

Freedom of Association & Collective Bargaining

Principle:

All workers, regardless of rank or job grade, have the right to form and join trade unions of their choice, and to bargain collectively. Where the right to freedom of association and collective bargaining are restricted under law, parallel means of independent and free association and bargaining are made available to all workers.

Key message:

Collaborating with workers' representatives provides broader views and can help increase motivation and morale at sites.

Definition of freedom of association

"Freedom of association is the right of workers and employers to form and join organisations of their own choosing.¹ It involves the right of individuals to interact and organise among themselves to collectively express, promote, pursue and defend common interests."²

Definition of collective bargaining

"All negotiation which take place between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more workers' organisations, on the other."³

Facts:

- Freedom of association and collective bargaining is a fundamental human right.⁴
- Many countries still restrict individuals from forming workers' unions.⁵
- However, the trade union membership in Malaysia shows a positive upward trend.⁶

¹ International Labour Organisation. (n.d.). Freedom of association. <https://www.ilo.org/global/topics/freedom-of-association-and-the-right-to-collective-bargaining/lang-en/index.htm>

² United Nations Human Rights Office of the High Commissioner. (n.d.). Freedom of assembly and of association. <https://www.ohchr.org/en/topic/freedom-assembly-and-association>

³ International Labour Organisation. (n.d.). What is collective bargaining? https://www.ilo.org/global/topics/collective-bargaining-labour-relations/WCMS_244362/lang-en/index.htm

⁴ United Nations. (1948). Universal Declaration of Human Rights. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

⁵ International Labour Organisation. (n.d.). Migrant workers' rights to freedom of association and collective bargaining. https://www.ilo.org/wcmsp5/groups/public/--ed_protect/--protrav/--migrant/documents/publication/wcms_883451.pdf

⁶ Jabatan Pendaftaran Pertubuhan Malaysia. (n.d.). Trade Union and Globalisation. <https://jpp.mohr.gov.my/files/pdf/notes/5%20TRADE%20UNION%20AND%20GLOBALISATION.pdf>

What is freedom of association?

- It is the right of people to be able to come together, to form or join informal or formal groups, for the purpose of collective action.
- It is widely regarded as fundamental to a free and fair society, which permits groups to act together towards a common cause or interest.
- All workers have the right to form or join groups that represent their interests. They also have the right to elect their own representatives.
- These groups can be trade unions, workers' committees, or other bodies, although their legal status varies.
- It allows workers and employers to come to agreements that reflect the interests of both parties.
- Sites that allow and facilitate workers to collectively bargain generally have higher morale, greater productivity and are more able to work together to solve challenges.

What is expected at sites?

- Mechanisms that allow workers to express their views about working conditions and terms of employment. This can include regular meetings between workers' representatives and site management, and should be more than a suggestions box or hotline.
- Subject to legal requirements, all workers have the right to join, form and collectively bargain within trade unions or workers' committees.
- Workers are not discriminated against for being union or workers' committee members.
- Workers are able to freely select their own representatives - their representatives should not be appointed by the site management.
- Workers are made aware of their rights to freedom of association and collective bargaining.
- Workers' rights are written in appropriate languages, and posted in a public place.

What is collective bargaining?

- Collective bargaining is facilitated by freedom of association.
- Collective bargaining is where workers collectively negotiate with employers over terms of employment, grievances, or other matters.
- These negotiations can lead to agreements that reflect both workers' and employers' interests.

Why is freedom of association and collective bargaining important?

- Freedom of association and collective bargaining allows workers to protect the wellbeing of themselves and their families.
 - This limits the capacity of companies to exploit individuals or groups of workers.
-



Non-discrimination of union members

- Discrimination against individuals based on any factor not related to their job performance is illegal in many countries.
- This includes discrimination against individuals based on union or committee membership.
- Workers that are part of unions or workers' committees cannot be treated differently to non-members.
- This must be reflected in sites' non-discrimination policies and training.
- Union or committee members should receive the same terms of employment, pay and working conditions as non-members.
- Any worker who feels discriminated against should be allowed to lodge a grievance, which is dealt with through the grievance procedure.

DISCLAIMER: The information in this document is prepared for a brief and general guideline for informational purposes only. Best efforts have been made to ensure that information included is correct to the best of our knowledge but, whilst EF may make up dates from time to time, EF has no obligation to do so and cannot be held liable for the accuracy of the information. The information provided is 'as is' and no warranty is made as to the completeness, accuracy or reliability of the information. As far as it is permitted by law, Earthworm Foundation (and its affiliates, subsidiaries and representatives) will (a) not be liable for any claims or damages related to the quality, completeness or accuracy of the information, (b) not owe any duty of care to the reader of this document, (c) not bear liability for any direct or indirect consequence due to error, misstatement or omission by EF. Readers are strongly encouraged to use this information as a guide to do their own research and to ensure that any relevant laws, rules, regulations and / or guidelines relevant to their company or business operations are adhered to.