

MRN briefing: Vulnerable migrant workers and immigration enforcement¹

In February 2008, the responsibility of UK employers for the immigration status of their workers was significantly increased, drawing employers more substantially into the business of immigration control, and levying high civil penalties for those failing to do so effectively. Eighteen months after the introduction of the regulations, the new regulations do not appear to be fulfilling UKBA's stated objectives of tackling exploitative employment of 'vulnerable migrants' and of preventing 'illegal working' in the UK. Rather, the regulations appear to have increased the vulnerability of many migrant workers, forcing those without regular status into more clandestine employment.

The Migrants' Rights Network developed and produced a report, *Papers Please*, in November 2008. This was the first attempt to map out the effects of the new regulations (referred to in the report as the 'civil penalty regime' on migrant workers, and focused on workers in London, although anecdotal reports indicate similar trends elsewhere in the UK (including the North West, West Midlands, Wales, Scotland and North East).

The legislation

The power to impose penalties on people employing undocumented migrants was established under Section 8 of the Asylum & Immigration Act 1996, but remained virtually unused until the implementation of the Immigration, Asylum and Nationality Act 2006 (just 37 employers were found guilty of employing illegal workers between 1997 and 2006). This was likely to have been due to Home Office awareness that the widespread use of the power would be unfair to employers – as a result of the complexity of immigration law, many employers had inadvertently fallen in breach because of their failures to properly interpret immigration documents.

With the move to 'managed migration' schemes over the past ten years, the Government has sought to extend the role of employers in immigration enforcement. The power to impose fines was extended in the Immigration, Asylum and Nationality Act 2006, with the creation of a 'civil penalty' regime which allowed a fine of up to £10,000 per worker to be imposed by immigration officials, rather than by the courts. The new civil penalty regime came into force on 28th February 2008. The regime forms part of a wider enforcement strategy and has been accompanied by a recorded increase in immigration raids on workplaces and employer fines.

Issues arising for vulnerable migrant workers in the UK

The perspectives gathered by MRN through the Papers Please research report, and during the first half of 2009, indicate that there have been widespread issues arising from the use of immigration enforcement in workplaces. Key issues arising for migrant workers thus far have included the following:

1. There appear to have been widespread attempts by many employers to check the immigration status of their workers, despite employers often not knowing enough about the regulations or the appropriate documentation to make an accurate assessment of workers' immigration status. Accounts indicated that employers had not followed the guidelines in the 80-page guidance document provided to the Home Office, which describes the range of passports, birth certificates, ID cards and official letters which can prove the right to work. Many employers are reportedly erring on the side of caution when checking documents because of the high stakes involved in getting it wrong. Interviews for the Papers Please report indicated that this may mean that employers dismiss, or decline to engage, migrant workers who are unable to provide clear and unambiguous evidence of a regular immigration status - particularly affecting refugees, migrants varying their leave and A2 (Romanian and Bulgarian) migrants, whose need for documentation emerged as unclear among interviewees.

¹ Prepared by MRN in advance of the debate in the House of Lords on vulnerable migrant workers, October 2009

2. There are substantial grounds for concern that document checks to satisfy the new regulations may be being implemented by employers in a discriminatory way, on the basis of race, accent, or other factors used by employers to make an assessment of nationality. This is contrary to the guidance accompanying the legislation, which requires checks to be applied comprehensively across workers without differential treatment. There was concern that discrimination in favour of British nationals/white workers may take place at the point of application, to sidestep responsibility for immigration status. This has the potential to impact on the right to work for a wide range of workers, including British ethnic minorities.
3. Undocumented migrants have emerged as having been severely affected by the impact of immigration checks and/or raids. In particular, the Papers Please research focused on the experiences of vulnerable undocumented migrant workers within the cleaning and hospitality sectors, many of whom were poorly paid and working in unsuitable and/or dangerous conditions. Incidents reported in the Papers Please report included employers having forced workers who couldn't produce adequate documentation to resign, called in UKBA to 'ambush' workers in the workplace, or dismissed workers and withheld back-pay.
4. There is strong concern that the presence of immigration enforcement in the workplace is having a negative impact on vulnerable migrant workers' ability to campaign for better conditions. Accounts gathered in the Papers Please report indicated that immigration checks had been used by employers to disrupt collective action under the ongoing living wage campaigns carried out by contract cleaners in various workplaces in London. This was alleged to have been a factor in the immigration raid at the School of Oriental and African Studies in London on 12th June 2009, following the campaigning of workers for better working conditions. Eight migrant workers were arrested and seven removed from the country as a result of the raid. (<http://news.bbc.co.uk/1/hi/education/8101780.stm>). Undocumented migrants have virtually no enforceable employment rights, enabling immigration enforcement to be used as a weapon by unscrupulous employers. Tensions are already arising from the requirement that employment standards agencies remain concerned with workers' immigration status. The Gangmaster Licensing Authority, for example, requires employers to check immigration documents, which may challenge the GLA's ability to protect the rights and interests of vulnerable and undocumented workers.

Policy recommendations

Issues 1 and 2 – Improved efforts needed by Home Office to inform and educate employers about the practical means of remaining within the law without resorting to discrimination. Current information materials are geared towards fostering fear and mistrust of migrant workers, and not enough concern has been given to the race equality impacts of the regulations. MRN has requested that the Equality and Human Rights Commission, or other similar body, carry out a full inquiry into the race relations implications of the civil penalty regime.

Issues 3 and 4 – The reliance of employment rights on holding an appropriate immigration status enables vulnerable migrant workers to be exploited at will – the new regulations for employers around checking the right to work have further eroded the ability of the most vulnerable to challenge infringements of these rights. Efforts must be made by employment standards agencies (including the Fair Employment Enforcement Board, the National Minimum Wage Inspectorate, the Employment Agency Standards Inspectorate and the Gangmaster Licensing Authority) to ensure that employment rights are protected irrespective of immigration status. In particular reference to the GLA, the concern of this agency with the immigration status of migrant workers should be removed. On a further point, MRN would advocate the extension of its remit to cover *as a minimum* the construction, hospitality and care sectors where a high number of vulnerable migrant workers are known to experience exploitation and poor working conditions (see Oxfam report *Turning the Tide*, July 2009).