FRA EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

SIX POINTS FOR WORKPLACE INSPECTORS

EU LAW SAFEGUARDS FOR NON-EU WORKERS

REPORT

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Introduction

Migrant workers are particularly vulnerable to labour exploitation and violations of European Union (EU) labour law. Workplace inspectors play a key role in overseeing the correct application of the safeguards enshrined in EU law.

EU law lays down safeguards to protect workers from non-EU countries (third countries) against employers' abusive behaviour and to facilitate their access to justice. EU law provides different levels of protection to non-EU workers. The level varies depending on their residence status.

Under EU law, non-EU workers who are legally resident in an EU country must receive equal treatment. They must be treated the same as workers from the Member State where they are employed. Equal treatment covers many areas, including working conditions, pay, working time, and health and safety at work.

According to the International Labour Organisation's Declaration on Fundamental Principles and Rights at Work, core labour rights apply to all workers, including workers in an irregular residence situation.

EU law rules protect all workers regardless of their nationality and residence status. For example, the safety and health of workers is protected under the framework directive on safety and health at work (89/391/EC).

Beyond the general EU law rules that apply to all workers, the following key EU law instruments provide specific safeguards for non-EU workers:

- the employer sanctions directive (2009/52/EC) for migrants in an irregular situation;
- the seasonal workers directive (2014/36/EU) for seasonal workers;
- the single permit directive (EU) 2024/1233 for regular workers. This directive has been recently revised and Member States have two years to transpose the new provisions;
- the reception conditions directive (EU) 2024/1346 for asylum applicants. This Directive has been recently revised and Member States must transpose it by June 2026;
- the posted workers directive (96/71/EC), as amended by directive (EU) 2018/957 for posted workers;
- the anti-trafficking directive (2011/36/EU), as amended by directive (EU) 2024/1712 for victims of human trafficking.

This report presents six points to help labour inspectors apply these EU law safeguards in practice:

1. providing information;
2. supporting access to justice and facilitating complaints;

3. identifying labour exploitation;
4. right to backpay and compensation;
5. right to adequate housing;
6. right to change employer.

This report is a summary of the forthcoming manual for workplace inspectors.

FRA activity: Manual for workplace inspectors to be published in autumn 2024

The European Union Agency for Fundamental Rights (FRA) is compiling a manual for workplace inspectors presenting safeguards for non-EU workers which will be published in autumn 2024. The manual will contain examples and promising practices across Member States. These examples will illustrate how EU labour inspectors can help ensure safeguards in law become a reality.

The manual analyses relevant EU law safeguards for non-EU workers holding residence permits under the EU single permit directive, the EU seasonal workers directive, the posted workers directive. It also analyses the situation for asylum applicants (as defined in Regulation (EU) 2024/1347) and for migrants in an irregular situation (as defined in the employer sanctions directive).

The manual is based on contributions from representatives of national labour inspectorates of selected EU Member States, the European Labour Authority, the European Commission, the International Labour Organisation, the International Trade Union Confederation, the European Union Trade Union Confederation, the International Organisation for Migration, the Council of Europe and other organisations.

Labour inspectors reviewed the content of the manual and discussed the promising practices. FRA held three meetings with experts and ran two validation workshops with labour inspectors between March and October 2023.

Workplace inspectors play an important role in upholding workers' rights. Promising practices identified in this research include workplace inspectors communicating directly with migrant workers during inspections and building trust with them. A further promising practice is when workplace inspectors have the skills to identify signs of labour exploitation. This involves overcoming language barriers, for example, by using translated leaflets and adjusting their interactions with exploited workers who may have experienced trauma or intimidation.

1. Providing information

Under EU law, non-EU workers of all categories have a right to be informed on their labour rights and available remedies. In various reports, FRA and the European Commission have noted gaps in the provision of information. This is reported in FRA's 2021 report on protecting migrant workers in an irregular situation and in the European Commission's report on posted workers in the implementation report of the posted workers directive, published in 2024.

Workplace inspectors are well placed to provide migrant workers with relevant information. This may be achieved by:

- providing information on labour rights as early and as proactively as possible during inspections;
- providing information through awareness-raising campaigns, together with relevant national authorities, that target both workers and employers during inspections;
- providing information through cooperation with third parties trusted by migrant worker communities, such as trade unions and relevant civil society organisations;
- providing workers with practical and concrete information about their rights and give information leaflets and their contact details to workers they meet during inspections;
- providing workers with information about their right to equal pay and to backpay (payment of due salaries), how to claim it and contact details of organisations that can support them;
- following up with workers after the inspection directly, if possible;
- providing at least the most important information in several languages;
- using a variety of information channels such as multilingual websites, one-stop-shops, hotlines, online platforms, posters or billboards, social media, videos and leaflets.

2. Supporting access to justice and facilitating complaints

EU law lays down different but comparable obligations for different categories of non-EU workers on access to justice. It requires Member States to put in place effective mechanisms for workers to lodge complaints against employers, including those who do so with the support of third parties such as trade unions and non-governmental organisations.

However, available evidence points to a limited use of complaint systems by migrant workers in an irregular situation, as FRA highlighted in its 2021 report on protecting migrants in an irregular situation from labour exploitation. A 2023 study on the posted workers directive and the enforcement directive found that posted non-EU workers may be reluctant to lodge complaints. This is due to their economic dependence on their employer, and their fear of losing their income and residence permits if they lose their job.

Workplace inspectors can play a key role in facilitating access to justice for non-EU workers by:

- informing workers about the right to complain and how to file a complaint with the labour inspectorate or a through a third party;
- addressing language barriers by providing forms to submit complaints in different languages;
- mapping which third parties, such as trade unions and relevant associations, can support migrant workers in filing a complaint, and sharing name and contact details of these organisations with workers;
- establishing structured partnerships with trade unions and civil society organisations;
- informing migrant workers in an irregular situation of any duty labour inspectors have to report them to immigration law enforcement and suggesting safe ways to file a complaint;
- securing the necessary evidence to support a complaint such as employment contracts, pay slips, working time and attendance records and evidence on substandard accommodation;
- verifying if exploited non-EU workers who are in an irregular situation may be entitled to a temporary residence or work permit, informing workers of the availability and limitations of such permits and, if part of the workplace inspector's mandate, facilitating access to such permits.

3. Identifying labour exploitation

Labour exploitation ranges from mild to more severe criminal forms of exploitation. It can include exploitative labour conditions, forced labour and trafficking for labour exploitation. As frontline staff, workplace inspectors are well placed to identify exploitation. A 2018 FRA report on protecting migrant workers shows that only some EU Member States clearly define in law what constitutes exploitative labour conditions. Only a few make detecting criminal forms of labour exploitation a key aim of workplace inspections in line with their obligations under EU and international law.

Workplace inspectors are encouraged to take the following measures to identify labour exploitation and refer victims to support by:

- undergoing training on the various types of crimes that involve labour exploitation and training on the relevant indicators to identify victims;
- using existing checklists to help identify victims of labour exploitation, such as the ILO indicators for labour exploitation;
- speaking directly to workers to identify signs of labour exploitation;
- mapping victim support services and specialist support services to whom victims may be referred;
- referring exploited workers, with their consent, to relevant organisations which provide victim support services and may be able to help them request temporary residence permits;
- cooperating with partners across borders, for example through concerted or joint inspections.

4. Right to backpay and compensation

The right to back payment of wages and/or compensation is one of the most important provisions to protect non-EU workers from exploitation and abuse. This includes those in an irregular situation. Non-EU workers are particularly vulnerable to wage abuses. They may experience delayed payment, underpayment, withholding of wages and unlawful deduction of wages, non-payment of wages and repatriation without receiving full wages. EU law contains a clear right to claim backpay and compensation for seasonal workers, posted workers, migrants with regular permits under the EU single permit directive and for non-EU workers in an irregular situation.

Workplace inspectors can help enforcing this right to backpay of wages and/or compensation in practice by:

- informing workers about their right to claim backpay and compensation and what it includes (e.g. outstanding remuneration, taxes and social security contributions, delay interests, administrative fines and other costs);
- facilitating the right to backpay and compensation of migrant workers;
- informing workers about existing non-judicial and judicial procedures to claim and enforce backpay and/or obtain compensation;
- informing workers about how to make a complaint with the labour inspectorate or other competent authority;
- being aware of the evidence needed to support migrant workers' claims for backpay and help collect and preserve this evidence;
- facilitating enforcement and the freezing and/or seizing of employers' assets to guarantee payment of due wages, where allowed in national law;
- cooperating with trade unions and relevant civil society organisations that can contact non-EU workers whose wages have not been paid, especially if they have returned to their country of origin.

5. Right to adequate housing

Some categories of migrant workers may be exposed to specific risks, for which EU law has express safeguards. For example, seasonal workers and posted workers are often provided housing by their employer. EU law requires this kind of accommodation to respect certain standards, however, these standards are not always met in practice.

A European Migration Network report on how the rights of seasonal workers are protected in the EU published in 2020 shows that seasonal workers' right to adequate housing differs across Member States. They use different criteria to define whether the housing offered respects adequate standard of living. Posted workers also experience substandard accommodation conditions, according to the implementation report of the posted workers directive published in 2024.

Workplace inspectors can play an important role in enforcing the right to adequate accommodation in practice by:

- undergoing training to recognise the signs of inadequate accommodation;
- monitoring compliance with adequate living standards in practice when this falls under their mandate;
- informing the responsible authorities of suspected sub-standard living conditions, if monitoring compliance is not within their mandate;
- providing workers with information on their rights to adequate accommodation and how to assert them, for example, with the help of trade unions or civil society organisations;
- collecting evidence of sub-standard living conditions.

6. Right to change employer

The opportunity to change employers reduces the risk of exploitation. It allows workers to leave an abusive employer without the risk of losing their income or permit. EU law entitles most non-EU workers with a residence permit to change employers, although Member States may limit this right.

Under EU law, if certain conditions are met, Member States must allow seasonal workers to change employers at least once. But changing employer is possible only when extending the seasonal work permit. Non-EU workers under the single permit directive are currently not allowed to change employer. They will, however, be able to once the revised directive is transposed into national legislation. Member States may bar this possibility in the first six months of the worker's stay in the country. They may also require that certain conditions are met, except in cases of serious violations of labour law.

Non-EU workers under the revised Single Permit Directive, once transposed into national legislation, will be allowed up to three months of unemployment during the period of validity of the single permit (extended to six months if the worker had a single permit for more than two years).

Workplace inspectors can play an important role to enforce this right in practice by:

- informing seasonal workers and non-EU workers under the single permit directive of the possibility to change the employer and explain the relevant procedure, once the directive is transposed into national legislation;
- informing workers under the single permit directive that they are entitled to a period of unemployment;
- proactively providing information on options for changing employer and unemployment options (where applicable for non-EU workers under the single permit directive), especially when signs of labour exploitation are detected during an inspection or identified in a complaint.

Related FRA research

- FRA (2021), Protecting migrants in an irregular situation from labour exploitation – Role of the Employers Sanctions Directive, Luxembourg, Publications Office of the European Union, 2021.
- FRA (2019), Protecting migrant workers from exploitation in the EU: workers' perspectives, Luxembourg, Publications Office of the European Union, 2019.
- FRA (2018), Protecting migrant workers from exploitation in the EU: boosting workplace inspections, Luxembourg, Publications Office of the European Union, 2018.
- FRA (2018), Out of sight: migrant women exploited in domestic work, Vienna, 2018 .
- FRA (2015), Severe labour exploitation: workers moving within or into the European Union, Luxembourg, Publications Office of the European Union, 2015.

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FRA – EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

Schwarzenbergplatz 11 – 1040 Vienna – Austria

T +43 158030-0 – F +43 158030-699

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