

Private Employment Agencies Convention, 1997 (No. 181)

Preamble

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Eighty-fifth Session on 3 June 1997, and

Noting the provisions of the Fee-Charging Employment Agencies Convention (Revised), 1949, and

Being aware of the importance of flexibility in the functioning of labour markets, and recalling that the International Labour Conference at its 81st Session, 1994, held the view that the ILO should proceed to revise the Fee-Charging Employment Agencies Convention (Revised), 1949, and considering the very different environment in which private employment agencies operate, when compared to the conditions prevailing when the above-mentioned Convention was adopted, and recognizing the role which private employment agencies may play in a well-functioning labour market, and recalling the need to protect workers against abuses, and recognizing the need to guarantee the right to freedom of association and to promote collective bargaining and social dialogue as necessary components of a well-functioning industrial relations system, and noting the provisions of the Employment Service Convention, 1948, and recalling the provisions of the Forced Labour Convention, 1930, the Freedom of Association and the Protection of the Right to Organise Convention, 1948, the Right to Organise and Collective Bargaining Convention, 1949, the Discrimination (Employment and Occupation) Convention, 1958, the Employment Policy Convention, 1964, the Minimum Age Convention, 1973, the Employment Promotion and Protection against Unemployment Convention, 1988, and the provisions relating to recruitment and placement in the Migration for Employment Convention (Revised), 1949, and the Migrant Workers (Supplementary Provisions) Convention, 1975, and

Having decided upon the adoption of certain proposals with regard to the revision of the Fee-Charging Employment Agencies Convention (Revised), 1949, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention;

adopts, this nineteenth day of June of the year one thousand nine hundred and ninety-seven, the following Convention, which may be cited as the Private Employment Agencies Convention, 1997:

Article 1

1. For the purpose of this Convention the term *private employment agency* means any natural or legal person, independent of the public authorities, which provides one or more of the following labour market services:
 - (a) services for matching offers of and applications for employment, without the private employment agency becoming a party to the employment relationships which may arise therefrom;

- (b) services consisting of employing workers with a view to making them available to a third party, who may be a natural or legal person (referred to below as a "user enterprise") which assigns their tasks and supervises the execution of these tasks;
 - (c) other services relating to jobseeking, determined by the competent authority after consulting the most representative employers and workers organizations, such as the provision of information, that do not set out to match specific offers of and applications for employment.
2. For the purpose of this Convention, the term *workers* includes jobseekers.
 3. For the purpose of this Convention, the term *processing of personal data of workers* means the collection, storage, combination, communication or any other use of information related to an identified or identifiable worker.

Article 2

1. This Convention applies to all private employment agencies.
2. This Convention applies to all categories of workers and all branches of economic activity. It does not apply to the recruitment and placement of seafarers.
3. One purpose of this Convention is to allow the operation of private employment agencies as well as the protection of the workers using their services, within the framework of its provisions.
4. After consulting the most representative organizations of employers and workers concerned, a Member may:
 - (a) prohibit, under specific circumstances, private employment agencies from operating in respect of certain categories of workers or branches of economic activity in the provision of one or more of the services referred to in Article 1, paragraph 1;
 - (b) exclude, under specific circumstances, workers in certain branches of economic activity, or parts thereof, from the scope of the Convention or from certain of its provisions, provided that adequate protection is otherwise assured for the workers concerned.
5. A Member which ratifies this Convention shall specify, in its reports under article 22 of the Constitution of the International Labour Organization, any prohibition or exclusion of which it avails itself under paragraph 4 above, and give the reasons therefor.

Article 3

1. The legal status of private employment agencies shall be determined in accordance with national law and practice, and after consulting the most representative organizations of employers and workers.

2. A Member shall determine the conditions governing the operation of private employment agencies in accordance with a system of licensing or certification, except where they are otherwise regulated or determined by appropriate national law and practice.

Article 4

Measures shall be taken to ensure that the workers recruited by private employment agencies providing the services referred to in Article 1 are not denied the right to freedom of association and the right to bargain collectively.

Article 5

1. In order to promote equality of opportunity and treatment in access to employment and to particular occupations, a Member shall ensure that private employment agencies treat workers without discrimination on the basis of race, colour, sex, religion, political opinion, national extraction, social origin, or any other form of discrimination covered by national law and practice, such as age or disability.
2. Paragraph 1 of this Article shall not be implemented in such a way as to prevent private employment agencies from providing special services or targeted programmes designed to assist the most disadvantaged workers in their jobseeking activities.

Article 6

The processing of personal data of workers by private employment agencies shall be:

- (a) done in a manner that protects this data and ensures respect for workers privacy in accordance with national law and practice;
- (b) limited to matters related to the qualifications and professional experience of the workers concerned and any other directly relevant information.

Article 7

1. Private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers.
2. In the interest of the workers concerned, and after consulting the most representative organizations of employers and workers, the competent authority may authorize exceptions to the provisions of paragraph 1 above in respect of certain categories of workers, as well as specified types of services provided by private employment agencies.
3. A Member which has authorized exceptions under paragraph 2 above shall, in its reports under article 22 of the Constitution of the International Labour Organization, provide information on such exceptions and give the reasons therefor.

Article 8

1. A Member shall, after consulting the most representative organizations of employers and workers, adopt all necessary and appropriate measures, both within its jurisdiction

and, where appropriate, in collaboration with other Members, to provide adequate protection for and prevent abuses of migrant workers recruited or placed in its territory by private employment agencies. These shall include laws or regulations which provide for penalties, including prohibition of those private employment agencies which engage in fraudulent practices and abuses.

2. Where workers are recruited in one country for work in another, the Members concerned shall consider concluding bilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment.

Article 9

A Member shall take measures to ensure that child labour is not used or supplied by private employment agencies.

Article 10

The competent authority shall ensure that adequate machinery and procedures, involving as appropriate the most representative employers and workers organizations, exist for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of private employment agencies.

Article 11

A Member shall, in accordance with national law and practice, take the necessary measures to ensure adequate protection for the workers employed by private employment agencies as described in Article 1, paragraph 1(b) above, in relation to:

- (a) freedom of association;
- (b) collective bargaining;
- (c) minimum wages;
- (d) working time and other working conditions;
- (e) statutory social security benefits;
- (f) access to training;
- (g) occupational safety and health;
- (h) compensation in case of occupational accidents or diseases;
- (i) compensation in case of insolvency and protection of workers claims;
- (j) maternity protection and benefits, and parental protection and benefits.

Article 12

A Member shall determine and allocate, in accordance with national law and practice, the respective responsibilities of private employment agencies providing the services referred to in paragraph 1(b) of Article 1 and of user enterprises in relation to:

- (a) collective bargaining;
- (b) minimum wages;
- (c) working time and other working conditions;
- (d) statutory social security benefits;
- (e) access to training;
- (f) protection in the field of occupational safety and health;
- (g) compensation in case of occupational accidents or diseases;
- (h) compensation in case of insolvency and protection of workers claims;
- (i) maternity protection and benefits, and parental protection and benefits.

Article 13

1. A Member shall, in accordance with national law and practice and after consulting the most representative organizations of employers and workers, formulate, establish and periodically review conditions to promote cooperation between the public employment service and private employment agencies.
2. The conditions referred to in paragraph 1 above shall be based on the principle that the public authorities retain final authority for:
 - (a) formulating labour market policy;
 - (b) utilizing or controlling the use of public funds earmarked for the implementation of that policy.
3. Private employment agencies shall, at intervals to be determined by the competent authority, provide to that authority the information required by it, with due regard to the confidential nature of such information:
 - (a) to allow the competent authority to be aware of the structure and activities of private employment agencies in accordance with national conditions and practices;
 - (b) for statistical purposes.
4. The competent authority shall compile and, at regular intervals, make this information publicly available.

Article 14

1. The provisions of this Convention shall be applied by means of laws or regulations or by any other means consistent with national practice, such as court decisions, arbitration awards or collective agreements.
2. Supervision of the implementation of provisions to give effect to this Convention shall be ensured by the labour inspection service or other competent public authorities.
3. Adequate remedies, including penalties where appropriate, shall be provided for and effectively applied in case of violations of this Convention.

Article 15

This Convention does not affect more favourable provisions applicable under other international labour Conventions to workers recruited, placed or employed by private employment agencies.

Article 16

This Convention revises the Fee-Charging Employment Agencies Convention (Revised), 1949, and the Fee-Charging Employment Agencies Convention, 1933.

Article 17

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 18

1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.
2. It shall come into force 12 months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member 12 months after the date on which its ratification has been registered.

Article 19

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article will be bound

for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 20

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and acts of denunciation communicated by the Members of the Organization.
2. When notifying the Members of the Organization of the registration of the second ratification, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention shall come into force.

Article 21

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations, for registration in accordance with article 102 of the Charter of the United Nations, full particulars of all ratifications and acts of denunciation registered by the Director-General in accordance with the provisions of the preceding Articles.

Article 22

At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 23

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides -
 - (a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 19 above, if and when the new revising Convention shall have come into force;
 - (b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.
2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 24

The English and French versions of the text of this Convention are equally authoritative.