「外國人受聘僱從事就業服務法第46條第1項第8款至第11款規定工作之轉換雇主或工作程序準則」修正問答集

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110.09.13修改
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Q&A on the Revision of "Regulations on Employer and Work Transfer Procedures for Foreigners Employed in Work Detailed in Subparagraphs 8-11, Paragraph 1, Article 46 of the Employment Service Act"

110.08.27

問題一：「外國人受聘僱從事就業服務法第46條第1項第8款至第11款規定工作之轉換雇主或工作程序準則轉換準則」(下稱轉換準則)修法的重點有哪些?何時開始實施?

答：本次轉換準則於110年8月27日修正發布，110年8月29日實施，本次修正重點包含如下：

(一) 同一工作類別雇主具優先承接順位：新增持招募許可函名額之同一工作類別雇主為第1順位，具聘僱資格的同一工作類別雇主為第2順位，故承接順位由3項擴增為5項，且於本部規定期間內，應優先由同一工作類別的雇主承接。配合前開規定修正，自8月29日起除移工遭人身傷害或經本專案同意跨業轉換案件外，新雇主不得直接透過雙(三)方合意方式跨業承接，須統一回歸當地公立就業服務機構辦理轉換作業。

(二) 移工非完全禁止跨業轉換：為落實移工應優先由同一工作類別的雇主承接，並考量轉換雇主資訊應充分揭露，移工於公立就業服務機構辦理轉換作業期間，於規定期間內應優先由同一工作類別的雇主承接。該「規定期間」，本部以110年8月30日令釋明定需連續14日無第1順位或第2順位新雇主登記承接。故本次修正係優先由第1順位或第2順位新雇主登記承接，尚非完全禁止跨業轉換。此外，該14日期間，本部將視勞動市場供需狀況彈性調整。

(三) 移工仍可自行選擇新雇主：現行轉換雇主係由移工與新雇主合意接續聘僱，本次修正後移工仍可依據意願選擇新雇主，惟移工最遲應於轉換雇主期間內與新雇主合意接續聘僱，期滿後未能轉換雇主成功者，移工應依規定由原雇主負責安排出國。

Q1: What are the key points of the revised "Regulations on Employer and Work Transfer Procedures for Foreigners Employed in Work Detailed in Subparagraphs 8-11, Paragraph 1, Article 46 of the Employment Service Act" (hereafter The Transfer Regulations) and when do they come into force?

A: The current revised transfer regulations were announced on Aug. 27, 2021 and came into force on Aug. 29. The key points of the revisions are as follows:

(1) Priority is given to employers in the same work category: First priority is given to employers in the same industry with a recruitment permit letter quota, while second priority goes to employers in the same work category who have employment

eligibility. The number of priority items is also increased from three to five, with priority given to employers in the same work category as long as these Ministry of Labor rules remain in place. In accordance with the aforementioned revisions, from Aug. 29 other than where a foreign work suffers physical injury or the ministry grants special case approval, a new employer is not permitted to directly engage in two (or three) party agreement to hire across industries. All transfer procedures are processed by local public employment service agencies.

(2) There is no wholesale ban on foreign workers transferring between industries: In order to prioritize employers in the same work category when hiring foreign workers and because information on employer transfers should be fully disclosed, when a foreign worker applies for a transfer with a public employment service agency, priority must be given to employers in the same industry for a stipulated period of time. In terms of that "stipulated period of time" an interpretation from the ministry on Aug. 30, 2021, indicates that priority must be given to the registration of first and second priority new employers for 14 consecutive days. As such, the revised regulations prioritize first and second priority employers but do not completely ban transfers between industries. Furthermore, after observing supply and demand in the labor market during the 14 day period the ministry can introduce flexible adjustments.

(3) Foreign workers can still choose their own new employer: The current rules on employer transfers require an employment continuation agreement between the foreign worker and employer. After the revision the worker can still select the new employer he or she wants. However, the foreign worker must come to an employment continuation agreement during the period of the employer transfer at the latest. If at the end of that period an employer transfer has not been successfully completed, the original employer is responsible for making the necessary arrangements for the foreign worker to leave Taiwan.

問題二：本次轉換準則修正後，移工跨業轉換規定?

答：

(一) 得直接跨業轉換：依轉換準則第8條及第25條規定略以，移工辦理轉換雇主登記，以原從事同一工作類別為限。但有下列情事之一者，均可跨業別轉換雇主或工作，不受本次修正限制:

1. 移工遭受人身傷害(包含性侵害、性騷擾、暴力毆打或經鑑別為人口販運被害人)。
2. 經本部專案核准。
3. 期滿轉換。

(二) 有條件跨業轉換：依轉換準則第7條、第8條及第10條規定略以，移工辦理轉換作業，需連續14日無第1順位或第2順位新雇主登記承接時，始得跨業轉換雇主。

Q2: After the introduction of the revised Transfer Regulations what are the rules on foreign workers transferring between industries?

A:

(1) Direct cross-industry transfers: In accordance with Articles 8 and 25 of the Transfer Regulations when foreign workers register for an employer transfer they are limited to the same type of work in which they were originally engaged. However, they can transfer employers or work across industries in the following situations:

1. The foreign workers has been subject to physical harm (including sexual assault, sexual harassment, physical violence or been classified as a victim of human trafficking).

2. When the Ministry of Labor provides a special case approval.
3. Contract completion transfers.
(2) Conditional cross-industry transfers: In accordance with Articles 7, 8 and 10 of the Transfer Regulations, when foreign workers register to transfer they are permitted to transfer between industries only if no first or second priority new employer registers to hire them for 14 consecutive days

問題三：本次修法後，何種情形移工與雇主可以三(雙)方合意接續聘僱?
答：移工與雇主如符合下列情事者，可採三(雙)方合意接續聘僱：
(一) 同一工作類別承接：於有效轉換期間，雇主與移工可依轉換準則第17條第1項第5款或第6款規定，與符合第1順位或第2順位雇主採三(雙)方合意接續聘僱。
(二) 移工遭受性侵害、性騷擾、暴力毆打或經鑑別為人口販運被害人符合轉換準則第8條第1項第2款規定者；或經本部專案核准，符合轉換準則第8條第1項第3款規定者。

Q3: Following the revisions under what situations can foreign workers and employers come to three (two) party employment continuation agreements?
A: If the foreign worker and employer meet the following conditions they can come to a three (two) party employment continuation agreement:
(1) Hiring within the same work category: In accordance with Subparagraph 5 or 6, Paragraph 1, Article 17 of the Transfer Regulations, employers and foreign workers can come to three (two) party employment continuation agreements with first or second priority employers during the effective transfer period.
(2) If a foreign worker is a victim of sexual assault, sexual harassment, physical violence or is classified as a victim of human trafficking in accordance with Subparagraph 2, Paragraph 1, Article 8 of the Transfer Regulations; or after receiving special case approval from the ministry under Subparagraph 3, Paragraph 1, Article 8.

問題四：依轉換準則第10條第7項規定，中央主管機關規定期間內，無同一工作類別的雇主持招募許可函(第1順位)或取得聘僱資格承接者(第2順位)，始得另由其他工作類別的雇主合意接續聘僱。何謂「中央主管機關規定之期間」?而該期間如何認定?
答：
(一) 依本部110年8月30日令釋「中央主管機關規定之期間」，指公立就業服務機構受理移工轉換登記，於辦理轉換作業期間內，有連續14日無符合第1順位或第2順位雇主登記承接者，且該14日係為連續天數，非以累計天數方式計算。
(二) 移工如果變更公立就業服務機構辦理轉換作業，該連續14天應重新計算。至於變更公立就業服務機構辦理轉換作業(例如台中變更至金門)，由公立就業服務機構依據現行辦理轉換作業之轄區據以認定。

Q4: In accordance with Paragraph 7, Article 10 of the Transfer Regulations, only when there is no employer with a recruitment permit letter (first priority) or an employer with employment eligibility (second priority) in the same work category for the time period determined by the central competent authority can an employment continuation agreement be reached with an employer in a different work category. What is meant by "time period determined by the central competent authority"? How is such a time period decided?
A:

(1) Based on an administrative interpretation from the Ministry of Labor on Aug. 30. 2021, the phrase “time period determined by the central competent authority” refers to the fact that there must be 14 consecutive days with no first or second priority employer registering to hire the foreign worker when a public employment agency processes the transfer registration. Moreover, the days must be consecutive not cumulative.
(2) If the foreign worker changes the public employment agency processing his or her transfer the consecutive 14 days must be recalculated from the beginning. As to the processing of the transfer procedures by the new public employment service agency (for example from Taichung to Kinmen) the agency should confirm the current transfer operations jurisdiction.

問題五：移工向公立就業服務機構辦理轉換登記後，是不是移工無意願與新雇主接續聘僱，只要連續14日後，即可辦理跨業轉換?
答：不是。依據本次修正規定，移工得跨業轉換條件，係移工向公立就業服務機構辦理轉換登記翌日起，需連續14日無符合轉換準則規定第1順位或第2順位的雇主登記承接，於第15日起才可由其他工作類別的雇主接續聘僱。至於移工無意願與新雇主合意接續聘僱，未符合上開條件，仍不得跨業轉換雇主。

Q5: After a foreign worker registers a transfer with a public employment service agency, can he or she undertake a cross industry transfer after 14 consecutive days if they are unwilling to reach an employment continuation agreement with a new employer?
A: No. Based on the revised regulations the necessary conditions for a foreign worker to qualify for a cross industry transfer is that from the day after he or she registers a transfer with a public employment service agency no eligible first or second priority employer registers to hire them for a period of 14 consecutive days. Only from the 15th day can the worker accept employment from an employer in a different work category. If the foreign worker is unwilling to reach an employment continuation agreement with a new employer, he or she still cannot transfer employers across industry unless the aforementioned conditions are met.

問題六：倘移工向公立就業服務機構辦理轉換登記翌日起，於連續14日內任一天有第1順位及第2順位雇主登記承接，需再重新計算14日嗎?
答：要。移工於辦理轉換登記翌日起，倘於連續14日內任一天有符合第1順位及第2順位的雇主登記承接，移工皆需再自雇主登記接續聘僱之日起重新計算連續14日之特定期間。

Q6: If a first or second priority employer registers to hire at any point within the 14 consecutive days after the foreign worker registers his or her transfer with a public employment service agency, does the calculation of the 14 consecutive days restart from the beginning?
A: Yes. If during the 14 consecutive days, starting the day after the foreign worker transfer is registered, a first or second priority employer registers to hire the worker, the 14 consecutive day period must be recalculated from the day after the employer registered to hire.

問題七：公立就業服務機構每周召開協調會議，協調會中移工無意願(或無法)與符合第1順位或第2順位雇主辦理接續聘僱，或有正當理由未出席媒合會議，是否會涉

及重新計算14日問題?

答：移工是否需重新計算14日，是以辦理轉換登記翌日起，連續14日有無符合第1順位或第2順位雇主登記承接而定，與移工於協調會無意願(或無法)媒合或有正當理由未出席協調會無涉。

Q7: Public employment service agencies convene weekly coordination meetings. If at such meetings the foreign worker is unwilling (or unable) to come to an employment continuation agreement with a first or second priority employer or has a good reason for not attending the meeting does that impact the calculation of the new 14 consecutive days?

A: A foreign worker only needs to recalculate the 14 days if a first or second priority employer registers to hire them within 14 days of the transfer being registered. It is unrelated to whether the worker is unwilling (or unable) to come to an agreement at a coordination meeting or has a good reason for not attending said meeting.

問題八： 移工已向 A 就業中心登記轉出，於連續14日轉換期間之第8日有符合第1順位或第2順位雇主登記承接，移工於第11日向 B 就業中心辦理跨區轉出登記，是否需重新計算14日?

答：是。移工如果已向 A 就業中心登記轉出，不論該連續14日轉換期間有無符合第1順位或第2順位雇主登記承接，移工於該連續14日屆滿前跨區轉出登記至 B 就業中心，需自登記至 B 就業中心之日起重新計算14日

Q8: If a foreign worker registers a transfer with employment service agency A and on the 8th day of the 14 consecutive day transfer period a first or second priority employer registers to hire him or her, but on the 11th day the worker registers a cross-area transfer with employment service agency B, does the 14 consecutive days have to be recalculated from the beginning?

A: Yes. If a foreign worker has already registered a transfer with employment service agency A, then regardless of whether a first or second priority employer registers to hire in the consecutive 14 day period, if the worker then registers a cross-area transfer with agency B, before the completion of the 14 day period, calculation of the 14 consecutive days restarts from the day of the registration.

問題九：倘移工向新北市政府板橋就業中心登記轉換雇主，該連續14日是否有符合第1順位及第2順位雇主登記承接，係以整個新北市轄區登記雇主數，或僅就板橋就業中心所轄管區域內登記有無同一工作類別雇主數作為計算基準，由誰認定?

答：以移工所登記的公立就業服務機構所轄業管範圍，有無符合第1順位及第2順位雇主登記承接作為計算基準。因涉及公立就業服務機構業務執行，係由變更後之公立就業服務機構認定之。

Q9: If a foreign worker registers an employer transfer with Banqiao employment center under New Taipei City Government, does the qualified first and second priority employers who register to hire in the 14 consecutive day period refer to all employers registered in the New Taipei area or only employers in the same work category who register in the area covered by the Banqiao employment center. Who decides?

A: This is determined by whether any first and second priority employers have registered to hire in the area covered by the public employment service agency. Because this

involves the operations of public employment service agencies the determination is made by the agency after a change is made.

問題十：新雇主可以跨區及跨業聘僱接續聘僱移工嗎?
答：依本部110年8月30日令釋「其他中央主管機關指定之條件」，雇主至外國人預定工作場所以外之公立就業服務機構申請登記(即跨區登記承接)，且跨業承接者，公立就業服務機構辦理外國人轉換作業時，不得將跨區登記承接之雇主選定為新雇主人選。但移工遭人身傷害或經本部專案同意跨業轉換案件，不在此限。

Q10: Can a new employer hire employment continuation foreign workers across areas and across industries?
A: Based on the Ministry of Labor's August 30, 2021 administrative interpretation of "conditions designated by other central competent authorities," if an employer applies to register (for cross-area hiring) with a public employment service agency outside a determined area for foreign workers and hires workers across industry, when the public employment service agency undertakes the foreigner worker transfer it cannot select an employer registered for cross-area hiring as a prospective new employer. This does not apply when a foreign worker has been subject to physical violence or when the ministry gives special case approval for a transfer.

問題十一:移工辦理轉換作業，符合本部(改制為行政院勞工委員會)98年1月22日勞職許字第0980504588號函釋規定，可再延長轉換雇主1次(60日)，再延長60日轉換期間是否仍適用連續14日規定期間之規定。
答：是。移工經本部許可辦理轉換雇主或工作，倘因有特殊情事無法於60日完成轉換雇主，符合本部98年1月22日函釋規定再延長轉換規定者，於再延長60日轉換期間，仍需符合連續14日無符合第1順位或第2順位雇主登記承接，始能由其他工作類別雇主承接規定。移工如經本部同意再延長轉換期間，其連續14日之採認，係將原轉換期間及再延長轉換期間內，無符合第1順位或第2順位雇主登記承接之日數合併計算。

Q11: When a foreign worker undertakes a transfer and this meets the regulations contained in the ministry's (upgraded from the Council of Labor Affairs) Jan. 22, 2009, Laotzuihsu No. 0980504588 interpretation, the employer transfer process can be extended one time (for 60 days). In this 60 day extension period does the 14 consecutive day rule still apply?
A: Yes. If a foreign worker is granted permission by the ministry to undertake a transfer but special conditions mean the employer transfer cannot be completed within 60 days, those eligible for a transfer extension based on the ministry's Jan. 22, 2009 administrative interpretation still cannot be hired by employers from a different work category during the 60 day transfer extension period unless no first or second priority employer registers to hire for 14 consecutive days. If the Ministry agrees to extend the transfer period of a foreign worker, the calculation of the 14 consecutive days involves counting the number of days no first or second priority employer registers to hire him or her in the original and extended transfer periods combined.

問題十二：倘移工於有效轉換期間內，皆有符合第1順位或第2順位雇主登記承接，惟都未媒合成功，移工於轉換期間屆滿且無再延長轉換理由，是否應該返國。

答：是。移工倘逾轉換作業期間未完成轉換雇主，且未有再延長轉換情事或無正當理由未出席協調會議，應依轉換準則第11條第3項規定辦理返國作業。

Q12: If first or second priority employers register to hire a foreign worker during the transfer period but agreement cannot be reached, then the transfer period ends and the worker has no good reason to seek an extension, should he or she return to their country of origin?

A: Yes. If a foreign worker does not complete an employer transfer within the allotted transfer period and has no good reason to seek a transfer extension or for not attending a coordination meeting, then in accordance with Paragraph 3, Article 11 of the Transfer Regulations the worker should return to their country of origin.

問題十三：110年8月29日轉換準則修正實施前，移工業經本部核准轉換雇主，已至公立就業服務機構辦理轉出登記，或已辦理轉換作業中案件，是否適用新修正規定?

答：

(一) 依中央法規標準法第18條規定略以，各機關受理人民聲請許可案件適用法規時，除依其性質應適用行為時之法規外，如在處理程序終結前，據以准許之法規有變更者，適用新法規。移工於110年8月28日(含)前未與雇主完成接續聘僱者，屬於轉換程序進行案件(如轉出申請中、經本部核准轉出尚未辦理轉換登記、或刻正辦理轉換作業中)，均屬程序事項，依中央法規標準法第18條規定，均應適用110年8月29日修正後規定。

(二) 至於移工於110年8月28日(含)前與雇主完成接續聘僱之認定，係以公立就業服務機構開具接續聘僱日，或三(雙)方合意接續聘僱日為依據。

Q13: If the ministry approves a foreign worker's employer transfer before the implementation of the revised Transfer Regulations on Aug. 29, 2021, and the transfer is registered with a public employment service agency or being processed, do the newly revised regulations apply?

A:

(1) Article 18 of the Central Regulation Standard Act stipulates that when government agencies process applications for permits in accordance with applicable regulations, other than where the nature of the event requires the application of regulations at the time of occurrence, agencies shall apply the new regulations to decide a case if the regulations on which the approval is based has been amended before the decision has been made. If the foreign worker did not completed an employment continuation with an employer on or before Aug. 28, 2021, then such case are considered ongoing (the transfer application has been made, the ministry has approved the transfer but it has not yet been registered, or transfer procedures are ongoing) and procedural matters to which Article 18 of the Central Regulation Standard Act applies and are therefore subject to the revised regulations which came into force on Aug. 29, 2021

(2) If a foreign worker and employer reach an employment continuation agreement on or before Aug. 28, that will be indicated by the public employment service agency as the employment continuation date or two (three) party employment continuation agreement day.

問題十四：移工辦理轉換作業期間，公立就業服務機構還可以提供哪些服務?

答：移工於轉換雇主或工作期間，倘有通譯服務需求，除可透過仲介協助外，公立就業服務機構亦可撥打1955專線採三方通譯或透過地方政府移工諮詢服務中心協

助。

Q14: What services can a public employment service agency provide during the transfer period?
A: When a foreign worker transfers an employer or work he or she may still require translation or interpretation services. Other than assistance provided by the labor broker, the public employment service agency can also call the 1955 Hotline and use its three-party interpretation service or seek the assistance of a local government foreign worker advisory service center.

問題十五：移工與雇主辦理雙(三)方合意承接不同工作類別，雇主及仲介有無罰責?
答：自110年8月29日當日起，倘雇主以雙（三）方合意方式承接不同工作類別移工，違反者除不予核發接續聘僱許可外，雇主以違反就業服務法(下稱本法)第57條第1款規定，應處新臺幣(下同)15萬元至75萬元罰鍰；仲介公司則違反本法第40條第1項第15款規定，亦應處6萬元至30萬元罰鍰。

Q15: If a foreign worker and employer reach a two (three) party employment continuation agreement across work categories, can the employer and labor broker be fined?
A: From Aug. 29, 2021, any employer who hires a foreign worker from a different work category through a two (three) party employment continuation agreement will not only be denied an employment continuation permit, but can also be fined NT$150,000 to NT$750,000 for violating Paragraph 1, Article 57 of the Employment Service Act. The labor brokerage can be fined NT$60,000 to NT$300,000 for violating Subparagraph 15, Paragraph 1, Article 40 of the Act.

問題十六：新雇主與移工未經公立就業服務機構召開協調會議辦理接續聘僱作業，由新雇主、原雇主及移工逕行簽署三（雙）方合意接續聘僱文件，並向本部申請接續聘僱移工從事與原許可工作類別不同工作之許可，是否准予核發？若不同意核發，新雇主是否以未經許可聘僱移工，衡酌違反就業服務法第57條第1款規定，移請地方政府裁處？
答：依本部110年8月27日修正發布轉換準則第7條規定，110年8月29日(含)起，新雇主與移工如以三（雙）方合意方式，接續聘僱移工從事與原許可工作類別不同工作，並向本部申請接續聘僱許可，本部將自始不予核發新雇主聘僱許可，另就新雇主違反就業服務法第57條第1款規定，移請地方政府裁處。

Q16: If a new employer and foreign worker do not process employment continuation procedures through a coordination meeting convened by a public employment service agency, but instead the new employer, original employer and foreign worker sign a three (two) party employment continuation agreement and apply to the ministry for a permit for the employment continuation foreign worker to engage in work that differs from the work category on the original work permit, would that be approved? If not, would the new employer be in violation of Paragraph 1, Article 57 of the Employment Service Act for hiring the worker without permission and subject to a penalty from the local government?
A: In accordance with Article 7 of the revised Transfer Regulations issued on Aug. 27, 2021, from Aug. 29 (inclusive), if a new employer and foreign worker come to a three (two) party employment continuation agreement that involves the worker engaging in a

work category that differs from that on the original permit, and an application for an employment continuation permit is filed with the ministry, the new employer will not be issued with an employment permit. In addition, the local government will impose penalties on the new employer for violating Paragraph 1, Article 57 of the Employment Service Act.

問題十七：110年8月28日(含）前，新雇主已與移工簽署合意接續聘僱並依規定期限向本部申請與移工原許可工作類別不同工作之三(雙)方接續聘僱許可，是否核發許可？

答：若新雇主與移工於本部110年8月27日修正發布轉換準則第7條規定生效日前(即110年8月28日(含）之前)，已合意接續從事同業別或不同工作類別，向本部申請或未申請三(雙)方合意接續聘僱許可，如新雇主與移工符合資格及應備文件齊備，本部將依修正前轉換準則規定進行審核。

Q17: If on or before Aug. 28, 2021, a new employer and foreign worker sign an employment continuation agreement and within the allotted time apply to the ministry for a three (two) party employment continuation agreement permit for the foreign worker to engage in work that differs from the work category on his or her original work permit would that be approved?

A: Prior to Article 7 of the revised Transfer Regulations issued by the ministry on Aug. 27, 2021, coming into force (on or before Aug. 28, 2021), if a new employer and foreign worker reach an employment continuation agreement in the same industry category or a different work category and do or do not apply to the ministry for a three (two) party employment continuation agreement permit, if both the new employer and foreign worker are eligible and provide all the necessary documentation the ministry will review the application based on the revised Transfer Regulations.

問題十八：依本部110年8月27日修正發布轉換準則第7條規定，自110年8月29日(含）起，新雇主得以何種方式申請接續聘僱與移工原從事同一工作別之許可？

答：新雇主倘持與外國人原從事同一工作類別之招募許可函或符合中央主管機關規定聘僱外國人資格函，可逕與原雇主、移工簽署三（雙）方合意接續聘僱證明文件，直接向本部申請接續聘僱許可，亦可至公立就業服務機構，以每週公開協調會議方式，並經開立接續聘僱證明書，並向本部申請辦理接續聘僱外國人許可。

Q18: Based on Article 7 of the revised Transfer Regulations issued by the ministry on Aug. 27, 2021, from Aug. 29, 2021 (inclusive) how should new employers apply for an employment continuation permit to hire a foreign worker to engage in the same work as before?

A: If a new employer holds a recruitment permit letter for the work category in which the foreigner worker was originally engaged or a foreign national employment eligibility letter in accordance with competent central authority regulations, he or she can sign a three (two) party employment continuation agreement with the original employer and foreign worker and directly apply to the ministry for an employment continuation permit. Alternatively, the new employer can also attend the weekly coordination meeting held by a public employment service agency, sign an employment continuation document and then apply to the ministry for a foreign worker employment continuation permit.