



Policy Brief

***MOBILEurope: Collective bargaining for mobile workers in Europe under the
COVID-19 – cases of frontier, seasonal and migrant workers***

key policy conclusions and recommendations



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The MOBILEurope project carried out research on the impact of the COVID-19 pandemic on the situation of frontier, seasonal and migrant workers in terms of employment, working conditions and social protection in the six countries studied (Poland, Greece, Spain, Portugal, Serbia, North Macedonia).

This paper presents the main findings of the research carried out in Poland and makes policy recommendations based on the results of the analysis.

Rights of mobile workers

In Poland, labour rights are regulated by normative acts – the Labour Code Act of 26 June 1974 (Journal of Laws item 1465) and the Employment Promotion and Labour Market Institutions Act of 20 April 2004 (Journal of Law 2004 No. 99 item 1001), and the benefits to which they are entitled depend on the type of contract signed. Thus, mobile workers (migrants) have the same rights and working conditions as Polish workers employed under similar types of contracts (employment contract, mandate contract, less frequently, contract for specific work). The same was certain during the COVID-19 pandemic.

Collective bargaining for mobile workers

Poland has the lowest rate of collective bargaining coverage among the 27 EU countries. It can therefore be assumed that the extent of collective bargaining for mobile workers is close to zero. Existing collective agreements do not contain provisions that address the specific needs of migrant workers and there are no provisions specifically aimed at this group of workers.

The low level of collective bargaining can be described as a crisis that has been going on for many years. On the employers' side, there is an apparent lack of agreement on various proposals to revive these negotiations. The argument against change is usually that existing labour law in Poland already regulates many areas of employment and provides labour standards at a level that is already high in terms of labour costs, employment and social security for workers. Consequently, there is no consensus among employers to extend these rights through collective agreements.

According to the Trade Unions Act of 23 May 1991 (Journal of Laws 1991 No 55, item 234), any person in gainful employment, regardless of nationality, may belong to a trade union. Thus, mobile workers have the same right to organise and negotiate as any employee or contractor in Poland. On the other hand, the research shows that there is still a reluctance or distrust of trade union membership among foreigners. On the one hand, this may be due to a lack of awareness that unionisation gives them more opportunities to influence working conditions and organisation. On the other hand, the largest groups of migrants in Poland come from Ukraine, Belarus and other post-socialist countries and have many stereotypes about trade unions, which makes them reluctant to join them or take collective action.

Form of employment of foreigners

The most common form of employment for foreigners in Poland is a civil law contract (mandate contract). If they are employed under an employment contract, it is usually a fixed-term or probationary contract. Permanent contracts are rare, although they are used for Ukrainian employees, especially those who have been working in Poland for a long time and enjoy the trust of their employer. The form of employment is also sometimes linked to a wider trend in a particular sector, rather than to the nationality of the worker. Sometimes migrants, especially from Ukraine, prefer civil law contracts as they give them more flexibility and the possibility to move between Poland and Ukraine. In the case of seasonal workers, the main motivation is the salary, which is higher under a civil law contract. However, they may not be fully aware of the different types of contract and the benefits that, for example, a fixed-term contract could offer them.

Irregularities

The most common breach of the rules on the legality of employing foreigners is the lack of the required work permit. Other offences include the employment of foreigners on the basis of declarations made by an entity other than the one to which the work is to be assigned, or the assignment of work to foreigners contrary to the conditions set out in the work permit, particularly with regard to the duration of working hours. However, the extent of violations of these laws detected by the State Labour Inspectorate during the period of greatest strictness caused by the COVID-19 pandemic, i.e. in 2020-2021, did not differ from those detected in previous years.

In 2020-2021, the most frequent violations of workers' rights in terms of compliance with workers' rights were:

1. failure to comply with health and safety rules or regulations (almost half of all offences);
2. failure to pay remuneration for work or other benefits on the agreed date, making an unjustified underpayment or deduction (about one in five offences);
3. violation of regulations on working time or regulations on workers' rights related to parenthood and employment of young people (just over 6% of all offences).

These types of problems affect both Polish and foreign citizens. The problem is therefore not the nationality of the employee, but the dishonesty of the employer.

Inspectorate in temporary employment agencies during COVID-19 also revealed an increase in the tendency to conclude civil law contracts under conditions that are characteristic of the employment relationship. In 2020, irregularities were detected in 5.2% of the units inspected, while in 2021, they were detected in 8.2% of the agencies. Before the pandemic, in 2019, this type of practice was detected in 6.8% of the units.

Trade unions, on the other hand, criticise the phenomenon of abusive 'false outsourcing', i.e. situations where workers - according to the unions - should be employed by a given company but provide temporary work externally through temporary employment agencies.

Employer perspective

Experts pointed to the dualism of the Polish approach to the employment of foreigners - on the one hand, the rather liberal rules and, on the other, the lengthy procedures. Lack of clarity about the current legal status of a foreigner awaiting the issuance of another residence legalisation document can inadvertently entangle a person in illegal residence and employment. The COVID regulations, which introduced the extension of the validity of national visas and temporary residence permits, as well as the extension of the validity of work permits for foreigners to 30 days after the end of the epidemic, were a great relief for employers.

On the other hand, legal ambiguities resulting from frequent amendments and new regulations that excluded certain categories of workers, such as international transport drivers, or changed the length of the compulsory quarantine period, posed a problem for both employers and mobile workers. However, during the COVID-19 pandemic, many companies recruited foreigners because of increased demand in many industries and a shortage of workers in the local market.

Conclusions

During the COVID-19 pandemic, in companies where trade unions were active, they negotiated agreements with the employer at company level. This made it possible, for example, to suspend some benefits, reduce working hours but still ensure continuity of employment. Foreign workers were treated on the same basis as nationals. Migrants employed in the service sector based on civil law contracts were also given some protection, the so-called post-stay benefit, which is aimed at entrepreneurs and people employed based on mandate contracts, including legally working foreigners.

Statistically, the increase in unemployment in Poland due to the pandemic was not as large as feared (6.2 per cent in September 2020 compared to 5 per cent the previous year). However, the statistics do not reflect the impact of the lockdown on sectors of the economy where informal and undeclared work predominates, such as care work. Furthermore, it is impossible to estimate the impact of the COVID-19 pandemic on the working situation of foreigners providing services in platform work, which is difficult to reach for both researchers and trade unionists.

The COVID-19 period also revealed other dangerous phenomena. The guidelines for agricultural producers employing foreigners for seasonal work in the context of the spread of the SARS-CoV-2 virus, whose main objective was to ensure the continuity of agricultural work, introduced an exception to the general rules on quarantine and could not be fully implemented in practice. Foreigners working and living on farms were not able to isolate themselves from other workers, putting their lives and health at risk.

Recommendations

Education and information activities should be stepped up, targeting both mobile workers and employers. The role of trade unions would be to develop their capacity to represent mobile workers by involving them in existing structures, producing materials in local languages, and initiating and providing education and training.

Particularly important is the need to support trade union initiatives set up by people with migrant experience, who can better identify and respond to the needs of migrant workers, while at the same time acting as a bridge between mobile workers, the host society, institutions, and other trade unions. It would also be good practice to include representatives of migrant workers on works councils, especially in workplaces where they are a significant part of the workforce. With one or more representatives on the council, the voice of migrant workers will be better heard, and they will have the opportunity to express and present their problems, needs and demands.

Given that mobile workers are strongly represented in platform jobs, such as drivers and couriers, and that such non-standard forms of work are increasing, the potential of platforms and social media to reach hard-to-reach groups should be exploited, and online communication channels should be used to reach a wider range of mobile workers.

The employment structure of foreigners in Poland is also changing and new challenges are emerging. For many years, the labour market was dominated by citizens of Ukraine and Belarus. Nowadays, more and more foreigners are being recruited from countries that are both geographically and culturally distant, such as Indonesia, Colombia, the Philippines, Cuba, Georgia, and Kazakhstan, which creates a need for training and information materials in their national languages to support the process of working with non-European foreigners.

Poland does not have an open and coherent migration policy, while at the same time the number of work permits issued has risen sharply in recent years. The lack of a long-term vision and migration strategy means that it is employers who shape the demand for migration to Poland and, as research shows, this is also linked to unfair practices by some companies. It is necessary to develop a migration policy that would be the result of a tripartite dialogue. Such a policy document should be consulted with the trade union movement at a central level.