

MORE THAN WORDS:

Criteria for an Effective Labour Rights Assessment

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Following increasing union organizing activity and reports of company violations of workers' freedom of association and collective bargaining rights, shareholders perceived contradictions between some companies' commitments to human rights principles and their actual labour practices. This led to investors filing shareholder proposals (example text to right) calling for independent third-party assessments of a company's adherence to its publicly stated policies.

Resolved clause: Shareholders urge the Board of Directors to commission and oversee an independent, third-party assessment of a company's adherence to its stated commitment to workers' freedom of association and collective bargaining rights as contained in the International Labour Organization's (ILO) Declaration on Fundamental Principles and Rights at Work and the UN Guiding Principles on Business and Human Rights and explicitly referenced in the company's own policy. The assessment should apply to the company's direct and licensed operations and address management non-interference when employees exercise their right to form or join a trade union as well as steps to remedy any practices inconsistent with the company's stated commitments. The assessment, prepared at reasonable cost and omitting confidential, proprietary, or legally privileged information, should be publicly disclosed on the company's website.

Please note that this brief is for informational purposes only. It is not intended to provide and should not be relied on for investment, legal, tax or accounting advice. Trustees should consult their own advisors and investment professionals to evaluate the merits and risks of any investment.

ASSESSING COMPANY COMPLIANCE WITH LABOUR RIGHTS STANDARDS



The *United Nations Guiding Principles on Business and Human Rights* (UNGPs) established a framework – Protect, Respect, Remedy – for businesses to comply with their human rights obligations.¹ Specifically for company implementation of labour rights, the UNGPs reference the International Labour Organization (ILO) core conventions as set out in the *ILO Declaration on Fundamental Principles and Rights at Work* (ILO Declaration), including the conventions on the rights to freedom of association and collective bargaining.² Moreover, the UNGPs assert that “all business enterprises have the same responsibility to respect human rights wherever they operate” and should “honour the principles of internationally recognized human rights when faced with conflicting requirements.”

Similarly, the *Organization for Economic Cooperation and Development Guidelines for Multinational Enterprises* (OECD Guidelines) states, “in all cases irrespective of country or specific context of enterprises’ operations, reference should be made to the internationally recognized human rights expressed in... the International Labour Organisation Declaration on Fundamental Principles and Rights at Work.” Further, it states that enterprises should “Respect the right of workers to establish or join trade unions of their own choosing, including by avoiding interfering with workers’ choice to establish or join a trade union or representative organization of their own choosing.”³

These and other international human rights standards⁴ provide the criteria for the assessment of company compliance with workers’ rights to freedom of association and collective bargaining. As they explicitly state, these guidelines apply even where they are more demanding than national law.

1 https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf.

2 https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/normativeinstrument/wcms_716594.pdf.

3 https://read.oecd-ilibrary.org/finance-and-investment/oecd-guidelines-for-multinational-enterprises-on-responsible-business-conduct_81f92357-en

4 For example, the UN Global Compact: <https://unglobalcompact.org/>

RATIONALE FOR ASSESSMENT



Many companies have adopted human rights policies, often with specific reference to the UNGPs, the OECD Guidelines, and/or the ILO Declaration. At the same time, a number of such companies have been accused of labour rights violations, in apparent contradiction to their public commitments. Many investors believe misalignment between a company's public commitments and its reported conduct represents meaningful reputational, legal, and operational risks and may negatively impact its long-term value. Failing to respect workers' rights could cause workplace conflict, worsen morale, and increase turnover in ways that impact productivity. Labour rights violations could harm a company's reputation with customers and hurt its ability to attract and retain the high-performing workforce necessary to provide quality products and services.

Recent whitepapers by [Trillium Asset Management](#)⁵ and the [Global Unions' Committee on Workers' Capital](#)⁶ summarize studies showing that workers' exercise of their rights to freedom of association and collective bargaining can have significant benefits on turnover, productivity, and health and safety. Additionally, anti-union activity may result in reputational risk to a company's brand and goodwill, particularly considering the growing public approval rating of unions in recent years.

Further, union membership has been shown to have a positive impact on retention, in some cases reducing turnover by as much as 65%⁷ – a significant reduction given that companies can spend approximately 20% of a worker's salary to replace a single position.⁸ One study published in the *Employee Responsibilities and Rights Journal*, showed that non-union members demonstrated a mean intention to leave of 4.07, compared to unionized members' intention of 2.87, on a scale of 1-10.⁹ Collective bargaining can be used to improve work-life balance, fair scheduling, and job advancement, which can then motivate workers to remain at their current company. With increased tenure comes greater skill and efficiency, which improves productivity.

Trade union density and inequality are related. Research indicates the decline of union density is a contributor to wage stagnation and rising inequality rates.¹⁰ Conversely, a study of 32 OECD countries found that higher collective bargaining coverage for working people is strongly correlated with lower wage inequality.¹¹ In these ways, upholding fundamental labour rights redounds to investors by mitigating systemic risks from inequality and boosting economic growth from improved aggregate demand.

5 <https://www.trilliuminvest.com/whitepapers/the-investor-case-for-supporting-worker-organizing-rights>

6 <https://www.workerscapital.org/our-resources/shared-prosperity-the-investor-case-for-freedom-of-association-and-collective-bargaining/>

7 Steven E. Abraham, Barry Friedman and Randall K. Thomas, "The Impact of Union Membership on Intent to Leave: Additional Evidence on the Voice Face of Unions," *Employee Responsibilities and Rights Journal*, December 2005. P. 202. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2507925

8 Heather Boushey, Sarah J. Glenn, "There are Significant Business Costs to Replacing Employees," *The American Prospect*, November 16, 2012. <https://www.americanprogress.org/article/there-are-significant-business-costs-to-replacing-employees/>

9 Steven E. Abraham, Barry A. Friedman, and Randall K. Thomas, "The Impact of Union Membership on Intent to Leave: Additional Evidence on the Voice Face of Unions," *Employee Responsibilities and Rights Journal* 17, no. 4 (2005): p. 208, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2507925 and, Heather Boushey and Sarah Jane Glynn, "There Are Significant Business Costs to Replacing Employees," (*American Progress*, November 16, 2012).

10 <https://home.treasury.gov/system/files/136/Labour-Unions-And-The-Middle-Class.pdf> **BROKEN LINK**

11 <https://www.oecd.org/employment/emp/34846881.pdf>

EXPECTATIONS FOR A CREDIBLE, HIGH-QUALITY ASSESSMENT



While investor-driven, labour rights assessments are relatively new, the due diligence involved is not. An assessment of company compliance with international standards for freedom of association and collective bargaining draws on many of the same due diligence tools as other company assessments, such as surveys, interviews, and document reviews. What is different about a labour rights assessment is the specific context of the employer-employee relationship, which can differ across jurisdictions and enterprises. To work within different contexts and still maintain adherence to the universal rights standards, labour rights assessments should be based on the following principles from the ILO Committee on Freedom of Association and the UN Global Compact's *The Labour Principles of the United Nations Global Compact: A Guide for Business*:

“Workers shall have the right to join organizations of their own choosing without any interference from the employer.”

“Employers should not interfere in workers’ decision to associate, try to influence their decision in any way, or discriminate against either those workers who choose to associate or those who act as their representatives.”

To implement these principles and to conduct effective due diligence requires clear commitments from the company, appropriate skills and independence of the assessor, the proper scope of investigation, a clear and transparent process, and adequate disclosure.

¹² ILO & The Global Compact, *The Labour Principles of the United Nations Global Compact: A Guide for Business* (Geneva: 2008), https://d306pr3pise04h.cloudfront.net/docs/issues_doc%2Flabour%2Fthe_labour_principles_a_guide_for_business.pdf

¹³ Ibid.



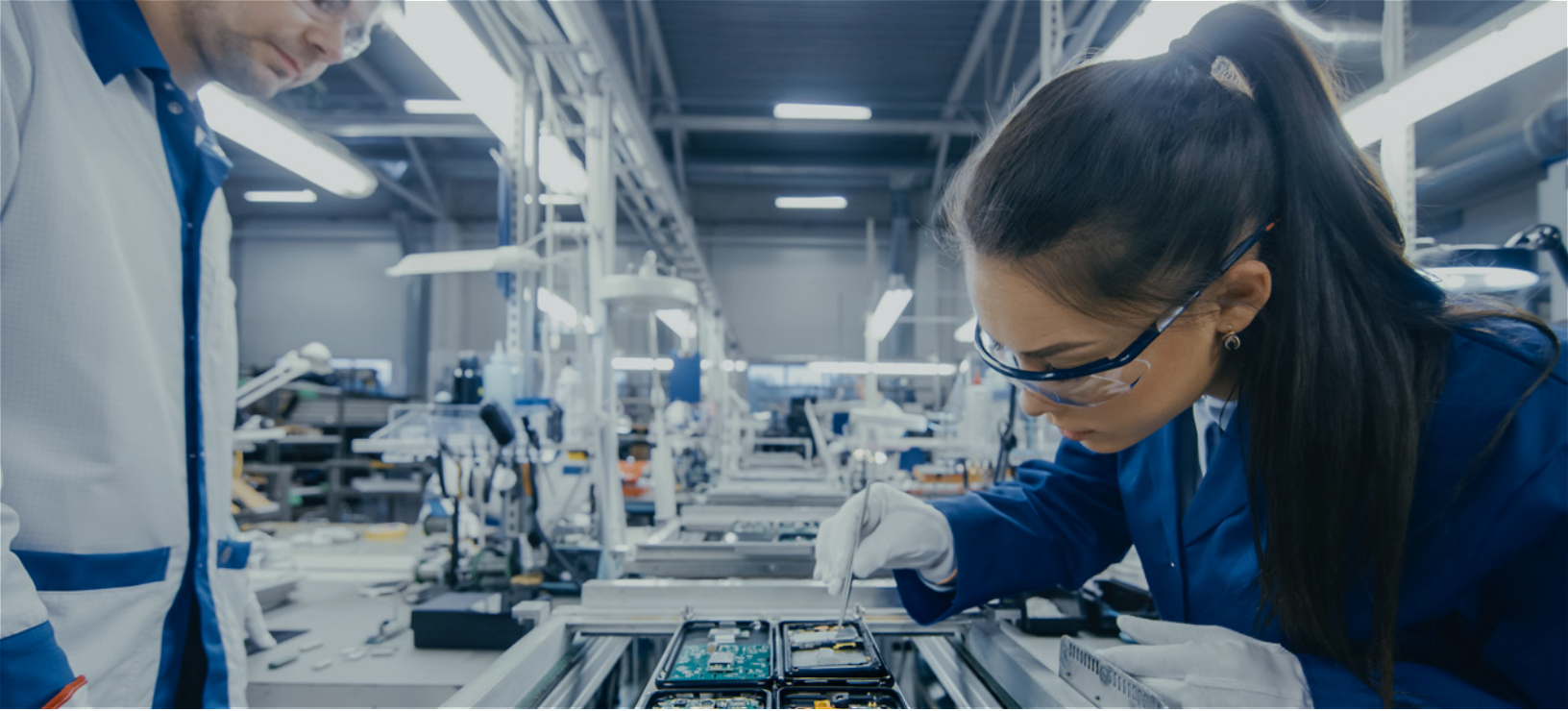
FUNDAMENTAL COMMITMENTS FROM COMPANY

- **Support:** Issue a public statement assuring a high level of corporate support and participation, including from senior executives and Board of Directors.
- **Board oversight:** The assessment will be supervised by an independent committee on the board.
- **Access:** Grant assessor full, unfiltered access to company's internal documents and stakeholders (front-line workers, workers' trade union representatives, all levels of management, and board).
- **Public:** Announce the assessment, including the chosen assessor both publicly and internally at the start of the assessment.
- **Disclosure:** Make the assessors' recommendations and findings publicly available and ensure they are authored by the assessor.
- **Non-retaliation:** Adopt a formal policy of non-retaliation against internal stakeholders who choose to participate in the assessment.
- **Independent:** The company must not interfere with, censor, or otherwise jeopardize the independence of the assessment.
- **Inclusive:** The company should explicitly authorize and encourage the assessor to seek input from outside workers' rights and human rights advocates, including unions.



3RD PARTY ASSESSOR SELECTION

- **Independent:** The assessor and individuals conducting the assessment must not have had any other business relationships with the company or its leadership for at least the past five years and it is the responsibility of the assessor to promptly inform the company and proponents of the existence of any relationships and interests which might reasonably be considered to bear on the independence of the assessment;
- **Neutral:** The assessor must not provide "union avoidance" consulting to dissuade workers from unionizing as part of its practice and should conduct the assessment from a position of neutrality on the issue of unionization.
- **Qualified:** The assessor must furnish an appropriately sized team based on the size of the company with expertise in global and human labour rights law and norms.



CRITICAL COMPONENTS OF THE ASSESSMENT

- **Labour rights violations:** Assess worker complaints of management violations of freedom of association and collective bargaining rights both prior to and during the assessment (including ones unrelated to government investigations).
- **Remedies:** Evaluate the company's response to labour regulators' findings and courts' decisions that found the company in violation of national labour laws and assess whether the company has adequately remedied the violations.
- **Collective bargaining:** Examine the company's actions and commitment to timely and good faith negotiations after employees have chosen to form or join a union.
- **Retaliation prevention:** Determine the various levels of management's discretion and evaluate past disciplinary actions taken against workers' who were exercising labour rights.
- **Surveillance:** Assess company's monitoring of workers, their union support, and how it applies the data it compiles.
- **Internal documents:** Review company's internal, managerial training documents, employee handbooks, etc. for policies regarding worker organizing.
- **Internal standards and controls:** Assess whether existing internal controls suffice to ensure compliance with company policies regarding freedom of association.
- **Use of "union avoidance" consultants:** Assess whether the company has used "union avoidance" consultants to dissuade employees' exercise of freedom of association rights and collective bargaining (including direct persuasion activities, management training; preparation of campaign materials and communications with employees – individuals, groups of employees or en masse; participation in contract negotiations). Assess management direction and monitoring of consultants and board's oversight of the consultants' work.
- **Incentive Structures:** Examine any explicit or implicit incentive structures, including compensation packages and perks, which might influence how managers treat unionizing workers.



SCOPE

- **Top-to-bottom:** Assess the company's policies and practices regarding labour rights as well as the board's oversight and disclosure on compliance with the relevant standards and covenants the company publicly commits to.
- **Culture:** Assess how senior leadership fosters a workplace environment that respects workers' rights.
- **Scale:** Assess the company's global operations, including both direct employees and contingent workers.



PROCESS

- **Comprehensive:** Points out strengths and weaknesses in company's policies and practices and provides remedies for company's failings regarding labour rights.
- **Inclusive:** Communicates to and provides a means for internal stakeholders to participate in the assessment.
- **Extensive:** Include unfiltered input of relevant external stakeholders, a supermajority of whom are independent from ties to the company, and experts in the labour rights field.
- **Accountable:** The assessor should report directly to independent members of the Board of Directors or an independent board committee.
- **Thorough:** Interview managers and workers to determine the level of perceived pressure from higher ups regarding unionization. Do a root cause analysis for any negative pressure perceived.
- **Confidential:** Protects the identity of managers and workers that choose to participate and ensures they are not retaliated against.
- **Transparent:** Includes proponents in the process – the assessor must be available to meet with investors (with or without company participation) prior to the assessment and debrief the investors after the assessment is completed but before the public release of the report on the assessment.



DISCLOSURE

- **Timely:** The company should hire the assessor and announce their identity and the commencement of the assessment publicly no more than 3 months from the date of the shareholder proposal vote or settlement agreement. Disclosure of the concluded assessment report should take place approximately one year from the date of the shareholder proposal vote or settlement agreement.
- **Comprehensive:** Disclose the assessor's full report (redactions to protect identity of individuals are permissible), including a full summary of findings, a detailed description of the assessment methodology, a list of external stakeholders that were engaged as part of the assessment, and the assessors' recommendations for improvement.
- **Publicly Available:** Publish the assessor's report in an easy-to-find location on the company's website and make a public announcement of the release and location to a broad audience.
- **Remedy:** The company should publicly commit to addressing the issues raised by the assessor.



ABOUT THE GLOBAL UNIONS' COMMITTEE ON WORKERS' CAPITAL (CWC)

The Global Unions' Committee on Workers' Capital (CWC) is an international labour union network for dialogue and action on the responsible investment of workers' retirement savings. A joint initiative of the International Trade Union Confederation (ITUC), the Global Union Federations (GUFs), and the Trade Union Advisory Committee to the OECD (TUAC), the CWC has brought trade union representatives and worker-nominated trustees from across the world together since 1999. The pension fund board members who participate in the CWC network oversee the retirement savings of millions of workers. For more information email info@workerscapital.org or visit www.workerscapital.org.

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