



International
Labour
Organization

► **Regional operational
guidelines on fair and
ethical recruitment in
ASEAN**

Improving regulation and enforcement:
A resource for regulators



▶ **Regional operational
guidelines on fair and
ethical recruitment in
ASEAN**

Improving regulation and enforcement:
A resource for regulators

Copyright © International Labour Organization 2023
First published 2023

Publications of the International Labour Office enjoy copyright under Protocol 2 of the Universal Copyright Convention. Nevertheless, short excerpts from them may be reproduced without authorization, on condition that the source is indicated. For rights of reproduction or translation, application should be made to ILO Publishing (Rights and Licensing), International Labour Office, CH-1211 Geneva 22, Switzerland, or by email: rights@ilo.org. The International Labour Office welcomes such applications.

Libraries, institutions and other users registered with a reproduction rights organization may make copies in accordance with the licences issued to them for this purpose. Visit www.ifrro.org to find the reproduction rights organization in your country.

ISBN 9789220385654 (print)
ISBN 9789220385661 (web PDF)

The designations employed in ILO publications, which are in conformity with United Nations practice, and the presentation of material therein do not imply the expression of any opinion whatsoever on the part of the International Labour Office concerning the legal status of any country, area or territory or of its authorities, or concerning the delimitation of its frontiers.

The responsibility for opinions expressed in signed articles, studies and other contributions rests solely with their authors, and publication does not constitute an endorsement by the International Labour Office of the opinions expressed in them.

Reference to names of firms and commercial products and processes does not imply their endorsement by the International Labour Office, and any failure to mention a particular firm, commercial product or process is not a sign of disapproval.

Information on ILO publications and digital products can be found at: www.ilo.org/publns.

Cover photo: © ILO
Printed in Thailand
All cover photos: © ILO

Contents

Introduction	iii
A. General guidelines on rights' protection	1
B. Recruitment guidelines	3
C. Guidelines on licensing private recruiters	5
D. Guidelines on monitoring recruitment processes	7
E. Guidelines on establishing effective inspection	9
F. Guidelines on acting on complaints concerning recruitment	11

Introduction

In today's globalized economy, workers are increasingly looking for job opportunities beyond their country of origin, in search of decent work and better livelihoods. Recruitment is a major function of the labour market where employers seek workers and workers seek jobs. Employers have three strategies to recruit workers (and workers to find jobs): (i) directly through job announcements and screening; (ii) through public employment services; and (iii) through private intermediaries that include licensed recruitment agencies, unregistered brokers and informal social networks.

Private recruitment agencies perform a useful labour market matching function. Job information can be a rare commodity in the labour market – employers know what skills they need but not where to find them; while the workers know their skills but not who is in need of them. Intermediaries such as recruiters play a role in resolving this asymmetry of information. In the real world, however, the operation of the recruitment market is highly imperfect, and can be characterized by exploitative practices, fraud and abuses. These imperfections have been particularly damaging to the interest of workers seeking jobs across national borders.

Widespread evidence exists that the migration recruitment industry is responsible for numerous abuses that erode the benefits of migration for workers. Recent surveys supported by the ILO confirm what is already well known: that recruitment costs are excessively high and exceed legal limits. Several Asian countries of origin have extensive regulations governing licensing and operation of recruitment for overseas employment, yet progress in achieving fair recruitment has been elusive.

The ILO has undertaken research in 2020 on the efforts of the Member States of the Association of Southeast Asian Nations (ASEAN) to foster fair and ethical recruitment, resulting in a resource paper to inform both the development of guidelines on fair and ethical recruitment in ASEAN and the conduct of a training course for regulators. The resource paper maps the laws and regulations of these Member States, and moreover the enforcement mechanisms they have employed, and reviews evidence of the results they may have achieved.¹

These regional guidelines have been developed within the framework of the *ILO General principles and operational guidelines for fair recruitment* and focus on implementation and enforcement, with respect to international migration. The regional guidelines have been developed as a resource for regulators in the ASEAN region and have been reviewed in the course of two training programmes for regulators from Cambodia, the Lao People's Democratic Republic, Malaysia, Indonesia, Viet Nam and Bangladesh in 2022. The regional guidelines apply to both countries of origin and destination, depending on the context.

¹ ILO, *Achieving Fair and Ethical Recruitment: Improving Regulation and Enforcement in the ASEAN Region*, 2022.





© ILO/A. Santos





A General guidelines on rights' protection

1. Incorporate principles contained in relevant international standards and guidance into national legislation and practice to ensure legal recognition and protection of the fundamental human and labour rights of all migrant workers.²

2. Formulate migration policy with due regard to the overall labour market situation and the criteria of decent work. Formulate the policy as an instrument of development and poverty reduction, and enter into MOUs or bilateral agreements, as needed, to facilitate safe, orderly and regular migration.

3. Ensure that measures taken in support of migration policy objectives are transparent and not inconsistent or in conflict with policies in other domains, and that migration policies are formulated in consultation with employers' and workers' organizations.

4. Adopt laws, regulations and policies providing for non-discriminatory treatment of migrant workers in wages, working conditions and entitlement to social protection.

5. Migration policies, strategies and practices should be made gender-responsive and cater to the specific needs of women migrant workers, especially in vulnerable sectors of labour.

6. Extend social protection to migrant workers in all sectors of the economy, and enter into bilateral and multilateral agreements to facilitate the portability of benefits.

7. Address the issues raised by irregular migration, including: ensuring protection of human rights; identifying options, criteria and procedures for inter-country cooperation; and regularizing the status of workers in an irregular situation where possible.

8. Adopt comprehensive strategies and measures against human trafficking and forced labour, and adopt measures against illegal recruitment and irregular migration that include protection, prevention and prosecution.

9. Facilitate coordination among involved ministries and agencies through information and data sharing.

² In particular, the *ILO General Principles and Operational Guidelines for Fair Recruitment*.



B Recruitment guidelines

10. Widely disseminate to the public – especially in rural areas – information on overseas employment opportunities and risks, as well as on prohibited acts in recruitment.

11. Make easily available, especially through user-friendly websites, information on licensed recruitment agencies in good standing.

12. Publicize information on: minimum standards for employment and service contracts; requirements and procedures for obtaining travel documents; and requirements and procedures for getting contracts approved.

13. Develop “model employment contracts” that are sector specific. Include these contracts in Memoranda of Understanding (MOUs), and promote their use by employers and their enforcement by authorities in countries of employment.

14. Prohibit the charging of recruitment fees in any form or manner from migrant workers. Eliminate worker-paid recruitment-related costs in line with the ILO definition of recruitment fees and related costs, and if exceptions are to be allowed, this should follow consultation with the most representative organizations of workers and employers. Charges should be properly covered by receipts.

15. Minimize to the fullest extent possible the time needed by jobseekers in securing the needed official documentation to migrate for employment, particularly through: establishing user-friendly web-sites; using shared databases among concerned agencies and units; operating “one-stop” centres; standardizing and simplifying procedures; and adopting “model contracts”.

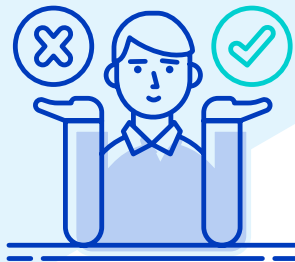
16. Provide migrant workers adequate information on labour conditions in countries of employment; provide counselling and training prior to departure; and establish on-site services, such as that of labour attachés, to respond to migrants’ need for information, legal aid and related services.

17. Strengthen public job placement services, especially with a view to providing – at no cost to workers – efficient job-matching services and to enabling direct hiring by accredited foreign employers.

18. Institute or strengthen capacities in government for developing coherent policy on, and supervision of, recruitment and protection of migrant workers, especially through adequate budgetary appropriation, staff development, and clear functional delineation among agencies with shared or related responsibilities.



© ILO



C Guidelines on licensing private recruiters

- 19.** Establish policies, qualification requirements and strict standards for the licensing and operation of private, for-profit recruitment agencies, with a view to encouraging ethical practices and eliminating costs to jobseekers.

- 20.** Ensure that applicants for recruitment licenses have adequate knowledge and experience in management, recruitment and job-matching; have no previous record of misconduct; and possess adequate financial resources to invest in the business.

- 21.** Set performance criteria and a rating system for fair recruitment, and offer incentives and rewards – financial as well as facilitated services – for private agencies that meet the performance criteria.

- 22.** Establish systems for monitoring compliance with recruitment regulations, and set clear criteria for suspending or cancelling licenses and for imposing fines.

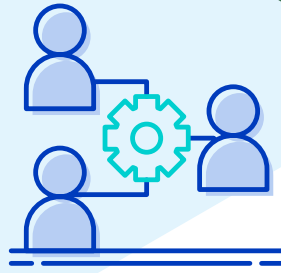
- 23.** Prohibit the publishing of false information, the placing of workers in harmful jobs, and the substitution of approved contracts with inferior ones upon arrival in countries of employment.

- 24.** Prohibit the transfer or assignment of a recruitment license to other entities without prior approval of the appropriate authority.

- 25.** Require licensed agencies to register all their personnel and agents, including those operating in rural communities.



© ILO



D Guidelines on monitoring recruitment processes

- 26.** Require licensed recruitment agencies to provide information on their agreements with foreign employers, particularly on the jobs for which they will recruit workers, the number and skills of workers being sought, the place of employment, and the employment contracts being offered.

- 27.** Require licensed recruiters to provide information on workers who have been deployed, those whose contracts have been renewed, and workers who have been laid off.

- 28.** Establish websites and social media platforms that can be easily and readily accessed by migrant workers to obtain information and advice in a language they can understand, to report abuses, and to share their experiences.

- 29.** Enable joint supervision of recruitment and employment by origin and destination country authorities through the sharing, in real time, of captured and updated information on worker deployment, job vacancies, skills available, and working conditions.

- 30.** Create an online database on deployed migrant workers as a means to facilitate communication and to assist those who may have fallen victim to fraud and abuse; with due consideration paid to safeguard privacy and data protection.



© ILO



E Guidelines on establishing effective inspection

- 31.** Institute a dedicated corps of inspectors trained to identify violations of recruitment rules and standards, and develop inspection methods and protocols appropriate to the challenges posed by recruitment activities.

- 32.** Develop gender sensitive standards and checklists for inspection, and train inspectors on the same.

- 33.** Train inspectors on how to properly document violations in order to support/facilitate the task of prosecuting violators.

- 34.** Provide migrants with translation and interpretation services to enable them to more easily access the assistance of local authorities.

- 35.** Encourage trade unions and other civil society organizations to create units that monitor and report recruitment fraud and abuses, as well as assist migrant workers who are faced with losing their jobs or are in fear of physical harm for reporting such abuses.

- 36.** Encourage, train and involve local government units/authorities, especially in far-flung regions, in the task of monitoring and reporting on recruitment activities in their localities.

- 37.** Include in bilateral labour agreements provisions on the sharing of information on instances of reported recruitment fraud and abuses.



© ILO



F Guidelines on acting on complaints concerning recruitment

- 38.** Designate qualified and specially trained personnel of the Labour Ministry/ relevant Ministry or Department to hear and properly document complaints about violations of recruitment laws, regulations and standards.

- 39.** Enable migrant workers and other interested parties to report violations of recruitment laws and regulations via the internet or long-distance telecommunication.

- 40.** Establish through legislation the modalities and processes for resolving disputes, including resolutions through conciliation, arbitration by third parties and adjudication by the courts.

- 41.** Develop through legislation the appropriate budgetary resources for regulating recruitment.

- 42.** Ensure that workers, irrespective of their presence or legal status in a State, should have access to gender-sensitive and free or affordable grievance and other dispute resolution mechanisms in case of alleged abuses of their rights in the recruitment process, as well as access to effective remedies, including trauma counselling, which should be provided where abuse has occurred.

The *Regional operational guidelines on fair and ethical recruitment. Improving regulation and enforcement: A resource for regulators* provides guidance to government regulators on fair recruitment practices, licensing private recruitment agencies, monitoring recruitment processes, and acting on complaints related to the recruitment process. These regional operational guidelines have been developed within the framework of the *ILO general principles and operational guidelines for fair recruitment*. The regional operational guidelines are relevant to both countries of origin and destination, depending on the context.

► **Contact:**

ILO Regional Office for Asia and the Pacific
United Nations Building
Rajdamnern Nok Avenue
Bangkok 10200
Thailand

T: +66 2 288 1234
F: +66 2 280 1735
E: BANGKOK@ilo.org
W: www.ilo.org/asia

9789220385661 (web PDF)

