



Charter to Protect Migrant Workers from Exploitation and to Build Inclusive Workplaces

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Northern Ireland - Ireland

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Introduction

This charter has been produced by the *Crossing Borders, Breaking Boundaries* project, a PEACE IV-funded programme, managed by SEUPB. The project brought together the Irish Congress of Trade Unions, the Migrant Rights Centre Ireland, the Community Intercultural Programme, and Ulster University, to support migrant workers in NI and the border region and to promote positive relations.

Workplaces are a crucial site of integration and peace building. Exploitative working conditions are barriers to inclusion. This charter is a call from the migrant workers who participated in the Crossing Borders, Breaking Boundaries project for change, so that all people here can work, live, learn and socialise together, with dignity, respect, free from exploitation, prejudice, hate and intolerance.



Ensuring Decent Work

Right to Inclusion – Awareness of Rights

The language barrier is an omnipresent disadvantage at the heart of the employment experience, impacting negatively on workplace justice, health and safety (H&S), equality and inclusion for BAME migrant workers. State bodies should produce a handbook on employment rights, in a range of appropriate languages, providing advice and guidance on how to access those rights, including information on trade unions and the role of public bodies with statutory authority to:

- Rule on employment disputes
- Regulate and enforce H&S legislation, or
- Responsibility for equality legislation



Employers shall:

1. On commencement of employment issue employment contracts, policies and all relevant documentation in the appropriate language of each worker.
2. Provide appropriately translated handbooks to workers at an obligatory induction process and ensure they are understood.
3. Ensure special arrangements are made for workers with limited English to assist comprehension in relation to all workplace processes. These include providing translation and interpreters or replacing written notices with clear symbols or diagrams.
4. Support migrant workers to learn English as a second language (ESOL). Arrange, or provide free, easily accessible and flexible ESOL courses (including online courses) that accord with the working and living situation of newcomer workers.

Right to Fair Pay and Working Hours

Pay and Working Hours

Pay should be in line with the relevant jurisdiction's real living wage in order to support workers to achieve a decent standard of living without having to work excessive hours. Pay structures should be transparent and include long service recognition.

Employers have a duty of care to all workers which includes protecting them from overwork and consistently long, excessive and unsociable hours. Employers should commit to a standard 40 hours working week, promoting a worker's right to transparent and predictable working hours. Zero hours contracts should be banned in N. Ireland.

Anyone required to work more than the hours prescribed in a contract shall be;

- Given proper notice
- Paid overtime rates, and
- Paid for cancelled shifts

Sick Pay

Employers should provide a reasonable level of sick pay, in line with a worker's regular pay rate. Statutory sick pay should be introduced in ROI, without qualifying restrictions, at the real living wage rate.

BAME migrant workers who have contracted Covid-19, or been forced to isolate, risk being plunged into destitution, supporting their families on the paltry statutory sick, illness or other benefit payments, if they are lucky enough to qualify for them. To ensure workers are not be penalised for ill health or sickness absence, qualifying restrictions on entitlement to Statutory Sick Pay in NI should be removed and the duration and the rate should be substantially increased to at least the real living wage.



Right to Equality, Dignity and Respect

All workers should be treated with dignity and respect regardless of ethnicity, nationality, religion, gender or employment status. Employers must:

- Robustly demonstrate that any form of racial harassment, bullying or discrimination regardless of the perpetrator's seniority will not be tolerated.
- Ensure all staff are trained on company policies addressing diversity, discrimination, racism, harassment, bullying and respect at work, with clear complaints mechanisms.
- Introduce clear procedures through which these types of behaviours can be confidentially reported and addressed.

Family and Carer Responsibilities

All workers should have the right to flexible working, not just the right to ask. This can be achieved by creating a presumption in favour of flexible working and a duty on employers to accommodate workers' requests when reasonable and practicable. BAME migrant workers generally do not have a wider family support network to rely upon.

Tougher sanctions should be introduced for employers who discriminate against, deny work to, or otherwise penalise workers, who are pregnant or on maternity leave.

All workers should be treated with dignity and respect regardless of ethnicity, nationality, religion, gender or employment status



Right to Career Progression

Training and career advancement opportunities must be available to all workers. BAME migrant workers tend not to be valued and are thus overlooked when it comes to career progression opportunities. (See section on *Recruitment and Career Development*)



Right to Work Safely – Covid-19

BAME migrant workers in agri-foods continue to endure poor and precarious working conditions. The Covid-19 crisis intensified this situation as production demands have increased, alongside the growing threat of virus transmission in the workplace. Migrant workers must be protected inside and outside the workplace. Therefore, employers should:

1. Establish a standing H&S committee, with union H&S representatives or fully trained worker representatives, to anticipate and deal with Covid-19 and other H&S issues. In small businesses employers should hold similar regular socially distanced meetings with employees.
2. Ensure that all workers receive paid training on H&S protocols and that information, briefings and regular public health updates are provided in language appropriate formats for all staff. Employers should provide translation services or interpreters, and replace written notices with clear symbols or diagrams.
3. Carry out regular risk assessments with H&S reps or workers for each type of job function. The results of the risk assessments should be shared with all workers to ensure that everyone understands the risks and the measures to be taken.
4. Provide all required Personal Protective Equipment needed free to all workers.

Covid-19

5. Maintain the 2-metre rule and use protective screens or other similar measures to avoid face to face working. To protect workers' safety, production lines should be reconfigured, and production rates reduced if necessary.
6. Create one-way systems or use floor markings to help social distancing and provide sufficient facilities and time for regular hand washing.
7. Stagger start/finish and break times, manage common areas such as locker-rooms, toilets and canteens to limit numbers at any period of time.
8. Ensure regular cleaning throughout the workplace specifically of touch points. Avoid workers contact with spray.
9. Review air conditioning systems in line with health guidance. Recirculation of air should be avoided.
10. Where necessary facilitate workers travel to and from work to ensure the maintenance of social distancing measures and apply these measures to car parking areas.
11. Assist workers who develop Covid-19 symptoms, with interpretation, to arrange and go through the testing and tracing processes, and continue to support and advise them, if required, while they are ill.
12. Pay full wages if a worker develops Covid-19 symptoms, or is isolating. Such absences should be excluded from absence management procedures and the worker should return to normal duties once approved to do so.
13. Allow workers who are clinically at risk to work from home, be relocated to a safer working environment, or be sent home with their pay and jobs protected.
14. Shut the workplace and implement a deep clean before reopening, after 2 weeks, should a cluster of cases occur. All workers should receive full pay for the duration.



Rights for Agency and Precarious Workers

All workers should be equally protected by employment law. The legal differences between the employee and worker categories should be abolished and bogus self-employed loopholes in the law should be closed.

BAME migrant agency workers remain fearful of raising any workplace issues for fear of losing work or being removed from a workplace. All of the rights in this charter should apply equally to agency workers and those in other forms of precarious employment. Legislation should also be introduced to ensure that:

- End-users, agencies and umbrella companies are jointly and severally liable for any breaches of employment law.
- Agency workers have a written statement of the complete employment particulars on or before their first day of employment.
- Agency workers are entitled to, at least, equitable pay, terms and conditions as the permanent employees in the workplace.
- Payslips are provided early to allow errors to be corrected in advance of payment.
- Employers who regularly underpay workers face tough sanctions.

- After 12 weeks doing the same job the agency worker should be offered a permanent contract.
- All employment and recruitment agencies must be subject to state licensing and continuous certification systems.

States should introduce a single licensing body, adequately staffed and resourced to carry out unannounced inspections, anonymously interview workers with interpreters, if required, and investigate complaints. Dissuasive penalties for non-compliance with existing legal standards, including employment rights, should be introduced and the non-compliance made public.



Right to Representation and a Voice at Work

Trade union access to workplaces remains the most efficient method of protecting workers' rights, ensuring workplace justice and improving relations. To raise wages and improve working conditions of BAME migrant and other workers requires:

- Trade union recognition - access to workers and full collective bargaining without restrictions should be a statutory right.
- Terms and conditions of employment, and sector specific H&S protections, should be set by a process of sector wide collective bargaining between employers and trade unions supported by the state.
- Protection from unfair dismissal should be a day one right for all workers.
- Increase compensatory awards and remove statutory limits.
- Legislation around compulsory redundancy consultations should be tightened to ensure any redundancy is genuine and all actions to avoid redundancies are adequately explored.

Right to Mobility and Status for all Workers

There must be a rights-based immigration system across the island where all workers, regardless of immigration status, have their rights respected at work and can access healthcare and social security support.

The Covid-19 pandemic has highlighted the vital role BAME migrant workers play in health, care, the agri-food sector and frontline services. Yet the UK Government's new immigration system means that they will be at further risk of racism, discrimination and exploitation.

A firewall must be introduced between labour inspection services and immigration enforcement, so people can report exploitation without fear of deportation. The 'Hostile Environment' and the 'illegal working' offence, unique to the UK, must be repealed. Work visas and permits should not be tied to specific employers – on ending employment, workers should have sufficient leave to remain in order to find alternative employment and to access their employment rights through the legal systems. Mobility should be introduced for workers to have full access, without the need for a work permit to the labour market after 2 years, with enhanced family reunification rights.

Right to Legal Redress and Protection from Exploitation

Inspection and Enforcement

Covid-19 has exposed the shortcomings of the workplace inspection regimes exacerbating a perceived pre-existing reluctance by the state to prosecute poor employer practice. Chronic underfunding and the exclusion of trade unions from the management of inspection authorities needs to be urgently addressed.

To effectively enforce employment rights, H&S and equality legislation, states should reinforce existing labour inspection authorities in terms of powers, financial resources, human resources and technical expertise. Additionally, the deployment of unannounced inspections should be increased. Inspectors should, with interpreters, anonymously interview workers as required. Increase Health and Safety prosecutions for violations and failure to protect workers. Dissuasive penalties for non-compliance with existing legal standards, including immediate closures, should be introduced and any non-compliance made public. States should also create a new unified Workers Protection Authority with extensive powers to inspect workplaces for breaches of employment, H&S and equality legislation and instigate prosecutions and civil proceedings.

Access to Justice

The current employment rights infrastructure does not adequately support access to workplace justice, particularly for BAME migrant workers.

The precarity of working life means that for workers, the pursuit of workplace justice can be a daunting process, for fear of upsetting employers or recruitment agencies. A lack of English, the complexity of the legal process and proceedings, limited resources and other barriers preclude migrant workers from bringing breaches of their employment rights to the statutory authorities. Reforming the current system to better support migrant worker access to workplace justice necessitates, in the first instance, that the state bodies in both jurisdictions tasked with promoting employment rights and/or determine employment rights infringements are subject to an equality proofing exercise designed to generate a programme of practical steps.



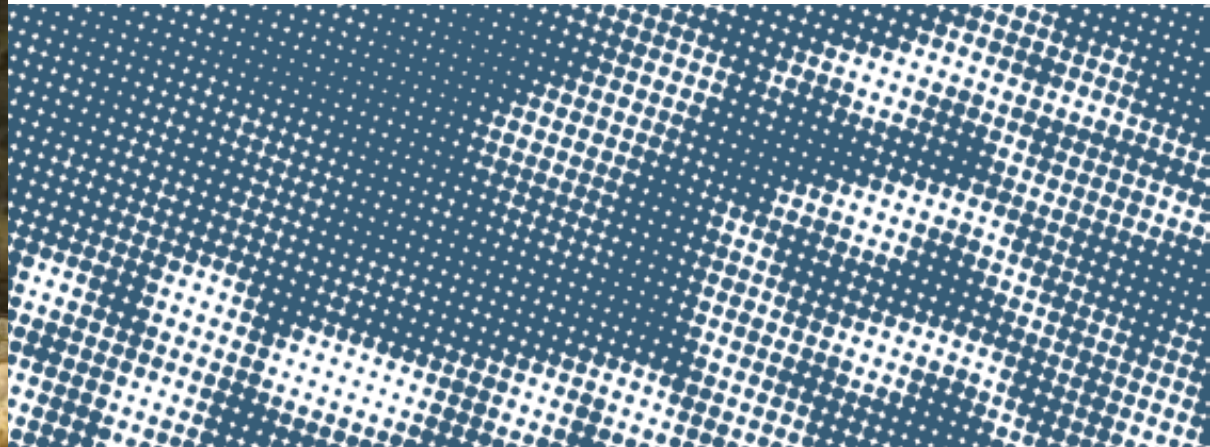
This review needs to consider:

1. Rebalancing the focus towards enforcing employment rights rather than simply settling disputes.
2. Simplifying the application, prehearing and hearing processes with greater consideration of non-English speakers unfamiliar with the legal process and proceedings, including the extension of current time limits.
3. Providing better guidance, for example by producing explanatory videos, in a range of languages, on the legal process and proceedings in areas such as:
 - Jurisdiction
 - Lodging a case
 - Case preparation
 - Prehearings and the hearing
 - Presenting a case
 - Cross-examination

4. Providing specially trained interpretation services with opportunities for users to feedback on this service. Allied to this is the provision of training for staff and adjudicating panel members on the specific requirements of non-English speakers, working with interpreters and cultural competency.

Other areas which require reform include:

- a) The provision of legal aid to ensure 'Equality of Arms' and expedite cases, as migrant workers require bespoke advice, advocacy and representation.
- b) Tougher penalties for employers in breach of the law, especially recidivists, or who fail to comply with tribunal orders including personal liability for those that were directors of companies at the time.
- c) Ensuring that legally determined awards are easily and speedily enforced.
- d) Stronger liaison between tribunals and enforcement agencies in order to deal with poor employer practice.
- e) Ensure undocumented workers have access to the legal redress in line with all other workers.



Building Inclusion

Recruitment and Career Development

Attracting BAME migrant workers into particular employment is dependent on helping potential applicants to realise that a career in that organisation is open to them. Typically, employers rely on pre-established recruitment and promotion methods that often fail to reach BAME migrant workers.

To access more diverse talent pools, employers should:

- Regularly review the ethnicity, nationality and gender make-up of their existing workforce.
- Review their recruitment and promotion practices to remove potential barriers and ensure meaningful opportunities for all, including a welcoming statement in job advertisements.
- Build strategic relationships with, and advertise job vacancies through, ethnic minority support organisations and networks including those facilitated by local government.
- Ensure agency staff are encouraged and helped to apply for permanent vacancies.
- Review job descriptions for un-intentional bias and make them inclusive by, for example, turning them into required skills lists.

- Train all hiring managers on inclusive shortlisting and interviewing techniques, cultural competency and unconscious bias.
- Structure interviews for inclusion, e.g. develop competency-based interview questions.
- Utilise state sponsored agencies for recognising equivalencies in international qualifications and skills.

Retention – Building Inclusion

Building an inclusive society begins in the workplace. Creating a workplace culture based on inclusion and trust benefits everyone.

All workers should be treated equally with dignity and respect regardless of ethnicity, nationality, religion, gender or employment status. Creating and maintaining a working environment where workers, feel valued, supported, listened to and afforded opportunities to develop, will enable workers to be more productive, innovative and likely to stay with the employer.

To achieve such a culture, employers should implement the relevant recommendations in this charter, and also:

1. Demonstrate strong, visible and consistent leadership on building an inclusive workplace. Employer values and publications should embed a zero-tolerance of discrimination, racism, harassment and bullying.
2. Provide an induction programme to support migrant workers in adjusting to both the regional culture and the employing organisation's culture and requirements.

3. Train all managers, supervisors and staff on company policies relating to cultural competency, discrimination, racism, harassment, bullying and respect at work, and ensure that all employees know how to deal with discrimination, bullying, racial abuse by staff or customers.
4. Encourage the reporting of discrimination, bullying and racial harassment. Appropriate support should be provided to victims by employers working in conjunction with trade unions and support organisations.
5. Recognise trade unions to support inclusion, communication and encourage diverse perspectives. Work with unions to facilitate and encourage union representatives from the different ethnic, national or gender groups making up the workforce.
6. Encourage line managers to get to know and support their staff.
7. Develop a governance structure which fosters a culture that values and supports inclusion e.g. establish a body that allows for representation of all the voices of the diverse workforce.
8. Make special arrangements for workers who need to improve their English to comprehend all work related policies, procedures and processes. These include providing translation, using interpreters, or replacing written notices with clear symbols or diagrams.
9. Support migrant workers to learn English as a second language (ESOL) where possible, provide free, easily accessible ESOL courses (including online courses) that accord with the working and living situation of newcomer workers. ESOL courses could also be specifically designed to meet the needs of the business.
10. Grow talent by promoting a learning environment that accommodates the needs of the entire workforce. Facilitate training and skills development. Work with trade union learning programmes to build partnerships with learning providers.
11. Actively and transparently support career progression for all, built upon support for inclusive flexible working, family friendly initiatives and working arrangements.
12. Form strategic partnerships with organisations in the community that support ethnic minorities and encourage active engagement. Promote initiatives and social activities that encourage understanding, friendship and inclusion.
13. Establish clear and ethical employment guidelines to which recruitment agencies, gangmasters and sub-contractors, operating on the employer's behalf, must adhere to.
14. The above actions should apply equally to agency and temporary workers as well as to permanent employees.





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The views and opinions expressed in this policy paper do not necessarily reflect those of the European Commission or the Special EU Programmes Body (SEUPB).

