R151 Migrant Workers Recommendation, 1975

Recommendation concerning Migrant Workers
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The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Sixtieth Session on 4 June 1975, and

Considering that the Preamble of the Constitution of the International Labour Organisation assigns to it the task of protecting the interests of workers when employed in countries other than their own, and

Recalling the provisions contained in the Migration for Employment Convention and Recommendation (Revised), 1949, and in the Protection of Migrant Workers (Underdeveloped Countries) Recommendation, 1955, which deal with such matters as the preparation and organisation of migration, social services to be provided to migrant workers and their families, in particular before their departure and during their journey, equality of treatment as regards a variety of matters which they enumerate, and the regulation of the stay and return of migrant workers and their families, and

Having adopted the Migrant Workers (Supplementary Provisions) Convention, 1975, and

Considering that further standards are desirable as regards equality of opportunity and treatment, social policy in regard to migrants and employment and residence, and

Having decided upon the adoption of certain proposals with regard to migrant workers, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation,

adopts this twenty-fourth day of June of the year one thousand nine hundred and seventy-five, the following Recommendation, which may be cited as the Migrant Workers Recommendation, 1975:

1. Members should apply the provision of this Recommendation within the framework of a coherent policy on international migration for employment. That

policy should be based upon the economic and social needs of both countries of origin and countries of employment; it should take account not only of short-term manpower needs and resources but also of the long-term social and economic consequences of migration for migrants as well as for the communities concerned.

I. Equality of Opportunity and Treatment

2. Migrant workers and members of their families lawfully within the territory of a Member should enjoy effective equality of opportunity and treatment with nationals of the Member concerned in respect of--

(a) access to vocational guidance and placement services;

(b) access to vocational training and employment of their own choice on the basis of individual suitability for such training or employment, account being taken of qualifications acquired outside the territory of and in the country of employment;

(c) advancement in accordance with their individual character, experience, ability and diligence;

(d) security of employment, the provision of alternative employment, relief work and retraining;

(e) remuneration for work of equal value;

(f) conditions of work, including hours of work, rest periods, annual holidays with pay, occupational safety and occupational health measures, as well as social security measures and welfare facilities and benefits provided in connection with employment;

(g) membership of trade unions, exercise of trade union rights and eligibility for office in trade unions and in labour-management relations bodies, including bodies representing workers in undertakings;

(h) rights of full membership in any form of co-operative;

(i) conditions of life, including housing and the benefits of social services and educational and health facilities.

3. Each Member should ensure the application of the principles set forth in Paragraph 2 of this Recommendation in all activities under the control of a public authority and promote its observance in all other activities by methods appropriate to national conditions and practice.

4. Appropriate measures should be taken, with the collaboration of employers' and workers' organisations and other bodies concerned, with a view to--

(a) fostering public understanding and acceptance of the above-mentioned principles;

(b) examining complaints that these principles are not being observed and securing the correction, by conciliation of other appropriate means, of any practices regarded as in conflict therewith.

5. Each Member should ensure that national laws and regulations concerning residence in its territory are so applied that the lawful exercise of rights enjoyed in pursuance of these principles cannot be the reason for non-renewal of a residence permit or for expulsion and is not inhibited by the threat of such measures.

6. A Member may--

(a) make the free choice of employment, while assuring migrant workers the right to geographical mobility, subject to the conditions that the migrant worker has resided lawfully in its territory for the purpose of employment for a prescribed period not exceeding two years or, if its laws or regulations provide for contracts for a fixed term of less than two years, that the worker has completed his first work contract;

(b) after appropriate consultation with the representative organisations of employers and workers, make regulations concerning recognition of occupational qualifications acquired outside its territory, including certificates and diplomas;

(c) restrict access to limited categories of employment or functions where this is necessary in the interests of the State.

7.

(1) In order to enable migrant workers and their families to take full advantage of their rights and opportunities in employment and occupation, such measures as may be necessary should be taken, in consultation with the representative organisations of employers and workers--

(a) to inform them, as far as possible in their mother tongue or, if that is not possible, in a language with which they are familiar, of their rights under national law and practice as regards the matters dealt with in Paragraph 2 of this Recommendation;

(b) to advance their knowledge of the language or languages of the country of

employment, as far as possible during paid time;

(c) generally, to promote their adaptation to the society of the country of employment and to assist and encourage the efforts of migrant workers and their families to preserve their national and ethnic identity and their cultural ties with their country of origin, including the possibility for children to be given some knowledge of their mother tongue.

(2) Where agreements concerning the collective recruitment of workers have been concluded between Members, they should jointly take the necessary measures before the migrants' departure from their country of origin to introduce them to the language of the country of employment and also to its economic, social and cultural environment.

8.

(1) Without prejudice to measures designed to ensure that migrant workers and their families enter national territory and are admitted to employment in conformity with the relevant laws and regulations, a decision should be taken as soon as possible in cases in which these laws and regulations have not been respected so that the migrant worker should know whether his position can be regularised or not.

(2) Migrant workers whose position has been regularised should benefit from all rights which, in accordance with Paragraph 2 of this Recommendation, are provided for migrant workers lawfully within the territory of a Member.

(3) Migrant workers whose position has not been or could not be regularised should enjoy equality of treatment for themselves and their families in respect of rights arising out of present and past employment as regards remuneration, social security and other benefits as well as regards trade union membership and exercise of trade union rights.

(4) In case of dispute about the rights referred to in the preceding sub-paragraphs, the worker should have the possibility of presenting his case to a competent body, either himself or through a representative.

(5) In case of expulsion of the worker or his family, the cost should not be borne by them.

II. Social Policy

9. Each Member should, in consultation with representative organisations of employers and workers, formulate and apply a social policy appropriate to national conditions and practice which enables migrant workers and their families to share in advantages enjoyed by its nationals while taking account, without

adversely affecting the principle of equality of opportunity and treatment, of such special needs as they may have until they are adapted to the society of the country of employment.

10. With a view to making the policy as responsive as possible to the real needs of migrant workers and their families, it should be based, in particular, on an examination not only of conditions in the territory of the Member but also of those in the countries of origin of the migrants.

11. The policy should take account of the need to spread the social cost of migration as widely and equitably as possible over the entire collectivity of the country of employment, and in particular over those who profit most from the work of migrants.

12. The policy should be periodically reviewed and evaluated and where necessary revised.

A. Reunification of Families

13.

(1) All possible measures should be taken both by countries of employment and by countries of origin to facilitate the reunification of families of migrant workers as rapidly as possible. These measures should include, as necessary, national laws or regulations and bilateral and multilateral arrangements.

(2) A prerequisite for the reunification of families should be that the worker has, for his family, appropriate accommodation which meets the standards normally applicable to nationals of the country of employment.

14. Representatives of all concerned, and in particular of employers and workers, should be consulted on the measures to be adopted to facilitate the reunification of families and their co-operation sought in giving effect thereto.

15. For the purpose of the provisions of this Recommendation relating to the reunification of families, the family of the migrant worker should include the spouse and dependent children, father and mother.

16. With a view to facilitating the reunification of families as quickly as possible in accordance with Paragraph 13 of this Recommendation, each Member should take full account of the needs of migrant workers and their families in particular in its policy regarding the construction of family housing, assistance in obtaining this housing and the development of appropriate reception services.

17. Where a migrant worker who has been employed for at least one year in a country of employment cannot be joined by his family in that country, he should

be entitled--

(a) to visit the country of residence of his family during the paid annual holiday to which he is entitled under the national law and practice of the country of employment without losing during the absence from that country any acquired rights or rights in course of acquisition and, particularly, without having his employment terminated or his right to residence in the country of employment withdrawn during that period; or

(b) to be visited by his family for a period corresponding at least to the annual holiday with pay to which he is entitled.

18. Consideration should be given to the possibility of giving the migrant worker financial assistance towards the cost of the travel envisaged in the preceding Paragraph or a reduction in the normal cost of transport, for instance by the arrangement of group travel.

19. Without prejudice to more favourable provisions which may be applicable to them, persons admitted in pursuance of international arrangements for free movement of labour should have the benefit of the measures provided for in Paragraphs 13 to 18 of this Recommendation.

B. Protection of the Health of Migrant Workers

20. All appropriate measures should be taken to prevent any special health risks to which migrant workers may be exposed.

21.

(1) Every effort should be made to ensure that migrant workers receive training and instruction in occupational safety and occupational hygiene in connection with their practical training or other work preparation, and, as far as possible, as part thereof.

(2) In addition, a migrant worker should, during paid working hours and immediately after beginning his employment, be provided with sufficient information in his mother tongue or, if that is not possible, in a language with which he is familiar, on the essential elements of laws and regulations and on provisions of collective agreements concerning the protection of workers and the prevention of accidents as well as on safety regulations and procedures particular to the nature of the work.

22.

(1) Employers should take all possible measures so that migrant workers may fully understand instructions, warnings, symbols and other signs relating to safety

and health hazards at work.

(2) Where, on account of the migrant workers' lack of familiarity with processes, language difficulties or other reasons, the training or instruction given to other workers is inadequate for them, special measures which ensure their full understanding should be taken.

(3) Members should have laws or regulations applying the principles set out in this Paragraph and provide that where employers or other persons or organisations having responsibility in this regard fail to observe such laws or regulations, administrative, civil and penal sanctions might be imposed.

C. Social Services

23. In accordance with the provisions of Paragraph 2 of this Recommendation, migrant workers and their families should benefit from the activities of social services and have access thereto under the same conditions as nationals of the country of employment.

24. In addition, social services should be provided which perform, in particular, the following functions in relation to migrant workers and their families--

(a) giving migrant workers and their families every assistance in adapting to the economic, social and cultural environment of the country of employment;

(b) helping migrant workers and their families to obtain information and advice from appropriate bodies, for instance by providing interpretation and translation services; to comply with administrative and other formalities; and to make full use of services and facilities provided in such fields as education, vocational training and language training, health services and social security, housing, transport and recreation: Provided that migrant workers and their families should as far as possible have the right to communicate with public authorities in the country of employment in their own language or in a language with which they are familiar, particularly in the context of legal assistance and court proceedings;

(c) assisting authorities and bodies with responsibilities relating to the conditions of life and work of migrant workers and their families in identifying their needs and in adapting thereto;

(d) giving the competent authorities information and, as appropriate, advice regarding the formulation, implementation and evaluation of social policy with respect to migrant workers;

(e) providing information for fellow workers and foremen and supervisors about the situation and the problems of migrant workers.

25.

(1) The social services referred to in Paragraph 24 of this Recommendation may be provided, as appropriate to national conditions and practice, by public authorities, by approved non-profit-making organisations or bodies, or by a combination of both. The public authorities should have the over-all responsibility of ensuring that these social services are at the disposal of migrant workers and their families.

(2) Full use should be made of services which are or can be provided by authorities, organisations and bodies serving the nationals of the country of employment, including employers' and workers' organisations.

26. Each Member should take such measures as may be necessary to ensure that sufficient resources and adequately trained staff are available for the social services referred to in Paragraph 24 of this Recommendation.

27. Each Member should promote co-operation and co-ordination between different social services on its territory and, as appropriate, between these services and corresponding services in other countries, without, however, this co-operation and co-ordination relieving the States of their responsibilities in this field.

28. Each Member should organise and encourage the organisation, at the national, regional or local level, or as appropriate in a branch of economic activity employing substantial numbers of migrant workers, of periodic meetings for the exchange of information and experience. Consideration should also be given to the exchange of information and experience with other countries of employment as well as with the countries of origin of migrant workers.

29. Representatives of all concerned and in particular of employers and workers should be consulted on the organisation of the social services in question and their co-operation sought in achieving the purposes aimed at.

III. Employment and Residence

30. In pursuance of the provision of Paragraph 18 of the Migration for Employment Recommendation (Revised), 1949, that Members should, as far as possible, refrain from removing from their territory, on account of lack of means or the state of the employment market, a migrant worker regularly admitted thereto, the loss by such migrant worker of his employment should not in itself imply the withdrawal of his authorisation of residence.

31. A migrant who has lost his employment should be allowed sufficient time to find alternative employment, at least for a period corresponding to that during which he may be entitled to unemployment benefit; the authorisation of residence

should be extended accordingly.

32.

(1) A migrant worker who has lodged an appeal against the termination of his employment, under such procedures as may be available, should be allowed sufficient time to obtain a final decision thereon.

(2) If it is established that the termination of employment was not justified, the migrant worker should be entitled, on the same terms as national workers, to reinstatement, to compensation for loss of wages or of other payment which results from unjustified termination, or to access to a new job with a right to indemnification. If he is not reinstated, he should be allowed sufficient time to find alternative employment.

33. A migrant worker who is the object of an expulsion order should have a right of appeal before an administrative or judicial instance, according to conditions laid down in national laws or regulations. This appeal should stay the execution of the expulsion order, subject to the duly substantiated requirements of national security or public order. The migrant worker should have the same right to legal assistance as national workers and have the possibility of being assisted by an interpreter.

34.

(1) A migrant worker who leaves the country of employment should be entitled, irrespective of the legality of his stay therein--

(a) to any outstanding remuneration for work performed, including severance payments normally due;

(b) to benefits which may be due in respect of any employment injury suffered;

(c) in accordance with national practice--

(i) to compensation in lieu of any holiday entitlement acquired but not used;

(ii) to reimbursement of any social security contributions which have not given and will not give rise to rights under national laws or regulations or international arrangements: Provided that where social security contributions do not permit entitlement to benefits, every effort should be made with a view to the conclusion of bilateral or multilateral agreements to protect the rights of migrants.

(2) Where any claim covered in subparagraph (1) of this Paragraph is in dispute, the worker should be able to have his interests represented before the competent body and enjoy equal treatment with national workers as regards legal

assistance.

Cross references

Conventions: C097 Migration for Employment Convention, 1949
Recommendations:R100 Protection of Migrant Workers (Underdeveloped Countries) Recommendation, 1955
Conventions: C143 Migrant Workers (Supplementary Provisions) Convention, 1975
Recommendations:R086 Migration for Employment Recommendation (Revised), 1949

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