

Viet Nam Policy Brief 3: Eliminating worker-borne recruitment fees and related costs to prevent forced labour

Last reviewed: 23rd of August 2020¹

The payment of recruitment fees and related costs by workers increases their risk of ending up in forced labour. Migrant workers from Viet Nam are legally charged some of the highest fees and costs in ASEAN.

Fair recruitment is critical to eradicating forced labour. One of the key principles of fair recruitment is that no recruitment fees and related costs are charged to workers. The private sector is committed to eradicating forced labour but it cannot be achieved by business action alone.

What can be done to eliminate worker borne recruitment fees and related costs?

1. Remove the obligation for workers to pay all recruitment fees and related costs, including brokerage fees, service charge and deposits, from Law 72.
2. Include provisions in bilateral labour agreements that clearly state that workers should not pay any recruitment fees and related costs.
3. Take a multi-stakeholder approach, in particular working with social partners, to devise a new fees and related costs model for migration, build understanding and consensus on the risks of the worker-borne model.

This policy brief sets out that:

- Recruitment fees and related costs charged to workers significantly increase the risk of forced labour
- International standards prohibit charging of recruitment fees and related costs to workers.
- However, in Viet Nam recruiters legally charge recruitment fees and related costs to workers.

The link between recruitment fees and related costs and forced labour

- As well as being unfair, high fees and related costs can result in situations of debt bondage. Many workers borrow heavily to pay the fees and may end up working excessive hours and/or have their wages withheld in order to pay back loans.
- Additional fees can be imposed by unregulated actors and third-party brokers in countries of destination that are not covered under the regulated fees and related costs structures.

¹ These policy briefs are intended to be living documents. Readers should regularly check for updates.

- Where worker visas are tied to one employer, those workers with large loans, or in situations of debt bondage, can be at higher risk of exploitative labour conditions and restrictions on their movement, due to their inability to leave their employer.
- The issue of recruitment fees and related costs can disproportionately impact women migrant workers, who have less access to resources with which to cover fees and related costs, or to secure loans. This leaves them relying on informal loans which are often less protected in terms of interest and repayments, and can result in higher payments overall.

Recruitment fees and related costs should not be charged to workers.

- The ILO's General Principles and Operational Guidelines on Fair Recruitment and Definition of Recruitment Fees and Related Costs provides that: **Recruitment fees or related costs:**
 - Should not be collected from workers by an employer, their subsidiaries, labour recruiters or other third parties providing related services.
 - Recruitment fees or related costs should not be collected directly or indirectly, such as through deductions from wages and benefits.
 - Related costs include: medical, insurance, tests, orientation, equipment, travel, lodging, administration.
- ILO's Private Employment Convention, 1997 (No. 181), Migration for Employment Convention (Revised), 1949 (No. 97), and Domestic Workers Convention, 2011 (No. 189) all include provisions that recruitment fees and related costs should not be passed on to workers.
- The Dhaka Principles for Migration with Dignity are a set of human rights-based principles that were endorsed by the World Employment Confederation and the International Trade Union Confederation (ITUC). They include at Principle 1 that states no recruitment fees are charged to migrant workers.

In Viet Nam recruiters can legally charge recruitment fees and related costs to workers

Key Laws

- **Law No. 72/2006/QH11 Law on Vietnamese Migrant Workers:** provides for the rights and obligations of migrant workers and employment agents sending them abroad
- **Law No. 45/2019/QH14 New Labour Code:** prohibits the extraction of forced labour; and making enticement, false promises or false advertising to deceive a worker; or making use of employment service or activities on sending workers abroad to work on the basis of employment contract to commit illegal acts
- **Law No. 66/2011/QH12 on Human Trafficking Prevention and Combat:** prohibits transferring or receiving, recruiting, transporting or harbouring person for forced labour

- The charging of fees and related costs is currently permitted under Law 72, which provides for worker payment of multiple fees and costs within the law and sub-laws,

including: enrolment fee; brokerage fee; service charge/fee (recruitment agent); service charge/fee (employer agent), contribution to overseas employment support fund; deposit; training; passport; visa; travel and health check. Law 72 is currently under review and the permitted fees and costs may be subject to change.

- Whilst Law 72 provides ceilings for costs, the amount paid can often exceed these. Both regulated and unregulated actors, in addition to third-party brokers, charge excessive recruitment fees and related costs.
- The average recruitment fees and related costs for women and men are around US\$6,500, with studies showing that women tend to pay slightly more than men. This is as against average monthly wages of US\$800 for work overseas.ⁱ On average, the migrant has to work 8.7 months to recover the cost of labour migration where legal ceiling amounts are respected.
- The recruitment fees and related costs of regular migration are cited as a reason that workers from Viet Nam use irregular methods for migration. The legal ceilings for recruitment fees and related costs constitute a barrier to regular migration, pushing people to migrate irregularly, thereby increasing the risk of forced labour.

Table 1: Table showing legal ceilings for recruitment fees and related costs in Viet Nam

Cost/Charge	Legal status	Description
Enrolment fee	Charged in addition to costs provided for in Law or allowable (one off payment of around US\$100-200)	Paid on enrolment with recruitment agent
Brokerage fee	Law 72 – ceiling limits apply (one-month salary per year – maximum US\$1,500 per year/US\$4,500 for three years)	To reimburse recruitment agent for fee paid to the employer agent
Service charge/fee (recruitment agent)	Law 72 – ceiling limits apply (one-month salary per year)	To cover costs of recruitment agent providing support to worker in country of destination
Service charge/fee (employer agent)	Charged in addition to costs in Law (variable – in Taiwan (China) between US\$600 - US\$720 per year)	To cover costs of employer's agent providing support to worker in country of destination
Overseas Employment Support Fund	Law 72 – fixed amount (approx. US\$4.30 per person)	To provide support to workers in country of destination
Deposit	Law 72 – ceiling limits apply (US \$1,000 for factory and construction workers in Taiwan (China); US\$800 for domestic and health-care workers; US\$3,000 fishers).	To compensate recruitment agent in event that worker breach of contract causes loss
Training and travel costs ⁱⁱ	Annex 2 of Circular 22: Sample Guest Worker Contract; no ceilings need to be applied	To cover costs

Law 72 is under review. Now is the right time to eliminate worker-borne recruitment fees and related costs.

- **Remove the obligation for workers to pay recruitment fees and related costs from Law 72.** This should include awareness raising of government officials and other relevant stakeholders (such as recruitment agent associations and trade unions) on the risks of worker-borne fees and related costs. Examples can be found in the approaches of other countries:
 - The Tokyo Declaration on the Responsible Acceptance of Foreign Workers in Japan (ASSC Tokyo Declaration) states that ‘Foreign workers must not bear recruitment fees and related costs.’ Instead, recruitment fees and costs should be borne by companies. Japan has also ratified ILO’s Private Employment Agencies Convention, 1997 (No. 181).
 - The Indonesian Government introduced a revised National Law No. 18/2017 on the Placement and Protection of Indonesian Migrant Workers, which includes a provision on zero recruitment costs for migrant workers and mandates that all recruitments costs to be covered by the employer.
- **Include provisions in bilateral labour agreements that clearly state that workers should not pay any recruitment fees and related costs.** Bilateral agreements and related negotiations should explore different fees and costs models.
 - For example: Nepal has sought to include in bilateral agreements with countries, including the Republic of Korea, Japan, Qatar, United Arab Emirates, and Bahrain, stipulations that employers pay the costs of recruitment and migration.ⁱⁱⁱ
- **Working with all relevant stakeholders, particularly social partners, devise a new fees and related costs model.** This should be part of an effort to streamline the recruitment process to make it more cost-effective. Making the system more efficient, transparent and economic will reduce the number of actors that are charging fees and related costs.

ⁱ ILSSA (Institute of Labour Science and Social Affairs). Unpublished. Synthesis Report: Returning Migrant Workers in Viet Nam and ILO.2017. Risks and rewards: Outcomes of labour migration in South-East Asia

ⁱⁱ Including: Foreign language training; Vocational/skill training; Pre-departure training; Passport /Visa; Travel costs, including flights; Health check-up

ⁱⁱⁱ ILO. 2018. Ending forced labour by 2030: A review of policies and programmes.