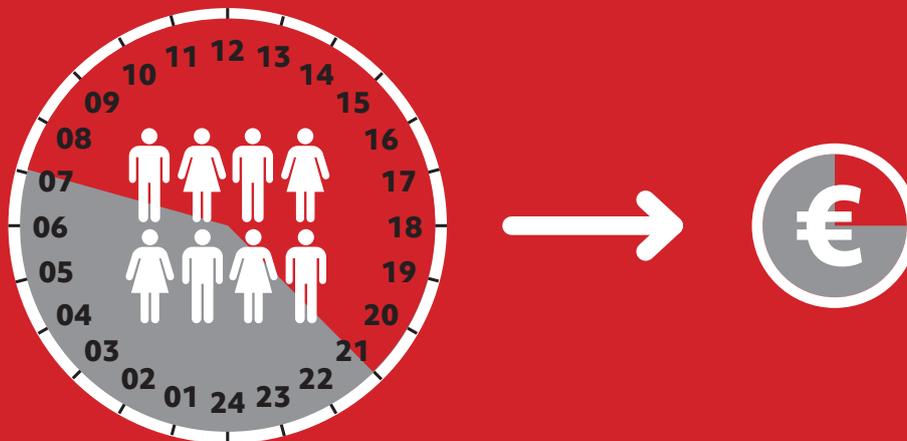


ALL WORK AND LOW PAY: THE EXPERIENCE OF MIGRANTS WORKING IN IRELAND



INTRODUCTION

THE MIGRANT RIGHTS CENTRE IRELAND (MRCI) ESTABLISHED IN 2001, IS A NON-GOVERNMENTAL ORGANISATION WORKING WITH MIGRANTS AND THEIR FAMILIES IN LOW-PAID SECTORS OF EMPLOYMENT, AT RISK OF POVERTY, DISCRIMINATION, SOCIAL EXCLUSION AND EXPLOITATION. THE MRCI'S FREE AND CONFIDENTIAL DROP-IN CENTRE PROVIDES INFORMATION AND ADVOCACY ON IMMIGRATION AND EMPLOYMENT ISSUES TO SOME TWO THOUSAND MIGRANT WORKERS EACH YEAR.

The MRCI has established a number of action groups to support migrants to actively participate in addressing the underlying causes of the issues they face. As a key preventative strategy to tackle exploitation and the growing prevalence of forced labour, the MRCI established a Worker Justice Group (WJG). This group brings together migrant workers employed in a number of sectors characterised by low-paid precarious jobs. As part of their work, the WJG carried out a survey, ran focus groups and gathered case studies to examine current trends and issues affecting migrants in low-paid precarious jobs. This paper outlines their findings and sets out a number of core recommendations to tackle the issues raised by workers.

RESEARCH METHODOLOGY

The research methodology draws from Participatory Action Research, an approach to research in communities which emphasises participation and action. The content, design and methodology were agreed with WJG members to ensure representation of migrant workers throughout the process. Seven WJG leaders were upskilled to conduct cross-sectional surveys in different communities and ensure a broad sample.

The findings constitute an analysis of 104 surveys of migrant workers, gathered by WJG leaders and migrant NGOs between November 2014 and March 2015. Three focus groups were held with migrants to examine the issues arising from the survey and to identify solutions. Selected case studies are included in this paper to highlight the key issues emerging from the research: exploitation, discrimination and lack of career progression.



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CONTEXT

THE FINDINGS OF THE SURVEY ARE SITUATED IN A BROADER CONTEXT, TAKING ACCOUNT OF A RANGE OF FACTORS THAT AFFECT MIGRANTS' POSITION IN THE LABOUR MARKET.

MIGRANTS AND LOW PAY

Immigrants comprise 12.47% of Ireland's population - some 578,000 people in total. Since 2001, over 90,000 migrants have become Irish citizens and migration has become a permanent feature of the labour market. This trend will undoubtedly continue, as the EU workforce is shrinking.¹ In the coming years, Europe and Ireland will need to source labour from outside of the EU.² Migration will continue to be an important feature of the Irish labour market.

Eurostat estimate that 20.7% of workers in Ireland are concentrated in low-paid work.³ Many in this grouping are migrant workers. A recent study conducted by the Nevin Economic Research Institute (NERI) estimates that approximately 75,000 workers are earning minimum wage - 5.6% of all employees, with 32,250 working full-time on the minimum wage. 65% of this group are women. A large proportion of these jobs are concentrated in the hotel, catering, restaurant, wholesale and retail sectors. The level of precarity experienced in minimum wage jobs is greater. According to NERI, workers are more likely to be on temporary contracts, work less than 20 hours per week, work part-time, and be in the private sector. NERI also identified that those on minimum wages are more likely to struggle financially and one-third experienced deprivation.⁴ Clearly, low pay is now a significant problem in the Irish labour market.

The Quarterly National Household Survey shows that migrant workers are concentrated in service sectors such as food, retail, health-related services and personal household services. These jobs are essential to the functioning of the labour market, yet they remain undervalued, underpaid and in some cases exploitative. These sectors have a higher incidence of labour exploitation. In 2014, the National Employment Rights Authority (NERA) carried out 5,591 inspections. 43% of these inspections uncovered incidences of labour exploitation.⁵ The highest incidences of exploitation were in the hotel and catering sector where migrant workers are concentrated. NERA identified the 'active exploitation of workers whether through control by employers, undocumented and invisible work, or long hours' as a particular challenge.⁶

According to the OECD, 70% of migrants are overqualified for the jobs they are employed in.⁷ This figure is reflected in Ireland: overall, migrant workers, both men and women, have a better educational profile than the Irish population as a whole, but despite their higher qualifications, migrants are over represented in lower-paid jobs.⁸ Labour market mobility is essential to creating the conditions for the integration of migrants into the labour market – a key issue that needs attention from policy makers.

A NOTE ON THE MINIMUM WAGE AND THE LIVING WAGE

The National Minimum Wage is enshrined in law. The rate is currently set at €8.65 per hour. This is due to increase by €0.50 cent per hour in January 2016. Research conducted by the Living Wage Technical Group has established the rate of pay required to provide an employee with an income sufficient to achieve the minimum acceptable standard of living.⁹ This is known as the living wage and in 2015 has been set at €11.50 per hour in Ireland. This rate of pay enables a single full-time worker to afford the essential standard of living; a wage below this rate would suggest that an employee could not make ends meet. Achieving this rate of pay would require a social agreement between employers and workers.

LABOUR MIGRATION

Ireland's labour migration policy aims to meet most of its labour needs from within the enlarged EU. The main mechanism by which non-EEA nationals take up employment in Ireland is through the employment permit system, a regime initially based on a guest-worker model offering limited rights to migrant workers. Immigration status and access to the labour market are intertwined and each employment permit is only valid for the employer and job specified. A change of employer requires a change of employment permit, which means incurring fees and application costs – and if the application fails, the worker is at risk of becoming undocumented.

Despite the welcome reforms introduced by the Employment Permits (Amendment) Act 2014, the system remains restrictive, with many low and middle-paid occupations still deemed ineligible for the purposes of an employment permit. As economic growth drives demand for both labour and skills across the labour market, these reforms fail to address needs in certain essential sectors – such as home care or the hotel and catering industry.

1. Eurostat projects that the EU workforce will shrink by 50 million over the next 50 years.
2. Eurofound, More and Better Jobs in Homecare Services, Publications office of the EU, 2013.
3. Eurostat: Low pay is classified as earning less than two-thirds of national median hourly earnings.
4. Collins, M.L. (2015), 'Earnings and Low Pay in the Republic of Ireland: a profile and some policy issues' NERI Working Paper, 2015/ No. 29. Dublin, The Nevin Economic Research Institute
5. National Employment Rights Authority, Review of 2014
6. Low Pay Commission Recommendations for the National Minimum Wage, July 2015
7. International Migration Outlook 2014, OECD.
8. An introduction to the situation and experience of women migrant workers in Ireland, Jane Pillinger, Equality Authority, 2006.
9. <http://www.livingwage.ie>

Where demand for workers in these sectors is growing and government policies remain unresponsive, employers will inevitably find alternative, irregular channels to recruit workers: channels where the rights of migrants are not protected, and where they are more at risk of exploitation. This in turn will have a negative impact by lowering standards in those industries and will result in economic loss for the State.

DISCRIMINATION AND RACISM

High levels of discrimination and racism against migrants are evident in the labour market. In 2008, non-Irish nationals were three times more likely to experience discrimination while looking for work, while Black people were seven times more likely. Moreover, in the workplace non-Irish nationals were twice as likely to experience discrimination as Irish nationals.¹⁰ A recent study on discrimination in the labour market from 2004-2010 highlighted that 'visibly different ethnic groups, in particular Black African and non-White EU groups reported very high rates of discrimination when looking for work, and their experience of discrimination did not decrease over time. This is consistent with discrimination based on racial prejudice, and a preference for White immigrants.'¹¹

EXPLOITATION AND ENFORCEMENT

In many cases of exploitation, enforcement of workers' rights is challenging. Currently, not all workers can access the Workplace Relations Bodies (WRBs) that mediate and adjudicate on breaches of employment and equality laws. Undocumented workers are excluded from taking cases to the Labour Courts.¹² The government made an attempt to address the situation through the Employment Permits (Amendment) Act 2014. Section 2 (3A) of the Employment Permits Act 2003 as amended enables workers who take all 'reasonable steps' to rectify their immigration situation to go to the civil courts to claim compensation for breaches of their employment rights. This remains untested as the cost of taking cases to the civil courts makes them difficult to access.

MRCI reviewed 48 employment cases it supported between 2006 and 2015. The 48 cases were filed to WRBs for breaches of employment law. Where workers were successful in bringing claims to the WRBs this in itself did not guarantee that they would receive compensation for breaches. €1,100,805 was awarded to workers by the WRBs and through settlements with employers. To date, only €295,677 - a third of the overall amount - has been recouped. In most cases it is difficult, if not impossible, to enforce the awards of the WRBs. Employers can avoid paying awards through:

- » closing down the company or ceasing to trade without any formal liquidation so there is no one to enforce the award against;
- » transferring the directorship so that the original employer is no longer listed as a director of the company;
- » claiming no means/ inability to pay;
- » leaving the jurisdiction so that the award can no longer be recouped.

There are no penalties against employers who have withheld wages or denied workers the benefits rightfully owed to an employee. This practice is known as wage theft and in other jurisdictions, such as the USA, it is a criminal offence. There is no mechanism to recoup monies from such employers, leaving workers without any recourse to justice.

A NOTE ON UNDOCUMENTED WORKERS

Being undocumented is an administrative infringement, not a criminal offence. Undocumented migrants include persons who have entered the country unknown to authorities, those who have overstayed their visas, and those who breach the terms and conditions of their permission to reside. It is often compounded by misinformation, administrative delays and exploitation. Deregulation, an increased demand for flexible labour, and precarious working conditions are key drivers of irregular migration. Immigration policies which emphasise control, enforcement and return, while overlooking skills and labour shortages, will continue to produce irregular migration, leaving thousands at risk of social exclusion, vulnerability and exploitation.

Undocumented workers are much more likely to experience poor working conditions and are highly vulnerable to exploitation. Every year a significant percentage of migrants seeking support from MRCI in relation to employment rights violations are undocumented. Faced with few options and alternatives, many are forced to stay in exploitative situations, fearing the risks of coming forward.¹³

10. Immigrants at Work: Ethnicity and Nationality in the Irish Labour Market, ESRI and Equality Authority, 2008.
11. Kingston, Gillian; McGinnity, Frances; O'Connell, Philip J (2015) "Discrimination in the Labour Market: Nationality, Ethnicity and the Recession", Work, Employment and Society, 29 (2), pp 213-23.
12. The High Court judgment in Amjad Hussein vs the Labour Court ruled that the Employment Permits Act 2003 prevents an exploited undocumented worker from seeking redress under labour law, as the employment contract cannot be recognised. This judgment was struck out in the Supreme Court on the specific points relating to the case, yet the rights of undocumented workers to access WRBs are still uncertain.
13. Research carried out by MRCI in November 2014 with 540 undocumented migrants in Ireland found that the majority of those interviewed are concentrated in, lower-paid work. The top five sectors of employment were Restaurant & Catering (37.5%), Domestic Work (32.5%), and Cleaning and Maintenance (10.5%) – less-regulated sectors, where non-compliance and exploitation are rife.

CASE STUDY: ANN

Ann came to Ireland in 2002 to work as a child minder. She is also a qualified carer. Despite having 13 years of experience and excellent references, Ann struggles to find work which pays her more than €8.65 an hour. In 2010, she started to work for a care agency. For many years she earned just €20 per 24-hour shift. In 2014, the agency gave her 22 hours' work per week at €8.65 per hour. The high cost of transport is a barrier to taking certain jobs. *"If I only get a few hours' work, I can't afford to spend the money I make on bus fare. I have to borrow money from friends to get a health check-up as my wages just don't cover me beyond food and bills. It is depressing living on a low wage and I feel isolated. If my friends text or phone me and ask me out, I just make excuses. There's shame, if you don't have the money."*

SURVEY FINDINGS

PROFILE OF PARTICIPANTS

Surveys were carried out in the restaurant, domestic, home care, retail and security sectors.

The top five nationalities represented were Pakistani, Filipino, Bangladeshi, Chinese and Indian.

The age profile was:

- » 25-33 - 34%
- » 34-44 - 45%
- » 45-54 - 10%

Immigration status of participants:

- » 53.3% - Irish citizenship or long-term residency: full access to the labour market
- » 30.5% - student visa: part-time work allowed in term time, full-time work allowed for limited periods
- » 12.2% - work permit holders: can work only for the employer specified on the permit
- » 4% - undocumented: no legal status or formal access to the labour market

EXPLOITATION AND NON-COMPLIANCE

"I was paid less than half the minimum wage and worked way longer than full-time hours."

The survey revealed that exploitation and non-compliance with Irish employment law are widespread across the identified sectors. The rights conferred under Irish employment law are routinely breached. Most breaches occur under the National Minimum Wage Act 2000, Organisation of Working Time Act 1997, Terms of Employment (Information Act) 1994 and the Payment of Wages Act 1991.

Respondents revealed that:

- » 44% received less than €8.65 per hour
- » 48% are living on less than €300 per week
- » 61% are required to work extra hours without pay
- » 45% had no contract
- » 26% do not receive payslips
- » 82% did not receive a salary increase in the last year
- » 82% were not compensated for working on Sundays

Exploitation of migrants is widespread in the sectors surveyed, and the employment conditions of those surveyed are extremely precarious. From a worker's point of view, precarious work is uncertain, unpredictable and risky employment. Our focus groups emphasised that the sub-minimum wage pay, coupled with increases in the cost of living – in particular rent, heating, transport costs and VAT on essential goods – are leaving people struggling to survive. Likewise, other participants who earn above minimum wage (up to €10.50 per hour) stated that their take-home pay does not leave them enough to live on, given the increase in the cost of living.

ENFORCEMENT

The most significant development identified through the survey is that many migrant workers are aware of and understand their employment rights, due to the length of time they have lived in Ireland. Yet on further exploration of this within the focus groups, it was revealed that many workers are unable to claim these rights. They stated that this is fuelled by the precarity of their jobs, where a culture of rights is not fostered and exploitation is a pervasive and serious problem. Migrants identified a number of factors that prevent them from claiming and exercising these rights:

- » There is little or no support for employees to challenge breaches of their employment rights;
- » None of those surveyed were members of trade unions;
- » Many would not report their complaints to the National Employment Rights Authority (NERA) as there is a perception that the labour inspectors are mainly concerned with immigration issues and there is little they can do to help workers enforce their rights;
- » Workers reliant on a work permit are fearful they will lose their jobs, as that would put them at risk of losing their immigration status and becoming undocumented;
- » Fear of losing their job if they complain given the barriers to seeking another job;
- » No safety net of social welfare, as many migrants will not claim any benefits due to fears it will affect their application for citizenship in the longer term.

WORKERS AND ENFORCEMENT BODIES

Participants in the focus groups further highlighted the negative perception of NERA among many migrant workers. It is widely believed by migrant workers that NERA's main function is to enforce immigration rules and target workers, not to target exploitation or unscrupulous employers. This belief is based on people's experience of inspections. Many workers felt that NERA prioritised checking immigration status rather than working conditions when carrying out inspections. Several participants whose workplace was subject to an inspection were not clear on their own rights as workers during the inspection or on the inspector's role and remit.

CASE STUDY: HASAN

Hasan witnessed an inspection in the Dublin-based restaurant where he works. Four officials entered the premises for the inspection, but only one official introduced himself and showed ID. Hasan and the two other workers on the floor did not fully understand which government agency or department the officials were from and the inspector did not explain to the workers his right to inspect or access the restaurant. The workers were first asked about their immigration papers and permission to work in Ireland. They were then given a form to fill out with their personal details. One official went into the back of the restaurant to the kitchen and checked storage spaces. Hassan believes he was looking for hidden workers.

PROGRESSION

77% of those surveyed have been in their current job for over a year and 58% over two years. The majority of people have worked in the same job sector for the past 5 years. 62% of all those surveyed have a third level qualification yet continue to work in jobs well below their skill levels.

Furthermore, 87.4% remained in entry-level jobs, with few progressing to management level despite having worked for the same employer for over 2 years.

93% have not been offered a promotion or opportunity to progress in the last year.

Many workers in the focus groups commented on the difficulty in moving beyond low-paid entry-level positions, despite years of experience and sometimes a high level of responsibility in their workplace. Participants believe they are ethnically profiled by name, as even those who have obtained Irish citizenship still struggle to progress and find different employment.

CASE STUDY: SAMEER

Sameer moved to Ireland to study in 2005. He obtained a post graduate degree with distinction and began working with an agency for an international company based in Dublin. Sameer has worked for this company for the last eight years. In those eight years he has applied unsuccessfully for over 50 different internal promotions and posts in the company, despite a stable immigration status with the right to work, extensive experience and a third level qualification from Ireland.

After so many unsuccessful attempts to progress in the company Sameer decided to apply for work externally. He applied for over 200 jobs in 12 months, again without success. Many of these applications were for international companies based in Ireland. Several conducted preliminary interviews over the phone from outside Ireland. Sameer was successful in moving beyond the preliminary and secondary interviews for a number of these roles. However, when it came to the last stages of the interview process in over the phone or in person in Ireland Sameer failed to progress. Sameer believes this was a direct result of discrimination due to his name and nationality.

DISCRIMINATION AND RACISM

38% of those surveyed felt they had been treated differently than other staff because of race, colour, nationality, ethnic origin or religion. Only 15 out of 60 people surveyed complained when they felt they had been discriminated against and 90% of this cohort reported that the situation did not improve after they complained.

In the focus groups, discrimination in recruitment and in the workplace was identified as a priority issue that needs to be addressed. A number of participants felt they continuously faced discrimination at point of recruitment, rarely getting beyond the first application stage.

The majority described being offered minimum wage or below while their Irish counterparts were offered €10+ for the same job. Some employers are aware that migrant workers have few options but to accept the job at minimum wage or less. A number of chefs reported that they had all the responsibilities of a head chef but were being paid less than €12 an hour under a lesser title.

"These wages would never be offered to a native Irish person for the same role."

CASE STUDY: MARIE

Marie, 42, is from Malawi and lives in Dublin working as a care assistant in a nursing home. She has over five years' experience and is a fully qualified care giver. Despite this she is consistently allocated night shifts along with other migrants. During these shifts she is also required to undertake cleaning duties, even though they are not part of her job description. In the last year, two Irish workers were employed who are not fully qualified, yet they earn higher wages than Marie does. Despite living in close proximity to the nursing home, she is never given the preferred day shift positions. *"I am the easy target. I have never raised a complaint about my conditions. I am afraid to lose my job. I don't have a choice."*

DISCUSSION OF FINDINGS

The prevalence of exploitation and routine breaches of basic employment standards in the sectors examined is staggering. Migrants are subjected to systemic exploitation which not only undermines their position in the labour market but also undermines wages and working conditions for all workers. While migrants are knowledgeable about their rights, few are able to assert these rights and improve their conditions.

Weak enforcement mechanisms are resulting in ongoing breaches of workers' rights, and the lack of sanctions for unscrupulous employers creates an environment where it is profitable and relatively easy to exploit workers. Many of the workers surveyed and who participated in the focus groups are struggling to make ends meet on very low wages. While the National Minimum Wage sets the minimum standard, many migrants fall below this line; and even where workers are earning €9.20 - €10.00 per hour, it is not sufficient to meet their most basic costs. The 2015 living wage of €11.50 should become the norm across the labour market.

Many migrant workers who have become Irish citizens have still seen no improvement in their experiences of seeking work or transitioning to a job with greater prospects. Acquiring secure long-term immigration status or Irish citizenship has little or no impact on job mobility. Progression routes within these job sectors remain relatively non-existent. Therefore, low-paid precarious jobs are becoming a trap with migrants forced to remain in these conditions for large segments of their working lives. In such circumstances, it is impossible for workers to build careers, plan for a better future or achieve their real potential.

The prevalence of discrimination and racism within the labour market affects migrant workers' capacity to integrate into Irish society. The labour market is one of the key points of integration into Irish society and all migrants should have equality of access to the labour market and the opportunity to progress and realise their potential in it.

CONCLUSION

The situation of many migrant workers in low-waged jobs has become more precarious, with entire career paths characterized by low pay, insecure hours, irregular hours, discrimination, lack of progression, and regular exploitation. The lack of a coherent labour migration policy to address essential occupational shortages in Ireland's labour market fuels the recruitment of labour through irregular channels at lower costs, driving down standards for all workers.

The high level of labour exploitation and poor working conditions must be addressed as a matter of urgency. Weak enforcement mechanisms, poor regulation, and the lack of accountability of employers are facilitating wage theft and enabling exploitative employers to reap profit with impunity. Criminal penalties are needed to sanction employers who commit wage theft and ensure they pay workers what they are owed.

In tandem, the labour inspectorate need to be given the remit to assist migrant workers - regardless of immigration status - in exposing exploitative practices and recouping monies owed to them under the employment laws. The function of the labour inspectorate should not be linked to the immigration authorities, as this undermines the role of the labour inspectorate in assisting workers in such situations.

The lack of progression and deskilling of migrants is a serious issue that has implications for the future of migrant participation not only within the labour market, but within Irish society. It is a key issue of equality and integration. The current trend is of segregation, as more and more migrants are concentrated in low-paid precarious jobs, deepening the isolation and inequality migrant workers experience. Access to a decent job with career prospects enables a person to use their skills and both contribute to and benefit from society. The creation of decent, sustainable jobs – as opposed to any job at any cost – should be a priority for the government.

The pervasive problem of racism and discrimination in the labour market must be addressed head on. Proactive support must be provided to workers to challenge discrimination and racism. Alongside this, we need to create a climate in the Irish labour market in which racism and discrimination are not tolerated.

RECOMMENDATIONS

LABOUR MIGRATION

A coherent labour migration policy is needed to address demand issues and protect workers' rights simultaneously. This could be achieved through:

- » Introducing a Regularisation Scheme to enable undocumented workers to regularise their immigration status;
- » Conducting a consultation and review of the available migration channels to Ireland at all skill levels;
- » Reviewing ineligible categories in the Employment Permit System to address occupational shortages within the labour market.

ENFORCEMENT AND PENALTIES

Stronger penalties are needed to sanction employers who commit wage theft and rob workers of the benefits owed to them from their labour. While the recent enactment of Workplace Relations Act 2015 provides additional enforcement powers to inspectors which will assist workers in some cases, more extensive mechanisms are required. The remit of the labour inspectorate needs to be strengthened in this regard. Its function should be to ensure that all workers, especially those vulnerable to exploitation and discrimination, can enforce their rights – regardless of their immigration status. This could be achieved through:

- » Designation of wage theft as a crime in Irish law;
- » Introducing penalties for non-payment of awards issued by Workplace Relations Bodies;
- » Adjudication of all employment breaches by the Workplace Relations Bodies, regardless of a worker's immigration status;
- » Delinking the role of the labour inspectorate (NERA) from the Immigration authorities.

RAISING WAGES

Many migrant workers are struggling to survive on low wages. There is also a dearth of data on the experiences of migrants in low pay. Addressing this issue could be achieved through:

- » Introducing a living wage of €11.50 (as of 2015) per hour to provide all workers with an acceptable standard of living;
- » Carrying out comprehensive research to build a profile of migrants in low pay.

PROTECTING WORKERS

Active worker participation in negotiating and enforcing their rights is critical to ensuring greater standards for workers are achieved. This could be achieved through:

- » Resourcing workers in non-unionised workplaces to organise their workplaces and enforce their rights.

RACISM AND DISCRIMINATION

There is a need for innovative strategies to proactively target, monitor and address racism and discrimination in the labour market. The Positive Public Sector obligation enshrined in Section 42 of the Irish Human Rights and Equality Commission Act 2014 require the elimination of discrimination and protection of human rights in the work of public sector bodies. This should be applied to recruitment practices, workplaces and business in both the public and private sector. This could be achieved through:

- » Conducting impact assessments that scope out and address discriminatory practices;
- » Introducing programmes to target discrimination in recruitment and in the labour market aimed at specific sectors;
- » Encouraging and promoting diversity policies and practices within businesses.

Worker Justice Group in Action



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