



# ► Promising practices for fair recruitment

April 2021

## Law amendment concerning management of migrant workers in Thailand

### Key points

- Public hearings and consultation led to an amended law on management of migrant workers at destination
- The amended law with provisions to protect workers ended the exodus of concerned migrant workers
- The amended law prescribes zero recruitment fees to be charged to migrant workers, along with the instruction that the definition of recruitment fees needs to be elaborated in secondary legislation
- A tripartite committee oversees migration policy

### Focus

**FRI pillar:** Improving laws, policies and enforcement

**Sectors:** All

**Country:** Thailand

**Responsible organizations:** Ministry of Labour, Thailand

### Description of the practice

In June 2017, the Thai Royal Ordinance Concerning Management of Employment of Migrant Workers came into force. It triggered widespread confusion and panic among employers and workers alike, especially caused by excessive penalty provisions and due to a lack of consultation with stakeholders prior to the enactment of the Royal Ordinance and the hastily manner in which it was prepared. One week after the promulgation of the Ordinance, there were reports of tens of thousands of migrants leaving Thailand and significant labour shortages emerging for employers. In response, the Thai Government suspended the enforcement of problematic provisions and initiated a series of public hearings feeding into a review process aimed to amend the Royal Ordinance, and sought technical support from the ILO to assist in the amendment process.

The revised version of the Royal Ordinance Concerning Management of Employment of Migrant Workers was adopted in March 2018 and includes a number of

provisions in line with international labour standards and good practices, including the following:

- Zero recruitment fees charged to migrant workers (drawing from the ILO's Private Employment Agencies' Convention (No.181)). Note that the definition of "recruitment fees" still needs to be defined in secondary legislation;
- No prison sentences imposed on irregular migrant workers;
- Written contracts are to be provided in the language of migrant workers (a provision that goes beyond protections offered in the Labour Protection Act);
- Increased flexibility for migrant workers to change employers;
- Prohibition on the confiscation of migrants' identification documents;
- Removal of housing zones that restrict migrants' freedom of movement;
- Appointment of a tripartite committee to oversee migration policy.



Awareness raising on child protection, birth registration and COVID-19. © ILO Regional Office for Asia

## Proof of impact/progress

Several of the stipulations of the 2017 Ordinance were distinctly reactionary. These included further prohibitions on the types of work that migrants are allowed to engage in, application of a levy on employment of migrants in order to force economic restructuring and establishment of compulsory migrant housing zones, and the stipulation that costs for passport, health checkups, work permit and other similar costs were to be borne by the migrant worker. It also imposed disproportionate criminal penalties on migrants who were found working without proper permits.

The 2018 Amendment of the Royal Ordinance addressed most of these concerns and appears to have created a more conducive environment for migrant worker recruitment. One outstanding concern is that while the Royal Ordinance adopts the principle of zero recruitment fees payable by migrant workers, it does not define what constitutes 'recruitment fees not to be paid by migrant workers' and instructs that this needs to be further elaborated under secondary legislation.

As yet, no impact assessment of the legal changes is available. Nevertheless, the normative relevance and impact of 'zero fee' legislation should not be underestimated. Combined with credible law enforcement and regular assessment of impact more proof of impact may emerge.

## Other promising features

### Participation and representation

Social dialogue enshrined within legislative implementation with a tripartite committee appointed to oversee migration policy.

### Rights-based

Labour rights are enshrined in the legislation that was adopted to the benefit of migrant workers. The legislation reflects ILO Conventions No. 29 (with respect to freedom of movement) and No. 181 (with respect to non-payment of recruitment fees by migrant workers), the UN Guiding Principles on human rights and human trafficking, the ILO's indicators of forced labour and a commitment to social dialogue.

## Resources

Amendment of 2018 to Royal Ordinance Concerning Management of Employment of Migrant Workers in Thailand B.E. 2560 (2017).

[ILO General Principles and Operational Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs \(GPOG\)](#).

### Five years of the Fair Recruitment Initiative

- This promising practice is part of a series, and results from a stocktaking exercise undertaken five years after the launch of the Fair Recruitment Initiative (FRI).
- The FRI aims to ensure that recruitment practices nationally and across borders are grounded in labour standards, developed through social dialogue, ensure gender equality. Specifically, they:
  1. Are transparent and effectively regulated, monitored, and enforced;
  2. Protect all workers' rights, including fundamental principles and rights at work (FPRW), and prevent human trafficking and forced labour; and
  3. Efficiently inform and respond to employment policies and labour market needs, including for recovery and resilience.

### Contact details

International Labour Organization  
Route des Morillons 4  
CH-1211 Geneva 22  
Switzerland

Conditions of Work and Equality  
Department

E: [fairrecruitmentinitiative@ilo.org](mailto:fairrecruitmentinitiative@ilo.org)