



International  
Labour  
Organization

# Fair recruitment initiative

Working paper no. 1: Executive summary

## Regulating labour recruitment to prevent human trafficking and foster fair migration: Models, challenges and opportunities

**T**he Fair Recruitment Initiative aims to foster fair recruitment practices, prevent human trafficking and reduce the costs of labour migration. This multi-stakeholder initiative is being implemented by the ILO in close collaboration with governments, employers' and workers' representative organizations, the private sector and other key partners. It has a four-pronged approach with social dialogue at the centre. The four main objectives are i) to enhance global knowledge on national and international recruitment practices and regulation, ii) to strengthen laws, policies and enforcement mechanisms, iii) to promote fair business practices, and iv) to empower workers who have suffered abuse in recruitment to lodge complaints and provide them with access to remedies.

To contribute to the first objective, the ILO is publishing a series of Working Papers to advance and share knowledge on policies, laws, current practice and challenges related to the recruitment of workers within and across countries. The purpose is to stimulate discussion and share emerging practices so as to foster fair recruitment.

This paper discusses the evolution of international labour standards to protect workers from abusive and fraudulent recruitment practices, and their relevance to promoting fair recruitment within and across countries. It highlights the role of the ILO's supervisory bodies in assessing application of international standards pertaining to recruitment, in particular the Forced Labour Convention, 1930 (No. 29) and the Private Employment Agencies Convention, 1997 (No. 181). Several examples serve to demonstrate the positive impact of the supervisory system, especially when coupled with ILO technical assistance.

The paper reviews the regulatory systems for worker recruitment and placement in place in 54 countries. International labour standards allow a certain degree of flexibility in terms of the regulation and enforcement models that are established in national law. The paper presents three basic regulatory models that have been employed, namely prohibitive legislation, licensing and registration systems.

Growing internal and international labour mobility and labour market flexibility have created new opportunities for private labour recruiters and employment agencies. Most countries have moved away from prohibitive legislation, which remains now in only a limited number of countries. In some countries, particularly in Europe, the Maghreb and East Asia, the public employment services continue to play a key role in job matching, in both the domestic and international labour markets. In addition, new avenues have been created for the involvement of private labour recruiters, including through partnerships with public employment services.

The predominant model of regulation in the regions reviewed for this paper is licensing. Most countries have employed a mixed approach in their legislation, combining licensing with other forms of regulation. Licensing schemes are often limited to private employment agencies operating in specific sectors (e.g. domestic work or agriculture) or providing specialised services (e.g. cross-border recruitment or temporary work); other types of private employment agencies are either prohibited or required only to register with the competent authority, but not to be licensed.

Some common elements are identifiable in the regulations. For example, most countries have provisions regarding the collection of recruitment fees from workers/job seekers. The majority of countries have prohibited fee charging to workers while a few, particularly in Asia, have opted for setting a ceiling on such fees. Other common elements include: requiring private recruiters to provide security deposits or bonds, listing approved or licensed recruiters on a public registry, imposing reporting requirements, and detailing sanctions (such as suspensions, fines or license revocations) for non-compliance.

Some countries have attempted to delineate the scope of liability of employers and labour recruiters respectively for fraudulent and abusive recruitment or labour practices. While this paper presents several examples of joint liability schemes, challenges still exist with regards to their implementation, particularly in the context of cross-border migration which requires collaboration between countries of origin and destination.

Immigration laws and regional or multi-lateral agreements on labour migration also impact on regulatory models for cross-border recruitment. In some destination countries, immigration laws tie the worker to a specific employer. This puts particular responsibility on recruiters to “find the right match” while also increasing the risk of forced labour as a result of flaws in the recruitment process and limitations to terminate employment and/or change employers. Regulatory approaches to cross-border migration must ensure comprehensive and consistent labour and immigration laws and policies which promote rather than constrain fair recruitment practices.

Criminal laws, in particular those targeting human trafficking, forced labour or elements thereof, can also play an important role in recruitment regulation. For regulation to be comprehensive, the entire scope of fraudulent and abusive recruitment practices must be taken into consideration, ensuring the complementarity of criminal, immigration and labour law.

Information on the enforcement of recruitment regulations remains scarce. Legislation on private employment agencies rarely requires the establishment of comprehensive monitoring or enforcement mechanisms. Nonetheless, there are some examples of innovative approaches to enforcement, including through collaboration between the public and private sector and other stakeholders. Some countries have set up special enforcement units with broad investigative powers, while others have established web-based tools to improve the coordination of investigations across borders. While such approaches should be encouraged, it is still essential to establish clear operational mandates with regards to the public enforcement of criminal, immigration and labour law.

Effective enforcement is closely linked to the ability of victims to denounce abusive and fraudulent recruitment practices and to hold the perpetrators accountable for their actions. Current enforcement mechanisms tend to focus principally on sanctioning perpetrators. This needs to be balanced by placing increased emphasis on providing protection and remedies to their victims.