

RECOGNIZING WOMEN'S HEALTH RIGHTS AT THE WORKPLACE

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**Business & Human Rights Working Group Webinar
Business for Social Responsibility**



The Notes for each slide below contain the prepared comments developed for the BSR Webinar with it Business and Human Rights Working Group. The presentation was based on a law review article by Erika George, David Wofford, Rebecca Sewell, and Candace Gibson published by the Berkeley Journal of International Law in April 2017.

While the prepared remarks accurately reflect the overall content of the oral presentation, the actual remarks made for each slide of the presentation may have been paraphrased, and some cases sentences may have been summarized or skipped.

Objectives & Outline

- **Objectives**

- Reframe issue of health rights at the workplace
- Shape the understanding of “responsibility to respect” health rights for workers
- Highlight women’s health rights as a business opportunity

- **Outline**

1. Women’s Health & The Workplace
2. Human Rights & Health
3. Recommendations & Opportunities for Action

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Greetings everyone. We are delighted by this opportunity to have a discussion with all of you about health rights, particularly in the context of the UN Guiding Principles on Business and Human Right. But also in the context of business’ role in the Sustainable Development Goals and more broadly corporate citizenship and responsibility. As you know the U.N. Guiding Principles do not create any new rights. But they can open the door to needed discussions about how companies uphold their role in respecting existing rights. A more rigorous consideration of health rights and women workers at the workplace is much needed.

In our time today, we hope to achieve three objectives:

First we want to give you a different perspective about women workers and their health rights. In our law review article, we reframe the issue of health rights at work to go beyond the traditional narrow lens of occupational safety and health, which we argue is out of date and fails to address the reality of women workers. We think there needs to be much greater alignment between occupational health and public health.

Second, we hope to shape the understanding you have internally and with stakeholders about what it means for business to respect health rights, particularly as these relate to women and women workers. This is about putting on a gender lens when thinking about health rights.

And finally, we want to expand the discussion of rights from one primarily about risk assessment and violation – both critical areas – to include greater emphasis on business opportunity and systemic change. We argue that companies have much to gain if they shift their thinking about workplace health from simple compliance to opportunity – opportunities to improve productivity, supervisor-worker communications, industrial relations and even overall business systems.

We will discuss these themes in three parts – the first giving the context, the second providing insight in the main framework on health rights; and third suggesting opportunities and benefits for aligning workplaces with public health.



Let's set the overall context – and there are three points to make. First our focus is on the global economy and respecting rights throughout operations and supply chains around the world. Our comments are primarily about formal workplaces in developing countries... industrial, agribusiness, extractives. These workplaces are usually required by law to have a doctor or nurse on site and often must have a health station or clinic. That said, our general critique of how worker health rights are conceptualized holds true for any industry and context.

Second, when we talk about respecting women's health rights and ensuring access to services, we do not mean to imply that every workplace needs to offer an onsite hospital or primary care center. There are a wide range of workplace contexts – from a mining company, which in fact, might operate a full-fledged hospital to factory that has a nurse or nurses, maybe doctors and an infirmary or health station, depending on its size and the local law, to white collar or service industries, like call centers, where there are no onsite health resources. Each company will have different issues and approaches to respecting women's health rights and responding to their needs. Obviously, in countries with universal health and quality public and private health systems supported by insurance and leave policies, the concern for women's health right is less acute than in other locales.

Third, we use a gender lens to look at the very real health needs of the millions of poor women workers who have limited access to information and services – and the role of

work as one social determinant of their health. This is not to say that men's health is not important. It is. But the situation for women workers highlights the point that occupational safety and health standards do not address the overall health rights of workers. The Core ILO labor standards have been strongly criticized for their gender bias and for having as their basis the concept of the male breadwinner. Critics note that these standards and corporate codes based on labor standards do a poor job of addressing gender issues that cross between the **personal** and **workplace** domains, and thus exclude women's experiences. We believe this is particularly true when they deal with women's health.

The Great Health Divide



The best place to start is with what we call the great divide between workplace “occupational” health and public health. This divide harms women and men workers, we argue, as it creates a false division between health issues at home and at work that is not justified by the facts on the ground. The overall health rights of workers fall into the gap.

At the global level, the divide is seen between the International Labor Organization and the World Health Organization. At the national level, **Ministries of Health** oversee all health professions and facilities EXCEPT at the workplace, which is the purview of **Ministries of Labor**.

This divide means there’s very little alignment between public health and occupational health. Ministries of Health and Ministries of Labor do not typically coordinate on policies or programs – for example, on continuing medical education or licensure of workplace health professionals. Ministry Labor inspectors or private auditors follow compliance checklists and protocols removed from the quality concerns of a public health perspective. It should not be surprising that workplace safety and health compliance focuses on inputs, such as number of fire extinguishers, exists and first aid kits, rather than the qualifications of health staff or availability of care for workers.

At the workplace level, this divide appears in the form of industry viewing health as separate from the basic operations of a business. Health is viewed as a cost center; it’s

about complying with safety regulations, using company resources on non-productive activities.

The bigger issue is not just that this divide contributes to corporate culture that views occupational health and safety through a lens of compliance. But also that it reinforces and papers over gender issues in the global economy and at the workplace. Huge numbers of young women in prime reproductive ages leave their homes, usually in rural areas to move to cities, where they are often disconnected from family and support networks and even known social services. Huge numbers of workers – women and men – are internal or external migrants. The old concept of the worker as a man whose job is in his home city is less and less true. Instead women are now moving to the urban areas to find work. The distinction between home and work as completely separate spheres is no longer valid, if it ever was. Where women workers live – and their access to health services – depends in large part on where they work.

Impact on Women



You might reasonably think, “That may be all well and good but it’s not business’ responsibility to ensure people have health care. Health is a government responsibility.” And of course, you are right. It is a government responsibility – even an obligation from a rights perspective.

But that doesn’t get business off the hook in terms of its “respect” role for human rights. This is why the divide between occupational health and public health is so problematic – and most acutely for women workers. The workplace itself is a determinant not just of workers occupational health but also their overall health – and workplace policies and practices and operations can directly harm or improve a workers’ ability to realize their health rights. If you don’t recognize that respect of health rights goes beyond occupation safety, you won’t address the ways your operations may harm women’s health and access to services in two places: in the community and at the workplace.

First, in the community, working women have unique challenges accessing public health services. Why? Because women workers typically face the burden of double duty – paid work followed by domestic duties caring for families and children. Poor women in general have difficulty accessing quality health services. The barriers for women workers are even higher as they are working long hours during the week, at the very times public clinics are open. Public clinics tend to be closed on weekends, so the choice for women workers is to go to private clinic and pay for health services. The

clinics that are available are often of low quality. So women worker must decide whether to spend limited incomes on needed, but not emergency care for important women's health concerns.

Thus, work and low access to external health services are very related – yet you will rarely find ministries of health and labor working together to ensure that public health facilities open after hours near where women work or live. Even if a workplace has policies allowing workers to take leave and go to either an onsite or offsite doctor or nurse, supervisors will make clear tacitly or with threats that they do not want workers to leave unless it is absolutely necessary.

Second, at the workplace, women workers often lack access to qualified and trained health workers capable of addressing their specific issues. The photo on the left shows an actual sign outside a factory's health infirmary that says it all: Don't come here unless it is a real emergency. This can be just the tip of the iceberg on restrictive policies that do not provide menstrual hygiene products or limit restroom and water breaks that increase the risk of urinary track and gynecological infections the male managers are blissfully unaware of.

Too often, occupational health staff that are available are not trained or qualified to deal with the unique health issues women workers face. A BSR-led study in Bangladesh found “a discernible mismatch between the training received by the nurses and the actual health needs in ready-made garment factories.” These nurses had not been well trained on basic diagnosis, counseling or patient education, treatment, and referral, all of which are roles they must play. The nurses were not able to provide health information on many subjects important to workers, including reproductive health. Yet 70% of the nurses said that menstrual pain was one of the top complaints they hear from workers. The study noted that factories “are not legally incentivized to hire a qualified nurse or to invest in his or her professional development once hired.” By the way, these were not low level factories, but rather ones with a greater sensitivity to worker health. But this is what comes of the compliance perspective focused on occupational safety.

Our experience is that even much higher quality workplace health services can be out of touch with key public health messages, particularly when it comes to women and reproductive health. In fact, most companies have limited understanding of the actual health needs of women workers because the surveys and approaches they use are not geared to asking the right questions in the right way. Formative research by Evidence Project in Cambodia found that female garment workers said that reproductive health services were the ones they needed the most help accessing.

Next we will put the challenge for women workers to address their health needs in terms of a broader understand of health rights – and why companies need to consider

their respect health rights going beyond labor rights on occupational health.



We now want to step back and give an overview of rights and health rights. Because if we are to think clearly about the corporate role in respecting health rights, we need to understand what these entail – and how they relate to the workplace and business. We think it is a mistake to think that respecting health rights begins and ends with occupational health and safety conventions.

Health is one of the earliest rights established – found at the beginning of the Universal Declaration on Human Rights. While not legally binding, the Declaration clearly made health a priority concern for ensuring human rights. We will spare you a 70 year tour of the development of health rights, which you can read in great detail in our law review article, if you wish. But I'd like to make three main points about health rights and the overall development of rights.

First, the Right to Health is not a right to be healthy. This is an important point. Even though international law recognizes “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health,” this does not guarantee you a certain degree of health... And it doesn't mean you have the right to any procedure regardless of cost or unavailability.

Instead the right to health obligates states to guarantee that health goods, services, and information are accessible to all who reside in that State. It requires States to ensure that their citizens can exercise these rights as well as prevent violations of these rights

by third parties. We will address later how a third party such as a company might violate these rights.

Health rights do cover a wide range of factors – called social determinants – that affect a person’s health from potable water, sanitation, hygiene and nutrition to workplace and environmental conditions, access to health education and information, improvements in emergency care and services for maternal, child and reproductive health, including family planning.

Second international law recognizes that governments may well lack the money to create the conditions to address everyone’s health needs, and thus the full right to health can’t be achieved immediately. So there is the idea of “progressive realization”, meaning that States are required to take immediate action but within their financial limitations and other constraints to realize the right to health over time. This was not meant to be an “out” for governments to do nothing. It recognized that countries would be at different levels of development and may have competing priorities for the resources. States are still expected to take “all appropriate means” to achieve rights, which include “legislative measures” and other means.

Third, it is important to understand that “health rights” as with all rights have evolved over time. And the interpretation and understanding of rights shift as a result of changes in social attitudes and awareness of new ways that rights are abused. So you won’t find the interpretation of “health rights” in any one convention or covenant, but rights are understood through multiple legally and non-legally binding instruments and documents that through cross referencing and additions reinforce or strengthen a right. For instance, health rights are primarily established in the Committee on Economic, Social and Cultural Rights. Yet other covenants, declarations, conventions address health as well.

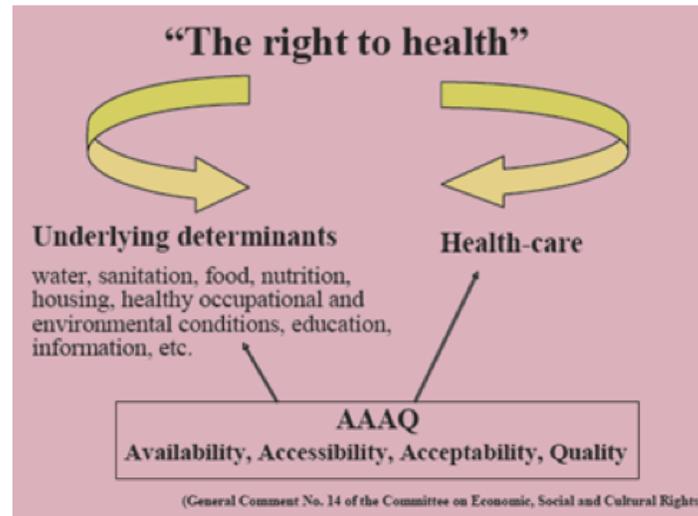
Furthermore, each covenant has a “committee” responsible for determining how a right will be interpreted and implemented. Committees do this in many ways, including by issuing statements and “General Comments. And it is through the issuing of “General Comments” that the substantive content of international human rights is interpreted, updated, and adapted to respond to changes in thinking and political and social circumstances. The body that addresses for health rights is the Committee on Economic, Social and Cultural Rights.

Over time, this committee has interpreted the right to health to entitle everyone to safe and sanitary living and working conditions, support for sexual and reproductive health, and a quality health care system that fights diseases, provides medical services to everyone, and disseminates health information. It is important to emphasize that since the Universal Declaration there has been a continuing expansion of the women’s rights

and reproductive rights.

A key question for states was how to give a practical framework for governments to operationalize these rights.

The AAAQ Framework



In 2000, the Committee on Economic, Social and Cultural Rights released general comment 14 that created the AAAQ framework establishing what government must do to protect health rights. The Framework requires States to ensure that the facilities, goods, services, and conditions needed for health are available, accessible, acceptable, and of quality.

You won't find references to AAAQ when people discuss occupational health but it is needs to be included in any discussions about to how a company is respecting health rights. Let's go through what each AAAQ means:

- Availability means: functioning public health and healthcare facilities, goods, services and programs are available in sufficient supply within the State, including essential medicine and supplies including contraception.
- Accessibility means: facilities, goods, and services are economically affordable and geographically, safely, and physically accessible for all. This includes the idea of non-discrimination and access for marginalized communities.
- Acceptability means: there are culturally appropriate services, goods, and facilities, which are respectful of the needs of persons of various genders and ages.
- Quality means states must guarantee that *all* health facilities, goods and services are

culturally, scientifically, and medically appropriate, as well as considerate of medical ethics.

Each of these are critically important for workers, but particularly for women workers and their unique health needs and challenges.

AAAQ Framework & Worker Health Rights

“Labor rights capture a limited array of human rights. Companies should consider supply chain impacts on all human rights in and beyond the workplace.”

–UN Good Practice Note 2015

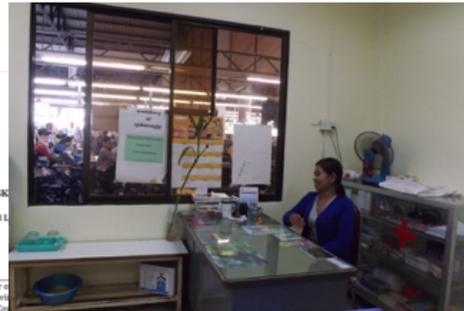


A STRUCTURED PROCESS TO PRIORITIZE SUPPLY CHAIN HUMAN RIGHTS RISKS

A Good Practice Note endorsed by the United Nations Global Compact Human Rights and Labour Working Group on 9 July 2015

Prepared by: Youssef Aflah and Andrey Mucic, Enodo Rights²

The United Nations Global Compact is a call to companies everywhere to voluntarily align their operations and strategies with ten universally accepted principles in the areas of human rights, labour, environment, anti-corruption, and to take action in support of UN goals and issues. In June 2006, the Global Compact established a Human Rights Working Group. In light of the growing recognition that labour rights are human rights and in order to ensure a coherent approach, the Chair and members of the Human Rights Working Group and Labour Working Group merged to create the Human Rights and Labour Working Group in 2013.



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If you think about the AAAQ framework you realize that there is no reason for it NOT to apply to workplace health in addition to state protections more generally for public health.

In the traditional view, States are responsible for enforcing employer compliance with regulations that protect against employment-related risks that might be experienced in the workplace by *virtue of one's status as worker*. Yet this conceptualization of health at the workplace fails to protect health-related rights that workers have by virtue of the fact that they are *human beings*, which is the basis of all human health rights.

Workplaces can violate workers health rights or be complicit in violations that involve more than health problems related directly to work. Or in many cases, while a company may not reach the threshold of a violation, they may well be re-enforcing social factors and poor government performance that harm health and make exercising health rights very difficult, if not impossible.

It is easy to miss violations or near violations when a company in advance determines its only responsibility for health rights has to do with complying with occupational health labor standards. A UN Good Practice Note on human rights risks in global supply chains makes this very point: it notes: **“Labor rights capture a limited array of human rights. Companies should consider supply chain impacts on all human rights in and beyond the workplace.”**

Thus, any company initiative to ensure respect for human rights should include using the AAAQ Framework to ask better questions about health rights in its operations and business relationships. For instance, you might ask:

- What kind of access to services do workers have and how available are these services during and after hours?
- And do they address the maternal, sexual and reproductive health needs of women – and men – workers? What is the quality of these service and what is the process by which the workplace enable access to quality services and information.

We should also note that AAAQ should apply, but does not in most cases, to the health services that exist at the workplace. Health and safety checklists do not look at quality or qualifications of the providers. And even for AAAQ areas that should align nicely with occupational safety, you will find health safety standards are ignored.

For instance, many workplace infirmaries and staff do not follow the most basic public health practices for hand washing, handling hazardous medical waste or using a sharps container that is required of the health clinic nearby the workplace. This is a workplace *safety* issue. Other essential quality issues for health are rarely considered. How does the health staff and factory protect the privacy and confidentiality of workers and their health information? Privacy is a basic health right – and especially important to women workers, for obvious reasons.



Now we turn to our recommendations and focus on some concrete opportunities for companies to take action.

Recommendations & Opportunities for Action

Incorporate AAAQ and a gender lens into your human rights due diligence related to health

Human Rights Impact Assessment of Corporate Action

- Norm: United Nations Guiding Principles on Business and Human Rights (2011)
- Requires companies to act with “due diligence”
- HRIA is a form of due diligence
- Many transnational companies now attempting to do HRIAs

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Our first recommendation focuses on the due diligence process required by the UN Guiding Principles. Your human rights assessments should take a broader view of workers and women’s right to health based on an understanding of the AAAQ framework.

The good practice note mentioned earlier points out you should not prioritize which rights are relevant before doing an assessment. Prioritization should come AFTER the assessment. And we would emphasize that such assessment need to use a gender lens – that is you must be very intentional in looking for the differential impacts of your activities on men and women workers. This is particularly acute when it comes to health rights – as frankly many male business managers are uncomfortable dealing with what might euphemistically be called “women’s issues.”

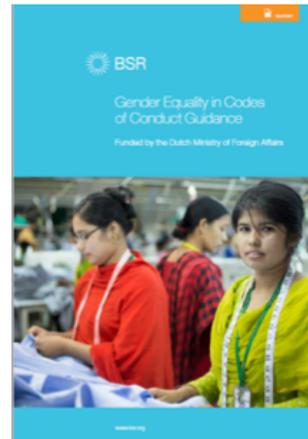
This means you need to assess your workers’ access to health services and the availability of health information and services and look at how your operations support or impede such access. This includes access to sexual and reproductive health services. Reproductive health should be part of a holistic approach to health and worker health.

Furthermore, gender should not just be an add-on – such as has been done by restricting pre-employment pregnancy tests – but rather it should be a fundamental way we look at occupational health and safety and all health rights. Most health issues identified in a human rights assessment probably will not rise to the level of a human

rights violation, but they certainly are human rights concerns and a concern or women workers. We would argue thus that a human rights assessment on health can be more than just about identifying risks, but an opportunity for business to help workers and also improve business performance.

Recommendations & Opportunities for Action

- Take a leadership role by:
 - Making health part of your commitment to the Sustainable Development Goals
 - Building women’s health into initiatives on gender equality
 - Incorporating women’s health in Codes of Conduct



We certainly want companies to do much more thorough due diligence on health rights. But our hope is that this doesn’t end up in the same compliance and risk avoidance mindset. Thinking more broadly about worker health rights can lead to a much more sustainable and comprehensive way to improve the lives of workers, empower women and identify new business opportunities.

We would ask companies to apply this broader understanding of health rights to other initiatives they are engaged in... The most prominent may be the Sustainable Development Goals, but also gender equality and corporate codes. Research suggests that investments in health and education are critical to a country’s growth and sustainable development in general. Women’s health is critical to both – and to gender equality.

When services are available and women have the information and means to plan their futures and family, they have the ability to join, remain and advance in the workforce. Women are also the main influence in caring for their children and investing in their educations. Healthy employed women are key drivers of development. That’s just a fact.

We argue that business, both in its operations and wider engagement in communities, should be seize the wide range of opportunities – directly or indirectly, with and without government – to respect and advance women’s health rights and access to general and reproductive health services.

Recommendations & Opportunities

Address women’s health as a management opportunity beyond risk and compliance

FINANCIAL OUTCOMES		HEALTH OUTCOMES	QUALITY OF LIFE & PRODUCTIVITY OUTCOMES
Direct	Indirect		
Cost savings and return on investment	Better use of existing spending on health, including clinic, nurses, and products and services	Employee adherence to quality medical treatment	Improved “functioning” and productivity
Lower absenteeism and presenteeism (at work but not working)	Improved relationships between management and workers	Positive behavior changes and risk reduction	Better attraction and retention of employees – “employer of choice”
Lower medical costs	Increased retention of buyers/improved buyer relationship	Improved health of women workers through improved menstrual hygiene, nutrition, hydration, and family planning	More engaged workers
Less short term disability and safety/workers’ compensation	Increased worker morale and well-being	Improved services for factory workers	Greater compliance with OSH and labor law
	Increased company resilience in economic downturns	Improved Worker Well-being (healthier, happier, more energetic)	Better community relationships and Corporate Social Responsibility performance

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Finally, health rights, in contrast to many other rights such as freedom of association or child labor, does not inevitably lead to conflict and disputes. This slide shows all the documented business benefits from taking worker health and wellness seriously. These benefit, however, do not come from one-off programs and a risk avoidance, compliance approach. They accrue to companies that have created a “culture of health.”

Research in factories by the ILO’s Better Work program found that many factories did not see the benefits of their well-being activities because they invested too little in them and did not give them time to succeed.

For us, we see this reframing of health rights at the workplace as an *opportunity* to be important step to getting corporate leaders to use their health staff as a strategic resource that contributes to the productivity of the workforce, which should be managed like any other function. Furthermore, a workplace’s commitment to health can contribute to many business benefits, not just productivity. It can empower women workers, improve worker-manager communication, build problem solving skills, strengthen management systems and data collection.

And we want to leave you with a last thought. As many of you know the focus of the Business and Human Forum this year is on “remedy.” The panelists will explore various approaches to providing victims remedy – clearly a very important focus. But remedying violations after they have happened also reflects a risk and compliance mindset that

emphasizes fixing problems over preventing them. In health, that would be like building only hospitals and emergency rooms and forgetting about primary care and health promotion. The former is reactive to the status quo; the latter potentially transformational.

We hope you will start to view the need to address worker and women's health rights more comprehensively as not simply a responses to violations and risks under the status quo, but an opportunity to transform the lives of workers, strengthen business and contribute to making a better, healthier world.

Tools & Resources

Berkeley Journal of International Law: “Recognizing Women’s Rights at Work: Health and Women Workers in Global Supply Chains”

- [Full Article](#)
- [Summary of Article](#)

Resources for Health Management:

- [Managing Health at the Workplace: A Guidebook](#)
- [Benchmarks & Self-Assessment Scorecard for Workplace Health](#)
- [Gender Equality in Codes of Conduct guidance document](#)
- [Workplace Clinic Management Toolkit](#)



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We can't talk about health rights as a business opportunity without pointing to an increasing number of tools out there which are open source. Many of these have been produced by Meridian and BSR together. The guidebook is geared to helping factory managers understand how they can manage their workplace health staff and function from a business perspective.

The guidebook builds on a set of workplace health infirmity guidelines and management benchmarks that apply public health standards and the AAAQ framework to a workplace setting. Most useful is the self-assessment Scorecard that workplaces can use to set goals and performance indicators.

The Gender Equality in Codes of Conduct has a significant section of workplace health and women, and can be used to improve health in your corporate code and related materials

Finally, the new BSR toolkit takes many of the other resources and provides a management training resource with powerpoint lessons and videos. And of course, we've provided links to both the full law review article as well as 3 page summary.

THANK YOU

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Thank you for listening to this presentation today. We are happy to have a discussion and answer questions on anything we've said. And of course, afterwards, you should feel free to contact either of us if you want to follow up on any issues further.

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