



CSO-TU Position on the Recruiters' Proposed Addenda to the POEA Overseas Employment Contract

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The COVID-19 pandemic has claimed thousands of lives and continues to reshape the world as we know it today. The pandemic has exposed and magnified the cracks in public healthcare systems, crises management, and global governance in general. The novel coronavirus knows neither territorial boundaries nor nationality and has spread throughout the world. To contain the infection, nations scrambled to close their borders, restrict mobility, and implement public health measures. As a result, economies shut down and migrant workers find themselves working in precarious high-risk environments or out of a job completely.

While COVID-19 continue to infect millions, the economic repercussions of large scale lockdowns became very much of a concern to governments. Some have started easing restrictions on mobility while requiring the practice of physical distancing, wearing face masks, and frequent hand-washing. Countries are looking to open its borders again to cushion the economic impact of COVID-19. Along with this, comes the resumption of the global migration flow. It is to our understanding that the private sector consisting of the private recruitment agencies in the Philippines has proposed additions to the standard overseas employment contracts for Overseas Filipino Workers (OFWs) to adapt to the new normal brought about by the pandemic. We agree that there is a need to adopt changes in policy and systems to the “new normal” but we respectfully depart from the recommendations proposed by those from the recruitment sector.

Migrant workers should not bear the cost of recruitment

Among the new provisions in the proposed addenda of the recruitment is the non-entitlement of the OFW of their salaries during quarantine period. The proposal shall apply where the OFW is required to undergo a mandatory 14-day quarantine period upon arrival in the country of destination. According to the recruitment sector, such non-requirement of the payment of salaries during the quarantine period shall increase the competitiveness of our workers abroad. We disagree with the position that the rights of our workers can be compromised in order to increase global competitiveness. If employers still want to pursue hiring migrant workers, they should go ahead and pay for all the costs. In Malaysia, for instance, employers have the option to look for

workers within their country. If they hire migrant workers, they should have already taken into consideration the costs.

The quarantine costs under the “new normal” for migrant workers essentially are recruitment costs. In view of the ongoing Covid pandemic, quarantine costs has become a mandatory requirement in order for migrant workers to secure employment abroad and clearly falls under the ILO definition of recruitment fees and related costs. Based on the ILO General Principles and Operational Guidelines for Fair Recruitment, all recruitment fees and related costs should not be charged to migrant workers. The Philippines, as a signatory to the Global Compact for Safe, Orderly and Regular Migration also committed to “prohibit recruiters and employers from charging or shifting recruitment fees or related costs to migrant workers.”

It is hard to believe that employers, who consciously decide to hire migrant workers, have not anticipated such additional costs. Further, if the employers are not to shoulder the cost of quarantine, it will fall on the workers themselves. It is untenable to shift the burden of recruitment to the workers. Under the International Labor Organization (ILO) Convention No. 189 on Decent Work for Domestic Workers, a member-state who has ratified the convention should take measures to ensure that fees are not charged nor deducted from the remuneration of domestic workers. ILO Convention 181 on Private Recruitment Agencies also states that migrant workers should not pay for recruitment fees and costs which, in our view during this pandemic, cover those for quarantine.

It is also important to clarify whether this proposed provision shall also apply to subsequent quarantine periods should the OFW get infected while in the country of destination. The blanket proposal provides that “the employee is not entitled to salaries while on quarantine except when he/she is required to work from his/her home and/or quarantine facility.” A textual reading of the proposal shows that in instances that the OFW is to go on quarantine for any reason, the employer would not be required to pay the salaries of the worker. It also is unclear whether the employer would shoulder any other quarantine costs acquired by the worker in the country of destination. OFWs, who are already at a vulnerable position abroad, will be further burdened by this proposal.

We also call the attention of POEA to the guidelines developed by the International Labour Organization on ensuring fair recruitment during COVID-19 which states that migrants should not pay for recruitment fees and cost including quarantine facilities during COVID19¹ The International Organization for Migration (IOM) International Recruitment Integrity System (IRIS) which the Philippine Government supports has also published COVID-19 guidance for business and recruitment agencies. The guidance documents state that workers should not pay for recruitment fees and cost.²

Allowing the transfer of employers is a system prone to abuse

The subject of the second proposed addendum to the overseas employment contract (OEC) is to allow the changing of employers and alternative work schemes for OFWs onsite. The recruitment sector would like to seek the application of the Department of Labor and

¹ The ILO guidelines can be accessed here: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_748839.pdf

² The publications can be accessed here: <https://iris.iom.int/covid-19-crisis-response>

Employment's (DOLE) Labor Advisory No. 17³ to OFW contracts. We see no need for the blanket application of the DOLE Labor Advisory No. 17 to OFWs. Once the worker is abroad, Labor Advisory No. 17 will not be enforceable, nor will it be relevant to the employers and foreign recruitment agencies (FRA). Local laws in the countries of destination will prevail. Further, the local recruitment agencies (LRA) have little to no involvement in the process of the transfer of employees nor in the enforcement of alternative work schemes abroad. The process of transferring employees shall involve largely the FRA, employers, and the employee. The role of the Philippine government at this junction is to ensure that the new contract entered follows the standard OEC. If the LRAs would like to apply the DOLE Labor Advisory to the case of OFWs, it could potentially affect the implementation of the Joint and Solidary Liability (JSL) provision of Republic Act No. 8042 as amended by Republic Act No. 10022. Such impact on the JSL should be considered thoroughly.

It is necessary to point out that allowing and deregulating the transfer of OFWs to another employer would subject OFWs to exploitation. As migrant workers situated in an already vulnerable position in a foreign country in the midst of a global health crisis, they immediately are at a disadvantage in terms of negotiating the terms of their employment with foreign employers and FRAs. The application of DOLE Labor Advisory No. 17 perpetuates the skewed power dynamic between foreign employers and OFWs abroad. Such exploitation of the skewed power dynamic between employer and OFW in favor of the former, is not far from reality and is in fact something that the Philippine government has been seeking to address. There had been reports of Filipino migrant domestic workers who are sold by their principal employers to other employers. Considering the context of the current situation of OFWs, a possible unintended consequence of the blanket application of DOLE Labor Advisory No. 17 may be a legitimization of systemic abuse and exploitation of OFWs.

Social Safety Nets for OFWs

In the midst of a global public health crisis, it is the primary duty of the government to protect the rights and welfare of OFWs. Our “global competitiveness” comes AFTER such duty. It would be a great injustice for OFWs to compromise their rights for the sake of competitiveness. There is a glaring need to ensure that our OFWs abroad are not left behind and their families here are given proper attention by the government.

Instead of the proposals that will effect diminution of protection and benefits for the OFWs, we propose instead that POEA ensures the following in the POEA Standard Employment Contract:

1. Clear provisions that guarantee safety in the workplace and in the accommodation and to provide treatment if an OFW gets infected with Covid-19 with assurance that salaries will continue to be paid during confinement;⁴

³ Discussions are on-going in the NTIPC for amendments of certain provisions in the DOLE Labor Advisory 17

⁴ This is the directive in Qatar issued by the Ministry of Administrative Development, Labor and Social Affairs [MADLSA] to give assurance to workers infected with Covid-19 will continue to receive their wages while undergoing treatment for Covid-19

2. Clear provision for social protection – health and medical insurance, leave credit entitlements, occupational health and safety provisions including hygiene kits, personal protective equipment/gears in the work place including observance of health protocol in the work place guidelines issued by the World Health Organization such as temperature checks, end-of-service entitlements/ social security provisions including maternity provisions among others; and,
3. Provision for the Joint and Several Liability of the Private recruitment Agencies vis a vis the foreign employers

Furthermore we would also like to recommend to the Philippine government the following:

4. To ensure that migrant workers do not pay for the cost of quarantine upon deployment of workers;
5. To ensure that migrant salaries are paid even during the prescribed quarantine;
6. To make available alternative measures for training and orientation while workers are on quarantine which could include online Post Arrival Orientation (POA), online training and or other alternative measures that will ensure workers are employed, occupied, and receiving their salaries while undergoing quarantine.

Signatories:

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