

The Private Employment Agencies Convention, 1997 (No. 181)

A key tool for the world of work's recovery from COVID-19

A focus on recovery

As the world recovers from the socio-economic devastation wrought by the COVID-19 pandemic, private employment agencies are playing a major role in strengthening national labour markets. Their experience in matching employers and jobseekers with decent work opportunities in fluctuating labour markets is critical to ensure resilient economies in these rapidly changing times. Moreover, private employment agencies can support employers and workers in adapting to the impacts of the pandemic, assisting them in redeploying resources and navigating increasingly frequent job transitions. They also provide essential support to facilitate access to the labour market, especially for jobseekers in most disadvantaged situations, including people with disabilities, young jobseekers, migrant and older workers. By facilitating access to vocational and career guidance, job search skills and training, and offering opportunities in different work environments, they can also significantly enhance workers' employability.

Ensuring a job-rich recovery from the pandemic requires not just any jobs, but rather decent jobs that can pave the way to a human-centred recovery. This in turn requires adequate, effective and transparent regulation of private employment agencies to protect workers against unethical or abusive practices, and employers against unfair competition. A framework for effective regulation is provided by the ILO's Private Employment Agencies Convention, 1997 (No. 181).

To support optimally functioning labour markets, the ILO encourages Member States to ratify and implement Convention No. 181, as the most up-to-date instrument in this area.

What is Convention No. 181?

Convention No. 181 (C181) is an international labour standard developed by ILO's Constituents (governments, employers and workers) and adopted at the International Labour Conference that establishes a comprehensive framework for the registration, licensing and effective regulation of private employment agencies and the protection of workers that use their services. It is binding on those States that ratify it.

The Convention, adopted in 1997, applies to all private employment agencies, economic sectors and categories of workers, with the exception of seafarers.

It requires ratifying States to take measures to protect national and migrant workers from abuses, protects legitimate agencies from unfair competition by rogue operators and recognizes the sector's important contribution in matching labour demand and supply.

Convention No. 181:

- ▶ helps prevent abuses and exploitative conditions, including child labour and forced labour;
- ▶ prohibits private employment agencies from charging recruitment fees or costs to workers, except in specified circumstances;
- ▶ provides for the protection of workers, including in terms of minimum wages, working time and conditions, social security benefits, training, and access to occupational safety and health;
- ▶ protects workers' fundamental rights, including freedom of association, collective bargaining, non-discrimination and prohibits child labour;
- ▶ provides specific protection for migrant workers, including those engaged in domestic work, temporary work in the construction sector and seasonal agricultural work;
- ▶ helps protect employers from unfair competition from unauthorized labour intermediaries.

Why ratify Convention No. 181?

To support the goal of achieving full, productive and freely chosen employment and decent work.

Ratifying the Convention promotes the establishment of a conducive legal and policy environment that helps ensure a fairer and more transparent labour market which enables workers to use their full potential (supporting enhanced employability including skills development and access to opportunities), while helping employers find workers with the skills and talent they need to grow, succeed and remain competitive.

C181 supports the goal of achieving full, productive and freely chosen employment and decent work.

To create more efficient intermediation.

Applying the Convention can support better matching of labour supply and demand, and promote enhanced cooperation between public and private employment service providers in areas such as information-sharing, basic job matching services and active support. Implementation also encourages complementarity in the provision of services to specific labour market groups, and delivery of publicly funded employment services in cooperation with private employment agencies.

In **the Netherlands**, many sectors stagnated due to COVID-19 containment measures, while others were in urgent need of staff with the right skills. A bipartite fund was set up to help agency workers made redundant by the pandemic to reskill and find new opportunities in sectors in demand. The fund was created by private employment service associations and trade unions, in partnership with the Public Employment Service, the city of Amsterdam and Schiphol Airport. The Netherlands is among the 38 countries that have ratified Convention No. 181.



A timely decision

When C181 was adopted, some countries considered that it had little relevance to their national contexts. This situation has changed in many countries, given the rapid, profound changes that have transformed the world of work, including the recruitment industry's increased market share in recent years, amid growing demand for its services in more diversified markets, with greater emphasis on flexibility and job security. In 2019, more than 61 million people in 40 countries found employment through private employment agencies – a year-on-year increase of seven per cent. Thus, there couldn't be a better timing to ratify the Convention to create a foundation for the protection of workers and ensure decent work.

Moreover, the laws and practice of a number of countries that have not yet ratified C181 already effectively reflect the principles of the Convention. They could ratify and implement the Convention by making only minor adjustments, a move that could encourage others to follow suit.

The Convention is an important tool to help achieve the **UN Sustainable Development Goals** centred on ending forced labour and human trafficking, protecting labour rights and facilitating responsible migration. It also supports the **ILO's Decent Work Agenda**.

A win for governments, employers and workers

As with all ILO international labour standards, C181 was drawn up by representatives of governments, employers and workers, all of whom stand to benefit from ratification and implementation of the Convention.

C181 helps governments better define and supervise private employment agencies so that agencies can play a positive role in national economic development. Implementation of the Convention strengthens labour markets by balancing flexibility and job security, guaranteeing workers' fundamental rights at work, promoting greater transparency and fair labour practices, ensuring quality of service standards and promoting partnerships with public employment services.

Depending on the country and subject to consensus by the social partners (Article 2), C181 can help simplify regulation of private employment agencies where it is overly complex, ease excessively tight restrictions on agencies' operations, or provide a solid basis for new regulations in countries where regulation is ineffective or non-existent.

C181 ensures that all workers have access to freely chosen job opportunities without discrimination. It protects the rights and working conditions of workers placed or employed by private employment agencies. This includes the prohibition of charging recruitment fees or costs to the worker, at least minimum levels of social protection, such as paid sick leave, and fundamental rights at work, including the right to join or form trade unions and the right to collective bargaining. Agencies can also help workers in the informal economy transition to the formal economy.

The Convention provides clear benefits to employers – both private employment agencies and companies that use them to hire workers. It protects legitimate private employment agencies from unfair competition from unscrupulous providers, ensuring application of quality standards in the industry and promoting recognition of the constructive role these agencies play in the labour market. C181 also helps clarify the rights and duties of workers and the agencies that employ them. At the same time, it provides flexibility, allowing employers in user enterprises to acquire staff – national or migrant workers – rapidly in response to labour market fluctuations.

How to make ratification happen

Employers' and workers' organizations have an essential role to play in raising awareness with national parliaments or other competent authorities of the type of action that may be taken to ratify the Convention.

Steps towards ratification may include:

- ▶ initiatives by the Government, especially after provision of ILO assistance in drafting legislation or regulation;
- ▶ campaigns by employers' and workers' organizations, and possibly by other groups;
- ▶ reviews by national tripartite labour advisory bodies of unratified Conventions;
- ▶ persuasion and facilitation by concerned parties;
- ▶ addressing gaps in legal protection of agency workers by Member States.



A number of countries have applied some of the provisions of the Convention in their national laws and practices.

Viet Nam adopted a **Law on Contract-Based Vietnamese Overseas Workers** in 2020. The law prohibits human trafficking, exploitation, forced labour or advertising promoting illegal departures from Viet Nam. It sets the stage for prohibiting recruitment agencies from charging fees to migrant workers and allowing migrant workers to unilaterally terminate contracts in cases of threats, sexual harassment, maltreatment or forced labour.

Recruitment Advisor is a global platform that provides reviews of recruitment agencies and other information to workers looking for jobs abroad. It also raises workers' awareness of their right to be fairly recruited, in line with the ILO's **General Principles and Operational Guidelines for Fair Recruitment**. The platform, developed collaboratively by governments, migrant workers' associations and trade unions, currently operates in **Bahrain, Hong Kong (China), Indonesia, Kenya, Nepal, the Philippines and Sri Lanka**.

The ILO is here to help

To promote ratification, the ILO:

- ▶ provides support on how to regulate private employment agencies;
- ▶ offers technical assistance to help implement C181, once ratified;
- ▶ facilitates exchanges of good practice and legislation among Member States;
- ▶ promotes social dialogue to facilitate the ratification process.



The evolution of C181

Convention No. 181 was developed after it became clear that the role of private employment agencies needed to be recognized, in addition to the need for protecting workers against abuses and unfair practices, on which earlier instruments had focused.

C181 revises the **Fee-Charging Employment Agencies Convention (No. 96)**, that was adopted in 1949 and an even earlier – now outdated – instrument, the **Fee-Charging Employment Agencies Convention, 1933 (No. 34)**.

Support ratification in your country!

The ILO is calling for wider ratification and implementation of Convention No. 181 around the world.

We invite ILO constituents (governments, employers' and workers organizations) and other relevant stakeholders to join this global campaign. Support is needed at the national level and through international organizations like the ITUC, GUFs, WEC and IOE.

Governments and the social partners should consider whether their country measures up to benchmarks indicated in C181. If it does, ratification is a rapid and simple process. If it does not, it may well be the time to take steps towards ratification to support a better recovery for all.

Governments that have ratified C181 are required to adopt and implement legislation and policy measures to enable effective regulation of private employment agencies. This protects workers as well as employers and, consequently, strengthens the labour market.

It's a win-win-win situation.

