

Rural Migration News

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Codes of Conduct and Labor Law Compliance

Can private codes of conduct substitute for government to ensure compliance with labor laws in supply chains that involve low-wage

workers? MIT's Richard Locke persuaded Nike to allow analysis of the audits conducted in Nike supplier factories, and concluded that pri-

vate audits and certifications did not ensure continuous supplier compliance with labor laws.

Nike suppliers moved in and out of compliance with labor laws. Locke concluded that capability-building, as when buyers help their suppliers to raise productivity and share the gains with employees, offers the most promise to improve wages and working conditions for low-wage workers when governments are unable or unwilling to enforce labor laws.

Nike, named for the Greek goddess of victory, is the most valuable apparel brand in the world, worth more than twice as much as Adidas, its closest sportswear rival, and more than Louis Vuitton, Gucci, and Chanel. Founded in 1972 by Phil Knight and his former University of Oregon coach Bill Bowerman, Nike's swish and just do it slogan have joined the ranks of iconic brands such as Apple and Coke to generate sales of \$45 billion in 2021. Basketball star Michael Jordan was the first major sports figure to endorse Nike, and today stars and teams in a wide range of sports are Nike ambassadors.

Most Nike shoes and apparel are produced by contractors in Asia. Reports of poor working conditions in these factories in the 1990s prompted Nike to develop labor standards for its contractors and require them to be audited and certified as in compliance with local labor laws by independent third parties. Locke reviewed these audits and revisited some of the factories.

Models

There are three major ways to encourage employers to comply with labor laws, coercion, commitment, and capability building. Coercion implies that the threat

Nike's Code of Conduct for Suppliers Lays Out Four Types of Requirements for Suppliers



of penalties from enforcement by government or the loss of orders from buyers will induce suppliers to comply with labor laws.

Locke found that coercion failed to ensure compliance in the factories supplying Nike. Many Nike contractors were in compliance for audits, which typically take several days and cost the factory several thousand dollars, and then slipped into non-compliance when faced with pressure from Nike to reduce costs or meet deadlines.

Locke traces the roots of the coercion model to three assumptions about the relationship between buyers and suppliers. First, researchers such as Gary Gereffi believe that buyers have power over their suppliers, so that a buyer threat to stop purchasing from non-compliant suppliers will force them to comply. Second is the belief that audits can detect non-compliance, and third is the notion that continued compliance is in the economic interest of the supplier because certification means more contracts and/or higher prices from buyers.

Locke found that these assumptions were wrong. Some of the Asian factories that produce footwear and electronics for global brands are large businesses that sell to many buyers, giving them bargaining power. Buyers often put shoe or apparel purchases out to bid, so that a certified factory may not win a continuing stream of orders from a particular brand. Buyers are reluctant to break ties with supplier factories that produce desired goods on time and at cost, and justify continuing to work with out-of-compliance factories by saying that purchasing from the factory gives the brand leverage to improve conditions for its employees.

Nike Limits Regular Work Weeks to 48 Hours, Bans Mandatory Overtime, and Requires Payment of the Applicable Minimum or Prevailing Wage

CODE OF CONDUCT STANDARDS

RESPECTED



EMPLOYMENT IS VOLUNTARY

The supplier does not use forced labor, including prison labor, indentured labor, bonded labor or other forms of forced labor. The supplier is responsible for employment eligibility fees of all workers, including recruitment fees.

EMPLOYEES ARE AGE 16 OR OLDER

Supplier's employees are at least age 16 or over the age for completion of compulsory education or country legal working age, whichever is higher. Employees under 18 are not employed in hazardous conditions.

SUPPLIER DOES NOT DISCRIMINATE

The men and women employed by the supplier are not subject to discrimination in employment, including hiring, compensation, promotion or discipline, on the basis of gender, race, religion, age, disability, sexual orientation, pregnancy, marital status, nationality, political opinion, trade union affiliation, social or ethnic origin or any other status protected by country law. Women and men shall receive equal pay for work of equal value.

FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING ARE RESPECTED

Supplier shall recognize and respect the right of employees to freedom of association and collective bargaining. Where the right to freedom of association and collective bargaining is restricted under law, the supplier allows the development of parallel means for independent and free association and bargaining.

FAIR



HARASSMENT AND ABUSE ARE NOT TOLERATED

Supplier's employees are treated with respect and dignity. Employees are not subject to physical, sexual, psychological or verbal harassment or abuse.

WORKING HOURS ARE NOT EXCESSIVE

Suppliers shall not require workers to work more than the regular and overtime hours allowed by the law of the country where the workers are employed. The regular work week shall not exceed 48 hours. Suppliers shall allow workers at least 24 consecutive hours of rest in every seven-day period. All overtime work shall be consensual. Suppliers shall not request overtime on a regular basis and shall compensate all overtime work at a premium rate. Other than in extraordinary circumstances, the sum of regular and overtime hours in a week shall not exceed 60 hours.

COMPENSATION IS TIMELY PAID

Supplier acknowledges that every employee, male or female, has a right to compensation for a regular work week that is sufficient to meet employees' basic needs and provide some discretionary income. Supplier's employees are timely paid at least the minimum wage required by country law, or prevailing wage, whichever is higher, and provided legally mandated benefits, including holidays and leaves, and statutory severance when employment ends. There are no disciplinary deductions from pay. When compensation does not meet the employees' basic needs and provide some discretionary income, supplier shall develop, communicate and implement strategies to progressively realize compensation that does.

Most Nike Supplier Factories are in Asia



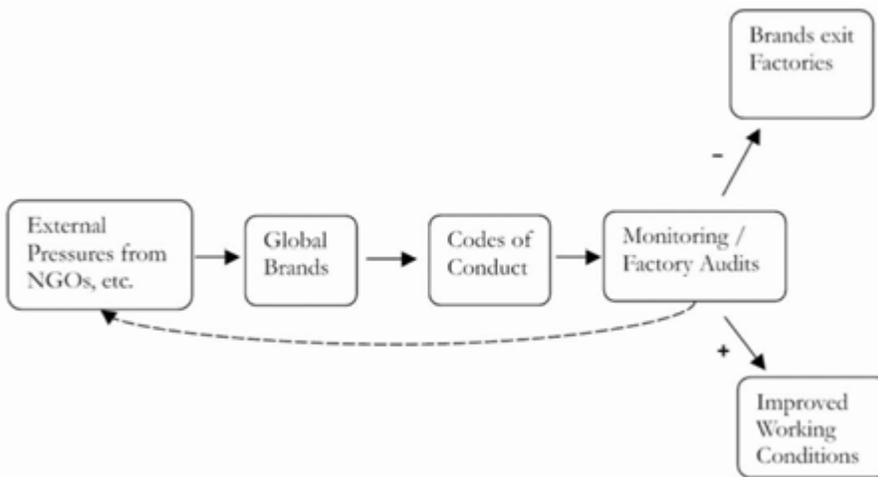
Source: <https://purpose.nike.com/code-of-conduct>

Commitment is the marriage-like suggestion that buyers and suppliers forge long-term relationships and adapt to each other's changing needs, or when violating employers sign compliance agreements with government agencies that involve regular reporting to ensure that the employer does not revert to non-compliance. Locke found that long-term relationships between buyers in rich countries and suppliers in poor countries did not lead to sustained compliance with labor laws. Locke did not study compli-

ance agreements between employers and government agencies.

Locke believes that capability-building is most promising. Many factory managers are not trained in how to improve margins by boosting productivity; instead, they seek to raise profits by reducing costs. Locke found examples of factories that received capability-building help from buyers such as Ikea to improve productivity and share some of the additional profits with their employees.

Coercion Assumes that Buyers Have More Power than Suppliers, and Can Impose and Enforce Codes of Conduct on Suppliers



Both factories were unionized and paid the same 65 peso (\$6) daily minimum wage and offered bonuses for overtime work and exceeding production quotas. Workers at the team-factory near Mexico City earned more, 960 pesos a week, than the individual-employee factory, 765 pesos a week, and were more satisfied with their jobs.

Locke and Romis concluded that the similar audit scores for the two factories reflected the fact that the Mexican family-owned firm was less careful about documenting its procedures. The Taiwanese-owned firm, which had experience with Nike elsewhere, was careful with documentation. Locke and Romis concluded that the Mexican family-owned firm saw employees as part of a team that was striving for success, while the Taiwanese-owned firm saw employees as a cost to be minimized, explaining higher employee satisfaction at the family-owned firm.

Locke and Romis found that even rigorous audits of suppliers can conceal as much as they reveal. They conclude that continuous interactions between buyers and suppliers, the capacity-building model of Ikea, are most promising to raise productivity and share the gains with employees.

5 Lessons

Analysis of several years of Nike audit reports led Locke to five major conclusions. First, private company codes of conduct imposed by buyers on suppliers have limited long-run effects on employee wages and working conditions because supplier factories move in and out of compliance. Factories pay for audits, make short-run changes to pass audits and then slip back into non-compliance. Audi-

Ikea Works with its Suppliers to Raise Productivity



PURCHASING AND SUPPLY MANAGEMENT (2020-2021)
PROJECT – IKEA

Mexico

Locke and Romis compared two Mexican garment factories that received similar scores of 86-87 on Nike’s most comprehensive audits and found very different wages, working conditions, and employee satisfaction, a result they attributed to the checklist nature of audits.

One factory near Mexico City that was owned by a Mexican family for over half a century organized workers into teams, with workers performing multiple jobs and encouraged to submit suggestions to raise productivity. The other factory was owned by a Taiwanese-based firm that had its employees specialize in one task.

tors whose jobs depend on factories hiring them are under pressure to find that their clients in compliance.

Second, raising the capability of supervisors may be the best way to improve efficiency and increase profit margins, since the extra profits from improved productivity allow suppliers to comply with labor laws and to raise wages and improve working conditions. Suppliers whose operations are barely profitable are most likely to see employees as a cost to be minimized rather than as partners in production.

Third, generating extra profits raises the question of how to share them between buyers, suppliers, and employees. The actual distribution of productivity gains reflects buyer-supplier relationships, government laws and institutions, and labor market conditions such as the supply of and demand for workers and whether employees are represented by unions.

Fourth, some poor working conditions such as excessive overtime arise from buyer practices. For example, buyers who are uncertain about how much clothing, shoes, or electronics will be sold may hold minimal inventories. If an item proves to be popular, buyers place orders for additional supplies with tight delivery timelines, which can lead to excess work hours and suppliers turning to contractors to obtain additional workers. Locke emphasizes that the source of some violations in a downstream workplace may have roots in risk-minimizing behavior upstream in the supply chain.

Fifth, governments are key actors, since they enact and enforce labor laws and foster or retard worker organizations. The priority of some governments is to maximize foreign direct investment and job creation,

Two Mexican Garment Factories Received Similar Audit Scores But had Different Wages and Working Conditions

Although Plant A and Plant B had very similar scores on one type of Nike supplier audit, the two workplaces are in some ways quite different.

Job Attributes	Plant A	Plant B
Average Weekly Wage	US\$85.50/week	US\$68/week
Teamwork	Yes	No
Job Description	Multiple tasks	Single task
Job Rotation	Yes	No
Worker Participation in Work-Related Decisions	Yes	No
Overtime	Voluntary and within limit	Mandatory and over limit

Source: <https://sloanreview.mit.edu/article/improving-work-conditions-in-a-global-supply-chain/>

The Ethical Charter Calls on Produce Firms to Comply With Labor Laws



Source: <https://equitablefood.org/learn-more/ethical-charter-on-responsible-labor-practices/>

which makes them less likely to enact and enforce labor laws that may raise labor costs and deter FDI. Other governments see foreign-owned firms as privileged and try to ensure that they are in compliance with labor laws.

Agriculture

The Los Angeles Times in December 2014 published a four-part series entitled Product of Mexico that highlighted child and forced labor on Mexican farms that export fruits and vegetables to the US.

In response, US buyers called on their Mexican suppliers to comply with labor laws, Mexican exporters formed associations such as AHIFORES to promote compliance, and the Mexican government stepped up enforcement of labor laws.

Two US-based associations, United Fresh and PMA, developed an Ethical Charter on Responsible Labor Practices that called on employers in the fresh produce industry to comply with applicable labor laws and to treat employees with

The Fair Labor Association’s Audit Forms Generally Require Yes Or No Answers

FLA Compliance Benchmarks for the Agriculture Sector – October 2015

G. AGRICULTURE COMPLIANCE BENCHMARKS

I. Employment Relationship

Employment Relationship (ER)				Comments:
Code provision: Employers shall adopt and adhere to rules and conditions of employment that respect workers and, at a minimum, safeguard their rights under national and international labor and social security laws and regulations.				
Comment: Formal employment relationship benchmarks do not apply to family members workers involved in the production activities, with the exception of benchmarks ER.22 (access to training for family members) and ER.26 (access to grievance procedure). A worker is considered as family worker when living on the farm premises in the same household of the farmer/producer. When family members are migrating as a group to get seasonal work on a farm, they are considered as hired workers and the benchmarks apply.				
No.	Benchmarks	Applicable to Farms with Informal Labor Structures	Applicable to Farms with Formal Labor Structures	X means it is a minimum benchmark to comply with x means it is a progress benchmark that needs to be met after x years (to be defined)
ER.1 General/Human Resource Management Systems				
ER.1.1	Employer shall have written terms and conditions of employment, job descriptions, rules of compensation, and working hours for all positions. In the case of workplaces with informal labor structures, employers should be able to describe verbally all of the above terms and conditions and clearly communicate them to workers.	X	X	New benchmark
ER.1.2	Employers shall assign responsibility for the administration of human resources to a clearly defined and adequately qualified staff member or staff members and ensure workers at all levels receive communication and training about existing policies and procedures or any revisions.		x	
ER.1.3	Employers should implement a regular review process of policies, procedures and their implementation in a consultative manner and amend when warranted.		x	
ER.2 General/Documentation and Inspection				
ER.2.1	Employers shall maintain on file all documentation needed to demonstrate compliance with the FLA Workplace Code and required laws, at the farm itself or externally with the sourcing company, intermediary, cooperative or an accountant or administrator.	x	X	
ER.2.1.1	Employers shall make these documents available to third-party assessors commissioned by the FLA and shall submit to unannounced inspections.	x	X	

Source: <https://www.fairlabor.org/accountability/standards/agriculture/ag-code/>

respect. The Ethical Charter has 13 standards grouped into three categories, labor laws, human rights, and professional conduct.

Perspective

Locke emphasizes the limitations of buyer-developed codes of conduct to effectuate lasting improvements in the wages and working conditions of low-wage workers. Most employment codes of conduct require suppliers to obey local labor laws and are enforced by third-party auditors who spend several days interviewing workers and managers and answering yes or no to a list of questions.

Auditing benefits firms that can document the existence of policies in each area covered by the code. However, auditors are much less effective at determining whether these policies are implemented

on a day-to-day basis or whether employees in firms that “pass” audits are satisfied with their wages and working conditions.

The best guarantee of labor law compliance is labor market pressure or the inability of non-compliant firms to hire workers. If there are more jobs than workers, market forces put upward pressure on wages and encourage employers to improve working conditions and benefits. Conversely, when there is an ample supply of workers, employers can hire workers without raising wages, enforce tough productivity standards, and limit benefits.

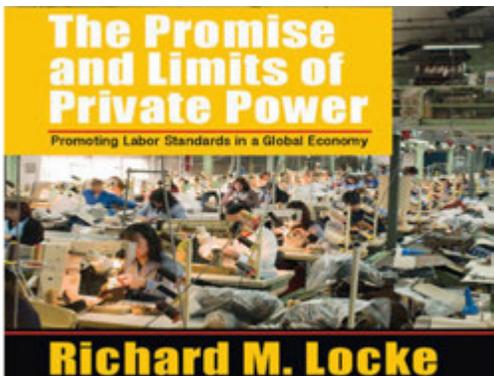
Labor laws and codes of conduct work best when they are needed least. When workers are scarce, employers cannot find workers unless they comply with labor laws and codes of conduct. Until then, a combination of codes of conduct

and audits, combined with government enforcement of labor laws and worker organizations and NGOs highlighting deficiencies, offers the best hope for labor law compliance.

The FLA Requires Farm Operators to Ensure that Workers Brought to Their Farms Do Not Pay Recruitment Costs and are Paid at Least the Minimum Wage

ER.3	Recruitment and Hiring/Proof of Age Documentation			
ER.3.1	Employers shall verify proof of age documentation for all young workers in the farm at the time of their employment and work towards collecting and maintaining all documentation necessary to confirm and verify date of birth of all workers, including long term and casual workers.	X	X	
ER.3.1.1	Employers shall take reasonable measures to ensure such documentation is complete and accurate.	X	X	
ER.3.1.2	In those cases where proof of age documentation is not readily available or unreliable, employers shall take all necessary precautions which can reasonably be expected of them to ensure that all workers are at least the minimum legal working age, including requesting and maintaining medical or religious records of workers, or through other means considered reliable in the local context.	X	X	
ER.4	Recruitment and Hiring/Employment Agency Recruitment Practices			
	Employers shall not use employment agencies/labor contractors that rely on any practice that is linked to: using false information to recruit workers; restricting workers' freedom of movement; requiring workers to pay recruitment and/or employment fees; withholding from workers a copy of their employment contract in their native language that sets forth the general terms and conditions of engagement and employment; retaining possession or control of workers identification and other documents like passports, identity papers, work permits, and other personal legal documents; punishing workers for terminating employment.	X	X	New benchmark
ER.5	Recruitment and Hiring/Employers Agreement with Employment Agencies, Labor Contractors or Referrals			
ER.5.1	No worker hired by an employment agency or a labor contractor shall be compensated below the legal minimum wage. The same rights as provided for directly hired contract workers apply for workers hired via an employment agency or labor intermediary.	X	X	
ER.5.2	Fees associated with the employment of workers shall be the sole responsibility of employers. No worker hired via an employment agency or a labor contractor shall pay a fee or get a reduction by applying a fee over his salary.	X	X	
ER.5.3	Workers shall not be engaged to work in a farm by a family member, friend, or associate in order for that family member, friend or associate to receive continuing remuneration, consideration, or any other return from the employer. This prohibition does not refer to normal references, referral bonuses or standard employment recruitment practices.	X	X	New benchmark

Source: <https://www.fairlabor.org/accountability/standards/agriculture/ag-code/>



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