



COMPETITION LAW DOs AND DON'Ts FOR FWF MEMBERS COLLABORATING TO PAY LIVING WAGES

Guidance for FWF member brands that seek to push past competition law concerns and work together to make living wages a reality for garment workers. - July 2015*

DO: WHAT IS SAFE TO DISCUSS WITH OTHER BRANDS?

A brand can hold discussions with other brands about:

- » which shared factories to target for living wage implementation;
- » how to calculate, verify, monitor, implement or revise the labour minute cost;
- » the process for negotiating with shared factories, and what terms to accept on the labour minute cost or the living wage calculation;
- » developing review mechanisms to ensure that the labour minute cost calculation remains up-to-date. This will change with living wage fluctuations – taking into account inflation or other economic/social changes.



DON'T: WHAT IS NOT SAFE TO DISCUSS WITH OTHER BRANDS?

DO NOT discuss with other brands:

- » the number of labour minutes that each of your respective garments will require;
- » the FOB (ex factory) price of your respective garments;
- » other commercial terms to be agreed with the factories that are not necessary for the adoption of the living wage, such as delivery and payment terms, insurance risk, returns policy, sourcing of materials for garments;
- » any element of cost or price further along the supply chain, such as shipping or distribution costs or wholesale or retail prices;
- » any element of cost or price higher up the supply chain, such as joint purchasing of cotton (or other materials) – or agreement on suppliers.



DO NOT use living wage discussions as an opportunity to discuss unrelated matters, such as commercial strategy, geographical expansion, or relationships with retailers or intermediaries.

DO: WHAT IS SAFE FOR BRANDS TO DISCUSS WITH THE FACTORIES?

Of course brands can continue to negotiate individually with factories on commercial terms. Brands can also hold discussions with the factories – either bilaterally or in collaboration with brands that share the factories – about:

- » calculation of the labour minute cost;
- » other labour conditions in the factory and any changes to production or employment efficiencies.



You can also request data necessary to calculate, verify, monitor or revise the labour minute cost calculations. You can agree review mechanisms to ensure the labour minute price calculation remains up-to-date.

DON'T: WHAT IS NOT SAFE FOR BRANDS TO DISCUSS WITH FACTORIES?

DO NOT act as a go-between among two or more factories, disclosing to each of them the FOB prices charged by others.

FWF brands may publish aggregated data about wage levels (e.g. wage ladders) or factory performance with regard to FWF labour standards, as per FWF requirements.

However: DO NOT disclose confidential information provided by one factory to other factories, such as overheads or other production or employment costs, information about individuals' salaries or personal data relating to employees.

Please note that different requirements apply to living wage discussions conducted within a collective bargaining framework. Please consult with FWF for more information.



WHAT IS SAFE TO DISCUSS IN COLLECTIVE AGREEMENTS?

DO: In the context of negotiating collective agreements, you can hold discussions with one or more factories, brands, and worker or union representatives to agree the calculation of a living wage, the labour minute cost, and wage levels.

DON'T: But DO NOT act as a go-between among two or more factories, disclosing the FOB prices charged by others..



PRACTICAL TIPS FOR SAFE DISCUSSIONS ABOUT COLLABORATION ON LIVING WAGES

DO:

1. Provide an agenda for all meetings

To avoid any ambiguity, circulate an agenda setting out the topics to be discussed prior to all discussions. Get agreement on the agenda before the meeting in question. Limit the agenda to the issues necessary to the permitted topics of discussion listed above. Stick to the agenda during meetings or discussions with other members.

2. If you are concerned, stop the discussion

Stop the meeting or terminate the discussion if you are concerned inappropriate topics are being discussed. If you decide to leave the conversation, ensure the minutes accurately record your concerns and reason for departure.

3. Keep notes and records

Keep a record of all discussions conducted in person or on the telephone in the form of a short set of minutes. Circulate the minutes for comments following each discussion. Retain all materials, communications, and documents received or exchanged during the discussions.

DON'T:

DO NOT discuss topics which are not on the agenda or which concern unrelated matters (see above).

DO NOT use language which exaggerates your company's position on the market (e.g. 'dominant' or 'monopolise') or which suggests anti-competitive conduct (e.g. 'delete / burn after reading', 'scheme', 'fixing labour costs').

DO NOT hold detailed unscheduled discussions about the labour minute (e.g., during a social occasion or informal gathering). If such discussions are unavoidable, stick to the principles outlined for formal meetings.

Have questions not addressed here? Please refer to our [Living Wage Portal](#) or contact your FWF contact person. This document will be updated as additional considerations arise.

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* This guidance was drafted by FWF based on advice from Arnold & Porter LLP.

See also A&P's legal opinion to FWF ['The Application of EU Competition Law to the Adoption of FWF's Living Wage Standard'](#).