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Health and Safety Implications of Posted Work: The Example of British Engineering Constructionⁱ

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Multiple-employer workplaces have become common in the recent decades as a result of the fragmentation of work and the outsourcing of most or all work to more specialized but often smaller companies, thus creating a long subcontracting chain in which there are both native and foreign providers (Marchington et al. 2005). Within the European Union, many subcontractors post their workers from other EU countries under the Posting of Workers Directive (Directive 96/71/EC). Subcontracting as a key feature of the restructuring of employment relationships has brought about multiple shifts between contingent and direct employment and between contingent forms of labour (Forde et al. 2009), uneven terms and conditions among workers employed by different contractors (Lillie 2012), lack of clarity on where to address grievances (Fudge 2012; Marchington et al. 2005), and the need for mechanisms for auditing, reporting, and communicating information between contracting partners (MacKenzie 2000) and between workers and the employer(s).

Furthermore posted workers are exposed to risks related to occupational health and safety (OSH) as a result of their status as migrants. Sargeant and Tucker (2009) propose a 'layers of vulnerability' framework for identifying OSH risks migrant workers in general face. They identified three sets of factors. The first set includes the migration factors, namely the migration status of the workers and the conditions of their recruitment. The second set includes the characteristics of migrant workers themselves, such as the socio-economic conditions in the home country, their education and skills level, and their language skills. The final set includes the receiving country conditions, i.e. the characteristics of employment and sector, access to collective representation, access to regulatory protection, and particular problems of social exclusion and isolation. This framework is useful because it encompasses different dimensions of migrant work and how they affect workers' OSH vulnerabilities.

The research at hand focuses on two cases studies in the Engineering Construction sector in the UK, which is a local project-based industry with an internationalized labour market, with a contingent workforce and the highest number of posted workers in the country (Clark 2012). The research questions are: What are the Occupational Safety and Health issues faced in multinational construction workplaces where part of the workforce is posted from other EU countries? And how have these issues been dealt with in the UK? The findings are drawn from 30 qualitative interviews with posted workers (16), trade union officials and shop stewards (10), and managers (4) conducted during 2014 with follow-ups in 2015. Both case studies were large power station construction sites in remote areas, which in their peak time had 27 companies. The workforce was composed of workers hired locally and via posting (20%). The posted workers interviewed were from Spain, Poland, Ireland, Slovenia, and Slovakia. Both projects were operating under the National Agreement for the Engineering Construction Industry (NAECI), which meant that there were two senior shop stewards and several stewards in both sites.

The findings from the case studies indicate that work intensification and overtime are common in both sites. Inter-language communication also presents a challenge in terms of occupational health and safety issues. Furthermore, working in a transnational workplace, issues of skills mismatch and inappropriate allocation of tasks to posted workers were raised as concerns with direct implications for health and safety in the workplace. Specifically, because of the differences in training, sometimes certain workers are hired to perform tasks they are not really trained to do, which combined with the different work practices between the host and sending countries can increase health and safety risks. Unions and workers alike raised concerns about posted workers being asked to perform other tasks, beyond their trade, to expedite the work process by supervisors/foremen. As one senior shop steward put it:

“...we experience problems on other projects, workers are – they do a bit of one trade, they do a bit of welding, a bit of pipefitting, a bit of electrical work, a bit of erection work, do lots of different things. Within our agreement, it’s trade specific, if we have a welder comes on, he will weld, he’s a specialist and if we have an electrician come, only the electrician can do that type of work. The pipefitters, everybody has basically got a task to do and it’s trade specific but outside NAECI, they exploit all the workers, and they will be told to do various other tasks. Sometimes they are not capable of doing them but they will be told to do them and if they don’t do that, they will move them on.”

However, they would deny responsibility if caught by OSH representatives or other supervisors on site, which put the workers in a difficult position:

“A rear has a special training and knows how to do specific things without danger. If a Spanish supervisor asks you to do something a rear is meant to do he will not have to hire a qualified rear. You just do it however you can and if something happens, the supervisor washes his hands and blames you. You know?” (Cervantes, welder)

Nevertheless, there were no accidents that were severe enough to interrupt the work process in the two cases covered in this research. There are a set of mechanisms that cover the occupational safety and health aspects in the workplace in the UK, which have a direct impact on the level of risk posted workers are exposed to. So, there is a National Joint Council Guide to Health, Safety and Welfare, which is cross-referenced in NAECI. Furthermore, each construction site has its own Project Health and Safety Plan and the safety representatives on site, whose mandate is regulated under the Safety Representatives and Safety Committees Regulations 1977 (SRSCR). They are appointed by the unions, and notified to the employer(s), who have to pay them even for the time spent dealing with OSH issues on site. Workers are familiarized with the Project Health and Safety Plan during the induction process, right before they start working on site. In the case of posted workers, the induction was conducted either directly in their native language or with translation. Monthly incident reports are submitted to the External Audit and the Project Joint Council. Furthermore, OSH representatives and union representatives monitor the workplace, and if there is a need, have the so-called ‘toolbox talk’, a meeting in which workers or contractors found in violation of OSH regulation are re-introduced to the regulation and informed about consequences. In cases of accidents or other OSH related issues, a four-stage grievance procedure is set to help workers address their concerns. The way OSH mechanisms operate indicates the importance of unions in British construction sites in terms of health and safety. As one senior shop steward put it:

And it's a safer site as well - where there's trade unions involved, they will always elect safety reps as well as shop stewards. And they're afforded the same facilities as the shop stewards are because their job is just as important as the stewards from a safety point of view. ... we set up safety committees who run concurrently with ...[the employers team] so they all have a weekly meeting. And they do walks out on the job, out on a site, having a walk round and having a look to see if they can spot any potential problems, or stuff that can be improved, or equipment that can be improved.

Another important aspect is the language of communication between people from different countries. The NJC Guide addresses the issue specifically:

'Training and information for non-English speaking employees

Training and information required for an English speaking employee to be able to work safely and without risk to health must also be provided to a non-English speaking one carrying out the same work in the same circumstances. The employer must ensure that the non - English speaker is provided with the necessary information and training in a form that he can understand' (p. 5).

As a result, information is provided in the different languages in leaflets in both sites, and in the case where the site was bilingual, posters and health and safety notices were provided in both languages spoken by the workers in the site. Furthermore, professional or peer translation is provided during the induction process or in other communication occurrences on site.

In conclusion, we can say that posted workers are vulnerable to OSH risks that stem from: their status as temporary and mobile workers, their professional skills, their knowledge of the local OSH regulation, their language skills, and their access to representation, as well as specific workplace OSH practices. While the host country regulation might provide occupational safety and health protection measures and mechanisms, the issue becomes about access to such protection and enforcement of OSH regulation.

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