts.
4. Better Work will notify all buyers subscribing to the factory and seek their active support, if at any point during remediation efforts the factory is not cooperating or making progress.