

Social Justice and Regeneration Committee

SJR(2)-11-06(p.1) Annex 8

National Assembly for Wales

2nd Draft

Proposed Code of Practice on the Employment of Migrant Workers and provision of services In Wales.

Introduction

Migrant workers are a growing category of employees in Wales and they are a necessary resource for many employment sectors due to a shortage of available local labour. It is estimated that there are 550,000 vacancies in the UK.

The Department for Work and Pensions operates the Workers Registration Scheme, requiring Migrant workers to register to ensure that the UK meets its obligation under the Treaty of Rome allowing workers from EU countries to enter and seek employment in the UK. Whilst the definition for Migrant workers incorporates a wider group (see below), the increase in applications from the eight nations that joined the EU last may has highlighted the exploitation of migrant workers.

According to the Department for Work and Pensions 293,000 Eastern Europeans have applied to work in the UK. Nearly 170,000 of the 293,000 that have applied are from Poland, 40,000 from Lithuania, 31,000 from Slovakia, 20,000 from Latvia, and 17,000 from the Czech Republic.

Most of these are single men aged 18 to 34, earning between £4.50 and £5.99 an hour, are spread across the UK. Majority are in low-skilled manual trades with the largest group described are " process operatives" or factory workers. Other most common jobs include packers, cleaners, those working in catering, warehouse operatives and farm workers. Only about a fifth are bases in London.

There are others who also come from Portugal, Spain, Italy and other European countries. Until recently for a number of reasons, in particular due to the emergence of 'gangmasters', and reported tragedies (such as the cockle pickers) little if any attention was paid to Migrant workers and the conditions they endured.

In most cases migrant workers have a positive impact on local communities and are an important factor in sustaining local business diversity. Workers are being brought here by employment agencies to meet

the needs of shortages in local workforces and help boost local economies. Others arrive here to undertake seasonal work (mainly) supporting the tourist industry in the summer months.

However, there are others brought here by unscrupulous agents who exploit and take advantage of migrant workers who are not aware of their rights or entitlements. Promises of good pay, reasonable hours and good accommodation have turned in to nightmares. Once on route, and far enough away from home, agents demand signatures on contracts, usually only in English, that put to pasture the promises made, sign away working time directive and tie migrant workers into payment for accommodation and transport once they arrive and a extortionate rates.

Examples that have been brought to the Welsh Assembly Government promoted the Minister for Social Justice and Regeneration to expose that exploitation of migrant workers and to create a Migrant workers group. This group took evidence from local authorities, the police, and voluntary sector and recommended that a code of practice for employers is introduce to persuade all employers in Wales to act to stop the exploitation of migrant workers.

The Migrant Workers Group believes from the outset that any worker, regardless of status must be treated with dignity and respect both from a moral perspective and through legal obligations arising from UK employment law and International Conventions.

In particular, the UK is signatory to international conventions that stipulate the protections offered by Nation states to migrant workers. International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, is one such convention that set out the scope of the protection that government is required to offer migrant workers.

Other include the International Covenant on Civil and Political Rights (articles referring to migrant workers: 8, 13, 14, 21, 22, 26, 27) and the ILO Convention No. 97 on Migration for Employment (Revised), 1949.

In addition, employers in Wales are reminded of the requirement of the Race Relations Amendment Act and provision of the Health and Safety Act, the codes of practice produced by the respectable regulatory bodies, the Commission for Racial Equality and the Health and Safety Executive that are binding on employers.

For example, employers cannot only choose to recruit migrant workers even if they believe that the work ethic they have is different from indigenous or local population (example provided for by Wales TUC), as the CRE have indicated this is likely to be in breach of the provision not to discriminate on grounds of National origin. OR where the HSE has indicated that migrant workers need to be supported by employers to be able to understand health and safety regulations, either in Welsh/English or their own language.

Nor can such employers hide behind recruitment/employment agencies that provide labour, often at a

cheap and low cost.

For further information please see

Definition of a migrant worker.

As mentioned above, there is sometimes confusion over who is and who is not a migrant worker. In the context of Article 2.1 of the "International Convention for the Protection of all migrant workers and members of the families".

"The term "migrant worker" refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national."

This definition would include national of any country, where as other may consider this definition too wide.

In essence, the International Convention's definition is accurate and should be the one used. The distinguishing factor is the process or procedure by which a migrant worker enters the UK to "be engaged, is engaged or has been engaged in remunerated activity".

There are a number of different and distinct categories of migrant workers or non-nationals who have varying rights to work in Wales. The main categories are as follows:

European Nationals (Members of the European Economic Area) can enter freely and stay for as long as they want but usually have six months in which to find employment, or enter with a pre-determined offer of employment. Once they have secured employment they are required to inform the Department of Work and pensions of their decision to work, and provide details of employment and employer. If they have secure employment before entering details are provided upon entry and passed to the DWP for record keeping. Nationals of the European Economic Area (EEA) who have a right to travel, live and work in the UK.

Nationals of all other countries –these people require a work permit, which is obtained by an employer who cannot find a suitable national to fill the post.

Commonwealth working holidaymakers – individuals between the ages of 17 and 30 who can work in the UK for up to two years.

Students from outside the EEA who can undertake part-time work whilst enrolled on courses here.

Accession countries (those referred to above as the eight nations who have applied to join the EU). Citizens of these countries have no access (as yet) to benefits, but need to register their wish to work in the UK

Who are they?

There is a need for employers to be better informed about migrant workers arriving in Wales, and to encourage employers to take responsibility to support the inclusion and safety of migrant workers into the local community. Recent events such as the death of the Chinese cockle workers brought home to many employers that they have not only a moral obligation but a legal obligation to the safety of their workers.

The Welsh Assembly Government has devised this Code of Practice to clearly identify a range of workers' rights and employer's responsibilities. This is a Voluntary Code that does not impose any legal obligation nor is it an authoritative statement of the law. We believe that the Code will help guide and reinforce best practice in relation to the employment of migrant workers, and the services that are available to them.

This code aims to provide guidance to employers in Wales with the tools to properly engage migrant workers. It will

Set out the statutory authority for employers and the duty towards those they employ.

Make reference to the Health and Safety regulations that employers have to have regard to for those they employ.

Provide signposts to best practice that employers should follow in ensuring that migrant workers are afforded the same rights as other employees.

Elements of Code

Recruitment

Employers should aim to be ethical in their recruitment practices, both in relation to potential employees and any impact on their country of origin. In particular, employers should:

Must take in to account the provision of the Race relations act as amended, the sex discrimination act, the disability discrimination act and the equality directives on Age, Sexuality, and Religion.

Employment codes can be accessed at

Take care that in recruiting from a country they do not create a shortage of local skills, for example, in nursing. Recruitment in developing countries should be undertaken as part of an intergovernmental co-operation agreement.

Where practicable, apply their usual recruitment and selection policy and procedures when undertaking a proactive recruitment campaign in another country. This should include advertising widely, selecting possible candidates fairly, conducting interviews that are based on merit.

Establish and agree clear and ethical recruitment guidelines to which recruitment agencies, operating on their behalf, must adhere. These should include a requirement that the agency does not charge fees to candidates considered for recruitment.

Check the credentials of an employment agency and its policies in how it treats the staff it is likely to recruit for you. Including checks on compliance with Minimum wage legislation, all equality legislation, Health and Safety legislation. Conduct spot check with those placed with you by an agency.

Travel and accommodation

The employer should be proactive in overseeing and assisting with suitable travel and accommodation arrangements for migrant workers.

In particular, employers should:

Where necessary and appropriate, meet travel costs incurred by migrant workers during the recruitment stage. Where this cost is to be paid back to the company, it should be paid back at an agreed affordable rate, in necessary, over a specified period of time.

Where possible, source appropriate accommodation, and if necessary, take out a lease on behalf of the tenants. However, workers should not be required to stay in accommodation provided by the employer but should be free to choose their own if they wish to do so. Accommodation charges must not be withdrawn direct from the Wage packets.

Help to ensure that, where workers obtain their own accommodation, they are not being exploited, and to offer advice and help if requested.

Not require workers who live in accommodation provided by the employer and then leave that employment, to leave their accommodation immediately but allow a reasonable and agreed period of time to find a suitable alternative. Migrant workers, like anyone else, are entitled to at least four weeks' written notice to quit.

Ensure that accommodation which they provide for migrant workers is not overcrowded and does not pose a risk to the health and safety of those living there.

Integration into the host Community

Relocating to a new country can be difficult and intimidating. Employers should play an active role in

helping migrant workers settle and integrate into their new host community. In particular, employers should:

Provide relevant information to workers prior to their arrival regarding, for example, the employer, the geographical location, climate, cost of living etc. It is important that overseas staff have as much information as possible in order to be prepared and develop realistic expectations.

Support workers in familiarising themselves with the local neighbourhood and facilities, by for example:

Helping to register with a Dentist and GP or insisting on registration with the company doctor (where appropriate).

Helping with the obtaining or the issuing of a National Insurance Number.

Working with a local bank to help with setting up a bank account, preferably before the workers arrive.

Where necessary, working with local utilities/heating/fuel providers to ensure that direct debits can be put in place. Where possible if the company can channel payment in the first instance. (Utilities tend to be suspicious of people with no track record of payment).

Providing access to information on schooling where there are children involved.

Signposting to the other local resources such as the local library, Citizens Advice Bureau, FE Colleges, Local Authorities services and the police.

Establish local liaison arrangements with the education board, health service representatives, community representatives and Police and notify them in advance about significant movements of people into or out of their area in order to support the integration of migrant workers and their safety in the community.

Work with the Police ethnic minority liaison officers to ensure awareness of safety issues and encourage reporting of racial incidents to the police and advice agencies.

Liaise with local community organisations, to provide 'welcome packs' for workers.

Seek to build a sense of belonging and welcome, through arranging social or sporting events.

Support workers in accessing the Internet and personal e-mail addresses (perhaps within their local library) in order to allow them to undertake their own research, and reduce feelings of isolation.

Providing for the needs of those who speak little or no English

For workers with little or no understanding of English, or who cannot read English, special arrangements should be made. These could include providing translation, using interpreters, or replacing written notices with clearly understood symbols or diagrams. Health and Safety legislation requires the employer to ensure that the workforce understands health and safety at work. In particular, employers should:

Disseminate information about local services in workers' own language and/or signpost workers to relevant service providers.

Support migrant workers to learn English as a second language. Where possible, provide free ESOL classes in conjunction with the local FE College.

Provide all information and training in a format that takes account of any language difficulties.

Ensuring that the basic cultural needs of minority ethnic people are met

Coming to live and work in a new country can be a 'culture shock' for migrant workers and it is important for employers to be supportive of the diversity of personal cultures which employing migrant workers brings. In particular, employers should:

Increase the awareness, knowledge and skills of indigenous staff in dealing with the needs of minority ethnic and migrant workers.

Provide Cultural Diversity Awareness training to all staff.

Provide an induction programme to support migrant workers in adjusting to both regional and local culture and the employing organisation's culture. This could include information on food, supermarkets, transport, laundrettes, emergency telephone numbers, church services, maps of local area etc.

Preventing and addressing racial discrimination and harassment in the workplace

Unfortunately, workplace discrimination and harassment still take place, often directed at migrant workers. Employers have a responsibility to address this issue and in particular, they should:

Promote a workplace culture that recognises, values and respects diversity.

Encourage the reporting of racial harassment and provide appropriate support to victims, working in conjunction with Police Ethnic Minority Liaison Officers.

Provide training to staff in dealing with racial harassment.

Communicate with the existing workforce to ensure they understand the reasons for overseas recruitment, are aware of the skills and experience of the individuals and also have an understanding of the different cultures involved.

Identify a liaison person within the organisation to provide advice and support.

Provide opportunities for dialogue and support on an ongoing basis.

Treatment of workers

Treating the people who work for you well is a key indicator of a socially responsible attitude and employers must ensure that they treat migrant workers fairly and equitably in relation to other employees. In particular, employers should:

Ensure that workers are provided with a copy of and have understood their employment contract and/or terms and conditions. Provide these in the worker's first language where required.

Provide workers with details of trade unions operating within the workplace.

Ensure that the same pay, terms and conditions of employment are applied to migrant workers as apply to other employees in the same staff grouping.

Recognise that migrant workers/overseas staff are entitled to the same statutory employment rights and are protected by UK employment legislation in the same way as other staff.

Afford migrant workers/overseas staff the same opportunities for learning and development as other staff.

Ensure that all workers, including whose first language is not English, understand all work related procedures and processes and can confirm that understanding.

ACKNOWLEDGEMENTS

We would like to thank a number of people for their support and contribution to the development of this Code.