



EMPLOYMENT SERVICES UNIT
DEPARTMENT OF LABOUR

November 2019

MIGRANT LABOUR DISCIPLINARY POLICY

Introduction

1. Under s 27 (3) of the Seasonal Employment Act 2007 (SEA), the Commissioner of Labour (CoL) may issue advisory guidelines. This disciplinary policy falls under that section. It has also been endorsed by the Tripartite Labour Advisory Committee (TLAC).
2. This policy covers conduct that has occurred in the receiving country. Domestic problems must be resolved within families, by chiefs, pastors or the Vanuatu courts¹ before a worker leaves Vanuatu.
3. The Employment Services Unit (ESU) maintains a database of workers' names whose behaviour has been deemed inappropriate in terms of Section 24 (2) of the Seasonal Employment Act 2007, and/or damaging to Vanuatu's excellent reputation for migrant labour.
4. The ultimate consequence for breaching the Migrant Worker Code of Conduct is to be stood down or banned from participating in a migrant labour programme. In the event a worker is stood down they may not participate in a programme until their name is removed by the ESU from its database.

Definitions

Stand Down A measure taken by ESU to penalise a worker who has been validly reported by the Team Leader, a Licensee, an Employer's Representative or an Employer, for tarnishing Vanuatu's reputation overseas. A worker can be on Stand Down for 1 to 5 seasons depending on the nature and seriousness of their case. The duration of the Stand Down is categorised below.

Ban A worker will be banned from ever again participating in migrant labour schemes if their misbehaviour is considered serious as described in paragraph 9 below. A worker who reoffends after being reinstated from Stand Down will automatically be banned.

Stand Down and Ban List A database that is controlled by ESU containing names and relevant details of workers who have been stood down or banned.

Reinstatement When a worker is allowed to participate again in the scheme after serving their penalty.

Reasons for taking disciplinary action

5. A worker may be stood down for any one of the following offences:

¹ A worker who faces court action while overseas, or who has failed to comply with a court order, will not be allowed to travel until the matter is resolved.

- a. Wilful damage to property
 - b. Repeated bad or disorderly behaviour (e.g. swearing)
 - c. Alcohol abuse and substance abuse
 - d. Bad attitude towards employer or in the workplace, refusal to work and/or deliberate underperformance
 - e. Violence or causing injury or harm to another person
 - f. Involvement with overseas Police through any activity deemed to be illegal or of a damaging nature (including, but not limited to shop-lifting, theft, driving offences)
 - g. Being a disruptive and negative influence on the workplace productivity or team effectiveness
 - h. Having been declined a visa by the immigration authorities in the receiving countries
 - i. Any other activity deemed by the Department of Labour to be damaging to Vanuatu's reputation as a labour sending country.
6. Stand Down applies to the season following the season in which the worker has participated. For example, if a worker returned from participating in the scheme in the 2019-20 season and their behaviour was deemed inappropriate, that worker may be stood down for the whole 2020-21 season (equivalent to a one year Stand Down) or more.
 7. Workers cannot be stood down for legitimately raising complaints about employers, agents, team leaders or representatives. They may also not be disciplined for raising complaints about living or working conditions or for seeking help from the Vanuatu DoL, or relevant in-country authorities.
 8. The DoL makes the decision to put a worker on the Stand Down List, and for how long.
 9. As a guide, workers may be stood down for the following periods of time:

Offence	Period of Stand Down
Deliberate poor productivity ² Failure to board a flight to the receiving country ³ Other misbehaviour ⁴	1-2 years
Repeated difficult to manage misbehaviour Damage to property	3-4 years
Fighting Affairs Sexual assault Abuse of alcohol Use of drugs Being sent home by the employer	5 years
Fraud and falsification Theft Drunk driving Reoffending after Stand Down & reinstatement Involved with NZ/Aust Police/Courts	Ban

² Workers should not be stood down for poor productivity unless there is a deliberate and continued pattern of behaviour (e.g. excessive sick leave, arriving late, taking unscheduled breaks). Other, more appropriate, roles should be considered for the worker first. If these are not available, the worker should be able to apply to another agent or recruiter who may have more appropriate roles.

³ Failure to make a flight to the receiving country may result in a stand down or the worker may be required to pay additional costs. This is at the employer's discretion.

⁴ Other misbehaviour might include repeated complaints from fellow team members and/or employers about failure to keep facilities tidy, cleanliness, smoking inside accommodation, failure to adhere to farmer's rules, failure to work effectively as a team member despite warnings

Responsibilities of recruiters (agents, permit-holders)

10. Recruiters should inform the ESU immediately of any cases where, after investigation and formal warnings, they believe ESU disciplinary action is warranted. They must also immediately inform the ESU if a worker is sent home.
11. When dealing with complaints about worker behaviour, recruiters must undertake a fair process. This means:
 - a. Giving the worker written notification of the allegations
 - b. Allowing the worker to respond to the allegations either in writing or at a meeting
 - c. Allowing the worker to have a support person present at any meeting
 - d. Ensuring there is evidence in support of the allegations – rumour and hearsay is not sufficient.
12. Before recommending a Stand Down, recruiters should, unless the conduct is very serious (e.g. deserving of a ban or a five year Stand Down):
 - a. Give workers an oral warning
 - b. Discuss the problem with the worker and develop a plan for how they will improve their behaviour.
13. When reporting the matter to the ESU, recruiters must:
 - a. Provide a clear description of the offending behaviour and its impact on the team and Vanuatu's reputation
 - b. Provide a description of the investigation and disciplinary process undertaken
 - c. Provide evidence of the allegations
 - d. Provide reasons for their recommendations.

Reinstatement

14. A worker may be removed from the Stand Down and Ban database when the worker has completed the Stand Down period and the Department of Labour and employer are satisfied that the worker has amended their ways and will behave well in accordance with the Workers' Code of Conduct
15. Otherwise, when a worker is allowed to participate again in the scheme after serving their penalty, they are removed from the database.

Communications

16. In the event a worker wishes to question or challenge a listing, they should in the first instance talk to the Senior Labour Officer, Migrant Labour who has delegated authority to make decisions. In some limited circumstances it may be possible for a worker to appeal the SLO's ruling to the Commissioner of Labour.
17. Should ESU identify that a worker who has lodged a Visa Application is on the Stand Down and Ban list, the ESU will notify the employer or recruiter they are not permitted to take up the job. It is then up to that employer or recruiter to notify the worker and seek a replacement worker if they wish.
18. The Stand Down and Ban list is not made publicly available. This means recruiters must send their lists of proposed workers to the ESU **before** applying for visas so these can be checked. The ESU will check these within two working days of receipt.