



Research and Policy Brief Summary

Avenues for exploited migrant workers to remain in their country of employment to pursue labour remedies

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The Problem

Migrant workers around the world are routinely subjected to wage theft and other forms of labour exploitation. Most are unwilling or unable to report abuse to the authorities or seek remedies during their employment because they fear jeopardising their job and their visa.

Many only feel safe to initiate a claim for the wages they are owed once their employment, work permit and residence come to an end. However, at that point, they are required to leave the country. Undocumented workers almost never raise labour violations for fear of detection by government authorities and possible immediate deportation. In general, it is extremely difficult for migrant workers to pursue a claim for unpaid wages from outside their country of employment. As a result, abusive employers are never held to account, and the vast majority of migrant workers never recover the wages they are owed.

How to effectively reform migration frameworks to enable access to justice: models and examples

To break the cycle of impunity for migrant worker exploitation, governments must amend migration frameworks that prevent migrant workers from taking action. Most importantly, these should include mechanisms for any migrant worker to leave exploitative work and stay in the country of employment for a period sufficient to pursue unpaid wages and other labour remedies. No government has established a migration framework that comprehensively achieves this. However, a number of countries have introduced laws that provide protections for some migrant workers under certain circumstances. This Brief examines these examples which provide models – and cautionary lessons – on which governments and advocates may draw to design migration reforms that will meaningfully provide exploited migrant workers with access to justice.

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Visa portability for employer-sponsored migrant workers

For employer-sponsored migrant workers, migration frameworks should provide visa portability that enables migrants to swiftly leave an exploitative position with a reasonable period of time to look for an alternative sponsor and bring a labour claim without being removed from the country of employment. Broad visa portability should be available for all sponsored workers, but sponsored workers experiencing workplace exploitation should have access to an extended portability period sufficient to leave their sponsored work, find a new sponsor and genuinely enable them to bring labour claims.

Several countries have established visa portability narrowly targeted to sponsored workers who encounter workplace exploitation. For example:

- **Canada's** Vulnerable Workers Open Work Permit provides a sponsored worker with a 12 month permit with unlimited work rights and waiver of application fee where an immigration officer has "reasonable grounds to believe that the migrant worker is experiencing or is at risk of experiencing abuse in the context of their employment in Canada". Advocates note that it is difficult for a worker to meet this threshold, especially without assistance.
- **Finland** provides a 12 month extended permit where a sponsored worker has experienced "exploitation" or "significant negligence" by an employer, including requiring unreasonably long hours or wage theft. However, it is expensive and advocates report extensive processing delays. The permit also cannot be renewed.
- In **Ireland**, the Reactivation Employment Permit is available to certain skilled migrant workers who encounter workplace exploitation, are still in Ireland, are now unemployed, and have a job offer in Ireland. Once this Permit is granted, the worker must generally stay with the new designated employer for at least 12 months but may then apply for a new visa for a different employer. The Permit is costly and advocates report extensive processing delays.
- **New Zealand's** Migrant Exploitation Protection Work Visa provides up to six months stay with work rights to sponsored migrant workers who report workplace exploitation. This includes any breach of minimum employment standards other than minor infractions.

Protection from removal or extension of stay for undocumented workers

Undocumented workers subject to workplace exploitation should be able to obtain protection from removal or extension of stay (with work rights) for a period of time sufficient to pursue unpaid wages and other remedies for labour abuses.

Migrant workers who are undocumented or working outside of their work-related visa restrictions are often the most vulnerable to exploitation and the least likely to address it because coming forward may expose them to arrest, detention, and deportation. The U.S. and several European countries have established ways for undocumented workers who come forward to avoid deportation while they pursue labour claims:

- In 2023, the **United States** instituted a new process for exploited migrant workers, including undocumented workers, to avoid deportation and remain in the US to assist a labour investigation. The 'deferred action' grant is up to two years, available to victims and witnesses of labour exploitation, and can provide work authorisation not tied to a single employer. It is based on a letter of support from a local, state or federal government agency investigating the labour breach (who may be more accessible than the centralised labour agency) and visa decision-makers do not evaluate the merits of the labour claim.
- Under the 2009 EU Employer Sanctions Directive, numerous **EU States** allow undocumented workers who are subject to criminally exploitative working conditions to apply for temporary residence to pursue a civil labour claim, without a requirement of participation in criminal proceedings. Unlike the US model, labour abuses must rise to the level of criminal offences. In practice these protections are difficult to access due to a range of evidentiary and procedural hurdles and the need for substantial assistance.

A visa/permit to extend migrant workers' lawful stay to pursue a labour claim

For all migrant workers, including those who are not sponsored by an employer, migration laws should establish mechanisms to extend a worker's lawful stay – with work rights – at the end of their visa so they may lodge and progress a claim for wage theft or other labour violations.

Several countries allow migrant workers to use a general short-term permit for the purpose of extending stay to pursue a labour claim (without work rights), and a proposal is under consideration in Australia for a specific visa for this purpose:

- The Australian government is currently considering a proposal from Migrant Justice Institute and over 40 peak organisations for a new Workplace Justice Visa with work rights. The visa would provide six to 12 months of extended stay for migrant workers, including undocumented workers, who take action against an employer for a non-trivial violation of labour law. To be eligible, the worker must be: assisting a government agency investigation, pursuing a remedy through a trade union, or pursuing a private legal claim against the employer (certified by a court or specialist employment lawyer or non-profit lawyer). The worker must also report the contravention to the relevant government authority. Further visas are available if the worker demonstrates proceedings are ongoing.
- **Israel** sometimes permits migrant workers to stay on a tourist visa (without work rights) to pursue a labour claim. **Hong Kong** and **Malaysia** have two week/one month short-term visas that may be used for a broad range of purposes, including to pursue labour claims. They enable some workers to stay long enough to collect evidence, file a claim, and possibly look for other employment, but their use is highly limited because they are expensive, very short in duration (with the same fees for each short renewal) and do not carry work rights.

Visas for victims of trafficking and criminal exploitation to pursue civil labour claims

Special visas and support for victims of trafficking and criminal exploitation should be extended to enable victims to remain in the country to pursue civil claims to recover unpaid wages.

Numerous countries offer temporary permission for an exploited worker to remain in the country of employment where the worker participates in a criminal case against the employer. Some specifically provide for a further extension of stay to a victim of crime to recover unpaid wages:

- In **Germany**, a victim of crime who has been issued a temporary residence permit may subsequently extend their stay beyond the criminal proceeding if they have not yet received the wages they are owed and if “it would represent particular hardship for the foreigner to pursue his or her claim from abroad”.
- In the **Netherlands**, a victim of criminal exploitation is eligible for a short-term residence permit if, once “the criminal investigation or prosecution has been completed, ... there is a wage claim procedure before the subdistrict court”.
- **Hungary** allows a residence permit to be granted “by initiative of the court, to third-country nationals who have been subjected to particularly exploitative working conditions”. This permit can be renewed (for up to six months each time) “until the definitive conclusion of proceedings” for outstanding wages brought by the migrant worker against their employer.

Governments should consider adapting their models for visas and support under trafficking and criminal exploitation frameworks to workers pursuing civil claims within a labour enforcement framework.



Conclusion: Learning lessons from existing models

Governments must create migration frameworks that reduce the vulnerability of migrant workers who address exploitation, and genuinely enable migrant workers to extend their stay for a short period in the country of employment to remedy wage theft and hold employers accountable for labour violations.

A number of countries have introduced promising laws and policies to achieve this purpose. Some, such as the new U.S. deferral of removal policy and various visa portability options, hold potential to enable a significant number of migrant workers leave exploitative employers and recover the wages they are owed. Others, such as extensions of stay to pursue civil claims in the context of criminal exploitation, are promising on paper, but implementation must be overhauled to fulfill their potential beyond the small numbers of migrant workers that currently benefit. Some examples, such as short term visas without work rights, suffer from fundamental design flaws that limit their effectiveness.

Governments seeking to develop effective models must ensure short-term visas or extension of stay have:

- Application to a broad range of non-trivial labour violations, without onerous evidentiary requirements, to ensure that a sufficiently large number of migrant workers are eligible for visa protections to pursue labour claims;
- An accessible application process, with very low or no application fees;
- Work rights for the duration of the visa/extension, not tied to a single employer;
- Duration sufficient to pursue a labour claim, with options for extension if proceedings continue;
- Adequate support for migrant workers to apply for visa protections and to pursue labour claims including resourcing civil society organisations and trade unions that assist migrant workers;
- Eligibility that is not contingent on government pursuing a criminal prosecution or workers acting as witnesses. Ideally, certification of a meritorious labour claim can be provided by a diverse range of government agencies, and by accountable private actors.

Given the striking commonality of this problem in all regions of the world, we encourage governments, advocates, trade unions and international organisations to continue to share developments and lessons learned as they work towards developing global best practice models that genuinely enable migrant workers to access justice for wage theft.

For the full Research and Policy Brief, a detailed summary of the recent U.S. protections from removal, and other reports, videos and further information on how governments and business can improve migrant workers' access to justice for wage theft, visit www.migrantjustice.org/wagetheft2

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