

Few More Rules, Not Enough Enforcement Mechanisms *A Review of Kuwait's Latest Draft Law for Domestic Workers*

Last June, Kuwait's parliament proposed a draft domestic workers law. The most recent update of the draft law obtained by Migrant-Rights.org still fails to adequately address domestic workers' vulnerabilities, relinquishing too much power and responsibility to recruiters and employers while providing few mechanisms for prevention and accountability. Voting on the draft was once again postponed, this time due to preoccupation with the Yemen war.

The draft law defines a domestic worker as "a male or female assigned to perform manual tasks at private homes. They are drivers, cooks, servants, and nannies." Workers can be no younger than 20 and no older than 60. For reasons unspecified, the labor ministry has the power to exempt certain workers.

The original draft proposed a joint-share company to centralize recruitment under a National Domestic Labor Agency. Citizens would have been able to buy shares in the company and yield influence over the board. This idea was voted down by Kuwait's Investment Authority, the General Organization of Social Insurance, and the Ministry of Interior Affairs. Instead, the current draft provides for the establishment of a state-run center to receive domestic workers before they start work with the employer. The purpose of this center is unclear; ideally, it could provide an opportunity to ensure workers understand their contracts and their rights, or even provide basic training for workers to ease their transition into Kuwaiti homes. But given that the draft is largely security-focused, the center may function as little more than a processing center. The potential role of embassies in the operation of the centre is also unclear.

Run by the Ministry of Interior Affairs, the center could also potentially provide workers with unprecedented accessibility to government agencies – as once placed with their employers, domestic workers are much harder to access. However, the Interior Ministry's record is not promising and casts doubt on its intentions for the center; low-income migrants tend to be daunted by the ministry, as its intimidating practices and discriminatory policies systematically deprive migrants of their rights and of access to justice.

There are other similar ambiguities in the draft.

Deportations

The interior ministry has long used deportation as its primary mean of migration management, one it appears to reassert in the draft law. Per the ministry's demand, the law now requires agencies to finance the repatriation of workers "returned" by sponsors during the 100-day probation period.

Costs of deporting absconding workers similarly would be shifted either to the recruitment agency or to anyone who may have provided them with shelter.

While rights groups have repeatedly called for Kuwait to crackdown on unscrupulous recruiters, the ministry seems more concerned with holding agencies responsible for costs than for enforcing fair recruitment practices and decent working conditions. Common complaints against recruiters include the illegal deduction of wages (as recruitment fees), the trade of returned of workers, and generally intimidating practices that discourage workers from lodging official complaints. These practices can amount to trafficking and can easily descend into even more severe physical and sexual abuse. The draft provides for some new penalties, discussed below, but does not appear to provide any monitoring mechanisms.

The labor ministry has proposed that it would set the minimum wage. The draft proposes fines would be determined based on the nature and impact of the violation.



Recruitment Agencies

As per the proposed law, recruitment agents cannot charge workers any fee. Agencies can risk losing their licenses if they charge workers fees or if they do not use the standard contract that the state will issue.

Agencies are also prohibited from advertising or promoting domestic worker services in a degrading manner or based on faith, gender, color, or cost. If enforced, this prohibition could help address the discrimination and dehumanization of workers by disassociating skills and abilities from ethnicity, and by emphasising the purchase of worker's labor (marketing their skills) rather than the purchase of individuals. Ultimately, this could pave the way for fair pay and treatment.

Agencies must also provide recruited workers insurance for the duration of the contract. Again, implementation will be key.

While these are necessary developments, the recruitment issues that arise in countries of origin also need to be addressed; it is important that recruitment agencies take accountability for the partners they work with by eschewing contracts with those known to have violated workers rights - for instance, those that

More importantly, recruitment agencies should be held accountable for intimidating workers and pressuring them into enduring abuse. The department of Domestic Labor, which functions under the Ministry of Interior Affairs, will issue fines of 1000 KWD (\$3314) against agencies for the following violations – all of which are primarily administrative.

- If an agency does not contact the department when summoned.
- If an agency does not deliver the worker within 24 hours of specified date. Agencies will have to notify the department ahead of time in case of complications.
- If an agency delays or fails to pick up workers from the airport after their arrival.
- If an agency attempts to provide employers with ‘returned’ workers or workers who were not originally recruited by the agency.

Employer/Sponsor Responsibilities

Sponsors are obligated to pay wages in accordance with the amount stipulated in the contract at the end of each month. Receipts signed by both employer and employee must be maintained as proof. Bahrain’s recent experiment with manual receipts indicates that this system still leaves significant room for manipulation, as employers can easily intimidate workers into falsifying receipts. Kuwait’s draft law does not specify what mechanism will be implemented regarding receipts of payments.

Employers are responsible for providing food, clothing, medical treatment, and a ‘place’ for rest. The draft is unclear as to whether this means a separate room. These items may not be deducted from their wages. Wage deductions for any reason are illegal.

Employers cannot require workers to perform dangerous or degrading labor.

Employers are prohibited from confiscating any personal documents, including passports or identification cards. This is already illegal, but will now be restated in the standard contract.

The law does not specify what mechanisms will be adopted to ensure that workers are paid on time. It seems the law assumes that employers will follow the terms of the contracts or otherwise risk paying fines if workers complain to the department of domestic labor.

The department of domestic labor is indeed tasked with handling cases against employers and the law exempts workers from court fees. But the difficulty lies in workers' knowledge of their rights, the services available to them, and their accessibility to redress mechanisms; their mobility and access to communication and public services are heavily circumscribed; their isolation catalyzes and compounds abuse. The criminalization of workers that leave abusive homes further diminishes any practical benefit from this clause.

Workers' Obligations

According to their contracts, workers must perform the work they were recruited to do. They are also obligated to follow employer's instructions.

The law states that workers should not steal or harm their employers' properties. They also should be "discreet with their employers' secrets." The "discretion of secrets" was previously introduced in a suggested law in the United Arab Emirates, which specified a punishment of six months in jail and 100,000 Dirham fine.

They are also not guaranteed time off for religious or cultural holidays.

The law stipulates that workers in Kuwait could be deported during their first two years at the cost of recruitment agencies in the following cases:

- If the worker has a disability or any other reason that does not allow them to perform their job. The GCC countries have a very wide definition of disability.
- If the worker has a transmittable disease or any physical, or psychological disability that makes them incapable of doing the job.
- If there is a reason not allowing the worker to renew their residency papers.
- If agencies provided invalid information about workers.
- If workers committed "unfaithful or immoral actions" that violate public laws, provided these actions are decided by final verdicts by the civil court.
- If workers refused to work or left to an unknown place.

- If workers commit suicide
- If workers are not delivered to their employers within 24 hours of the date agreed upon in contract.

Workers' contracts can also be terminated "if they violate instructions that harm employers." In such cases, they will also be denied their end of service compensation. Agencies will be required to reimburse employers for recruitment fees. There is much less burden of proof for employers to terminate workers contracts, which leaves employers with the power to prevent workers from making these complaints. Given that workers are tied to their employers and cannot find other employment without their employer's permission, the likelihood that this avenue will provide actual relief for domestic workers is slim.

This list leaves too much room for interpretation and for workers to be deported without due cause.

Contracts

GCC countries deliberated a draft unified contract for domestic workers for over two years. Migrant-Rights.org followed the developments of that project closely, but the contract turned out to be a mere 'suggestion' and was not binding on member states.

As for workers' rights, the Ministry of Labor suggested a basic minimum monthly wage of 45 KD (\$149) and a maximum of 8 hours work a day. Breaks are not mentioned.

However, last month a Kuwaiti MP Saleh Ashour, one of the law's authors, stated that the minimum wage should be 80 KD, and a minimum of 10 hours work a day.

Workers will have the right to a weekly rest day and a paid annual leave. However, the law does not guarantee workers the right to spend their days outside home. The contract does not specify a minimum length or compensation for annual leave.

In case of death, the employer is responsible of repatriating the worker's body to their home country as well as providing the worker's family with a payment equivalent to three months' salary.

Compensation

For every year of work completed, employers must pay domestic workers an end of service compensation equivalent of one month's salary.

Domestic workers can lodge complaints of delayed or unpaid wages to the domestic labor department. Employers will be fined 10 KD (\$33) for every late payment. It is not yet clear how domestic workers will be made aware of these compliant mechanisms, or even what form these mechanisms will take. Other GCC states have established hotlines specifically for domestic workers, though they are not well known to workers.

Workers can also complain to the department if they have worked overtime without payment. If employers are found guilty, they must pay double the specified wage. The concept of overtime for domestic workers is entirely new and marks an important gain; however, there remains no limit on total working hours, making it difficult to prove wrongdoing.

Labor disputes

The draft tasks the Department of Domestic Labor to handle all disputes with employers. Whether the department will provide workers with free legal services or translators is unclear.

If disputes are not resolved by recruitment agencies within 48 hours, workers will be referred to the Domestic Labor Department. Records of the must be documented by both the recruitment agency and domestic labor department. It is unclear if recruitment agencies are expected to refer cases on goodwill alone, or if some kind of enforcement scheme will be put in place.

If the department fails to resolve a dispute, the case will be referred to a civil court. Courts are required set a date within a month of submission. Protracted cases are an issue that typically dissuades workers from pursuing case, as the time and financial investment is often significant. Importantly, the department now has the authority to extend worker's residency for a limited time to allow for the dispute to be resolved.

Penalties Against Employers

Employers recruiting minors will be fined 500 KD and/or face up to 6 months of jail time.

Perhaps most notably, employers found guilty of abuse will be suspended from sponsoring workers for an unspecified period of time. While there are several practical workarounds to this penalty – a family member can simply

sponsor worker on their behalf – it nonetheless marks some progress in holding employers accountable and preventing future abuse.

Concluding Remarks

While the draft law suggests some promising improvements for domestic workers, it suffers from a number of issues even if properly enforced. The draft makes little effort to align domestic workers rights with the labor rights of others workers; one parliamentarian readily admitted it would be “ridiculous” to grant domestic workers a day off outside the home.

The employment of domestic workers involves recruiters, employers, and so the law must take into consideration the rights of each. Yet the draft appears to disproportionately focus on the obligations of agencies towards employers. On paper, domestic workers have been ceded a few more rights, but in practicality possess only those they can defend; restrictions on their mobility makes it even more difficult to access a justice system already tilted against their favor.

The absence of any formal input from Kuwait’s trade union, local NGOs, and migrants’ embassies through the protracted drafting process no doubt accounts for its many weaknesses. The lack of meaningful monitoring or enforcement mechanisms further reduces the law’s viability. The status quo for domestic workers remains largely unchanged as the state continues to displace accountability to employers and recruitment agencies.