



Employment Rights Bill: Tackle Restrictive Visas or Increase Inequality

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About Us

Focus on Labour Exploitation (FLEX) is a research and policy organisation working towards an end to labour exploitation. FLEX seeks to achieve this vision through the prevention of labour abuses, protection of the rights of those affected or at risk of exploitation and by promoting best practice responses to labour exploitation through research and evidence-based advocacy.

Overview

We welcome the opportunities for improved employment rights presented by the Employment Rights Bill, as well as the stated intention to make work pay for working people, ban exploitative practices and enhance employment rights in the UK.

While employment rights are in dire need of strengthening, we need to ensure a level playing field, and make sure that all workers are able to enjoy fair rights and benefits. **In its current form, the Employment Rights Bill fails to give meaningful access to vital protections for thousands upon thousands of some of the most at-risk workers.** Whatever aims the Bill has, it will result in an increase in inequality.

Restrictive visas have created a two tier workforce where migrant workers face significant barriers to enforcing their rights, driving a race to the bottom in terms of pay and conditions across the UK labour market. Such visas often limit the sector workers are permitted to work in, or which employers they can work for. This creates multiple dependencies, where workers are reliant on their employer for income, and as their visa sponsor for their ability to remain in the UK. The result is a dynamic where migrant workers are doubly punished for speaking out - first, by unscrupulous employers, then by immigration enforcement. This has allowed for a proliferation of abuses, from non-payment of wages, to overwork, and sexual assault amongst a litany of other labour and criminal law violations. **The Bill's failure to mitigate these risks means that this two tier workforce will continue, and the gap will only widen.**

Restrictive visas may be time limited, non-renewable or not include a pathway to settlement, impeding workers' ability to avail of labour protections or bring a claim to the Employment Tribunal. If the worker's employer is also their visa sponsor this creates a double dependency and a reluctance to challenge poor employment conditions for fear of jeopardising their work visa. Further, restrictive visas may prohibit applications to bring dependents and prevent access to public funds, leaving workers without a safety net when they need to escape their exploiters. **For the Employment Rights Bill to work, it needs to make sure that migrant workers aren't excluded in practice from the rights it sets out.**

Provisions such as the Fair Work Agency, establishing day-one rights and single worker status provide tangible opportunities to improve employment rights for workers. However, the draft Bill must be strengthened to ensure that unscrupulous employers and recruiters can't take advantage of migrant workers. **The Employment Rights Bill will only be as strong as its weakest link.** Failing to extend meaningful access to rights for workers on restrictive visas is not only unfair; it will also act to drive down standards for all.

Restrictive Visas

Examples of restrictive visas which create risks of exploitation are the **Overseas Domestic Worker (ODW) visa** for work in a private household and the **Seasonal Workers visa (SWV)** for work in agriculture. Both visas are six months long and cannot be renewed (other than in the instance of a positive National Referral Mechanism trafficking decision for an ODW visa holder). Exploitation of workers on both routes is prevalent for reasons including the workers' multiple dependencies on employers; for their ability to remain in the UK, work, for information, and often for their accommodation. The short term nature of these visas increases risky dependencies. This is because workers, who have often paid large amounts to migrate, know that their best option is to not complain or to challenge poor working conditions, but to focus on earning what they can during the short time they are in the UK. The Employment Rights Bill must look at the particular risks of spurious dismissal faced by workers on short term visas, many of whom have accrued significant debts to travel to the UK and are at a considerable risk of debt bondage.

The exploitation of workers on the **Health and Social Care Worker visa** is also well documented. Care work in the UK continues to be undervalued and underfunded. Despite persistent labour shortages in the sector, care workers continue to face low-pay and poor working conditions. This is exacerbated for migrant workers who have arrived with migration debts and with repayment clauses in the event they leave a job before their contract ends. Where enforcement action against rogue employers results in removal of sponsor licences, workers can be doubly punished and left scrambling to find new work with a visa sponsor in a race against destitution, debt and the 60 day visa cancellation period. Fair Pay Agreements in the social care sector are not enough in-and-of-themselves to ameliorate the risks of exploitation caused by the visa itself.

In fishing, the use of a loophole created by the misuse of Code 7 leave (the "**Seafarers Transit Loophole**"), designed to allow migrant fishes to transfer onto a vessel to work outside of UK waters, and can leave exploited migrant fishers with few options and unable to access employment law protections. If migrant fishers are working more than 12 nautical miles from the UK coast they are outside of jurisdiction. If they are closer, even if for a limited period, they are breaching the immigration rules.

The misuse of this loophole means that contacting the authorities increases the likelihood of an immigration enforcement response, rather than support to access rights. The immigration restrictions on Code 7 leave restrict access to external support and to rest opportunities as well as access to medical support. This means that unscrupulous employers can use the limitations of the “transit loophole’ in the context of priority being given to Immigration Enforcement over workers’ rights and access to justice, in order to control workers and prevent exploited workers from seeking assistance. Any amendment on seafarers must address the risks of exploitation faced by migrant fishers.

Opportunities: A Fair Work Agency

A Fair Work Agency (FWA) has the potential to bring clarity to the fragmented labour market enforcement system in the UK and build resilience against drivers of risk for workers. However, the effectiveness of the FWA is contingent on its design and resourcing. **The FWA must enshrine its commitment to international labour standards and make sure that the UK is equipped to enforce labour protections for all workers.**

The FWA must address the issues faced by workers in high-risk sectors who have multiple dependencies. It must provide fair and efficient remediation, whilst also being able address workers’ immediate needs. This should include having powers to issue accommodation referrals, prevent visa sponsoring employers from cancelling visas, or to issue bridging visas that enable workers to pursue employment matters. An effective FWA must be well resourced to be able to conduct proactive inspections across all high risk sectors.

Having a structure that includes regional offices with expert local knowledge can help facilitate proactive inspections as well as providing workers with points of access on the ground. **It is essential that there are secure reporting pathways in place with a separation between immigration and labour market enforcement powers, so that labour market inspections are never conducted in conjunction with immigration enforcement.** An effective FWA must provide safe pathways for workers to report issues without fear of repercussions from their employer or immigration enforcement.

Bridging Visas

The UK's work migration system needs to support and drive up employment standards for all workers. The Employment Rights Bill should introduce safety valves to mitigate circumstances where immigration status and sponsorship arrangements limit migrant workers' options to challenge poor working conditions, or to access redress.

One example of good practice is Australia, where recent reforms protect migrant workers on temporary visas from being trapped in exploitative work due to their immigration status. This is through provisions which prevent visa cancellations where there is evidence of exploitation and which provide for a **Workplace Justice visa**, permitting work in any sector, while the worker seeks redress. These measures enable migrant workers in exploitation to leave exploitation without risking their immigration status, giving them time to find decent work with a new sponsor, and to work to support themselves in the interim.

Recommendations

The bill must be amended to include the following vital provisions to address the UK's migrant labour exploitation crisis:

- 1. All UK work visas should be renewable subject to ongoing employment.** The UK should end the use of short term work visas.
- 2. Workers' visas should not be cancelled where enforcement action is taken against their sponsoring employer.** Workers must be enabled to find alternative employment in the sector.
- 3. Bridging visas should be created,** providing options for workers to seek redress and support themselves while finding employment with a new sponsor.
- 4. Labour market enforcement agencies should not report workers' migration status to the Home Office or engage in joint or simultaneous inspections with immigration enforcement,** as this is shown to interfere with their primary duties and efficiency in contravention of International Labour Organisation Convention 81.
- 5. The Fair Work Agency must be accessible to workers in practice, and provided with robust enforcement powers.** These reforms must be grounded in the principles of protected reporting, evidence-based resourcing, compliance with international standards at a minimum, fair and efficient remediation, gender sensitivity, and meaningful worker participation.