



# The Equitable Food Initiative Auditor Guidance for Assessing Freedom of Association and the Right to Organize

VERSION 1.2, DECEMBER 1<sup>ST</sup>, 2017

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## Responsibility for these Requirements

The EFI Standards Committee has responsibility for this document, and will periodically review and update it.

Users should verify that they are using the latest copy by checking on the EFI website at:

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### Versions Issued

Version No.	Date	Description of Amendment
v1.0	August 15 <sup>th</sup> , 2015	First public-facing version
v1.1	December 20 <sup>th</sup> , 2016	Additions to Appendix B in Mexico and the United States
v1.2	December 1 <sup>st</sup> , 2017	The branding of this document was updated to meet current EFI requirements. The meaning or intent of the guidance was not changed.

## 1 Introduction

An EFI certified operation is required to be in conformance with standards and indicators related to their workforce's freedom to associate and right to organize. Because of the myriad of legal, political and cultural landscapes that a certifying body (CB) may operate in on behalf of Growers seeking EFI certification, EFI is providing additional guidance on:

- How the freedom of association (FoA) standard and indicators are to be assessed
- Acceptable corrective actions should a nonconformity be found

This guidance shall be employed by CBs for all audits to the EFI Standards, Guidance & Interpretations (EFI Standards).

## 2 Relevant Standards & Indicators

### 2.1 *Compliance with Law*

- 2.1.1 In many jurisdictions freedom of association (FoA) and the right to organize are guaranteed by law. Labor relations, conditions and agreements on a farm must meet the thresholds and practices required by all applicable laws, whether commonly enforced or not, and shall be assessed for conformance with Standard CL-1 and Indicator CL 1.1.

#### Standard CL-1

Employer complies with national, state, and local laws regarding labor, food safety, and pesticides

#### Indicator CL 1.1

Employer complies with national, state, and local laws regarding labor relations and employment, including but not limited to Social Security insurance, unemployment compensation, state and federal wage-hour laws, state agricultural labor relations laws, anti-discrimination laws, farm labor contractor laws, and, when applicable, housing and transportation safety requirements.

### 2.2 *Freedom of Association*

- 2.2.1 Freedom of Association and the right to organize shall also be assessed for conformity with Standard FOA-1 and Indicator FOA 1.1 and 1.2.

#### Standard FOA-1

Employers recognize farmworkers' freedom of association and right to organize.

#### Indicator FOA 1.1

The employer's policy states that:

1. Farmworkers have the right to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from such activities.
2. The employer will not interfere with, restrain, or coerce farmworkers in the exercise of these rights.
3. The employer will not dominate or interfere with the formation or administration of any labor organization.

#### Indicator FOA 1.2

Farmworkers are not discriminated or retaliated against in hiring or tenure of employment, or any term or condition of employment, for engaging in the above-mentioned activities under the freedom of association.

#### Indicator FOA 1.2 (Guidance & Interpretations)

FWIs [farmworker interviews] and a document review shall verify that farmworkers' rights under the freedom of association policy have not been interfered with or restrained, or that there has not been coercion, discrimination, or retaliation against them in hiring, tenure of employment, or any term or condition of employment, for engaging in the activities covered under the freedom of association policy.

### 3 Assessing FoA & the Right to Organize

#### 3.1 *Data Gathering*

- 3.1.1 CBs shall, in addition to a document review and other industry-accepted practices for assessing FoA and the right to organize, ask the questions in Appendix A during management and farmworker interviews.

#### 3.2 *Additional Guidance for Indicator CL 1.1*

- 3.2.1 Appendix B shows relevant statutes that must be considered by the CB in assessing conformity with this indicator.
  - 3.2.1.1 This list is not exhaustive and the CB shall have an internal process for remaining up to date on relevant legislation and regulations.
  - 3.2.1.2 Jurisdictions that are not covered in Appendix B must be audited with a similar level of diligence and rigor.
- 3.2.2 If a collective bargaining agreement (CBA) is in force, the CB shall assess whether the negotiations, execution, revisions and communications with workers related to the CBA have been completed in compliance with all applicable laws including those listed in Appendix B.

3.2.2.1 Particular attention shall be paid to the identification of illegal exclusion clauses in the CBA.

3.2.3 The final audit report shall document that each of the statutes in Appendix B, or their equivalents in the applicable jurisdiction, were considered in the conformant/nonconformant decision.

### 3.3 *Additional Guidance for Indicator FOA 1.1*

3.3.1 Per the *EFI Requirements and Legal Compliance* section of the EFI Standards conformance with CL 1.1 shall not be considered evidence in itself of conformance with FOA 1.1.

3.3.2 The CB shall not consider the presence of a unionized workforce as evidence in itself that EFI's FoA and right to organize thresholds have been met.

### 3.4 *Additional Guidance for Indicator FOA 1.2*

3.4.1 The CB shall assess whether any actions taken against employees after the effective date of the FOA 1.1-conformant policy can be considered retaliation for exercising the rights guaranteed by that policy, or other legally guaranteed rights, to associate, organize, join or leave a union.

## 4 **Closing Nonconformities related to FoA & the Right to Organize**

### 4.1 *CL 1.1*

4.1.1 Corrective action plans shall bring the operation into compliance with all current and applicable regulations, whether commonly enforced or not.

### 4.2 *FOA 1.1*

4.2.1 Corrective action plans must meet the threshold set by the guidance and interpretations provided in the EFI Standards.

4.2.2 If the CB is of the opinion that the employer, contrary to the provided FoA policy, did "dominate or interfere with the formation or administration of any labor organization" the CB may request that the corrective actions include:

4.2.2.1 The effective communication of the FoA policy to all workers including new employees.

4.2.2.2 The posting of the name of the union holding the CBA, the federation to which it is affiliated, and contact information for union representatives.

4.2.2.3 Providing the workforce with prior notice of negotiations of a first CBA, revisions to the CBA, and any other agreements between the employer and the union that affect their terms and conditions of employment, as well as the names of the worker representatives in such negotiations.

### 4.3 FOA 1.2

4.3.1 If the CB makes a finding of nonconformity they may request that a corrective action plan include:

- 4.3.1.1 The effective communication of the FoA policy to all workers including new employees.
- 4.3.1.2 The rehiring and reinstatement of workers dismissed for activities deemed permissible by the FoA policy and/or the law with full compensation, including back pay.



# **Auditor Guidance for Assessing Freedom of Association and the Right to Organize Appendix A**

**APPENDIX TO VERSION 1.2, DECEMBER 1ST, 2017**





## Questions for Farmworkers

Do you currently belong to and/or pay dues to a union?

If Yes

If No

What is the name of the union?

Who are the worker representatives for the union?

Have you, or colleagues that you are familiar with, brought any issues to a worker representative?

Are you covered by a CBA?

Are you able to leave the union?

Are you able to join a different union?

Have there been attempts to form a union?

*If Yes*  
What kind of issues and how were they resolved?

*If Yes*  
Did you, or colleagues that you are familiar with, actively negotiate, provide input into, or ratify the CBA?

*If Yes*  
Have you been provided a copy of the CBA or know how to access it?

If Yes

If No

Why did the attempts fail?

Are the workers who supported those efforts still working on the farm?

What do you think would happen if workers attempted to form a union?

## Questions for Management

**Is there a union that represents farmworkers at this location?**

**If Yes**

**If No**

**When was the first CBA signed and how often is it revised?**

Who negotiates and executes the CBA and revisions to the CBA on behalf of the workers? Are they also employees of the company?

Does the Union Charter held by the company state that the Union was formed at a worker assembly in accordance with applicable laws?

What benefits are included in the CBA that provide workers with entitlements beyond what is required by law?

Does the CBA contain an exclusion clause requiring the dismissal of any worker that is expelled from or who has decided to leave the union?

**Have there been attempts to form a union?**

**If Yes**

**If No**

**Why did the attempts fail?**

Are the workers who supported those efforts still working on the farm?

Are there any established policies or procedures related to management's role in addressing employees' efforts to organize and collective bargain?



# **Auditor Guidance for Assessing Freedom of Association and the Right to Organize Appendix B**

**APPENDIX TO VERSION 1.2, DECEMBER 1<sup>ST</sup>, 2017**

## Select Relevant Freedom of Association Laws by Jurisdiction

Country	Jurisdiction	Name of Law	Sections of Note	Related to
United States	California	Agricultural Labor Relations Act	Labor Code 1140-1166 California Labor Code sections	Discrimination or other forms of retaliation against workers for organizing or joining a labor union are prohibited.
		Anti-retaliation provisions of state law	Cal. Lab. Code § 98.6(a), § 1102.5	
		Agricultural Labor Relations Act	Labor Code 1140-1166	A union has a regulated right to enter the employer's premises during an organizing campaign under conditions detailed in the Labor Code.
			Labor Code 1166, 1154-1157	Workers have the regulated right to strike under conditions detailed in the Labor Code.
		Labor Code 1140-1166	The California Agricultural Labor Relations Board shall receive a copy of any collective bargaining agreements.	
	Oregon	Little Norris La-Guardia Act	Or. Rev. Stat. § 662.020	An employer is prohibited from discriminating or retaliating against a worker who files a complaint with an agency or a court to enforce rights or participates in a proceeding regarding the legislatively guaranteed full freedom of association, self-organization, and designation of representatives, free from retaliation, interference or coercion of employers or their agents.
Washington State	Little Norris La-Guardia Act	Wash. Rev. Code § 49.32.020	An employer is prohibited from discriminating or retaliating against a worker who files a complaint with an agency or a court to enforce rights or participates in a proceeding regarding the legislatively guaranteed full freedom of association, self-organization, and designation of representatives, free from retaliation, interference or coercion of employers or their agents.	

Country	Jurisdiction	Name of Law	Sections of Note	Related to
Mexico	Federal Law	Labor Law	Const. Art 123(A)(XVI) and XXII; FLL 133(IV)-(V); 354-55, 357-358	Workers may not be fired for affiliating with a union or leaving a union (but see Art. 395 below). The company may not interfere with internal union affairs through reprisals against workers.
				Workers have the right to join or not join a labor union.
			Article 132 (XVIII); FLL Art. 390 and 391bis	Employer must post collective bargaining agreement for workers to see in workplace. The agreement must be given to the Board of Arbitration and Conciliation for public access, which preferably will be on a free website.
			FLL Art. 387	An employer is obligated to negotiate with a union to reach a collective bargaining agreement. The union may strike to obtain an agreement.
			FLL Article 388, 389	Where there is more than one trade union, the CBA is held with union that has majority of workers. If a union loses majority support, it will lose the right to represent the workers under the contract.
			FLL Art. 395, partly repealed after Supreme Court held it unconstitutional	CBAs may not require workers to be fired if they leave or are expelled from the union. However, a CBA may require that newly-hired workers be members of the union. If they later resign from the union they are able to keep their jobs and have all benefits.
			Const. Art 123(A)(XVII-XXII); FL Articles 2, 4(II)(a)-(b);449; 440-469	The Constitution and the law guarantee workers the right to strike, free from retaliation from employers or improper interference from government, but the reasons and procedures for strikes are regulated by the federal labor law.