

WORK PERMITS AND EXPLOITATION: TIME FOR REFORM



MRCI POSITION

Binding a worker to one employer under the current employment permits system is a leading factor in the exploitation of migrant workers. Denying workers the freedom to change employer is also a major cause of workers becoming undocumented. To counter exploitation and to ensure a level playing field for compliant employers, the employment permits system must grant employment permit holders the right to change employers.

BACKGROUND TO EMPLOYMENT PERMITS

Employment permit schemes are mechanisms used by states to monitor the admission of migrant workers in employment sectors where a demand for workers exists and where jobs cannot be filled by local workers. Such programmes became popular in Europe after World War II at a time when workers and their skills were needed to rebuild economies. Known as *Guest Worker Programmes*, they were usually characterised by the restriction of the rights of migrant workers in areas such as permanent residency, family reunion, freedom to change employer and social welfare benefits. By restricting rights, states presumed that migrant workers would return to their countries of origin when their labour was no longer needed. Despite these restrictive and discriminatory rules, many migrant workers stayed and settled with their families.

Ireland began recruiting migrant workers in the late 1990s when they were needed to fill the demand for labour in the rapidly growing economy. At the time, work permit schemes operated under the Aliens Act (1935), Aliens Order (1946) and the Immigration Act (1999). Prior to 1998, the number of work permits issued was below 5,000 per year.⁰¹ Given the booming economy, the number of work permits issued to non-European Economic Area (non-EEA) nationals increased from approximately 5,000 in 1998 to a peak of 48,000 in 2003.⁰² New legislation was introduced in 2003, the Employment Permits Act, which established two types of permit schemes for non-EEA nationals; working visa/authorisations and work permits. The work visa/

authorisation scheme, administered by the Department of Justice, Equality and Law Reform, was aimed at recruiting migrants skilled in the IT, health and architectural sectors. The work permit scheme, administered by the Department of Enterprise, Trade and Employment (DETE), was primarily aimed at recruiting workers for those skilled in domestic care work, agriculture, hotel and restaurant work.

In May 2004, Ireland invited nationals of the ten new EU accession States to work in Ireland without the need for work permits, following the United Kingdom and Sweden. After Enlargement, the government felt it needed a more managed approach to regulate the number and selection of migrant workers to Ireland from outside the EEA. The employment permits system was again reformed through the Employment Permits Act of 2006,⁰³ which was designed to reflect the policy of meeting Ireland's labour needs from within the enlarged EEA. This policy shift resulted in decreased numbers of employment permits being issued.

CURRENT EMPLOYMENT PERMITS SYSTEM

According to DETE statistics in 2009, there were approximately 30,000 non-EEA migrant workers holding employment permits in Ireland.⁰⁴ Approximately one out of three of these permits was held by those employed in the services sector, and one out of five to those in the catering sector. Other significant sectors include medical and nursing, agriculture and industry.

01 Mac Éinrí, P. & White, A. *Immigration into the Republic of Ireland: a bibliography of recent research*. Irish Geography, Volume 41, Issue 2 July, pages 151-179

02 Department of Enterprise, Trade and Employment website: <http://www.entemp.ie/labour/workpermits/statistics.htm>

03 National Economic and Social Council & International Organisation for Migration, *Managing migration in Ireland: a social and economic analysis*, 2006

04 <http://www.entemp.ie/press/2009/20090415.htm>

Employment Permits: Green Card and Work Permit

There are two primary types of employment permits;⁰⁵ the green card and the work permit.

The Green Card:

- Replaced the working visa/authorisation scheme
- Issued for *all* positions with an annual salary of €60,000 or more
- May also be granted in the €30,000 to €60,000 annual salary range for a restricted number of occupations where skills shortages have been identified by DETE.⁰⁶
- Fee for a two-year green card is €1,000.

Work Permits:

- Issued where the salary range is €30,000 or more (and in exceptional cases below €30,000) for occupations other than those named in DETE's ineligible job category list.⁰⁷
- An application is subject to an eight-week Labour Market Needs Test before it can be made, to ensure that no other qualified Irish or EEA-national is available for the position.
- Labour Market Needs Test requires that a job is advertised with EURES/FÁS employment network for at least eight weeks and in local and national newspapers for six days.
- Fees are €500 for a six month permit or €1,000 for a two-year permit.
- There are lengthy delays in the processing of work permits (currently three month delay).⁰⁸

Under the current system, either the employer or the employee may apply for an employment permit. When an employment permit is issued to the migrant worker, he or she, where necessary, must obtain an entry visa from his/her local Irish Embassy or Consulate. Upon arrival in Ireland, the permit holder must register with the Garda National Immigration Bureau or local Garda immigration officer to obtain permission to remain in the State as an employee. The immigration status of a permit holder is therefore tied directly to their employment permit.

Employment permit holders are entitled to apply for long term residency after five years which, once granted, entitles an individual to live and work without the need for another employment permit. The long term residency processing times are currently more than two years, during which the applicant must stay within the employment permit system.

RESTRICTED FREEDOM OF MOVEMENT

The holder of an employment permit is only allowed to work for the employer and in the employment stated on the permit. A permit holder may apply to change employer

within their employment sector or another eligible sector but there are significant obstacles of lengthy delays and large costs to overcome. Firstly, workers need to complete at least one year's service with their employer before they are permitted to move or change employer. Secondly, the worker must make a new application for an employment permit, which entails returning their current permit, and paying another €1,000 processing fee. Thirdly, during the long processing times (currently three months⁰⁹) a worker is not entitled to work at all, i.e. must remain unemployed. In addition, the new prospective employer is left waiting. These factors greatly hinder workers from changing employers, and discourage many prospective employers from considering them for positions.

WORKER EXPLOITATION

The MRCI provides a free legal information and advocacy service to migrant workers experiencing violations of their rights in the workplace. Between 2006 and 2009, MRCI assisted over 250 exploited migrant workers in lodging formal complaints and in achieving settlements and awards of €1.3 million for unpaid wages and other gross violations of their employment rights. Breaches included payment below the minimum wage, non-payment of holidays and excessive working hours, among others. Most of these workers were employed in low-wage, primarily non-unionised sectors, such as agriculture, domestic work, and restaurants.

Approximately 80% of MRCI's exploitation cases involved migrant workers holding employment permits. Work permit holders also represented the most serious cases of exploitation that were evidenced, including a case of an Indian national working in virtual slave-like conditions in a private home for five years, who received a Labour Court award of over €240,000 in unpaid wages. The MRCI is also assisting over twenty individuals who have been in situations of trafficking for forced labour in Ireland,

⁰⁵ Other employment permits include the Spouse/dependent permit which allows such family members of permit holders to apply for an employment permit. There is also an Intra-Company Transfer permit which is designed for the transfer of senior management, key staff or trainees, from an overseas branch of a multinational to its Irish branch.

⁰⁶ The Expert Group on Future Skills Needs, together with FÁS and Forfás advise the Irish Government on current and future skills needed and on other labour market issues. As a result, occupations sourced through the employment permit are revised yearly by the Department of Enterprise, Trade and Employment.

⁰⁷ Department of Enterprise, Trade and Employment website: <http://www.entemp.ie/publications/labour/2009/guidelines-workpermits-oct-2009.pdf>

⁰⁸ Department of Enterprise, Trade and Employment website: <http://www.entemp.ie/labour/workpermits/processingdates.htm>

⁰⁹ Department of Enterprise, Trade and Employment website: <http://www.entemp.ie/labour/workpermits/processingdates.htm>

a large number of which involve workers holding valid employment permits.

Migrant workers consistently claim that the lack of freedom to change employers is the main reason for remaining in exploitative conditions. Research published by the MRCI in recent years involving domestic workers (*Private Homes: A Public Concern*, 2004), agricultural workers (*Harvesting Justice*, 2006) and restaurant workers (*Exploitation in Ireland's Restaurant Industry*, 2008) all identified the restriction of movement for work permit holders as the primary factor of exploitation and vulnerability. Workers claim the lack of freedom puts them in a powerless situation, wholly dependent on the employer for their permit and legal status. Migrant workers commonly speak of how employers threaten them with revoking or not renewing their permit if they complain.

Lack of freedom is also a major factor in workers becoming undocumented in Ireland. The MRCI assisted over 350 workers between 2006 and 2009 who became undocumented after falling out of the employment permit system. This occurred when workers left exploitative employment or through false promises from their employer that a permit would be renewed. This phenomenon has been acknowledged by the government's Undocumented Workers Scheme of 2009.

"The permit is like a chain around your neck. I couldn't leave my job. I was told by my employer that if I leave I will be illegal here and not be able to find another job. He said that I would be sent back home in shackles."
-Migrant domestic worker

RECOMMENDATION: FREEDOM TO CHANGE EMPLOYER

The current employment permit system of binding an employee to an employer and restricting the basic freedom to change employer is fundamentally flawed. It is unjust, discriminatory and encourages exploitation. Compliant employers are undermined by those who choose to profit from exploiting workers in this situation. The system must change and allow employment permit holders the right to change employer. This freedom is basic to all workers.

Proposal

A better and fairer employment permit system would be one in which employment permits are granted to workers within a designated occupation or job category as opposed to one employer. This change would be significant but it would not require a complete overhaul of the system. Freedom to change employers is not a new or radical idea, as it existed previously under the working visa/authorisation scheme. An initial application for an employment permit would follow current procedures and labour market needs tests where required. Once granted, permit holders would be given a permit for a designated

occupation or job category as named on their permit. When a change of employer occurred, employees would simply be required to notify the DETE. Renewals of permits would operate the same way they do currently.

Benefits

Given options, workers could move out of exploitative situations without the barrier of costly and lengthy work permit applications and the risk of becoming undocumented. Such freedom would improve employment conditions for permit holders and all other workers. It would also help level the playing field so that compliant employers can compete fairly against those who reduce their wage costs through exploitation. It would also reduce the number of individuals who are becoming undocumented as a result of exploitation.

A system granting freedom to change employers would save government resources by removing many of the costly administrative procedures in processing new applications. It would also cut down on processing delays and allow for a more immediate response to fill a need for labour where workers are needed in specific sectors. It would also help work permit holders who are made redundant to get back into employment more quickly, reducing the need to claim unemployment benefits.

Fear that government may lose control or regulation of non-EEA workers in such a system is primarily based on an assumption that workers will stay longer than they are needed and become a burden on the state. However, the government would continue to regulate the granting of work permits in the first instance. Occupations and skills sourced through the employment permit system would continue to be updated by DETE, allowing them to add or remove job categories for which new employment permits are granted. Initial work permits would also continue to include a labour market needs test to ensure that local workers at first instance are not available to fill a job vacancy. Finally, if employment permit holders are made redundant and are unable to find alternative employment in their sector or another eligible sector within a six month period, they would continue to be required to reassess their immigration status with immigration authorities.

It is significant that at the time the Employment Permits Bill was being debated in 2005, Micheál Martin, TD, then Minister for Enterprise, Trade and Employment, stated that the new legislation would, "ensure that the economy's skills and labour needs (could) be addressed in a pragmatic and speedy manner, while ensuring the rights of all workers are protected."¹⁰ If we are truly to incorporate these values and objectives then it is time to modify the employment permit system by granting employment permit holders the freedom to change employers.

¹⁰ Press release, Department of Enterprise, Trade and Employment, 12 Oct 2005.

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This project is co-financed by the European Commission and supported by the Office of the Minister for Integration and Pobal.

