

Research Brief

Migrant Worker Recruitment Costs

Macau

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Macau S.A.R. is a territory of destination for mainland Chinese construction workers and Indonesian domestic workers. The Law for Employment of Non-Resident Workers, enacted in 2009, is the main legislation for government regulation of migrant labour in Macau. Enforced by the Labour Inspection Department of the Macau Labour Affairs Bureau, the law affords a series of rights for migrant workers such as rights to suitable working conditions and to compensation equivalent to the cost of travel in the event of repatriation. The law also explicitly prohibits reductions of worker salaries to cover the mandatory social security fees. A separate item of legislation, the 2009 Labour Relations Law, explicitly forbids unlawful deductions from workers' salaries. This implicitly includes deductions to cover recruitment fees. Enforcement of this ruling, however, is evidently problematic in light of the existence of informal lobby groups protesting against recruitment fees for non-resident domestic workers. This remains the furthest extent of existing legislation in regulating recruitment fees.

Background

The Macau Special Administrative Region (SAR) is a tourism and casino-dependent economy, where a fifth of the 640,000 population is made up of migrant workers (Statistics and Census Service of the Government of Macau SAR, 2015). A large majority of the migrant labour force in Macau is employed in the growing construction industry and a smaller proportion as domestic labour, while growing numbers (approximately 30% of the casino sector workforce) have also been employed in the casino sector, a sector traditionally seen as privileged employment for locals (Liu J. , 2014). Consequently, there have been increasing popular protests against the hiring of migrant labour (Lau, 2015). There is, however, a general consensus that firstly, in light of Macau's limited workforce and high employment rates, there is a need for migrant labour, and secondly, the employment of locals takes priority over employment of a non-local for the same job position (Pinto, 2015) (Cohen, 2010).

A series of labour regulatory laws were passed in 2009, in response to a need to clarify existing vague labour standards in view of recent massive increases of migrant labour inflows¹. These include the *Law for Employment of Non-Resident Workers* and the more general *Labour Relations Law*. Both of these laws provide for a comprehensive range of rights of employees and prohibitions on employee abuses and are enforced by the Labour Affairs Bureau, which also provides mediation for employer-employee disputes. Macau maintains labour laws and judicial institutions autonomous from the People's Republic of China.

Migrant workers in Macau are classified by the Labour Affairs Bureau into three categories of (1) "specialized workers", i.e. workers who possess highly qualified technical skill or professional experience, (2) "domestic workers", and (3) "non-specialised workers", i.e. low-skilled labour (Macau Legislative Assembly, 2009). The issue of recruitment fees is expected to affect the second and last category of workers, given the relatively low economic value attached to their work and hence limited bargaining power. Most migrant domestic workers come from Indonesia, whereas migrant workers in the construction industry come from the Chinese mainland (DSEC, 2007). The large majority of the migrant labour for the construction sector appears to be employed through offshore "bulk" recruitment agencies (Labour Affairs Bureau, 2014). The migrant labour population is tightly micro-managed through a strict time-limited employment permit system with government-determined quotas² (Macau News, 2015).

¹ There was a 63.9 percent increase in migrant workers in one year alone from 39,411 in 2005 to 64,736 in 2006 according to the Macau Statistics and Census Bureau.

² The quotas were enacted through Article 12 of the 2009 Law for Employment of Non-Resident Workers.

Details of policy

The *Law for Employment for Non-Resident Workers*, the main legislation for regulation of migrant labour, provides for the rights of migrant workers to suitable working and living conditions, rights to suitable remunerations, rights to compensation of travelling costs in the event of repatriation and a clause which prohibits deduction of salaries to pay for social security fees. Violations of these regulations by employers are accompanied by fines. Recruitment agencies have to be licensed by the Labour Affairs Bureau, but there appears to be no regulatory framework governing recruitment fees charged by recruitment agencies. A clause is also included to regulate cessation of employment permits and renewal of permits, but does not explicitly prohibit employer kickbacks demanded and given to secure the renewal of permits. There is also no explicit regulation of recruitment fees.

The *Labour Relations Law*, on the other hand, explicitly forbids deductions from employee salaries, except for specified scenarios, and this essentially prohibits recruitment fees. Deductions are limited to one sixth of employee income³. While in principle, this law is applicable to non-resident employees, as specified in Article 6 Clause 2, actual enforcement is problematic, a deficiency illuminated by the presence of localized but informal lobby groups of Indonesian domestic helpers protesting against recruitment fees (Macau Daily Times, 2015). This testifies to an apparent failure to benefit migrant domestic workers as the legislation might have been intended to (Jornal San Wa Ou, 2015).

Pros and cons

Pros: The *Labour Relations Law*, which provides a fundamental rights-based legislative baseline for labour rights to both local and migrant workers, is a helpful chassis on which to further develop and expand labour regulations.

Cons: The Macau labour regulatory policies suffer from legislative neglect. While the *Law for Employment of Non-Resident Workers* provides an expected base line of migrant labour rights, it does not prohibit recruitment fees. The *Labour Relations Law* arguably prohibits them, but its actual applicability to non-resident workers and its enforcement, with the existence of separate and specific legislation for non-resident workers, is suspect. This is supported by the fact that there have recently been protests by groups of migrant workers calling for the regulation of recruitment fees.

Furthermore, even if the laws did prohibit recruitment fees, the penalties they afforded are incommensurate. The *Law for Employment of Non-Resident Workers* provides only for a 5000 Macao pataca fine for infractions on living and working conditions, equivalent to only about 625 USD. The *Law*

³ These rulings can be found under Article 64 of the 2009 Labour Relations Law.

for Labour Relations awards heftier fines of between 20,000 – 50,000 Macau pataca⁴, but as stated earlier, the applicability of this law to non-resident workers is questionable. The lack of other penalties such as de-licensing, especially for “bulk” employment agencies further limits the deterrent effect of these laws. For comparison, this is unlike Ministry of Manpower practices in Singapore where there is more micro-level legislation that acts to curb various aspects of migrant labour abuse, such as the Employment Agencies Act, accompanied by comprehensive and proportional penalties. The *Law for Employment of Non-Resident Workers* on the other hand fails to regulate migrant labour recruitment agencies altogether.

Moreover, the Macau Labour Affairs Bureau appears to lend greater emphasis to cracking down on illegal migrant labour rather than errant abusive employers, as a result of domestic pressures. For example, the *Law for Employment of Non-Resident Workers* further disadvantages migrant workers by imposing a six-month ban on entry to Macau for a migrant worker who leaves his or her job without employer consent (International Trade Union Confederation, 2011).

Accompanied by limited opportunities for low-skilled migrant labour to seek redress for employer abuse, this results in limited enforcement of labour regulatory laws. Such a circumstance is underscored by a lack of reports of errant and abusive employers prosecuted by the Macanese authorities.

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⁴ This amount is equivalent to about 2 500 to 6,250 USD

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TWC2 Recruitment Costs Research Working Group

The great majority of migrant workers pay large sums of money in order to obtain jobs in other countries. The costs, often exorbitant, leave workers debt-ridden and in a more vulnerable position to pernicious labour abuse. At TWC2, we recognise the consequences of recruitment costs and the urgent need to eliminate such fees.

This report is part of a series of papers analysing the policies in various countries regulating recruitment costs. Through this evaluative process, we hope to be able formulate effective policy recommendations in reducing the recruitment costs of workers who come to Singapore.



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