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R151 - Recomendación sobre los trabajadores migrantes, 1975 (núm. 151)

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Preámbulo

La Conferencia General de la Organización Internacional del Trabajo,

Convocada en Ginebra por el Consejo de Administración de la Oficina Internacional del Trabajo, y congregada en dicha ciudad el 4 de junio de 1975 en su sexagésima reunión;

Considerando que el Preámbulo de la Constitución de la Organización Internacional del Trabajo le asigna la misión de proteger los intereses de los trabajadores cuando están empleados en países distintos del suyo, y

Recordando las disposiciones contenidas en el Convenio y la Recomendación sobre los trabajadores migrantes (revisados), 1949, y en la Recomendación sobre la protección de los trabajadores migrantes (países insuficientemente desarrollados), 1955, que tratan de cuestiones tales como la preparación y organización de la migración, los servicios sociales que deben proporcionarse a los trabajadores migrantes y a sus familias, en particular antes de su partida y durante el viaje, la igualdad de trato respecto de diversas cuestiones que enumeran, y la reglamentación de la estancia y el regreso de los trabajadores migrantes y de sus familias, y

Habiendo adoptado la Convención sobre los trabajadores migrantes (disposiciones complementarias), 1975, y

Considerando que son deseables normas adicionales en materia de igualdad de oportunidades y de trato, política social en relación con los migrantes y empleo y residencia, y

Habiendo decidido adoptar diversas proposiciones relativas a los trabajadores migrantes, cuestión que constituye el quinto punto del orden del día de la reunión, y

Habiendo decidido que dichas propuestas revistan la forma de una Recomendación,

adopta, con fecha veinticuatro de junio de mil novecientos setenta y cinco, la siguiente Recomendación, que podrá ser citada como la Recomendación sobre los trabajadores migrantes, 1975:

1. Los Miembros deberían aplicar las disposiciones de la presente Recomendación en el marco de una política coherente sobre migración internacional con fines de empleo. Dicha política debería basarse en las necesidades económicas y sociales tanto de los países de origen como de los países de empleo; debería tener en cuenta no solo las necesidades y recursos de mano de obra a corto plazo, sino también las consecuencias sociales y económicas a largo plazo de la migración para los migrantes y las comunidades afectadas.

I. Igualdad de oportunidades y trato

2. Los trabajadores migratorios y sus familiares que se encuentren legalmente en el territorio de un Miembro deberían gozar de igualdad efectiva de oportunidades y de trato con los nacionales del Miembro de que se trate respecto de:

- a) el acceso a servicios de orientación y colocación profesional;
- b) el acceso a la formación profesional y al empleo de su propia elección, sobre la base de la idoneidad individual para dicha formación o empleo, teniendo en cuenta las cualificaciones adquiridas fuera del territorio y en el país de empleo;
- (c) ascensos de acuerdo con su carácter individual, experiencia, capacidad y diligencia;
- d) la seguridad del empleo, la provisión de empleo alternativo, el trabajo de relevo y la readaptación profesional;
- e) remuneración por un trabajo de igual valor;
- f) las condiciones de trabajo, incluidas las horas de trabajo, los períodos de descanso, las vacaciones anuales pagadas, las medidas de seguridad y salud en el trabajo, así como las medidas de seguridad social y las instalaciones y prestaciones de bienestar proporcionadas en relación con el empleo;
- g) la afiliación a sindicatos, el ejercicio de los derechos sindicales y la elegibilidad para cargos en sindicatos y en órganos de relaciones entre trabajadores y dirección, incluidos los órganos que representan a los trabajadores en las empresas;
- (h) derechos de membresía plena en cualquier forma de cooperativa;
- i) las condiciones de vida, incluidos la vivienda y los beneficios de los servicios sociales y las instalaciones educativas y sanitarias.

3. Todo Miembro debería garantizar la aplicación de los principios enunciados en el párrafo 2 de la presente Recomendación en todas las actividades bajo el control de una autoridad pública y promover su observancia en todas las demás actividades mediante métodos adecuados a las condiciones y la práctica nacionales.

4. Se deberían adoptar medidas apropiadas, con la colaboración de las organizaciones de empleadores y de trabajadores y otros organismos interesados, con objeto de:

- a) fomentar la comprensión y la aceptación públicas de los principios antes mencionados;
- b) examinar las quejas sobre el incumplimiento de estos principios y asegurar la corrección, mediante conciliación u otros medios apropiados, de cualquier práctica que se considere en conflicto con ellos.

5. Cada Miembro debería garantizar que las leyes y reglamentos nacionales relativos a la residencia en su territorio se apliquen de tal manera que el ejercicio legítimo de los derechos disfrutados en virtud de esos principios no pueda ser motivo de no renovación de un permiso de residencia o de expulsión y no se vea inhibido por la amenaza de tales medidas.

6. Un Miembro podrá:

- (a) make the free choice of employment, while assuring migrant workers the right to geographical mobility, subject to the conditions that the migrant worker has resided lawfully in its territory for the purpose of employment for a prescribed period not exceeding two years or, if its laws or regulations provide for contracts for a fixed term of less than two years, that the worker has completed his first work contract;
- (b) after appropriate consultation with the representative organisations of employers and workers, make regulations concerning recognition of occupational qualifications acquired outside its territory, including certificates and diplomas;
- (c) restrict access to limited categories of employment or functions where this is necessary in the interests of the State.

7.

(1) In order to enable migrant workers and their families to take full advantage of their rights and opportunities in employment and occupation, such measures as may be necessary should be taken, in consultation with the representative organisations of employers and workers--

- (a) to inform them, as far as possible in their mother tongue or, if that is not possible, in a language with which they are familiar, of their rights under national law and practice as regards the matters dealt with in Paragraph 2 of this Recommendation;
- (b) to advance their knowledge of the language or languages of the country of employment, as far as possible during paid time;

(c) generally, to promote their adaptation to the society of the country of employment and to assist and encourage the efforts of migrant workers and their families to preserve their national and ethnic identity and their cultural ties with their country of origin, including the possibility for children to be given some knowledge of their mother tongue.

(2) Where agreements concerning the collective recruitment of workers have been concluded between Members, they should jointly take the necessary measures before the migrants' departure from their country of origin to introduce them to the language of the country of employment and also to its economic, social and cultural environment.

8.

(1) Without prejudice to measures designed to ensure that migrant workers and their families enter national territory and are admitted to employment in conformity with the relevant laws and regulations, a decision should be taken as soon as possible in cases in which these laws and regulations have not been respected so that the migrant worker should know whether his position can be regularised or not.

(2) Migrant workers whose position has been regularised should benefit from all rights which, in accordance with Paragraph 2 of this Recommendation, are provided for migrant workers lawfully within the territory of a Member.

(3) Migrant workers whose position has not been or could not be regularised should enjoy equality of treatment for themselves and their families in respect of rights arising out of present and past employment as regards remuneration, social security and other benefits as well as regards trade union membership and exercise of trade union rights.

(4) In case of dispute about the rights referred to in the preceding sub-paragraphs, the worker should have the possibility of presenting his case to a competent body, either himself or through a representative.

(5) In case of expulsion of the worker or his family, the cost should not be borne by them.

II. Social Policy

9. Each Member should, in consultation with representative organisations of employers and workers, formulate and apply a social policy appropriate to national conditions and practice which enables migrant workers and their families to share in advantages enjoyed by its nationals while taking account, without adversely affecting the principle of equality of opportunity and treatment, of such special needs as they may have until they are adapted to the society of the country of employment.

10. With a view to making the policy as responsive as possible to the real needs of migrant workers and their families, it should be based, in particular, on an examination not only of conditions in the territory of the Member but also of those in the countries of origin of the migrants.

11. The policy should take account of the need to spread the social cost of migration as widely and equitably as possible over the entire collectivity of the country of employment, and in particular over those who profit most from the work of migrants.

12. The policy should be periodically reviewed and evaluated and where necessary revised.

A. REUNIFICATION OF FAMILIES

13.

(1) All possible measures should be taken both by countries of employment and by countries of origin to facilitate the reunification of families of migrant workers as rapidly as possible. These measures should include, as necessary, national laws or regulations and bilateral and multilateral arrangements.

(2) A prerequisite for the reunification of families should be that the worker has, for his family, appropriate accommodation which meets the standards normally applicable to nationals of the country of employment.

14. Representatives of all concerned, and in particular of employers and workers, should be consulted on the measures to be adopted to facilitate the reunification of families and their co-operation sought in giving effect thereto.

15. For the purpose of the provisions of this Recommendation relating to the reunification of families, the family of the migrant worker should include the spouse and dependent children, father and mother.

16. With a view to facilitating the reunification of families as quickly as possible in accordance with Paragraph 13 of this Recommendation, each Member should take full account of the needs of migrant workers and their families in particular in its

policy regarding the construction of family housing, assistance in obtaining this housing and the development of appropriate reception services.

17. Where a migrant worker who has been employed for at least one year in a country of employment cannot be joined by his family in that country, he should be entitled--

(a) to visit the country of residence of his family during the paid annual holiday to which he is entitled under the national law and practice of the country of employment without losing during the absence from that country any acquired rights or rights in course of acquisition and, particularly, without having his employment terminated or his right to residence in the country of employment withdrawn during that period; or

(b) to be visited by his family for a period corresponding at least to the annual holiday with pay to which he is entitled.

18. Consideration should be given to the possibility of giving the migrant worker financial assistance towards the cost of the travel envisaged in the preceding Paragraph or a reduction in the normal cost of transport, for instance by the arrangement of group travel.

19. Without prejudice to more favourable provisions which may be applicable to them, persons admitted in pursuance of international arrangements for free movement of labour should have the benefit of the measures provided for in Paragraphs 13 to 18 of this Recommendation.

B. PROTECTION OF THE HEALTH OF MIGRANT WORKERS

20. All appropriate measures should be taken to prevent any special health risks to which migrant workers may be exposed.

21.

(1) Every effort should be made to ensure that migrant workers receive training and instruction in occupational safety and occupational hygiene in connection with their practical training or other work preparation, and, as far as possible, as part thereof.

(2) In addition, a migrant worker should, during paid working hours and immediately after beginning his employment, be provided with sufficient information in his mother tongue or, if that is not possible, in a language with which he is familiar, on the essential elements of laws and regulations and on provisions of collective agreements concerning the protection of workers and the prevention of accidents as well as on safety regulations and procedures particular to the nature of the work.

22.

(1) Employers should take all possible measures so that migrant workers may fully understand instructions, warnings, symbols and other signs relating to safety and health hazards at work.

(2) Where, on account of the migrant workers' lack of familiarity with processes, language difficulties or other reasons, the training or instruction given to other workers is inadequate for them, special measures which ensure their full understanding should be taken.

(3) Members should have laws or regulations applying the principles set out in this Paragraph and provide that where employers or other persons or organisations having responsibility in this regard fail to observe such laws or regulations, administrative, civil and penal sanctions might be imposed.

C. SOCIAL SERVICES

23. In accordance with the provisions of Paragraph 2 of this Recommendation, migrant workers and their families should benefit from the activities of social services and have access thereto under the same conditions as nationals of the country of employment.

24. In addition, social services should be provided which perform, in particular, the following functions in relation to migrant workers and their families--

(a) giving migrant workers and their families every assistance in adapting to the economic, social and cultural environment of the country of employment;

(b) helping migrant workers and their families to obtain information and advice from appropriate bodies, for instance by providing interpretation and translation services; to comply with administrative and other formalities; and to make full use of

services and facilities provided in such fields as education, vocational training and language training, health services and social security, housing, transport and recreation: Provided that migrant workers and their families should as far as possible have the right to communicate with public authorities in the country of employment in their own language or in a language with which they are familiar, particularly in the context of legal assistance and court proceedings;

(c) assisting authorities and bodies with responsibilities relating to the conditions of life and work of migrant workers and their families in identifying their needs and in adapting thereto;

(d) giving the competent authorities information and, as appropriate, advice regarding the formulation, implementation and evaluation of social policy with respect to migrant workers;

(e) providing information for fellow workers and foremen and supervisors about the situation and the problems of migrant workers.

25.

(1) The social services referred to in Paragraph 24 of this Recommendation may be provided, as appropriate to national conditions and practice, by public authorities, by approved non-profit-making organisations or bodies, or by a combination of both. The public authorities should have the over-all responsibility of ensuring that these social services are at the disposal of migrant workers and their families.

(2) Full use should be made of services which are or can be provided by authorities, organisations and bodies serving the nationals of the country of employment, including employers' and workers' organisations.

26. Each Member should take such measures as may be necessary to ensure that sufficient resources and adequately trained staff are available for the social services referred to in Paragraph 24 of this Recommendation.

27. Each Member should promote co-operation and co-ordination between different social services on its territory and, as appropriate, between these services and corresponding services in other countries, without, however, this co-operation and co-ordination relieving the States of their responsibilities in this field.

28. Each Member should organise and encourage the organisation, at the national, regional or local level, or as appropriate in a branch of economic activity employing substantial numbers of migrant workers, of periodic meetings for the exchange of information and experience. Consideration should also be given to the exchange of information and experience with other countries of employment as well as with the countries of origin of migrant workers.

29. Representatives of all concerned and in particular of employers and workers should be consulted on the organisation of the social services in question and their co-operation sought in achieving the purposes aimed at.

III. Employment and Residence

30. In pursuance of the provision of Paragraph 18 of the Migration for Employment Recommendation (Revised), 1949, that Members should, as far as possible, refrain from removing from their territory, on account of lack of means or the state of the employment market, a migrant worker regularly admitted thereto, the loss by such migrant worker of his employment should not in itself imply the withdrawal of his authorisation of residence.

31. A migrant who has lost his employment should be allowed sufficient time to find alternative employment, at least for a period corresponding to that during which he may be entitled to unemployment benefit; the authorisation of residence should be extended accordingly.

32.

(1) A migrant worker who has lodged an appeal against the termination of his employment, under such procedures as may be available, should be allowed sufficient time to obtain a final decision thereon.

(2) If it is established that the termination of employment was not justified, the migrant worker should be entitled, on the same terms as national workers, to reinstatement, to compensation for loss of wages or of other payment which results from unjustified termination, or to access to a new job with a right to indemnification. If he is not reinstated, he should be allowed sufficient time to find alternative employment.

33. Todo trabajador migrante objeto de una orden de expulsión tendrá derecho a recurrir ante una instancia administrativa o judicial, según lo establecido en la legislación nacional. Este recurso suspenderá la ejecución de la orden de expulsión, siempre que se justifiquen las exigencias de seguridad nacional o de orden público. El trabajador migrante tendrá el mismo derecho a asistencia jurídica que los trabajadores nacionales y la posibilidad de contar con la asistencia de un intérprete.

34.

(1) Un trabajador migrante que abandona el país de empleo debería tener derecho, independientemente de la legalidad de su estancia en el mismo:

- a) a cualquier remuneración pendiente por el trabajo realizado, incluidos los pagos de indemnización por despido normalmente debidos;
- b) a las prestaciones que puedan corresponderle por cualquier lesión laboral sufrida;
- c) de conformidad con la práctica nacional:
 - (i) a una compensación sustitutiva por cualquier derecho a vacaciones adquirido pero no utilizado;
 - ii) al reembolso de las contribuciones a la seguridad social que no hayan dado ni darán lugar a derechos en virtud de las leyes y reglamentos nacionales o de acuerdos internacionales; sin embargo, cuando las contribuciones a la seguridad social no permitan tener derecho a las prestaciones, se deberían hacer todos los esfuerzos posibles con miras a la conclusión de acuerdos bilaterales o multilaterales para proteger los derechos de los migrantes.

(2) Cuando sea objeto de litigio alguna reclamación de las contempladas en el apartado (1) del presente párrafo, el trabajador debería poder hacer representar sus intereses ante el organismo competente y disfrutar de igualdad de trato con los trabajadores nacionales en lo que se refiere a asistencia jurídica.

Ver relacionados
Información clave
Recomendación relativa a los trabajadores migrantes
Adopción: Ginebra, 60ª sesión de la CDI (24 de junio de 1975) Estado: Instrumento actualizado.

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