

Slavery Free Recruitment Systems

A Landscape Analysis of Fee-Free Recruitment Initiatives

Initial efforts to address exploitation of workers in product supply chains focused on the immediate working conditions at the factory or worksite. It is now widely recognized, however, that much of the exploitative practice in supply chains occurs in the process of recruitment for migrant workers, a process whereby migrants, unaware of other options, frequently pay high recruitment fees, and begin a journey of mounting debts. In the absence of other options for repayment, this debt effectively binds them to the workplace and leaves them open to further abuse, something that can take place without the knowledge of end employers.

In this context, there is a growing interest in the fee-free or “Employer Pays” model of recruitment, whereby migrant workers are not charged a recruitment fee and all costs are met by the employer. This paper summarizes the current discussion around fee-free recruitment, including: (1) definitions of fee-free recruitment; (2) linkages between migration fees and exploitative practice; (3) government initiatives on fee-free recruitment; (4) industry initiatives on fee-free recruitment; and (5) discussion of the key issues surrounding free-free recruitment.



AUTHOR

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METHODOLOGY

This paper was informed by a literature review and discussions with key informants working on improving labour recruitment practices. Respondents represented private companies addressing issues within their supply chains; non-profit organizations and coalitions working with industry on establishing and monitoring recruitment standards; and, recruitment agencies with a “no fees for migrants” policy.

DEFINITIONS

Fee Free Recruitment

Fee-free recruitment refers to a situation where migrant workers are not charged any fees for recruitment or placement. There is an ongoing discussion about which of the costs paid by workers should be considered a recruitment or placement fee, which is covered further below.

Contract Substitution

This is where workers have signed one contract but are asked to sign a revised contract immediately prior to departure from their home countries or on arrival in the country of destination. The new contract generally has less favorable employment conditions. Often workers have already incurred a level of debt through fees to recruiters and sub-brokers, which means they have little option but to sign the inferior contract.

The Employer Pays Principle

The Employer Pays Principle is a logical extension of fee-free recruitment. Under this principle, the employer should bear the full costs of recruitment and placement for migrant workers.

Recruitment Agencies

Also known as labour brokers or migrant recruiters, recruitment agencies are intermediaries that supply migrant workers for the use of other business enterprises, usually on the basis of agreements with these user enterprises as well as agreements with the migrant workers concerned. They perform various functions, which can include matching migrant workers to jobs in other parts of the country or abroad, arranging for visas, making travel arrangements, and providing pre-departure orientation or training. Some recruitment agencies contract and pay the workers directly on behalf of the employer.

Direct Employment

Direct employment refers to a situation where all workers are contracted directly by the employer rather than indirectly by the recruitment agency. The employer may still use recruitment agencies to recruit the workers.

Direct Recruitment

Direct recruitment is where companies take responsibility for the recruiting and hiring of all workers.

What constitutes a recruitment fee?

There is a consensus around what constitutes fee-free recruitment in general terms but not yet on all the details. All 'no-fees' initiatives agree that fee-free recruitment specifically prohibits: (1) the charging to migrant workers of recruitment fees and placement fees, irrespective of where or how they are recruited and (2) a requirement for workers to pay a deposit or bond to secure work.

The costs on where there is no consensus include: passports and other travel documents; pre-departure training (which some governments make mandatory for all departing migrant workers); and transport from home to the first point of departure. With regard to passports, for example, one view is that a passport is the personal property of the worker and is a legitimate cost to any worker taking a job abroad. A contrasting view is that most workers employed are relatively poor and unskilled and would be unlikely to need a passport for any other reason.

A working definition, proposed by Fair Hiring Inc. and endorsed by several people consulted in this paper, is to consider any costs incurred prior to a job offer as the responsibility of the worker. This is a useful starting point, but does not in itself necessarily resolve questions such as passport costs. It is important to note that, with the possible exception of

pre-training departure costs, the costs on which there is disagreement are generally comparatively small and not those that might place an undue burden on migrant workers.

The Leadership Group for Responsible Recruitment

The Leadership Group for Responsible Recruitment states that "the costs and fees associated with recruitment, travel and processing of migrant workers shall be covered by the employer from their home community to the workplace, and return when the relocation is not permanent."

Fees included are outlined in the diagram below. The Group also states that " ... where the migrant worker is legally required to pay a fee or cost directly, the migrant worker shall be reimbursed by the employer as soon as practicable upon discovery."

The Electronic Industry Citizenship Coalition (EICC) and the clothing company, Patagonia, have developed more detailed lists of fees that should be paid by suppliers, as represented in the infographic on the following page. As can be seen, Patagonia differs from EICC in that it considers transport costs from the worker's community to the first point of departure as a legitimate cost for migrants.



Exploring Two Progressive Models for Fee-Free Recruitment: EICC & Patagonia

PRE-DEPARTURE & DOCUMENTATION FEES



ELECTRONIC INDUSTRY CITIZENSHIP COALITION

PATAGONIA

THE DEBATE

Applications, recommendations & recruitment fees



Fee-free groups agree that:

✧ migrant workers should not be charged recruitment or placement fees and

✧ workers should not be required to pay a deposit or bond to secure their work.

Labor broker and sub-agent fees



Pre-departure training or orientation



New hire training and skills tests on arrival



Pre-employment medical examinations & vaccinations in the sending country



There is continued debate on whether employers should cover:

✧ the costs of passports & other travel documents

✧ pre-departure training

✧ transport from home to the first point of departure.

Visa & work permits



New passport



Work permit renewal



TRANSPORTATION & LODGING COSTS

EICC

Transportation & relocation costs paid by EMPLOYER

Airfare & international travel costs to be paid by EMPLOYER

Border crossing & police clearance fees to be paid by EMPLOYER

Transportation & lodgment costs to be paid by EMPLOYER

Medical exams & new arrival training to be paid by EMPLOYER

Worker's home

Port of departure

Port of entry

Job location & housing

PATAGONIA

Transportation, meals, & accommodation to be paid by MIGRANT WORKERS

Airfare & international travel costs to be paid by EMPLOYER

Transportation & lodgment costs to be paid by EMPLOYER

Medical exams to be paid by EMPLOYER

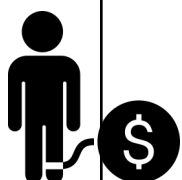
*The above information provides a summary of EICC and Patagonia's policies. Please refer to www.patagonia.com & www.eiccoalition.org for further details.

The link between migration fees and exploitative practice²

Initial efforts to address exploitation of workers in product supply chains focused on the immediate working conditions at the factory or worksite. It is now widely recognized, however, that much of the exploitative practice in supply chains occurs in the process of recruitment for migrant workers, something that may or may not take place with the knowledge of end employers.

Migrant labour recruitment is dominated by private for-profit recruitment agencies that link employers in countries of destination with potential migrant recruits in countries of origin. These agencies generally charge a fee for their services. Although generally billed as a fee-for-service payment, there are a number of mutually-reinforcing factors that contribute to the charging of significant and unauthorized fees to workers. These include:

- 1 Pressure on recruitment agencies** to present the lowest bid to employers, which encourages passing recruitment costs to the worker to keep their fees to employers low. Employers or employment agencies may also demand a commission from recruitment agencies, the cost of which gets passed to workers.
- 2 The involvement of recruiting sub-agents**, who often extract unauthorized fees from migrants.
- 3 Opportunities for recruitment agencies to require workers to attend pre-departure training** and charge (potentially excessive) additional fees.
- 4 Requirement to pay a “behavioral” bond**, which is forfeited for migrants not seeing out their contracts, often irrespective of the reasons behind this.
- 5 “Warehousing”** – where recruiters stockpile migrant workers until jobs become available, charging them for food and accommodation in the meantime.
- 6 Opportunities for further exploitation** of the worker through contract substitution, non-transparent salary deductions and mandatory and inflated charges for expenses such as accommodation and food.



Risks of Debt Bondage. The requirement to pay excessive fees as a condition of obtaining employment means that many workers go into debt. Often the debt is to be recovered from the future earnings of the work. In other cases, workers may borrow from money-lenders, often linked to sub-agents who recruit them. Interest rates on these debts tend to be usurious. As a consequence it can take migrant workers anywhere from five months to two years to repay their loans.

In the meantime, the existence of the debt – and the worker’s urgent need to repay it – mean that the worker can more easily be manipulated by the employer to accept lower wages than that originally promised, poor working conditions, excessive work hours, or similar abusive practices. Debt-burdened workers are also much more vulnerable to threats of deportation—and consequent loss of their earning potential – than workers with no debt obligations.

Failure to repay debt can have severe personal and social consequences, particularly if the money is owed to those with connections to criminal elements, or if family assets have been leveraged as collateral. Even in the best case scenario, many workers return home having earned much less than anticipated or promised. Further, employers or recruiters often use the presence of a debt to justify withholding the passports of workers.

²This section draws heavily on text from: (1) Open Working Group on Labour Migration & Recruitment, *Recruitment Fees and Migrants’ Rights Violations, Policy Brief #1*, available at <http://www.responsiblerecruitment.org/issues>; and (2) <http://madenetwork.org/sites/default/files/Policy-Brief-Recruitment-Fees-Migrants-Rights-Violations.pdf>.

Why does this situation persist?

Regulation of global migrant labour recruitment is extremely weak and “heavily influenced by vested interests and rent-seeking behavior among officials involved in providing the necessary authorizations for recruitment.” A recent report by Verité highlighted a range of additional payments paid by recruiters including: direct kick-backs to employers for providing them with contracts; costs of travel, accommodation, and entertainment expenses for employer representatives; and bribes to government officials for approvals ranging from the issuing of work quotas to visa clearance. All of these costs are passed on to migrants.

Current Initiatives

There are no universally agreed standards with respect to the payment of fees by migrants. To the extent that fees have been regulated in the past, there are a number of examples of these being set at a maximum of one month’s wages. Early versions of the Electronic Industry Citizenship Coalition’s Code Of Conduct, for example, stated that “Workers shall not be required to pay employers or agents recruitment fees or other aggregate fees in excess of one month’s salary.” At government level, Germany and Switzerland are examples of countries that regulate the charging of fees (in Germany this is €2000, while in Switzerland this is set as five percent of the first annual gross wage).

More recently, there has been a growing interest in fee-free or employer pays recruitment. This in part represents recognition that the cost of recruiting workers is a fair and legitimate cost of doing business. The main impetus, however, is the widespread abuses in the existing system.

1 ILO’s Private Employment Agencies Convention

ILO’s Private Employment Agencies Convention (known as ILO 181) was established in 1997 and states that “Private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers”, although there is an exception for fees “(i)n the interest of the workers concerned, and after consulting the most representative organizations of employers and workers...”. The Convention has been ratified by just 32 countries, however.

Underpinning this situation is a large excess in supply of potential migrant workers compared to the demand for migrant labour, as a result of which the workers themselves have extremely limited bargaining power. Lower skilled migrants will often tolerate significant levels of exploitation, knowing that they can be easily replaced. In this environment, migrants are highly susceptible to illegal and large deductions. Verité indicates that recruitment costs can make up as much as 62% of a worker’s anticipated wages⁴.

2 The Dhaka Principles for Migration with Dignity.

More recently, fee-free recruitment was highlighted in the **Dhaka Principles for Migration with Dignity**. Developed over two years of international multi-stakeholder consultation led by the Institute for Human Rights and Business (IHRB), the Dhaka Principles for Migration With Dignity were officially launched in December 2012 with the endorsement of the International Trade Union Confederation and the International Confederation of Private Employment Agencies (CIETT).

The Dhaka Principles are a set of ten principles for the responsible recruitment and employment of migrant workers. The first principle is that “No fees are charged to migrant workers.” This is further elaborated as “The employer should bear the full costs of recruitment and placement. Migrant workers are not charged any fees for recruitment or placement.”

Although not in any way binding, the Dhaka Principles arose out of the UN Guiding Principles on Business and Human Rights, established as a global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity. These are thus seen as an important initiative in normative terms.

³ Even where the worker is not in debt to a money lender, they may have a “moral” debt to, for example, their families who have sold assets to fund the migration.

⁴ Marie Apostol, Fair Hiring Initiative / Presentation, “Ethical Recruitment,” Regional Conference on Recruitment Reform, 17 December 2014, Amman, Jordan.

⁵ http://www.eiccoalition.org/media/docs/EICCCodeofConduct5_English.pdf

⁶ OSCE Survey of Responses to Trafficking in Persons, forthcoming.

Legislative/ Government led Initiatives

Since the Dhaka Principles were launched, there have been a number of other initiatives to support fee-free recruitment at both government and private sector level. As noted, ILO 181 bans the charging of recruitment fees but has only been ratified by 32 countries. Even where countries have banned recruitment fees for their own companies, this would

1 United Kingdom

The **United Kingdom Modern Slavery Act** requires companies with a global turnover of £36 million or more (including turnover from subsidiaries) and carry on business in the UK, to produce an "annual slavery and human trafficking statement." It recommends including in this statement information on "the parts of its business and supply chains where there is a risk of slavery and human trafficking taking place, and the steps taken to assess and manage that risk." Commentators have pointed out that the parts of supply chains where there is a risk of slavery/trafficking must include the labour migration process, but a standard has yet to be established on fee-free migration.

Internally in the UK, however, the **Gangmasters Licensing Authority (GLA)** requires that the "labour user requires its labour providers, agents and sub-agents to have a clear public policy against charging directly or indirectly, in whole or in part, any fees or costs to workers for work-finding services." This suggests that the recruiting agency must have a general policy on fee-free recruitment, not just for the contracts directly under the auspices of the GLA.

2 United States

The most far-reaching steps have been taken by the United States, through amendments to its **Federal Acquisition Regulations**, which "prohibits contractors, contractor employees, subcontractors, subcontractor employees, and their agents from charging employees recruitment fees." In place since 2013, this prohibition is still being clarified. In the current proposal on which comments were sought earlier this year, fees are seen to cover all costs associated with the recruiting process including: transferring, training, providing new-hire orientation, obtaining labor certification, visas, border crossing fees, photographs and identity documentation, and medical examinations and immunizations. Significantly, the Regulations cover subcontractors at all tier levels.

not necessarily apply to the supply chains of these companies. The Convention does not specifically define what is to be included and excluded in the definition of migrant fees. This is the focus of a tripartite meeting with employers and trade unions in Geneva in early September 2016.

3 Denmark

The **Danish Government Anti-Trafficking Centre** has prepared guidelines which serve as a quick guide for companies and employers with risks of hidden forced labour and severe labour exploitation in their supply chains. The guide was prepared in consultation with a number of different stakeholders including business representatives and is intended as an awareness, business risk management and practical prevention tool. The guide is designed including checklists, to reduce risk and show responsible corporate behaviour with focus on precautions during direct recruitment and employment and use of contractors. Companies can apply the tool to conduct risk assessment, risk management and prevention. The guide encourages self-regulation and action and provides measures which companies can apply in order to avoid unintentionally being associated with cases of hidden forced labour, which may result in serious reputational damage and police investigations.

4 Multi-lateral Initiatives

At multi-lateral level, the **Organization of Security and Cooperation in Europe**, comprising 57 member states including all EU members, the US and Canada, currently has an initiative aimed at strengthening both government procurement practices and government regulation of labour practices in business supply chains. This initiative is expected to produce recommendations for governments by the end of 2017. As well as tightening up of government procurement processes to reduce the risk of procuring goods and services produced with the involvement of forced labour, the recommendations are likely to address government contracting criteria that are based solely on lowest cost.

The EU has already included a "**social conditionality clause**" in its procurement regulations to enabling purchasers to take into account factors not relating to price.

Industry Coalitions

1 The Leadership Group for Responsible Recruitment

The **Leadership Group for Responsible Recruitment** was launched in May 2016 with the stated intention of eradicating the charging of recruitment fees to workers within a decade. The Leadership Group's five founding companies are Coca-Cola, HP Inc., Hewlett Packard Enterprise, IKEA and Unilever. It is convened by the Institute for Human Rights and Business (IHRB) and also involves the Interfaith Center for Corporate Responsibility, the International Organization for Migration (IOM) and Verité.

The **stated aims of the Leadership Group include:** raising awareness and engaging industry leaders; providing a roadmap of concrete actions to move beyond commitment to the 'Employer Pays Principle' to implementation of policy and practice; collaborating with and reinforcing other complementary business initiatives such as The Consumer Goods Forum on Fighting Forced Labour and the Electronics Industry Citizenship Coalition Working Group on Protecting Vulnerable Workers; and supporting the development and implementation of systems to identify ethical recruitment agencies, such as the International Recruitment Integrity System (see below).

The Leadership Group also **encourages direct employment**. Direct employment provides employers with control over worker contracts, ensuring that recruitment agencies are not making ongoing deductions from workers, and that workers are not subject to contract substitution by these agencies. It does require an increase in internal resources to manage the contracting and payment process, but not to the same degree as direct recruitment.

2 International Confederation of Private Employment Services (CIETT)

The **International Confederation of Private Employment Services (CIETT)** was founded in 1967 and consists of 49 national federations of private employment agencies and eight of the largest staffing companies worldwide: Adecco, Gi Group, Kelly Services, Manpower, Randstad, Recruit Co., LTD., Trenkwalder and USG People. Its Code of Conduct states that "Private employment services shall not charge directly or indirectly, in whole or in part, any fees or costs to jobseekers and workers, for the services directly related to temporary assignment or permanent placement."

3 The Electronic Industry Citizenship Coalition (EICC)

The **Electronic Industry Citizenship Coalition (EICC)** is comprised of more than 100 electronics companies with combined annual revenue of over \$4.5 trillion. EICC requires members to adhere to a Code of Conduct on social, environmental and ethical issues. In March 2015, EICC had a special membership vote to change the Code position on migrant fees, stating that "Workers shall not be required to pay employers' or agents' recruitment fees or other related fees for their employment. If any such fees are found to have been paid by workers, such fees shall be repaid to the worker." Prior to that time, there was a one-month cap on fees. The Code of Conduct also applies to Tier 1 suppliers, many of which are major companies in their own right. Tier 1 suppliers are also expected to require compliance from their suppliers and so on down the supply chain.

4 Stronger Together

Launched in October 2013 **Stronger Together** is a business led, multi-stakeholder collaborative initiative whose purpose is to support organisations to tackle modern slavery within their businesses and supply chains. Stronger Together provides guidance, resources and training to support employers and labour providers in at risk sectors to deter, detect and address exploitative labour practices.

Stronger Together is currently developing its Supplier Policy for the Responsible Use of Labour Providers, which endorses fee-free recruitment and also recognizes the importance of addressing possible workarounds by recruitment agencies. To this end, the draft policy states that labour providers must not: (1) Charge workers for purportedly optional services which are in fact integral to the work-finding process; and (2) Make providing work-finding services conditional on the worker using other services or hiring or purchasing goods provided by the labour provider or any person connected to them.

5 Interfaith Center on Corporate Responsibility

The **ICCR** is a coalition of faith and values-driven organizations. ICCR is working with 51 companies in the food and agriculture sectors, asking them to establish procedures that ensure suppliers are abiding by the company policy to recruit responsibly and implement a supply chain traceability program to track the commodity to the producer. The program focuses on three areas: (1) eliminating migrant fees; (2) ensuring that employers or recruiters do not withhold

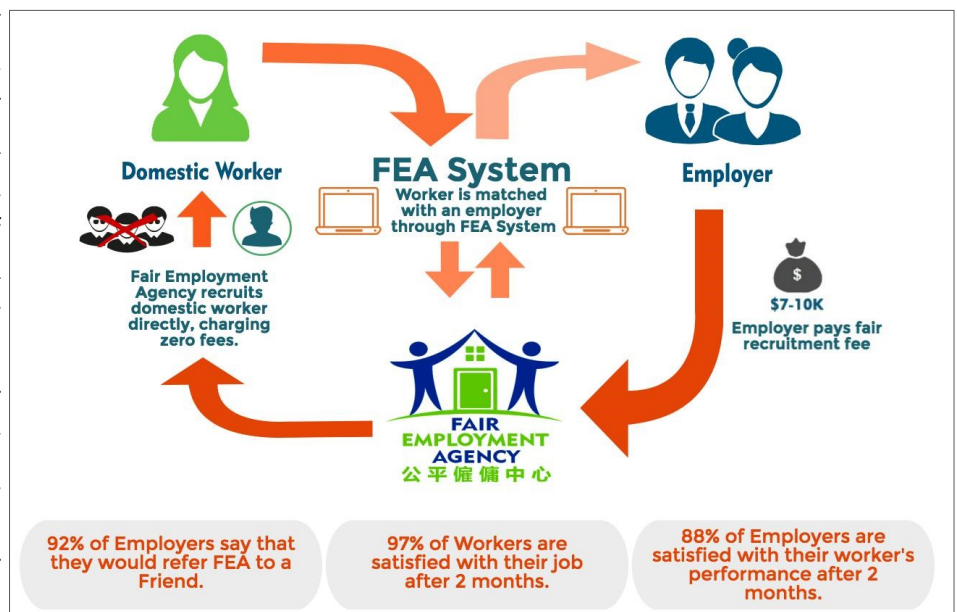
the passports and other travel documents of workers; and (3) ensuring workers have contracts in a language they understand that are respected and not subject to substitution. ICCR has not yet defined the specifics of fee-free migration and indicates it will be guided by the forthcoming ILO work in this regard.

6 Global Labour Provider Certification Scheme & International Recruitment Integrity System

Two initiatives focusing on recruiter accreditation also include the principle of no fees to job seekers. These are the Global Labour Provider Certification Scheme which is being developed by the Association of Labour Providers and the IOM-led International Recruitment Integrity System (IRIS), which includes a voluntary accreditation framework, based on adherence to common principles for ethical recruitment.

Crowding out exploitative practice: The Fair Employment Agency, Hong Kong

The Fair Employment Agency (FEA) arose from recognition that recruitment practices for Filipino domestic workers in Hong Kong were more focused on serving the interests of recruitment agencies than either the employers or domestic workers. Not only did the charging of fees for domestic workers place many of them in debt, it encouraged recruitment agencies to focus on placement quantity rather than quality, with unsuitable



placements actually benefiting the sector through increased turnover. This contributed to a proliferation of placement agencies in Hong Kong, estimated at around 1,300 for 340,000 workers.

FEA was set up in recognition of the need for an alternative for both workers and employers. It works with one local agent, which identifies potential workers and is paid sufficiently well to discourage "double-dipping", that is, claiming additional fees from migrants. FEA's business model relies solely on payments from employers and is thus based on employer and employee satisfaction. Bad placements mean both a loss of income and a loss of reputation. Fair Employment thus places strong emphasis on matching the right worker to the right household, taking into account not just what workers are able to do, but want they want to do. Technology plays an important role in the matching process as well as in communicating with both employers and employees.

FEA does not currently cover fees for the mandatory worker training but, in de-linking the training requirement from an individual agent, allows each worker to shop around for the best deal. Although initially funded by donations, FEA believes it is close to a sustainable business model and reports a 92% satisfaction rate among employers. Further, they consider they have developed an agency standard which will eventually require other agencies to adapt or become uncompetitive, thus crowding out inefficient and exploitative businesses. Although this model focuses on domestic workers, FEA considers that the core principles would apply much more widely.

Individual Companies

1 Hewlett Packard Enterprises (HPE)

In keeping with its role as founding member of the Leadership Group on Responsible Recruitment and its involvement in the EICC, Hewlett Packard Enterprises (HPE) has been working within its own supply chains to eliminate recruitment fees, and to require that “all foreign migrant workers must be employed and paid directly by the supplier, not by agents, sub-agents, or third parties.” HPE recognizes that improvements in the recruitment process require time and planning noting, for example, that many suppliers rely on recruitment agents to handle on-site management of foreign migrant workers. Also, suppliers are obliged to not to hold the passports of migrant workers, which means that the workers need access to adequate and secure storage to understand the importance of not losing their documents and to have access to solutions when they do so.

To assist suppliers to meet its Foreign Migrant Worker Standards, HPE has produced a Supply Chain Foreign Migrant Worker Standard Guidance Document (available at <http://www8.hp.com/h20195/v2/GetPDF.aspx/c05116077.pdf>). The document covers: (1) transitioning to direct employment; (2) transitioning to a ‘Supplier Pays’ recruitment fees model; (3) transitioning to workers holding their own identification documents; and (4) identifying, screening, selecting and managing recruitment agents.

2 FSI Worldwide

FSI Worldwide is a recruitment company that only recruits on a no-fees-for-migrants basis. FSI predominantly recruits from South Asia for construction in the Middle East. FSI manages the entire recruitment process and does not use brokers or sub-brokers. Thus, while FSI requires its own infrastructure and is not necessarily a low-cost option, the organisation is able to guarantee fair recruitment practices. Many of FSI’s clients are those bound by the US FAR to ensure that no fees are paid by migrants, meaning this certainty is important. Another example of a recruitment company founded specifically to address exploitative recruitment practices is the Fair Recruitment Agency (see page 8).

3 Vinci

An alternative model is that pursued by the French construction company *Vinci*. Vinci also recruits for construction in the Middle East but its model established in Bangladesh involves working with a select group of recruitment companies and assisting them to develop more professional operations. This process has reportedly involved a sizeable investment but led to improvements in all areas although doubts remain about sub-brokering.

Case Study: Thai Union Group



Thai Union Group Public Company Limited (TU) is the world’s largest shelf-stable tuna processor and owner of a portfolio of leading global seafood brands. In April 2016, it announced that it would aim to eliminate recruitment fees for all workers in its factories and processing plants, effective immediately for all future recruitment of workers both from within Thailand and also from overseas.

Thai Union’s workforce in Thailand is composed of workers primarily from Myanmar, Cambodia, and Thailand, recruited locally or through formal channels engaging licensed recruitment agents in Cambodia and Myanmar. The move follows Thai Union’s continued development of an ethical migrant worker recruitment policy. In recent months, Thai Union has focused on reducing the potential for abuse and extortion by agents and brokers in recruitment of migrant workers. This work includes social condition mapping of all Thai Union’s factories and processing plants to be carried out in 2016, to identify challenges in recruitment requiring an urgent response. In Thailand, the use of local recruitment agents (brokers) is being phased out, with Thai Union aiming to employ workers directly. Work with the Issara Institute and feedback from workers through Issara’s helpline has also helped identify areas for improvement in the recruitment of workers, and awareness raising materials to educate potential workers on safe and legal recruitment are being developed in multiple languages.

By committing significant resources and time to dealing directly and building stronger relationships with recruitment agents in Cambodia and Myanmar, Thai Union has been able to map out recruitment processes more effectively, and positively impact the lives of people coming to work in Thailand in the seafood sector.

Discussion

A requirement for workers to pay reasonable recruitment fees does not, in itself, appear problematic so long as these are fixed at a reasonable level (e.g. one month's salary) rather than defined in vague terms such as 'not excessive'. Available data suggests that most migrants are willing to pay significantly higher amounts. The lack of negotiating power that unskilled and lower skilled migrants have, however, combines with vested interest to lead to a gross distortion of such fees. The EICC is an example of an organization that had initially capped fees at one month but eventually moved to an Employer Pays system, partly for ethical reasons and partly due to the growing international trend in this direction, particularly with respect to the US Foreign Acquisition Regulations.

Advantages of the Employer Pays model

1 Reduction in exploitative labour practice, including debt bondage and a better deal for all affected migrants.

For a large proportion of the world's population, migration is the single greatest route out of poverty. Fee-free migration and the associated reduction in exploitative practice offers a better deal for migrants, which is likely to increase remittances and thus have flow-on effects to the families and communities of migrants.

2 Incentives to minimize worker turnover.

The migrant pays system creates incentives for recruitment companies with regard to high worker turnover – the more migrants that pay fees, the more the recruiters earn. This is generally not in the interests of the employer. When the employer agrees a set fee with the recruiter for a specified number of workers, this creates an incentive for the recruiter to minimize turnover.

3 Lower recruitment costs.

An immediate advantage of the employer pays system is that it is likely to reduce the level of recruitment fees. Fees charged to employers are unlikely to be as high as those to migrants. Employers have considerably more bargaining power than migrant workers, and can "shop around" different recruitment agencies in a way that individual migrant workers cannot. This, and greater power to negotiate and enforce contractual agreements, lessens the potential for recruitment to inflate charges. Kickbacks

from recruitment agencies to employers for example would become an employer cost. Further, employers would not need to take on high levels of debt to cover recruitment costs, a major contributor to migrant vulnerability.

4 More professionalized recruitment services.

At present, the ability of recruitment companies to pass almost all costs onto migrants means there is limited incentive to become more efficient and professional. An employer pays system would likely encourage recruiters to focus on providing better value for money.

5 Early adoption of an emerging global standard.

The EICC's decision to move from a capping recruitment fees at one month to an Employer Pays system came about partly due to ethical concerns and partly due to recognition of the growing international trend in this direction. While the US Foreign Acquisition Regulations are particularly important in this regard because they will make the Employer Pays Principle an issue of compliance, and thus obligatory – the principle is also being driven by industry-led groups and other inter-governmental fora. Over time, it is likely to be the focus also of consumer attention. Thus, there appears an advantage to companies in taking steps at an early stage to build fee-free migration into their supply chains.

The Role of Government Policy & Practice.

Governments retain control over both labour migration regulation and the regulation of recruiting agencies meaning there are a number of actions they can take to influence the labour recruitment market, both positive and negative. These include: (1) the imposition of additional fees, such as Malaysia's migrant worker levy; (2) regulations such as requiring workers to pay a security bond; (3) policies and processes regulating foreign worker quotas; and (4) policies and practices relating to the employment of workers with irregular migrant status (that is, without valid visas and or work permits). These practices range from: very strict, such as in Malaysia where employers are held strongly and directly accountable for the immigration status of workers in their employ; to Thailand, where the government's systematic lack of action against employers engaging irregular migrants serves to undermine the legal migration system.

The role that governments can play in facilitating or impeding fair recruitment, including no or limited fees, suggests a potential advocacy role for businesses, particularly collectively such as through industry or cross-industry coalitions.

Challenges and decision-making factors

1 Increased costs for employers.

As noted, many employers are enjoying the benefits of cheap migrant labour without paying the full costs. Requiring employers to pay recruiters and monitor their practices will add to production costs, although there are potential off-setting gains in productivity from a more stable and ideally better selected workforce.

None of the companies consulted directly compensated suppliers for any additional costs incurred as a result of adopting a fee-free migration model, or knew of other companies who had done so. The general view seemed to be that this was just one of many issues that suppliers needed to consider in bidding for contracts and that, in setting clear standards for the employers of migrant workers, the buying company was acting to level the playing field. One company noted that prior to the adoption of this policy, suppliers with more ethical recruitment policies were effectively being placed at a disadvantage. Another informant considered that companies with multiple suppliers were likely running a dual system, with 'fee-free' workers working alongside fee-paying migrant workers.

2 Compliance and double-dipping.

The payment of fees by the employer does not act as a guarantee that recruiting agents are not also charging migrants. The Dhaka Principles state that "Employers should check with migrant workers on arrival that migrant recruiters have not charged any fees for recruitment or placement, and should take remedial action if fees have been levied." While there are examples of companies such as Apple who have required overcharged fees to be repaid, there may be reasons why migrants are unwilling to disclose that they have already paid a fee – the recruiter might have warned them, for example, that they would lose their job, their community would be ineligible for other contracts, etc. To address this, some companies promoting fee-free recruitment have sought to embed their own staff in migration process. Most initiatives to date involve employment in "closed" factory environments where it is much easier to monitor compliance. Several informants have highlighted the difficulties in working on, for example, large construction sites, where there are often a large number of different companies and recruiters involved.

3 Company obligations.

The Employer Pays Principle places a number of extra obligations on companies in addition to costs. At the very least, it requires companies to engage and negotiate with recruitment companies on recruitment costs and to put measures in place to ensure compliance with fee-free recruitment. A move to direct employment can assist to ensure compliance but places an additional HR burden on companies.

4 Sub-brokers.

As noted, the common principle for fee-free migration is that the employer meets cost from the point of recruitment. However, by this time, many migrants have already paid fees to sub-brokers. These fees may be significant as sub-brokers are generally unregulated. Organizations involved in recruitment have highlighted sub-brokers as particularly difficult to eliminate from the migrant supply chain. Many sub-brokers are based in communities and often seen as providing an important service. Recruiters without a presence in rural and remote areas are often heavily reliant on these sub-brokers.

5 Vested interest.

There is a huge amount of vested interest in the current recruitment set-up, with many different agents benefiting at the expenses of the migrants. Initiatives to date are not at a level to significantly disturb the status quo and it is unclear what would happen if this should occur. There are already reports of recruiters already adapting by over-charging migrants for administrative functions (in the words of one recruiter, "photocopying is expensive") and also setting up fake advertisements claiming to represent the HR companies set up by employers. As discussed below, there are also a number of actions Governments can take to influence the market if influential figures are adversely affected by industry changes.

Worker retention.

A common argument against fee-free migration is that migrants will not respect their jobs and be more likely to leave if they have not paid a fee. The limited literature available at this point, and feedback from those involved, suggests there is little evidence of this in practice. It is certainly true that some migrants are not prepared for the work they take and some wish to leave. However, there are also reports that some migrants leave to try and find other jobs (illegally) to be able to pay off their debt. Further, as noted above, recruiters currently have little motivation to mitigate turnover as more migrants mean more fees. Fee-free migration advocates argue that the fee-free system increases incentives for recruiters to ensure workers are well-briefed and for employers to ensure migrants are treated fairly, thus lessening the likelihood that migrants would want to leave.



Supply Chain Coverage.

Employer pays initiatives to date generally focus on Tier 1 suppliers, while including a requirement that these suppliers require their own suppliers to adopt similar policies and so on. The issue thus becomes one more of monitoring adherence to these requirements. At present, monitoring at levels beyond the first tier appears limited. One industry informant acknowledged the difficulties in moving beyond the first tier. While some buyers were able to “jump” tiers, that is, work directly with second and third tier suppliers, most relied on a cascading approach, which would take time.

END GAME

There is a growing impetus for companies to adopt and enforce a fee-free or employer pays model for the recruitment of migrant workers. This model recognizes that current fee-paying models are resulting in huge exploitation of vulnerable migrant workers by recruitment agencies and other vested interests. The model also recognizes that recruitment of workers is a legitimate business cost.

Work in implementing the fee-free model is at a nascent level and generally only at the top tier of company supply chains. Generally, it is part of a wider range of measures that includes requiring companies: not to withhold passports and other documents; to ensure that contracts are respected; and often to employ migrant workers directly. At present, most companies appear to be focusing primarily on three areas: (1) ensuring that their Tier 1 suppliers understand the requirement to move to an employer pays model of migrant worker recruitment; (2) providing training to suppliers on how to implement this model; and (3) monitoring of compliance.

In order to facilitate implementation of these measures, there is growing interest in developing a more professionalized worker recruitment sector, with initiatives ranging from accreditation and certification to companies investing in selected

recruitment agencies to companies taking on recruitment themselves. With the exception of Vinci as noted above, there is currently less emphasis on this at an individual company level.

If, ultimately, the issue is about compliance to agreed standards, an approach in which companies work directly with selected recruitment agencies – and has robust measures in place to ensure compliance – does not preclude the charging of fees to migrants. As such, where supplier resistance is seen as a barrier to “Employer Pays”, companies may consider an interim policy of allowing recruiters to charge, say, one month’s salary to migrants, so long as the employer pays this cost up front and claims back from workers through agreed, transparent and interest-free deductions. Up-front payment by employers would remove the need for workers to go into debt and the potential for over-charging, while providing migrants with certainty in the migration process.

Companies considering this approach would, however, need to take into account the growing impetus toward fee-free migration as a global labour recruitment standard, which is being driven by both industry and government initiatives, and grounded in recognition of migrant labour recruitment costs as a legitimate business expense.

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