



ARRANGEMENT ON THE PRINCIPLES AND CONTROLS ON THE RECRUITMENT AND PROTECTION OF FILIPINO WORKERS IN NEW ZEALAND



The Department of Labor and Employment (DOLE) of the Republic of the Philippines and the Ministry of Business, Innovation, and Employment (MBIE) of New Zealand (hereinafter jointly referred to as the “Participants” and separately as a “Participant”).

WHEREAS, the *Memorandum of Agreement on Labor Cooperation between the Government of the Republic of the Philippines and the Government of New Zealand* was signed on 04 November 2008;

WHEREAS, the DOLE’s mandate is to promote gainful employment opportunities, develop human resources, protect workers and promote their welfare, maintain industrial peace and manage the migration of Filipino workers for overseas employment.

WHEREAS, MBIE’s purposes include, a) fostering more productive and internationally competitive businesses and, b) promoting safer and more skilled workplaces, improved business capability, more productive and successful people and improved international flows of people.

WHEREAS, the Participants mutually desire to promote, strengthen, and create efficiencies in human resource deployment and continually improve ways to safeguard Overseas Filipino Workers and implement those protections to safeguard Filipino workers recruited for employment in New Zealand.

The Participants have accordingly reached the following understanding:

Paragraph 1 DEFINITIONS OF TERMS

“DOLE” – refers to the Department of Labor and Employment, including the following attached agencies, namely, Philippine Overseas Employment Administration (POEA), Overseas Workers Welfare Administration (OWWA), Technical Education and Skills Development Authority (TESDA), and Professional Regulation Commission (PRC).

“Employer” means a person employing any employee in New Zealand as defined under New Zealand’s Wages Protection Act 1983 and Employment Relations Act 2000.

“MBIE” – refers to the Ministry of Business, Innovation, and Employment. It is the New Zealand government agency responsible for, amongst other things, immigration, employment standards and workplace relations.

“Overseas Filipino Workers or OFW” means a person who is to be engaged, is engaged, or has been engaged in a remunerated activity in a state of which he or she is not a citizen.

“POEA Exit Clearance” refers to the document issued to all Filipino workers processed at the Philippine Overseas Employment Administration (POEA) and Philippine Overseas Labor Office (POLO) which comes in the form of either the Overseas Employment Certificate (OEC), E-receipt (electronic receipt), Multiple Travel Exit Clearance (MTEC) or Overseas Filipino Worker (OFW) card.

“Sending Agency” refers to a third-party recruitment agency in the Philippines that DOLE authorized or licensed to recruit and/or pre-screen workers who seek to be employed in New Zealand.

Paragraph 2 AREAS OF COOPERATION

The areas for cooperation are the following:

- a) Regulation of the deployment of OFWs to New Zealand;
- b) Promotion of compliance with recruitment, employment and immigration laws of the Philippines and New Zealand through a targeted programme of actions including audits of sectors where OFWs are engaged;
- c) Protection of the rights of OFWs who are, or are to be employed in New Zealand;
- d) Ensuring that OFWs are recruited and employed in New Zealand in a manner that is ethical, effective, efficient, and transparent;
- e) Ensuring that any fees charged to OFWs, and any deductions from their wages, comply with employment and immigration laws of the Philippines and New Zealand;
- f) Ensuring that both the OFWs and New Zealand employers understand their rights and obligations;
- g) Assisting the Participants in understanding relevant parts of employment and immigration laws of the Philippines and New Zealand.

Paragraph 3 COOPERATION PRIORITIES

The Parties may jointly decide upon their priorities for collaboration under this arrangement. Cooperation Priorities may include:

- a) Promoting transparent, ethical and equitable recruitment and employment practices consistent with:
- Presidential Decree No. 442, otherwise known as the Philippine Labor Code, as amended; Republic Act (RA) 8042 or the Migrant Workers and Overseas Filipinos Act, as amended by Republic Act 10022; POEA Rules and Regulations; and relevant Memoranda Circulars governing the deployment of OFWs to New Zealand; and
 - New Zealand's Immigration Act 2009, Employment Relations Act 2000, Holidays Act 2003, Equal Pay Act 1972, Minimum Wage Act 1983, and the Wages Protection Act 1983.
- b) Enforcing laws and regulations on non-payment of recruitment and placement fees by OFWs;
- c) Ensuring that the terms and conditions that OFWs are offered in the Philippines reflect their actual terms and conditions in New Zealand, while preserving the ability of OFWs and Employers to lawfully and properly change those terms and conditions; provided that changes do not result in diminution of the terms and conditions of the original contract;
- d) Ensuring that, before leaving the Philippines, OFWs are made aware of their immigration and employment rights in New Zealand (e.g. pre-departure orientations and language assessments provided by MBIE);
- e) Facilitating linkages between Employers and Sending Agencies; and
- f) Cooperating to assist in the maintenance of the law, including the prevention, investigation, and detection of offences in either the Philippines or New Zealand.

Paragraph 4
IMPLEMENTATION OF COOPERATION PRIORITIES

The Participants may decide in writing which particular initiatives they intend to implement under the Cooperation Priorities. The Participants will exert all best efforts to implement such initiatives, subject to their respective domestic laws.

Paragraph 5
EXCHANGE OF INFORMATION

- a) The DOLE may request MBIE to confirm whether an Employer may recruit and employ OFWs under New Zealand law.
- b) The DOLE through the POEA may provide MBIE with a list of the Sending Agencies.

- c) The Participants may enter into further arrangements to facilitate the regular exchange of information under this Arrangement. Such further arrangement may be subject to, or necessary under, the domestic legislation, policies and practices of the Participants.¹
- d) Prior consent from the concerned Participant will be sought before publication or transmission of confidential information to third parties.

Paragraph 6
RECRUITMENT AND SELECTION OF OFWs

- a) The DOLE, through the POEA, will accredit Employers and license Sending Agencies to recruit and place OFWs in New Zealand.
- b) Upon a request from an Employer, Sending Agencies will provide the Employer with the names and accurate information on the relevant skills, experience and qualifications of pre-qualified OFWs. Employers may also select qualified OFWs and provide the names of those OFWs to the Sending Agencies for processing and documentation at the DOLE through POEA.
- c) The DOLE through the POEA, will require all contracts for recruitment services between Employers and Sending Agencies to:
 - i. be written in clear and unambiguous language; and
 - ii. describe the service to be provided, the fees and expenses to be charged to the Employer, and the services for each fee and expense to be charged.
- d) POEA may investigate, suspend or revoke the license of Sending Agencies for violations of the POEA rules and regulations. Likewise, Employers or OFWs may be disqualified from participating in overseas employment for violations of POEA rules and regulations.
- e) MBIE may refuse to grant visas for work with Employers who do not comply with New Zealand employment or immigration law.
- f) MBIE will require Employers to demonstrate that they comply with New Zealand immigration and employment law, including by:
 - i. paying employees no less than the appropriate statutory minimum wage or other contracted industry standard;
 - ii. meeting holiday and special leave requirements or other minimum statutory criteria, (e.g. health and safety obligations);
 - iii. only employing people who have authority to work in New Zealand;
 - iv. making offers of employment that are genuine and sustainable;

¹ For example, this might concern relevant information relating to enforcement action taken by either Participant against Employers of OFWs or Sending Agencies.

- v. not charging premiums²;
 - vi. not making unlawful deductions from wages; and
 - vii. providing MBIE with truthful and accurate information.
- g) MBIE may prosecute Employers for offences, including employing a person not entitled to work in New Zealand, exploitation, or providing false and misleading information to MBIE.

Paragraph 7
COST OF RECRUITMENT OF OFWs

- a) Each Participant will uphold and enforce the employment and immigration laws relating to the imposition of costs on OFWs within its jurisdiction.
- b) The Participants will explore ways to further ensure that Employers provide any service fees to Sending Agencies to cover the cost of recruitment of an OFW.
- c) The Participants will ensure the observance of New Zealand's employment and immigration laws, specifically its strict limitation on the fees that Employers may charge OFWs and the deductions that may be properly made from their wages. In particular, neither an Employer in New Zealand, nor an agent in New Zealand of that Employer, may charge an OFW for recruitment services provided to the Employer (a premium)³.
- d) The Participants note that POEA's Memorandum Circular No. 9, series of 2014, provides that under POEA rules and regulations "agencies recruiting and hiring workers and deploying to New Zealand are prohibited from charging and collecting any recruitment and placement fees from said workers."

Paragraph 8
OFFERS OF EMPLOYMENT AND EMPLOYMENT CONTRACTS

- a) The DOLE through POEA will require the Sending Agencies to provide the OFWs with a copy of the employment contract or written offer of employment.
- b) The DOLE will require Sending Agencies to conduct a mandatory orientation for OFWs concerning the contents of the employment contract or written offer of employment sent by Employers to the OFWs to ensure that the OFWs have a clear understanding of the terms and conditions of their employment.

² For example, a sum of money charged to or taken from an OFW by an Employer in New Zealand, or an agent in New Zealand of that Employer, for recruitment services provided to the Employer.

³ See Footnote no. 2

- c) The DOLE will issue a POEA Exit Clearance for OFWs based on confirmation from the Employer without requiring an original individual verified employment contract for that OFW *unless otherwise provided by Philippine laws, rules and regulations*.
- d) The Participants will enforce the relevant legislation to ensure that Employers do not unlawfully vary, reduce or eliminate any benefit or term or condition of the employment contract in order to recover the cost of recruiting the OFW.
- e) Under New Zealand immigration law, an Employer will be required to show MBIE the proposed terms and conditions of an OFW's employment before MBIE will grant a visa to the OFW. Those terms and conditions must comply with New Zealand employment law (including minimum standards).
- f) The Participants acknowledge that the recruitment documents of foreign principals, employers and projects will undergo verification at the work site prior to registration with POEA. The Philippine Overseas Labor Office (POLO) nearest the worksite will review and verify the recruitment documents, including the master employment contract, with a view to establishing the existence of the Employer, company or project, his/its capability to hire workers at the applicable rates and at desirable working conditions that are in conformity with the minimum standards prescribed by the Administration and/or with the labor laws and legislations of the host country.
- g) MBIE, in upholding New Zealand employment and immigration law will investigate unlawful changes to OFW employment conditions after visas are granted.

Paragraph 9
SETTLING OF DIFFERENCES

- a) The Participants intend that all differences between Employers and OFWs that are not resolved amicably will be dealt with in accordance with the legislation provided under Paragraph 3(a).
- b) The POLO, Philippine Embassy or Philippine Consulate, as the case may be, will provide information and support to OFWs and facilitate the resolution of differences with Employers, via referral to the relevant authority of New Zealand.
- c) Any differences between the Participants arising out of the interpretation or implementation of this Arrangement will be settled amicably by consultations or negotiations through diplomatic channels.
- d) During the pendency of cases of differences between Employers and OFWs and until its final determination, the stay of the OFWs will be in accordance with New Zealand laws.

Paragraph 10
COMPLIANCE WITH DOMESTIC LAW

In pursuing Cooperation Priorities, the Participants will act in accordance with their respective domestic laws, regulations and policies, including privacy law.

Paragraph 11
JOINT COMMITTEE

A Joint Committee will be formed consisting of representatives led by a Senior Official from the Participants to review the activities under this Arrangement every two (2) years or as may be jointly decided.

Paragraph 12
COMMENCEMENT, VARIATION AND DISCONTINUANCE

- a) This Arrangement will come into effect on the date of the last written notification from the Participants through diplomatic channels, indicating that their domestic requirements for its effectivity have been completed, and will remain in effect for a period of five (5) years. It will be automatically renewed for similar periods of five (5) years unless either Participant terminates it in accordance with Paragraph 12 (b).
- b) Either Participant may terminate this Arrangement by providing six (6) months written notice sent through diplomatic channels.
- c) The Participants may amend this Arrangement. Any such amendments must be made in writing and approved by the Participants, through diplomatic channels and will come into effect on a date approved by the Participants.

Signed in duplicate at _____ on this _____ day of _____ in the year _____.

**For and on behalf of the Department of
Labor and Employment of the
Government of the Republic of the
Philippines**

**For and on behalf of Ministry of Business
Innovation and Employment of the
Government of New Zealand**