

## Principle 10

## FREEDOM TO CHANGE EMPLOYMENT IS RESPECTED, AND SAFE, TIMELY RETURN IS GUARANTEED

Migrant workers should be guaranteed provision for return home on contract completion and in exceptional situations. They should not, however, be prevented from seeking or changing employment in the host country on completion of first contract or after two years, whichever is less.

Once a migrant worker's contract has expired, the worker is in a particularly vulnerable situation because their related work permits and right to remain in the country may legally expire. In some cases, migrant workers are left to make their own arrangements for return at their own cost. Withholding of final wages and other deductions at the end of employment is a recurrent problem. Migrant workers lack leverage with former employer to pursue claims for payments due once contracts are completed and work permits may have expired.

Contrary to international labour standards, migrant workers are sometimes prevented from seeking or changing employment in the host country due to restrictions placed on them by business enterprises that go beyond any found in national law.<sup>10</sup>

### IMPLEMENTATION STEPS

- Business enterprises, either the employer or the migrant recruiter, should not prevent migrant workers from seeking employment or from changing employment in the host country by placing restrictions that go beyond any found in national law. Where legally possible, contracts between the migrant workers and the employer or migrant recruiter should explicitly permit the migrant workers to change employment following the completion of the first contract or after two years whichever is less.<sup>11</sup>
- Employers should arrange and pay for migrant workers' airfare or other reasonable transport costs associated with safe return. All migrant workers' contracts should include clauses guaranteeing safe and timely return home at the end of the contract, or during the contract in cases of medical emergency or political and civil unrest that put workers' lives in danger, or threaten the closure of the workplace.
- At the end of a contract all migrant workers should be paid outstanding wages and any other benefits or savings accrued in full. These should be paid to the workers before they leave for home.
- Where migrant workers terminate their contract early, there must be no penalty for doing so except where established in the worker's original contract, and the worker must be given access to all savings and receive the usual assistance in repatriation.
- Employers should provide migrant workers with return tickets home at the employer's expense prior to the end of the contract if a migrant worker becomes pregnant, needs to travel home for a family emergency, or wishes to leave the place of employment for any reason and at any time, unless the migrant worker is in clear breach of contract.
- Employers should honour contracts with migrant workers and not use false reasons for terminating a worker's contract prematurely to avoid the costs associated with repatriation at the end of the normal contract term.
- In cases of retrenchment, the employer should assist migrant workers in finding new work, or provide a proper compensation package, including the costs of returning home.

<sup>10</sup>See ILO Convention 143 - Migrant Workers (Supplementary Provisions), Article 14.

<sup>11</sup>ILO Convention 143, Article 14 states that "a member may (a) make the free choice of employment, while assuring migrant workers the right to geographical mobility, subject to the conditions that the migrant worker has resided lawfully in its territory for the purpose of employment for a prescribed period not exceeding two years or, if its laws or regulations provide for contracts for a fixed term of less than two years, that the worker has completed his first work contract.