



SECOND ITEM ON THE AGENDA

**Effect to be given to the
recommendations of sectoral
and technical meetings**

**Workshop to promote ratification of
the Private Employment Agencies
Convention, 1997 (No. 181)
(Geneva, 20–21 October 2009)**

1. The Workshop to promote ratification of the Private Employment Agencies Convention, 1997 (No. 181) was held in Geneva from 20 to 21 October 2009. It was chaired by Mr Hans Leo J. Cacdac, Deputy Administrator, Philippine Overseas Employment Administration.
2. An Issues paper prepared by the Office¹ served as a basis for deliberations. The paper provides a background to earlier labour standards on employment agencies; examines the main provisions of the Convention; looks at trends in the private employment agency market and temporary agency work; provides a preliminary assessment of the impact of the economic crisis on the industry; draws together international-level policy statements highlighting issues relating to employment agencies and temporary work, notably the Global Jobs Pact; discusses social dialogue in the temporary agency work sector; and looks at how the Convention may, among other things, improve labour market efficiency and encourage job creation while protecting workers from unfair practices.
3. The Workshop was attended by 107 participants including 29 Government representatives, 18 advisers, one representative of the European Commission, 19 Worker representatives, 34 Employer representatives, and 6 representatives of international non-governmental organizations. Twenty-nine per cent of participants were women.

¹ ILO: *Private employment agencies, temporary agency workers and their contribution to the labour market*, Issues paper for discussion at the Workshop to promote ratification of the Private Employment Agencies Convention, 1997 (No. 181), Geneva, 20–21 October 2009 (WPEA/2009).

4. The Workshop adopted the attached “Points of consensus”,² following a discussion of a draft prepared by the Office. This text, together with a brief summary of the proceedings and the list of participants, will be included in the final report, to be submitted to the next session of the Governing Body.

5. *The Committee may wish to recommend that the Governing Body:*

(a) authorize the Director-General to communicate the Points of consensus mentioned in paragraph 4 above to governments of member States; to the employers’ and workers’ organizations concerned; and to the international organizations concerned; and

(b) request the Director-General to bear in mind, when drawing up proposals for future work of the Office, the wishes expressed in the attached Points of consensus.

Geneva, 4 November 2009.

Point for decision: Paragraph 5.

² WPEAC/2009/8.

**Workshop to Promote Ratification of the Private
Employment Agencies Convention, 1997 (No. 181)**Geneva
20–21 October 2009

Points of consensus ¹

Preamble

Government, Employer and Worker representatives attended the Workshop to promote ratification of the Private Employment Agencies Convention, 1997 (No. 181), held at the ILO, Geneva, 20–21 October 2009. The Workshop was called to raise awareness of the Convention, exchange views on its benefits, present good practices on its implementation and encourage further ratifications. The Workshop developed consensus on the following:

Introduction

1. The Private Employment Agencies Convention, 1997 (No. 181), and its accompanying Recommendation No. 188 provide a framework that allows for improved functioning of private employment agencies and protection of agency workers.
2. Private employment agencies can provide a range of labour market services that address the need for flexibility, like temporary agency work, ² permanent recruitment, executive search, outplacement, training or payroll management.
3. As a specific service provided by private employment agencies, if regulated appropriately, temporary agency work contributes to improved functioning of labour markets, fulfils specific needs for both enterprises and workers, and aims at complementing other forms of employment.
4. The Workshop wishes to base its points of consensus on the Decent Work Agenda and the ILO Declaration on Fundamental Principles and Rights at Work (1998), and on the importance of compliance with and enforcement of regulations, and to fight abuse of temporary agency workers.

¹ Subject to approval by the Governing Body of the ILO.

² A specific employment relationship whereby a worker employed by an agency performs assignments at a user company under the latter's supervision.

Point 1 – Private employment agencies’ contribution to labour markets, and cooperation between public and private employment services

5. Private employment agencies that respect the principles of the Convention can contribute, through the services they provide, to:
- Matching supply and demand in the labour market, including catering for the need for flexibility of enterprises.
 - Implementing active labour market policies and creating pathways from unemployment to employment by:
 - Helping jobseekers enter or re-enter the labour market.
 - Helping vulnerable people to enter the labour market.
 - Providing greater work opportunities for more people.
 - Facilitating the transition from education to work, by providing students and young workers with their first opportunity to gain work experience.
 - Easing the transition between temporary assignments and jobs by providing agency workers with vocational training.
 - Promoting conversion between different types of work contracts, e.g. by assisting a shift from temporary agency contracts to fixed-term or open-ended contracts.
 - Improving life–work balance, e.g. by providing flexible working time arrangements such as part-time work and flexible working hours.
 - Helping fight undeclared work.
 - Ensuring decent conditions for cross-border labour migration.
 - Implementing national government policy on organizing the labour market, through cooperation and complementarity between the public employment service and private employment agencies, which should be encouraged.

Point 2 – Private employment agencies – Regulation, monitoring and controls

6. Appropriate regulatory frameworks (governmental, co-regulation or self-regulation) on private employment agencies should include and promote principles, rights and obligations as outlined in Convention No. 181 on private employment agencies, notably:
- A particular focus on the implementation of the no-fee charging rule for jobseekers (whether domestic or cross-border) for temporary assignments and permanent placement services provided by the private employment agency, a principle that is already applied in most countries where regulation on private employment agencies exists.
 - The principle of non-discrimination for agency workers with regard to their working and employment conditions (for instance equitable, objective and transparent principles for the calculation and payment of agency workers’ wages and benefits).

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- Freedom of association and the right to collective bargaining as guaranteed by ILO Conventions Nos 87 and 98.
 - Sectoral social dialogue at national and enterprise level, for instance through collective bargaining.
 - Prohibition of the replacement of striking workers by temporary agency workers, without prejudice to national law and practice.
 - Prohibition of the use of child labour and forced labour.
 - Enforcement of regulations by the public authorities, e.g. labour inspectorates, and in addition developing bipartite and tripartite compliance mechanisms.
 - Clarity (transparency and access to information) about benefits (i.e. salary, social insurance, pension, vocational training).

Point 3 – Agency workers’ rights and working conditions

7. As regards the rights and working conditions of temporary agency workers, as laid down in Convention No. 181, it is important to:

- Ensure that private employment agencies do not function to the detriment of workers’ rights and working conditions.
- Clarify the respective roles, obligations and rights of the private employment agency, the agency worker and the user enterprise when there is an employment relationship between a private employment agency and a worker.
- Combine adequate social protection, decent working and employment conditions for agency workers – including occupational safety and health conditions – and proper conditions for the operation of private employment agencies in a well functioning labour market.
- Ensure the right of freedom of association and the right to collective bargaining, as guaranteed by Conventions Nos 87 and 98.
- Ensure that regulation regarding temporary agency work is fair, non-discriminatory and objective; promotes decent forms of temporary agency work; and effectively prevents potential abuses, such as undermining workers’ employment conditions and their right to organize and bargain collectively.
- Promote quality standards within the private employment agency industry and prevent unfair competition by fraudulent agencies and/or user companies, combat abuses and illegal practices, and fight human trafficking.
- Examine new ways to protect workers, including eligibility for pension entitlements, seniority, the portability of rights and benefits, and protection of workers as they move from one job to another.
- Stress the importance of education, lifelong learning and access to training as another positive contribution to employment made by temporary employment agencies and the need for skills upgrading.

Point 4 – The economic crisis and private employment agencies

8. The economic crisis appears to have hit temporary agency workers hard. The ILO Global Jobs Pact provides a framework for implementing recovery plans that support decent work, help preserve employment and prioritize job growth, including measures relating to agency work. Decent work for temporary agency workers can be promoted through legislation and social dialogue. More data is needed on the size of the industry, on the profile and numbers of agency workers, the specific sectors concerned, what types of workers have been affected, job creation in the temporary agency sector, how long people remain unemployed, replacement of permanent workers by temporary agency workers and on good practices during the crisis such as tripartite measures to encourage enterprises to mitigate the crisis, incentives to protect employment, special benefits and assistance to returning migrant workers, enhancing protection between job assignments for temporary agency workers and short-time working.

Point 5 – How to support further ratifications of Convention No. 181

9. In order to further promote ratification and implementation of the Private Employment Agencies Convention, 1997 (No. 181), the following actions are suggested to be taken, in accordance with national legislation by governments and/or the social partners, as appropriate:

At national level:

- If a regulatory framework as defined under Point 2 of this document is in place, identify and review unjustified obstacles of a legal or administrative nature which may hamper the opportunities for private employment agencies to operate, and, where appropriate, to remove them.
- Review the need for systems of licensing and inspection and when relevant, promote the introduction of such systems (which can include financial guarantees), thereby contributing to development of good industry standards, provided that such systems are fair, non-discriminatory and objective and do not unduly hamper the development of private employment agencies.
- Provide adequate and continuous social protection for agency workers.
- Collect best practices and encourage bipartite cooperation and administration by the social partners on additional benefits, for example vocational training and childcare.
- Promote sectoral social dialogue as the appropriate platform to negotiate working conditions of agency workers as well as the conditions of use of temporary agency work.
- Encourage and develop cooperation between the public employment service and private employment agencies to facilitate work mobility and transitions in the labour market.
- Work with the ILO in selected countries on fostering the process of ratifying Convention No. 181.

At the global level:

- Cooperate with the ILO to promote ratification and implementation of Convention No. 181.
 - Cooperate with the ILO, IOM and other organizations to promote international instruments and actions to eliminate human trafficking (e.g. promotion of ratification and effective implementation of relevant ILO Conventions on forced labour and migrant workers).
10. For its part, to further promote ratification and implementation of Convention No. 181, the ILO should:
- Highlight the benefits resulting from ratification and full implementation of the Convention for workers, employers and governments.
 - Publish and disseminate the workshop's conclusions as well as reports.
 - Update the Guide to private employment agencies, taking account of relevant legislation in ratifying countries.
 - Continue to research the private employment agency industry and further elaborate on perceptions and conditions for both workers and employers (e.g. on job creation, precarious work, occupational health and safety, profile of the agency workers etc.).

Point 6 – Suggestions for future ILO action

11. The ILO should:

- Collect data on best practices, monitor and analyse trends in employment in the private employment agency sector, and include reference to these statistics in its employment report and the International Labour Conference in 2010. This research should be carried out in relation with issues relating to the economic crisis and the Global Jobs Pact.
- Analyse the replies received to the questionnaire for the General Survey on employment to gain a more detailed and comprehensive understanding of the industry as well as of the reservations made therein in relation to ratification of Convention No. 181.
- Provide technical support, including through capacity-building, to member States and social partners.
- Encourage and develop cooperation between the public employment services and private employment agencies.
- Support the establishment of a global sectoral dialogue forum on private employment agencies.
- Strengthen, in cooperation with the sectoral social partners, the existing supervisory mechanism to monitor the implementation of the Convention No. 181 to guarantee protection for temporary agency workers and the sound development of the private employment agency sector, as well as to follow up the impact of the private employment agency sector on the labour market in terms of participation to job creation, potential substitution effect on permanent contracts, facilitating transitions,

reduction of unemployment, inclusion in the labour market (especially for vulnerable groups), increasing enterprises' competitiveness, fight against undeclared work.

- Establish a platform for countries to exchange experiences and benefits with regard to the ratification and implementation of Convention No. 181.

12. Given that the Global Jobs Pact is an important and useful policy framework that can assist ILO member States in limiting the risk of long-term unemployment by strengthening the public employment service and private employment agencies so as to give adequate support to jobseekers, provide quality services and ensure respect for rights at work, it is important that the ILO orient its action on temporary agency work accordingly.