

## **Guidelines for adopting national regulation on Private Employment Agencies**

### **Preamble**

As a general rule, any national regulation on private employment agencies should:

- a) combine an adequate protection of agency workers and the role private employment agencies play in a well-functioning labour market in terms of job creation, labour market participation and business competitiveness enhancement;
- b) reflect the principle of free movement of workers and allow for a sound mobility of the workforce both at national and international level;
- c) provide a legal framework for private employment agencies to operate that would help to prevent unfair competition by rogue traders and/or user companies, counter abuses and illegal practices;
- d) be consistent with the provisions of all ILO core conventions, the ILO 1998 Declaration on Fundamental Principles and Rights at Work as well as with provisions of ILO Convention n°181 and Recommendation n°188 on private employment agencies.

### **20 minimum provisions to be included into national regulatory framework in order to develop decent work via private employment agencies**

#### **Creating Jobs**

1. Legislation regulating private employment agencies should be proportionate, non-discriminatory and objective: restrictions and/or obstacles of a legal or administrative nature which may limit the opportunities for private employment agencies to establish and operate shall be tolerated only in exceptional cases related to the protection of the agency workers or health & safety reasons.
2. When it comes to regulation on private employment agencies, a level-playing field for operating should be secured vis-à-vis other labour market intermediaries (whether public or private) and other labour contracts, especially regarding taxes, social charges, legal restrictions and liabilities.
3. Cooperation between public and private employment agencies should be encouraged and established as a way to implement active labour market policies. For this purpose, bodies may be established that include representatives of the public employment services and private employment agencies.
4. Freedom of choice of employment should be guaranteed, as a diversity of labour contractual arrangements complementing full-time, permanent contracts allows for a higher participation and inclusion in the labour market.

## Guaranteeing rights at work

5. Regulation on private employment agencies should prohibit the use of child labour and forced labour.
6. Services that private employment agencies can provide should be legally defined, including the situation where the agency employs workers with a view to making them available to a third party.
7. Freedom of establishment for private employment agencies should be enshrined. However, in order to contribute to the sound development of their activities, a system of licensing certification, inspection or registration may be established, provided that such systems are proportional, non-discriminatory and objective and do not aim at hampering the development of the private employment agency industry.
8. Private employment agencies should be forbidden from charging directly or indirectly, in whole or in part, any fees or costs to jobseekers and workers, for the services directly related to temporary assignment or permanent placement.
9. The processing of personal data of workers by private employment agencies should be done in a manner that protects this data and ensures respect for workers' privacy. They should be limited to matters related to the skills, qualifications and professional experience of the workers and any other directly relevant information.
10. Private employment agencies should not make workers available to a user company to replace workers of that company who are on strike, taking into consideration national law and practices.
11. Private employment agencies should inform migrant workers, as far as possible in their own language or in a language with which they are familiar, of the nature of the position offered and the applicable terms and conditions of employment.
12. Confiscation by private employment agencies of workers' identity document or passport should be made illegal, especially in the case of migrant workers.

## Securing decent employment and working conditions

13. Workers employed by private employment agencies should be treated without discrimination on the basis of race, colour, sex, religion, political opinion, national extraction, social origin with regard to their basic working and employment conditions (e.g. for the calculation of wages, access to social security, unemployment benefits and pension).
14. Taking into consideration national law and practices, workers employed by private employment agencies should be as much as possible provided with written contracts of employment specifying their terms and conditions of employment, and the worker's assent obtained without coercion.
15. When triangular employment relationships are provided, respective responsibilities of private employment agencies and of user companies should be determined and allocated, especially in relation to collective bargaining, minimum wages, working time and other working conditions,

health & safety at work, compensation in case of occupational accidents or diseases, insolvency and protection of workers claims, maternity protection and benefits and parental protection and benefits.

16. Private employment agencies should act diligently in assessing risks in order to promote the safety of agency workers in their workplace. They should not knowingly recruit, place or employ workers for jobs involving unacceptable occupational hazards or safety risks.
17. Access to training and lifelong learning for workers employed by private employment agencies should be facilitated in order to enhance their career development and employability.
18. Rogue providers that do not comply with existing national regulation on private employment agencies should be prosecuted. Adequate remedies, including penalties where appropriate, should be provided for and effectively applied. Workers should have access to credible grievance mechanisms, without fear of recrimination or dismissal.

### Promoting social dialogue

19. Freedom of association and collective bargaining should be granted to social partners representing at national level workers and employers from the private employment agency sector, as guaranteed by ILO Conventions No. 87 and 98.
20. Regulation on private employment agencies can be reached through different means (and/or by a mix of these means): legislation, collective labour agreements, and instruments of self-regulation (e.g. Code of Conduct, certification, quality audits). The mix between these means should take into account national practices and law.