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A Study on Employment Transfer Regulations of Migrant Workers

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Abstract

The Employment Service Act was designed to regulate white-collar and migrant workers (blue-collar migrant workers) in different ways since it was enacted in 1992. In order to protect nationals' employment opportunities, the government adopts an employment permit system to control the number of migrant workers strictly, restricting their working period and signing fixed term contracts, maintaining the same type of job in their original industry when job transferring. Also, the government prohibits blue-collar migrant workers from applying to transfer jobs before the expiry of employment, unless they meet four requirements of Article 59 of the Employment Service Act. However, blue-collar migrant workers often face difficulty to meet these four requirements. Besides, Employment Service Act also sets a period limit for employment transferring and the government controls the number of migrant workers, which makes it more difficult for migrant workers to transfer. Many migrant workers have to take risk of deportation to transferring job within the legal period. These phenomenon shows different level of regulation be-

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tween white-collar and blue-collar migrant workers in Taiwan, which means the latter have no freedom of employment transferring. In Summary, this article introduces regulations and policy changing of shifting to work for a new employer or to engage in new work at first and then explains three ways of employment transferring which includes circumstances not attributable to the employed foreign worker, transferring by consent and expiry transferring. The article then analyses the difficulty of applying to regulations of these three ways in practice. At last, considering the government has not yet follow ILO's Migrant Workers Convention No.143 and ICMW to grant migrant workers freedom of transferring in Employment Service Act, and taking account of supplementary and temporary foreign labor policy purpose and human rights of migrant workers, the article offers short-term and long term suggestion: loosen up restrictions on migrant workers' right to terminate contract and transferring in the short term. Long-term reforms should gradually move from current guest worker system to real migrant worker system, and amend the law to achieve freely transferring in practice.

Keywords: Migrant Worker, Guest Worker, Article 59 of Employment Service Act, Employment Transfer, Labor Broker Agency