

RECRUITING OF WORKERS ACT

Chapter 88:10



Government of the Republic of Trinidad and Tobago

Ministry of Labour and Small Enterprise Development

INADEQUACIES WITH THE CURRENT ACT

- The Act does not apply to the recruiting of workers within Trinidad for employment therein or within Tobago for employment therein.
- The procedures as set out in the Act are not feasible today and are significantly outdated.
- The Act lacks labour legislation protections.

THE PERSPECTIVE OF THE INTERNATIONAL LABOUR ORGANIZATION

- The ILO has provided exemplary guidance on regulating recruitment agencies in its document entitled “*Guide to Private Employment Agencies – Regulation, Monitoring and Enforcement*”. This document was prepared by the ILO to provide guidance to national legislators in drafting legal frameworks.
- According to the ILO, legislation is utilized to regulate, in an efficient way, the placement of persons in accordance with the law. Specific legislation to guide particular types of recruitment services is absolutely necessary, as in cases dealing with domestic workers and placement of workers abroad, as well as in the national market.
- Specific legislation to guide particular types of recruitment services is absolutely necessary. If the placement of workers abroad is very common in a country, specific legislation for this kind of activity should be considered. In contrast, where such recruitment for abroad is rarely carried out, these agencies could fall under the scope of the general legislation.

THE PERSPECTIVE OF THE INTERNATIONAL LABOUR ORGANIZATION (CONTINUED)

- The structure of the domestic labour market and the placement activities predominantly undertaken may have an impact on deciding whether a single concise piece of legislation covering all types of agencies should be elaborated, or whether several specific laws and/or regulations should be used.
- The ILO's guidance in formulating legislation to govern private employment agencies consider the inclusion of the following key elements:
 - Legal requirements for establishing and operating Private Employment Agencies;
 - Government regulatory responsibilities; and
 - Mechanisms of self-regulation

THE PERSPECTIVE OF THE INTERNATIONAL LABOUR ORGANIZATION (CONTINUED)

Government regulatory responsibilities

- ILO's guidelines provide that the administration of the registration (or licensing) procedure is important, and there are many ways of organizing the licensing and subsequent monitoring of agency activities. The administration of the registration procedure itself should include a division between the actual licensing and registration process and the subsequent monitoring of the activities of agencies and the enforcement of legislation.
- Administrative assignments should also set up a time-frame in which licence applicants can realistically trust upon the licence to be issued. It was suggested that one means of increasing the transparency of the activities of agencies is to install a public register that includes all licensed agencies with their contact details. The Philippines and Singapore are currently utilising public registers and which can be used as a model.

THE PERSPECTIVE OF THE INTERNATIONAL LABOUR ORGANIZATION (CONTINUED)

- After an agency has been licensed on the basis of the described criteria, it is important that recruitment activities are monitored. ILO has proposed two ways of monitoring agencies' activities: a desk audit of provided information and/or field audits. ILO has noted that the most common method for the evaluation of the licence conditions is a desk audit. This may be carried out during the application procedure.
- Another important element of Government's responsibility is the imposing of sanctions. In cases of non-compliance with the regulations, sanctions have to be imposed. Sanctions for non-compliance with legislation and regulations usually depend on the type of infringement and whether the perpetrator is a first time or repeat offender. Measures can range from minor administrative to severe penal sanctions.

C181—PRIVATE EMPLOYMENT AGENCIES CONVENTION, 1997

Convention concerning Private Employment Agencies

It should be noted that Trinidad and Tobago has not yet ratified this convention. However, principles within this Convention should be applied to the development of legislation to govern private recruiting agencies.

COMPARATIVE ANALYSIS – A REGIONAL PERSPECTIVE: JAMAICA

- Recruitment agencies in Jamaica are governed by The Employment Agencies Regulation Act, 1957.
- The procedure adopted for the regulation of recruitment agencies is through licensing. The Minister appoints a Licensing Officer who is responsible for treating with applications for licences for employment in Jamaica and outside of Jamaica.
- The Act provides for the monitoring of agencies. The Minister is afforded the power to appoint Inspectors of employment agencies whose responsibility is to investigate complaints and secure the proper observance of the Act. When an application is made to the Licensing Officer, the Officer then directs the Inspectors to visit and inspect the premises.

COMPARATIVE ANALYSIS – A REGIONAL PERSPECTIVE: JAMAICA (continued)

- Following this, a report is done by the Inspector which forms the basis for the decision to grant or renew the license. The decision whether to grant or renew a license for recruitment within Jamaica is made by the Licensing Officer. However, for employment outside of Jamaica, the licensing officer has to refer the application for the direction of the Minister.
- Further, for employment outside of Jamaica, the employment agency must enter into a bond with surety as a guarantee of his financial ability to operate the employment agency and to refund such fees charged by the agency as he becomes liable to refund.
- Other regulatory measures utilised are: licenses are issued for a period of time and a proper procedure is conducted for the transferability of licenses. The duration of licenses are for a period of one year from the date of issue.

COMPARATIVE ANALYSIS – A REGIONAL PERSPECTIVE: JAMAICA (continued)

- Additionally, licenses are not transferred unless the proposed transferee is found to be fit by the submission of an application containing relevant documentation and enquiries by Inspectors.
- Moreover, contravention of the provisions in the Act attracts a penal sanction of up to five hundred thousand dollars or imprisonment with or without hard labour. The Court is also empowered to revoke a license, in lieu of or in addition to the penalty.
- Searches conducted reveal that Jamaica is the only Caribbean country that has enacted legislation regulating recruitment agencies.

COMPARATIVE ANALYSIS – UNITED KINGDOM

- **The Employment Agencies Act, 1973** and the **Conduct of Employment Agencies and Employment Businesses Regulations, 2003** set minimum standards for employment agencies and employment businesses operating from premises in Great Britain. All employment agencies and employment businesses must comply with the provisions in the legislation. These provisions are designed to protect work-seekers and employers using the services provided by an employment agency or employment business.
- An employment tribunal may, on application by the Secretary of State, make an order prohibiting a person from operating an employment agency or employment business. The Act and the Regulations govern the conduct of the private recruitment industry.
- The Act applies to agencies engaged in a wide range of different sectors, for example, those finding work in the industrial and office sectors, entertainment and model agents, and the executive selection functions of management consultants and search agencies. In addition, those recruitment companies that operate on-line and those that use a publication will also be covered. Once the work-seekers are engaged by the employer, the relationship with the agency ends.

COMPARATIVE ANALYSIS – UNITED KINGDOM (continued)

- The procedure for the granting of a license in the United Kingdom is unique in that an applicant is required to display notice of the application in a place where it can be conveniently read for a period of twenty one days as well as advertise the notice of application in an approved newspaper. In addition to the requirement for a license, another method employed for the regulating of the agencies is ensuring that there is suitable qualification for eligibility.
- An applicant must be not be under the age of twenty-one years and must not be on account of misconduct.
- Moreover, the Act prescribes a penal sanction for fraudulent applications and entries along with offences by bodies corporate.

COMPARATIVE ANALYSIS- CANADA

- Recruitment agencies in Canada are governed by the Employment Agency Business Licensing Regulation and the Consumer Protection Act. The Employment Agency Business Licensing Regulation cites two categories of recruitment agencies: national and international.
- National Employment Agency Businesses are only authorized to assist or recruit employees within Canada who are seeking work within the country. International Employment Agency Businesses have the authority to assist or recruit employees from outside Canada who seek to work in Canada. A recruiting agency can however possess both categories of licenses.
- Licences are valid for a term of twenty four months.

COMPARATIVE ANALYSIS- CANADA (continued)

- Recruitment agencies in Canada are allowed to charge employers for services delivered. Recruiters can charge employees a fee for services, provided. These services are not directly related to the recruitment.
- The services that recruitment agencies are allowed to charge include: resume preparation and job-skills training. In such circumstances, a separate written agreement must exist that quotes the fee. However, the fee must not be charged as a condition to help the individual find work.
- A recruitment agency cannot demand or collect a fee from someone it is helping to find work. An agency is also prohibited from demanding or holding a deposit or bond from the employee, even if there is a promise to refund the fee. Further, the recruiting agency cannot direct the employer to recover the costs of agency services from the employee.

COMPARATIVE ANALYSIS - SINGAPORE

- Employment agencies in Singapore are regulated by the Employment Agencies Act. By virtue of the Act, “employment agency” means *“any agency or registry carried on or represented as being or intended to be carried on (whether for the purpose of gain or reward or not) for or in connection with the employment of persons in any capacity, but does not include any registry set up by an employer for the sole purpose of recruiting persons for employment on his own behalf”*.
- It should be noted that the Act does not apply to any employment agency, wholly managed or wholly maintained by any department of the Government.
- Recruitment agencies are regulated by a process of licensing. The Act provides for the Minister to appoint a Commissioner for Employment Agencies. The Commissioner is responsible for granting licenses to employment agencies for employment within and outside Singapore.
- The licence continues to be in force for the period specified in the license. The Commission also has the power to require the agency to provide security before granting the licence.

COMPARATIVE ANALYSIS – SINGAPORE (continued)

- The Act also grants licensees the authority to charge and receive such fees as may be prescribed for services rendered.
- Further, the Act affords the Minister power to appoint employment agency inspectors who could, inter alia, enter and search any premises where he has reasonable cause to believe that an offence has been committed. The inspectors also have a range of powers to arrest persons without a warrant, search arrested persons and take possession of articles connected with the offence.
- Throughout the Act, sanctions are imposed for various contraventions. Examples include: A fine of up to \$80,000.00 can be imposed if the holder of the licence continues to perform activities after the period of the licence has expired. Upon registration, the agency has to issue registration cards to their personnel.
- Anyone who forges a registration card; unlawfully alters a card; uses a card which is not issued to him; or sells a card shall be liable to a fine of \$15,000.00.

COMPARATIVE ANALYSIS – SOUTH AFRICA

- The Employment Services Act, 2014, provides for the registration and regulation of private employment agencies in South Africa.
- The Act also govern public employment services; facilitates the employment of foreign nationals; provides for the establishment of the Employment Services Board; provides for the establishment of Productivity South Africa; and provides for the establishment of Supported Employment Enterprises.
- Chapter 3 of the Act contains seven (7) sections that relate to recruitment agencies. Recruitment agencies are regulated by registration. The criteria for the registration of recruitment agencies are determined by the Minister after consulting with the Employment Services Board. Applications for registering to provide services are made to the Registrar who is appointed by the Minister.

COMPARATIVE ANALYSIS – SOUTH AFRICA (continued)

- Employment agencies are prohibited from charging fees except where permitted by the Board. The Board can permit fees for specified categories of employees or for the provision of specialised services.
- Moreover, the Act prohibits the agency from deducting any amount from the remuneration of an employee or requiring or permitting an employee to pay any amount in respect of the placing of the employee with an employer.
- The Act also mandates that the agency must keep a register of work seekers and their placement and uphold confidentiality with respect to work seekers information.
- There are no penal sanctions imposed on recruitment agencies within the Act but the Registrar is empowered to cancel the registration of an agency for failure to comply with the Act's requirements or any prescribed procedure.

MIGRANT WORKERS

- As a result of increased globalization, CARICOM, and the modern patterns of migration, migrant workers ought to be considered in the development of legislation.
- Several countries have prepared policies to address migrant workers in relation to recruitment agencies. An article prepared by the Migration Policy Institute entitled “*What we know about regulating the recruitment of Migrant Workers*” stated that recruitment agencies are responsible for orchestrating much of the migration process from pre departure to return.
- It also states that agencies provide information, assistance and support to migrants from transit to and from their destination and in some cases employ migrants directly.
- The article further identifies recruitment irregularities faced by migrant with the use of agencies. Such irregularities include: excessive charging of fees; early collection of fees; and failure to issue receipts for payment of fees.
- The article also noted that studies conducted revealed that recruitment related abuses occurred in all destinations at all skill levels. Whilst policies were drafted and research conducted on private recruitment agencies in many jurisdictions, no legislation was found that included migrant workers.

RECOMMENDATION

- Upon evaluation of the various pieces legislation discussed previously, the following observations were formed:
 - The method of regulation adopted by the majority of countries is one of licensing rather than registration;
 - Most pieces of legislation prohibits private employment agencies from charging fees to job seekers;
 - Existing legislation generally do not contain mechanisms of self-regulation;
 - No quintessential legislation was found containing all the requirements outlined by the ILO.
- It is recommended that the Act in its current form be repealed and replaced with legislation to regulate recruitment agencies considering best practices in other pieces of legislation; ILO's guidelines; and the primary type of recruitment within Trinidad and Tobago.

Thank You!