

GUYANA



PROPOSALS

On the following Convention, Recommendation and Instrument of Amendment which were adopted by the International Labour Conference at its 85th Session held in June, 1997.

1. Private Employment Agencies Convention, 1997, No. 181.
2. Private Employment Agencies Recommendation, 1997, No. 188.
3. Constitution of the International Labour Organisation Instrument of Amendment, 1997.

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MINISTRY OF HEALTH
AND LABOUR
AUGUST, 2000.

SUBMISSION OF INTERNATIONAL LABOUR INSTRUMENTS TO THE NATIONAL
ASSEMBLY OF THE PARLIAMENT OF GUYANA FOR IMPLEMENTATION.

The International Labour Conference at its 85th Session held in June, 1997, adopted the following convention, Recommendation and Instrument.

- 1) Private Employment Agencies
Convention, 1997, No. 181.
- 2) Private Employment Agencies
Recommendation, 1997, No. 188.
- 3) Constitution of the International Labour Organisation Instrument
of Amendment, 1997.

2. Copies of the Convention, Recommendation and Instrument are attached as appendices I, II and III.

3. As a member of the International Labour Organisation Guyana is obliged to bring the above Convention, Recommendation and Instrument to the attention of the National Assembly for necessary action and to inform the Director General of the International Labour Organisation accordingly.

4. CONVENTION NO. 181 - CONCERNING PRIVATE EMPLOYMENT AGENCIES

DEFINITION AND SCOPE.

For the purpose of this Convention.

- 1) The term "private employment agency" means any natural or legal person, independent of the public authorities, which provides one or more of the following Labour market services:
 - a) services for matching offers of and applications for employment, without the private employment agency becoming a party to the employment relationships which may arise therefrom;
 - b) services consisting of employing workers with a view to making them available to a third party, who may be a natural or legal person (referred to below as a "user enterprise") which assigns their tasks and supervises the execution of these tasks;
 - c) other services relating to job seeking, determined by the competent authority after consultation with employers' and workers' organisations;

- 2) the term "workers" includes jobseekers;
- 3) the term "processing of personal data of workers" means the collection, storage, combination, communication or any other use of information related to an identified or identifiable worker.

The Convention applies to all private employment agencies and to all categories of workers and all branches of economic activity but does not apply to the recruitment and placement of seafarers.

The Government shall determine the conditions governing the operation of private employment agencies in accordance with a system of licensing or certification.

Workers recruited by private employment agencies shall not be denied the right to freedom of association, and the right to bargain collectively.

Private employment agencies shall promote equality of opportunity and treatment without discrimination based on race, colour, sex, religion, political opinion, national extraction, social origin or any other form covered by law such as age or disability.

The processing of personal data of workers shall be done in a manner that protects the data and ensures respect for workers privacy and shall be limited to matters related to qualifications and professional experience or other such information.

Agencies shall not charge directly or indirectly in whole or in part any fees or costing to workers.

Where workers are recruited in one country for work in another, Government shall consider concluding bilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment.

Government shall ensure that child labour is not used or supplied.

Government shall take the necessary measures to ensure adequate protection for workers employed by private employment agencies in relation to:

- a) freedom of association;
- b) collective bargaining;
- c) minimum wage;
- d) working time and other working conditions;
- e) statutory social security benefits;
- f) access to training;
- g) occupational safety and health;
- h) compensation in case of occupational accidents and diseases;
- i) compensation in case of insolvency and protection of workers' claims;

- j) maternity protection and benefits, and parental protection and benefits;

Government shall formulate, establish and periodically review conditions to promote cooperation between the public and private employment agencies.

Government shall retain final authority for formulating labour market policy.

Implementation of the provisions of this Convention shall be supervised by the labour inspection service with adequate penalties being applied.

RECOMMENDATION NO. 188 - CONCERNING PRIVATE EMPLOYMENT AGENCIES

This Recommendation supplements the convention concerning Private Employment Agencies No. 181.

Tripartite bodies should be involved in formulation and implementation of provisions of the Convention.

Laws and regulations should be supplemented by technical standards, guidelines, codes of ethics and self-regulatory mechanisms.

Workers employed by such agencies shall be given written contract of employment before the beginning of their assignment.

Private employment agencies should not make workers available to a user enterprise to replace workers who are on strike.

Agencies should be prevented from publishing vacancy notices that result in discrimination on grounds of race, colour, sex, age, religion, political opinion, national extraction or membership of a workers' organisation.

Personal data of a worker should be stored only for as long as it is justified for the purpose for which they have been collected and workers should have the right to examine such data and to have same corrected or deleted as appropriate.

Private employment agencies should have qualified and trained staff.

Cooperation between public and private employment agencies could include:

- a) pooling of information and use of common terminology;
- b) exchanging vacancy notices;
- c) Launching of joint training programmes etc;
- d) training of staff.

POSITION IN GUYANA:

There is an employment exchange service attached to the Ministry of Health and Labour and is governed by the Employment Exchange Act Chapter 98:05 of the Laws of Guyana.

Also, there are at present two privately run placement services. They are not governed by any law.

CONCLUSION:

It is recommended that Guyana do not ratify this Convention at present but use the provisions of both the Convention and Recommendation as a guide in formulating the necessary policy and legislation to govern the operation of private employment agencies.

INSTRUMENT FOR THE AMENDMENT OF CONSTITUTION OF THE INTERNATIONAL
LABOUR ORGANISATION, 1997.

This instrument is intended to amend article 19 of the Constitution of the International Labour Organisation by the insertion after paragraph 8 of the following new paragraph.

"9. Acting on a proposal of the Governing Body, the conference may, by a majority of two-thirds of the votes cast by the delegates present, abrogate any convention adopted in accordance with the provisions of this article if it appears that the convention has lost its purpose or that it no longer makes a useful contribution to attaining the objectives of the organisation".

This amendment will enable the International Labour Conference to abrogate International Labour Conventions if, on the proposal of the Governing Body, the conference considers by a two-thirds majority that the convention concerned has become obsolete.

Under Article 36 of the Constitution as currently in force, amendments "which are adopted by the conference by a majority of two-thirds of the votes cast by the delegates present shall take effect when ratified or accepted by two-thirds of the Members of the Organisation including five of the ten Members which are represented on the Governing Body as Members of Chief Industrial importance in accordance with the provisions of paragraph 3 of article 7 of this Convention".

This amendment will enable the conference to ensure that the body of international labour standards is up to date and coherent without having to be constrained by ratifications registered by member states.

CONCLUSION:

The amendment provides a more democratic form to abrogate any convention that might have lost its usefulness since the two-thirds voting in favour will not have their votes invalidated by the failure of five members of chief industrial importance to ratify the decision.

It is recommended that Guyana ratify the instrument for the amendment of the Constitution of the International Labour Organisation

International Labour Conference Conférence internationale du Travail

CONVENTION 181

CONVENTION CONCERNING PRIVATE EMPLOYMENT AGENCIES
ADOPTED BY THE CONFERENCE AT ITS
EIGHTY-FIFTH SESSION, GENEVA, 19 JUNE 1997

CONVENTION 181

CONVENTION CONCERNANT LES AGENCES D'EMPLOI PRIVÉES
ADOPTÉE PAR LA CONFÉRENCE À SA
QUATRE-VINGT- INQUIÈME SESSION, GENÈVE, 19 JUIN 1997

AUTHENTIC TEXT

Convention 181

CONVENTION CONCERNING PRIVATE EMPLOYMENT AGENCIES

The General Conference of the International Labour Organization,
Having been convened at Geneva by the Governing Body of the International
Labour Office, and having met in its Eighty-fifth Session on 3 June 1997, and

Noting the provisions of the Fee-Charging Employment Agencies Convention
(Revised), 1949, and

Being aware of the importance of flexibility in the functioning of labour mar-
kets, and

Recalling that the International Labour Conference at its 81st Session, 1994,
held the view that the ILO should proceed to revise the Fee-Charging Em-
ployment Agencies Convention (Revised), 1949, and

Considering the very different environment in which private employment agen-
cies operate, when compared to the conditions prevailing when the above-
mentioned Convention was adopted, and

Recognizing the role which private employment agencies may play in a well-
functioning labour market, and

Recalling the need to protect workers against abuses, and

Recognizing the need to guarantee the right to freedom of association and to
promote collective bargaining and social dialogue as necessary components
of a well-functioning industrial relations system, and

Noting the provisions of the Employment Service Convention, 1948, and

Recalling the provisions of the Forced Labour Convention, 1930, the Freedom
of Association and the Protection of the Right to Organise Convention,
1948, the Right to Organise and Collective Bargaining Convention, 1949,
the Discrimination (Employment and Occupation) Convention, 1958, the
Employment Policy Convention, 1964, the Minimum Age Convention,
1973, the Employment Promotion and Protection against Unemployment
Convention, 1988, and the provisions relating to recruitment and placement
in the Migration for Employment Convention (Revised), 1949, and the Mi-
grant Workers (Supplementary Provisions) Convention, 1975, and

Having decided upon the adoption of certain proposals with regard to the revi-
sion of the Fee-Charging Employment Agencies Convention (Revised),
1949, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international
Convention;

adopts, this nineteenth day of June of the year one thousand nine hundred and ninety-
seven, the following Convention, which may be cited as the Private Employment
Agencies Convention, 1997:

Article 1

1. For the purpose of this Convention the term "private employment agency"
means any natural or legal person, independent of the public authorities, which pro-
vides one or more of the following labour market services:

- (a) services for matching offers of and applications for employment, without the
private employment agency becoming a party to the employment relationships
which may arise therefrom;
- (b) services consisting of employing workers with a view to making them available
to a third party, who may be a natural or legal person (referred to below as a
"user enterprise") which assigns their tasks and supervises the execution of
these tasks;
- (c) other services relating to jobseeking, determined by the competent authority
after consulting the most representative employers' and workers' organizations,
such as the provision of information, that do not set out to match specific offers
of and applications for employment.

2. For the purpose of this Convention, the term “workers” includes jobseekers.

3. For the purpose of this Convention, the term “processing of personal data of workers” means the collection, storage, combination, communication or any other use of information related to an identified or identifiable worker.

Article 2

1. This Convention applies to all private employment agencies.

2. This Convention applies to all categories of workers and all branches of economic activity. It does not apply to the recruitment and placement of seafarers.

3. One purpose of this Convention is to allow the operation of private employment agencies as well as the protection of the workers using their services, within the framework of its provisions.

4. After consulting the most representative organizations of employers and workers concerned, a Member may:

- (a) prohibit, under specific circumstances, private employment agencies from operating in respect of certain categories of workers or branches of economic activity in the provision of one or more of the services referred to in Article 1, paragraph 1;
- (b) exclude, under specific circumstances, workers in certain branches of economic activity, or parts thereof, from the scope of the Convention or from certain of its provisions, provided that adequate protection is otherwise assured for the workers concerned.

5. A Member which ratifies this Convention shall specify, in its reports under article 22 of the Constitution of the International Labour Organization, any prohibition or exclusion of which it avails itself under paragraph 4 above, and give the reasons therefor.

Article 3

1. The legal status of private employment agencies shall be determined in accordance with national law and practice, and after consulting the most representative organizations of employers and workers.

2. A Member shall determine the conditions governing the operation of private employment agencies in accordance with a system of licensing or certification, except where they are otherwise regulated or determined by appropriate national law and practice.

Article 4

Measures shall be taken to ensure that the workers recruited by private employment agencies providing the services referred to in Article 1 are not denied the right to freedom of association and the right to bargain collectively.

Article 5

1. In order to promote equality of opportunity and treatment in access to employment and to particular occupations, a Member shall ensure that private employment agencies treat workers without discrimination on the basis of race, colour, sex, religion, political opinion, national extraction, social origin, or any other form of discrimination covered by national law and practice, such as age or disability.

2. Paragraph 1 of this Article shall not be implemented in such a way as to prevent private employment agencies from providing special services or targeted programmes designed to assist the most disadvantaged workers in their jobseeking activities.

Article 6

The processing of personal data of workers by private employment agencies shall be:

- (a) done in a manner that protects this data and ensures respect for workers' privacy in accordance with national law and practice;
- (b) limited to matters related to the qualifications and professional experience of the workers concerned and any other directly relevant information.

Article 7

1. Private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers.

2. In the interest of the workers concerned, and after consulting the most representative organizations of employers and workers, the competent authority may authorize exceptions to the provisions of paragraph 1 above in respect of certain categories of workers, as well as specified types of services provided by private employment agencies.

3. A Member which has authorized exceptions under paragraph 2 above shall, in its reports under article 22 of the Constitution of the International Labour Organization, provide information on such exceptions and give the reasons therefor.

Article 8

1. A Member shall, after consulting the most representative organizations of employers and workers, adopt all necessary and appropriate measures, both within its jurisdiction and, where appropriate, in collaboration with other Members, to provide adequate protection for and prevent abuses of migrant workers recruited or placed in its territory by private employment agencies. These shall include laws or regulations which provide for penalties, including prohibition of those private employment agencies which engage in fraudulent practices and abuses.

2. Where workers are recruited in one country for work in another, the Members concerned shall consider concluding bilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment.

Article 9

A Member shall take measures to ensure that child labour is not used or supplied by private employment agencies.

Article 10

The competent authority shall ensure that adequate machinery and procedures, involving as appropriate the most representative employers' and workers' organizations, exist for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of private employment agencies.

Article 11

A Member shall, in accordance with national law and practice, take the necessary measures to ensure adequate protection for the workers employed by private employment agencies as described in Article 1, paragraph 1(b) above, in relation to:

- (a) freedom of association;
- (b) collective bargaining;
- (c) minimum wages;
- (d) working time and other working conditions;
- (e) statutory social security benefits;

- (f) access to training;
- (g) occupational safety and health;
- (h) compensation in case of occupational accidents or diseases;
- (i) compensation in case of insolvency and protection of workers' claims;
- (j) maternity protection and benefits, and parental protection and benefits.

Article 12

A Member shall determine and allocate, in accordance with national law and practice, the respective responsibilities of private employment agencies providing the services referred to in paragraph 1(b) of Article 1 and of user enterprises in relation to:

- (a) collective bargaining;
- (b) minimum wages;
- (c) working time and other working conditions;
- (d) statutory social security benefits;
- (e) access to training;
- (f) protection in the field of occupational safety and health;
- (g) compensation in case of occupational accidents or diseases;
- (h) compensation in case of insolvency and protection of workers' claims;
- (i) maternity protection and benefits, and parental protection and benefits.

Article 13

1. A Member shall, in accordance with national law and practice and after consulting the most representative organizations of employers and workers, formulate, establish and periodically review conditions to promote cooperation between the public employment service and private employment agencies.

2. The conditions referred to in paragraph 1 above shall be based on the principle that the public authorities retain final authority for:

- (a) formulating labour market policy;
- (b) utilizing or controlling the use of public funds earmarked for the implementation of that policy.

3. Private employment agencies shall, at intervals to be determined by the competent authority, provide to that authority the information required by it, with due regard to the confidential nature of such information:

- (a) to allow the competent authority to be aware of the structure and activities of private employment agencies in accordance with national conditions and practices;
- (b) for statistical purposes.

4. The competent authority shall compile and, at regular intervals, make this information publicly available.

Article 14

1. The provisions of this Convention shall be applied by means of laws or regulations or by any other means consistent with national practice, such as court decisions, arbitration awards or collective agreements.

2. Supervision of the implementation of provisions to give effect to this Convention shall be ensured by the labour inspection service or other competent public authorities.

3. Adequate remedies, including penalties where appropriate, shall be provided for and effectively applied in case of violations of this Convention.

Article 15

This Convention does not affect more favourable provisions applicable under other international labour Conventions to workers recruited, placed or employed by private employment agencies.

Article 16

This Convention revises the Fee-Charging Employment Agencies Convention (Revised), 1949, and the Fee-Charging Employment Agencies Convention, 1933.

Article 17

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 18

1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.

2. It shall come into force 12 months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member 12 months after the date on which its ratification has been registered.

Article 19

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 20

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and acts of denunciation communicated by the Members of the Organization.

2. When notifying the Members of the Organization of the registration of the second ratification, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention shall come into force.

Article 21

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations, for registration in accordance with article 102 of the Charter of the United Nations, full particulars of all ratifications and acts of denunciation registered by the Director-General in accordance with the provisions of the preceding Articles.

Article 22

At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 23

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides –

- (a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 19 above, if and when the new revising Convention shall have come into force;
- (b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 24

The English and French versions of the text of this Convention are equally authoritative.

The foregoing is the authentic text of the Convention duly adopted by the General Conference of the International Labour Organization during its Eighty-fifth Session which was held at Geneva and declared closed the 19 June 1997.

IN FAITH WHEREOF we have appended our signatures this twentieth day of June 1997.

The text of the Convention as here presented is a true copy of the text authenticated by the signatures of the President of the International Labour Conference and of the Director-General of the International Labour Office.

Le texte de la convention présentée ici est une copie exacte du texte authentiqué par les signatures de la Présidente de la Conférence internationale du Travail et du Directeur général du Bureau international du Travail.

Certified true and complete copy,
Copie certifiée conforme et complète,

*For the Director-General of the International Labour Office:
Pour le Directeur général du Bureau international du Travail:*

International Labour Conference **Conférence internationale du Travail**

RECOMMENDATION 188

RECOMMENDATION CONCERNING PRIVATE EMPLOYMENT AGENCIES
ADOPTED BY THE CONFERENCE AT ITS
EIGHTY-FIFTH SESSION, GENEVA, 19 JUNE 1997

RECOMMANDATION 188

RECOMMANDATION CONCERNANT LES AGENCES D'EMPLOI PRIVÉES
ADOPTÉE PAR LA CONFÉRENCE À SA
QUATRE-VINGT-CINQUIÈME SESSION, GENÈVE, 19 JUIN 1997

Recommendation 188

RECOMMENDATION CONCERNING PRIVATE EMPLOYMENT AGENCIES

The General Conference of the International Labour Organization,
Having been convened at Geneva by the Governing Body of the International
Labour Office, and having met in its Eighty-fifth Session on 3 June 1997, and

Having decided upon the adoption of certain proposals with regard to the revision of the Fee-Charging Employment Agencies Convention (Revised), 1949, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Private Employment Agencies Convention, 1997;
adopts, this nineteenth day of June of the year one thousand nine hundred and ninety-seven, the following Recommendation, which may be cited as the Private Employment Agencies Recommendation, 1997:

I. GENERAL PROVISIONS

1. The provisions of this Recommendation supplement those of the Private Employment Agencies Convention, 1997, (referred to as “the Convention”) and should be applied in conjunction with them.

2. (1) Tripartite bodies or organizations of employers and workers should be involved as far as possible in the formulation and implementation of provisions to give effect to the Convention.

(2) Where appropriate, national laws and regulations applicable to private employment agencies should be supplemented by technical standards, guidelines, codes of ethics, self-regulatory mechanisms or other means consistent with national practice.

3. Members should, as may be appropriate and practicable, exchange information and experiences on the contributions of private employment agencies to the functioning of the labour market and communicate this to the International Labour Office.

II. PROTECTION OF WORKERS

4. Members should adopt all necessary and appropriate measures to prevent and to eliminate unethical practices by private employment agencies. These measures may include laws or regulations which provide for penalties, including prohibition of private employment agencies engaging in unethical practices.

5. Workers employed by private employment agencies as defined in Article 1.1(b) of the Convention should, where appropriate, have a written contract of employment specifying their terms and conditions of employment. As a minimum requirement, these workers should be informed of their conditions of employment before the effective beginning of their assignment.

6. Private employment agencies should not make workers available to a user enterprise to replace workers of that enterprise who are on strike.

7. The competent authority should combat unfair advertising practices and misleading advertisements, including advertisements for non-existent jobs.

8. Private employment agencies should:

(a) not knowingly recruit, place or employ workers for jobs involving unacceptable hazards or risks or where they may be subjected to abuse or discriminatory treatment of any kind;

(b) 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.

9. Private employment agencies should be prohibited, or by other means prevented, from drawing up and publishing vacancy notices or offers of employment in ways that directly or indirectly result in discrimination on grounds such as race, colour, sex, age, religion, political opinion, national extraction, social origin, ethnic origin, disability, marital or family status, sexual orientation or membership of a workers' organization.

10. Private employment agencies should be encouraged to promote equality in employment through affirmative action programmes.

11. Private employment agencies should be prohibited from recording, in files or registers, personal data which are not required for judging the aptitude of applicants for jobs for which they are being or could be considered.

12. (1) Private employment agencies should store the personal data of a worker only for so long as it is justified by the specific purposes for which they have been collected, or so long as the worker wishes to remain on a list of potential job candidates.

(2) Measures should be taken to ensure that workers have access to all their personal data as processed by automated or electronic systems, or kept in a manual file. These measures should include the right of workers to obtain and examine a copy of any such data and the right to demand that incorrect or incomplete data be deleted or corrected.

(3) Unless directly relevant to the requirements of a particular occupation and with the express permission of the worker concerned, private employment agencies should not require, maintain or use information on the medical status of a worker, or use such information to determine the suitability of a worker for employment.

13. Private employment agencies and the competent authority should take measures to promote the utilization of proper, fair and efficient selection methods.

14. Private employment agencies should have properly qualified and trained staff.

15. Having due regard to the rights and duties laid down in national law concerning termination of contracts of employment, private employment agencies providing the services referred to in paragraph 1(b) of Article 1 of the Convention should not:

- (a) prevent the user enterprise from hiring an employee of the agency assigned to it;
- (b) restrict the occupational mobility of an employee;
- (c) impose penalties on an employee accepting employment in another enterprise.

III. RELATIONSHIP BETWEEN THE PUBLIC EMPLOYMENT SERVICE AND PRIVATE EMPLOYMENT AGENCIES

16. Cooperation between the public employment service and private employment agencies in relation to the implementation of a national policy on organizing the labour market should be encouraged; for this purpose, bodies may be established that include representatives of the public employment service and private employment agencies, as well as of the most representative organizations of employers and workers.

17. Measures to promote cooperation between the public employment service and private employment agencies could include:

- (a) pooling of information and use of common terminology so as to improve transparency of labour market functioning;
- (b) exchanging vacancy notices;
- (c) launching of joint projects, for example in training;
- (d) concluding agreements between the public employment service and private employment agencies regarding the execution of certain activities, such as projects for the integration of the long-term unemployed;
- (e) training of staff;
- (f) consulting regularly with a view to improving professional practices.

The foregoing is the authentic text of the Recommendation duly adopted by the General Conference of the International Labour Organization during its Eighty-fifth Session which was held at Geneva and declared closed the 19 June 1997.

IN FAITH WHEREOF we have appended our signatures this twentieth day of June 1997.

The text of the Recommendation as here presented is a true copy of the text authenticated by the signatures of the President of the International Labour Conference and of the Director-General of the International Labour Office.

Le texte de la recommandation présentée ici est une copie exacte du texte authentiqué par les signatures de la Présidente de la Conférence internationale du Travail et du Directeur général du Bureau international du Travail.

Certified true and complete copy.
Copie certifiée conforme et complète.

For the Director-General of the International Labour Office
Pour le Directeur général du Bureau international du Travail

International Labour Conference Conférence internationale du Travail

RECOMMENDATION 188

RECOMMENDATION CONCERNING PRIVATE EMPLOYMENT AGENCIES
ADOPTED BY THE CONFERENCE AT ITS
EIGHTY-FIFTH SESSION, GENEVA, 19 JUNE 1997

RECOMMANDATION 188

RECOMMANDATION CONCERNANT LES AGENCES D'EMPLOI PRIVÉES
ADOPTÉE PAR LA CONFÉRENCE À SA
QUATRE-VINGT-CINQUIÈME SESSION, GENÈVE, 19 JUIN 1997

Recommendation 188

RECOMMENDATION CONCERNING PRIVATE EMPLOYMENT AGENCIES

The General Conference of the International Labour Organization,
Having been convened at Geneva by the Governing Body of the International
Labour Office, and having met in its Eighty-fifth Session on 3 June 1997, and

Having decided upon the adoption of certain proposals with regard to the revision of the Fee-Charging Employment Agencies Convention (Revised), 1949, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Private Employment Agencies Convention, 1997;
adopts, this nineteenth day of June of the year one thousand nine hundred and ninety-seven, the following Recommendation, which may be cited as the Private Employment Agencies Recommendation, 1997:

I. GENERAL PROVISIONS

1. The provisions of this Recommendation supplement those of the Private Employment Agencies Convention, 1997, (referred to as "the Convention") and should be applied in conjunction with them.

2. (1) Tripartite bodies or organizations of employers and workers should be involved as far as possible in the formulation and implementation of provisions to give effect to the Convention.

(2) Where appropriate, national laws and regulations applicable to private employment agencies should be supplemented by technical standards, guidelines, codes of ethics, self-regulatory mechanisms or other means consistent with national practice.

3. Members should, as may be appropriate and practicable, exchange information and experiences on the contributions of private employment agencies to the functioning of the labour market and communicate this to the International Labour Office.

II. PROTECTION OF WORKERS

4. Members should adopt all necessary and appropriate measures to prevent and to eliminate unethical practices by private employment agencies. These measures may include laws or regulations which provide for penalties, including prohibition of private employment agencies engaging in unethical practices.

5. Workers employed by private employment agencies as defined in Article 1.1(b) of the Convention should, where appropriate, have a written contract of employment specifying their terms and conditions of employment. As a minimum requirement, these workers should be informed of their conditions of employment before the effective beginning of their assignment.

6. Private employment agencies should not make workers available to a user enterprise to replace workers of that enterprise who are on strike.

7. The competent authority should combat unfair advertising practices and misleading advertisements, including advertisement for non-existent jobs.

8. Private employment agencies should:

(a) not knowingly recruit, place or employ workers for jobs involving unacceptable hazard or risks or where they may be subjected to abuse or discriminatory treatment of any kind;

(b) 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.

9. Private employment agencies should be prohibited, or by other means prevented, from drawing up and publishing vacancy notices or offers of employment in ways that directly or indirectly result in discrimination on grounds such as race, colour, sex, age, religion, political opinion, national extraction, social origin, ethnic origin, disability, marital or family status, sexual orientation or membership of a workers' organization.

10. Private employment agencies should be encouraged to promote equality in employment through affirmative action programmes.

11. Private employment agencies should be prohibited from recording, in files or registers, personal data which are not required for judging the aptitude of applicants for jobs for which they are being or could be considered.

12. (1) Private employment agencies should store the personal data of a worker only for so long as it is justified by the specific purposes for which they have been collected, or so long as the worker wishes to remain on a list of potential job candidates.

(2) Measures should be taken to ensure that workers have access to all their personal data as processed by automated or electronic systems, or kept in a manual file. These measures should include the right of workers to obtain and examine a copy of any such data and the right to demand that incorrect or incomplete data be deleted or corrected.

(3) Unless directly relevant to the requirements of a particular occupation and with the express permission of the worker concerned, private employment agencies should not require, maintain or use information on the medical status of a worker, or use such information to determine the suitability of a worker for employment.

13. Private employment agencies and the competent authority should take measures to promote the utilization of proper, fair and efficient selection methods.

14. Private employment agencies should have properly qualified and trained staff.

15. Having due regard to the rights and duties laid down in national law concerning termination of contracts of employment, private employment agencies providing the services referred to in paragraph 1(b) of Article 1 of the Convention should not:

- (a) prevent the user enterprise from hiring an employee of the agency assigned to it;
- (b) restrict the occupational mobility of an employee;
- (c) impose penalties on an employee accepting employment in another enterprise.

III. RELATIONSHIP BETWEEN THE PUBLIC EMPLOYMENT SERVICE AND PRIVATE EMPLOYMENT AGENCIES

16. Cooperation between the public employment service and private employment agencies in relation to the implementation of a national policy on organizing the labour market should be encouraged; for this purpose, bodies may be established that include representatives of the public employment service and private employment agencies, as well as of the most representative organizations of employers and workers.

17. Measures to promote cooperation between the public employment service and private employment agencies could include:

- (a) pooling of information and use of common terminology so as to improve transparency of labour market functioning;
- (b) exchanging vacancy notices;
- (c) launching of joint projects, for example in training;
- (d) concluding agreements between the public employment service and private employment agencies regarding the execution of certain activities, such as projects for the integration of the long-term unemployed;
- (e) training of staff;
- (f) consulting regularly with a view to improving professional practices.

The foregoing is the authentic text of the Recommendation duly adopted by the General Conference of the International Labour Organization during its Eighty-fifth Session which was held at Geneva and declared closed the 19 June 1997.

IN FAITH WHEREOF we have appended our signatures this twentieth day of June 1997.

The text of the Recommendation as here presented is a true copy of the text authenticated by the signatures of the President of the International Labour Conference and of the Director-General of the International Labour Office.

Le texte de la recommandation présentée ici est une copie exacte du texte authentiqué par les signatures de la Présidente de la Conférence internationale du Travail et du Directeur général du Bureau international du Travail.

Certified true and complete copy.
Copie certifiée conforme et complète.

For the Director-General of the International Labour Office
Pour le Directeur général du Bureau international du Travail

International Labour Conference Conférence internationale du Travail

INSTRUMENT

INSTRUMENT FOR THE AMENDMENT OF THE CONSTITUTION OF
THE INTERNATIONAL LABOUR ORGANISATION
ADOPTED BY THE CONFERENCE AT ITS
EIGHTY-FIFTH SESSION, GENEVA, 19 JUNE 1997

INSTRUMENT

INSTRUMENT POUR L'AMENDEMENT DE LA CONSTITUTION
DE L'ORGANISATION INTERNATIONALE DU TRAVAIL
ADOPTÉ PAR LA CONFÉRENCE À SA
QUATRE-VINGT-CINQUIÈME SESSION, GENÈVE, 19 JUIN 1997

AUTHENTIC TEXT
TEXTE AUTHENTIQUE

Instrument

INSTRUMENT FOR THE AMENDMENT OF THE CONSTITUTION OF THE INTERNATIONAL LABOUR ORGANISATION

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Eighty-fifth Session on 3 June 1997, and

Having decided upon the adoption of an amendment to the Constitution of the International Labour Organisation, a question which is included in the seventh item on the agenda of the Session;

adopts, this nineteenth day of June of the year one thousand nine hundred and ninety-seven, the following instrument for the amendment of the Constitution of the International Labour Organisation, which may be cited as the Constitution of the International Labour Organisation Instrument of Amendment, 1997:

Article 1

As from the date of the coming into force of this Instrument of Amendment, article 19 of the Constitution of the International Labour Organisation shall be amended by the insertion after paragraph 8 of the following new paragraph:

“9. Acting on a proposal of the Governing Body, the Conference may, by a majority of two-thirds of the votes cast by the delegates present, abrogate any Convention adopted in accordance with the provisions of this article if it appears that the Convention has lost its purpose or that it no longer makes a useful contribution to attaining the objectives of the Organisation.”

Article 2

Two copies of this Instrument of Amendment shall be authenticated by the signatures of the President of the Conference and of the Director-General of the International Labour Office. One of these copies shall be deposited in the archives of the International Labour Office and the other shall be communicated to the Secretary-General of the United Nations for registration in accordance with article 102 of the Charter of the United Nations. The Director-General will communicate a certified copy of the Instrument to all the Members of the International Labour Organisation.

Article 3

1. The formal ratifications or acceptances of this Instrument of Amendment shall be communicated to the Director-General of the International Labour Office, who shall notify the Members of the Organisation of the receipt thereof.

2. This Instrument of Amendment will come into force in accordance with the provisions of article 36 of the Constitution of the International Labour Organisation.

3. On the coming into force of this Instrument, the Director-General of the International Labour Office shall so notify all the Members of the International Labour Organisation and the Secretary-General of the United Nations.

The foregoing is the authentic text of the instrument duly adopted by the General Conference of the International Labour Organisation during its Eighty-fifth Session which was held at Geneva and declared closed the 19 June 1997.

IN FAITH WHEREOF we have appended our signatures this twentieth day of June 1997.

The text of the Instrument as here presented is a true copy of the text authenticated by the signatures of the President of the International Labour Conference and of the Director-General of the International Labour Office.

Le texte de l'instrument présenté ici est une copie exacte du texte authentiqué par les signatures de la Présidente de la Conférence internationale du Travail et du Directeur général du Bureau international du Travail.

Certified true and complete copy,
Copie certifiée conforme et complète,

For the Director-General of the International Labour Office
Pour le Directeur général du Bureau international du Travail

