



Part 2

# Human Rights and Employment & Recruitment Agencies

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## Human Rights Impacts related to Employment & Recruitment Agencies

People are the core business of E&R agencies. This means that human rights are not just important to the industry because respecting them is the “right thing” to do but because human rights are material to the very functioning of E&R agencies. Companies that are determined to provide “the right person for the right job” need to care about the impacts on all those concerned - in particular, on the human rights of the workers at the centre of these business relationships.

Human rights are basic standards aimed at securing dignity and equality for all. Every human being is entitled to enjoy them without discrimination. They include the rights contained in the “International Bill of Human Rights” – meaning the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Those documents set out a range of rights and freedoms such as the rights to life, to freedom of expression, to privacy, to education, and to favourable conditions of work, to name a few. Internationally-recognised human rights also include the principles concerning fundamental rights set out in the International Labour Organisation’s (ILO) Declaration on Fundamental Principles and Rights at Work, which addresses freedom of association and collective bargaining, forced labour, child labour and non-discrimination. In addition, some potentially vulnerable or marginalised individuals and groups are the subject of international human rights instruments that help provide clarity on how human rights apply to them (for more on this, see [Section II-A](#)). (See [Annex 1](#) for a list of relevant instruments.)

Responsible E&R agencies have become increasingly active in recent years in understanding and addressing the range of human rights issues linked to their services. They recognise that they can both positively and negatively impact their internal staff, the direct hire employees they recruit and the agency workers they place – as well as those individuals’ families. Where they are involved in international recruitment or employment services, they may also need to consider impacts on local communities in the migrant worker’s origin state.

Those E&R agencies that are able to understand and manage a relatively complex set of relationships with user enterprises and client companies, and with their supply chain and contractors, even with comparatively small resources, will be well-placed to build and maintain a high degree of stakeholder trust and accountability. On the other hand, those agencies that do not pay enough attention to human rights will run increasing risks of serious negative impacts resulting in worker dissatisfaction, possible lawsuits and reputational harm.

E&R agencies are engaged in the recruitment or employment of workers in virtually every sector of the economy, from IT and electronics manufacturing to the extractive industry, the food industry, hospitality, and domestic and clerical work. [ILO Convention 181](#) on Private Employment Agencies and, in the EU, the [Temporary Agency Work Directive EC/2008/104](#) recognise the potential positive impacts of E&R agencies in well-functioning labour markets in matching unemployed, or underemployed, individuals with available job opportunities. This in turn supports the realisation of the right to work, and may facilitate the realisation of other human rights that can depend in part on personal income for their enjoyment, including the right to an adequate standard of living, to housing and to food.

Some E&R agencies have come together in industry associations, in part with the aim of identifying and promoting good practices with regard to respect for human rights, as well as making it harder for fraudulent and unscrupulous operators to exist. Of particular relevance is the work of the International Confederation of Private Employment Agencies ([Ciett](#)) and the European Confederation ([Eurociett](#)). An increasing number of national associations are also seeking to foster good practices.

Individual user enterprises and client companies are also beginning to focus on the need for effective policies and processes to implement the responsibility to respect in their labour hiring practices, including by working together with other actors on these issues in multi-stakeholder initiatives. One example of this is in the UK, where the

“Supermarkets and Suppliers Protocol” of the Gangmasters Licensing Authority (GLA) aims to establish strong links between the regulatory body (the GLA), the retailers (supermarkets), suppliers (food processing plants and agriculture and horticulture suppliers) and E&R agencies. In other words, to link up all the actors within the food supply chain in order to strengthen respect for relevant standards at each step.

## Operating Contexts and the Relevance of the State Duty to Protect

The extent to which E&R agencies are involved with negative human rights impacts will be heavily influenced by both their operating context and the practices of their business partners – which includes client companies and user enterprises, as well as other E&R agencies that they may have a business relationship with. Both of these factors – context and business partners – will shape the policies, processes and practices an E&R agency needs in order to prevent and address negative impacts.

When states fail to meet their duty to protect, the responsibility of E&R agencies to respect human rights does not change; however, it can become all the more challenging for them to meet that responsibility in practice. Areas in which state action (or inaction) can cause particular challenges for E&R agencies include:

- ▶ **The absence of effective regulation of the services provided by E&R agencies.** This may be because the industry is completely unregulated, or because there is a lack of enforcement where regulation does exist. The typically low barriers to entry into the E&R business can compound a lack of effective regulation. This kind of situation allows unscrupulous companies to proliferate – ranging from companies that knowingly profit from poor labour practices to criminal organisations involved in human trafficking and other serious human rights abuses.
- ▶ **Permitting E&R agencies to charge workers fees for services.** Some states allow E&R agencies to charge recruitment fees to workers – a practice that can lead to significant human rights abuses such as forced labour arising from debt bondage. Others may fail to enforce relevant prohibitions on such fees.
- ▶ **A lack of robust protection of workers’ human rights, either in national law or practice.** Limits on, or a lack of protection of, the rights to freedom of association, particularly to form and join a trade union, and to collective bargaining, can leave workers without effective representation. Poor protections against discrimination in recruitment and employment on the basis of, e.g., race, ethnicity, age, gender or disability, can lead to client companies and user enterprises making discriminatory requests of E&R agencies without any fear of being sanctioned. Domestic workers are often at heightened risk of negative impacts, particularly in countries where domestic work is not even recognised as “work” under local labour laws.

Where E&R agencies are involved in the recruitment and employment of migrant workers, additional challenges include:

- ▶ **Major gaps in the regulation of the international recruitment of migrant workers.** Despite the existence of ILO Convention No 181 (Article 8) and the UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, many “origin” and “destination” states lack bilateral agreements on protections for migrant workers, or do not enforce their provisions in practice.

### Resources: ILO standards regarding E&R agencies

ILO Convention No 181 and its accompanying Recommendation No 188 were adopted by the International Labour Conference of the ILO in 1997. They represent a consensus among the ILO’s tripartite constituents. At the time of writing, 26 countries had ratified Convention No 181.

Convention No 181 covers the recruitment and placement in employment of workers by E&R agencies of all categories of workers and areas of economic activity, except the recruitment of seafarers (which is the subject of a separate Convention).

Convention 181 sets out standards on:

- ▶ Freedom of association and collective bargaining;
- ▶ Non-discrimination;
- ▶ Privacy and protection of personal information;
- ▶ Child labour;
- ▶ Prohibition on charging of fees to workers;
- ▶ Protection of migrant workers;
- ▶ State-to-state bilateral agreements on protection of migrant workers;
- ▶ Access to remedy, in conjunction with trade unions and workers’ representatives.

In the context of migrant workers, ILO Convention No 97 (and Recommendation No 86) and Convention No 143 (and Recommendation No 151) are also relevant.

ILO Convention No 111 and its associated Recommendation address non-discrimination in recruitment and employment in detail. The recent ILO Convention No 189 addresses decent work for domestic workers.

- ▶ **The potential vulnerability of workers where immigration regulations tie immigration status to a particular employer.** Some states link an immigration or employment visa to one particular employer who acts as a sponsor. In effect, this means that the migrant worker is “tied” to that employer if she wants to remain in the country. If the worker experiences abuse or exploitation and tries to seek redress, this may lead to her losing not only her job but also her immigration status. She may fall into an undocumented or irregular situation through no fault of her own, leaving her with no rights, and at risk of further human rights abuses and/or deportation. A significant number of migrant workers fall into an irregular status having entered the country legally, for example, through unlawful retention of their documents or arbitrary termination of their employment. This can be a particular risk in countries where employment sponsorship power is vested in individual sponsors, rather than in an independent state agency.

There are clear differences between EU and some non-EU country contexts in these areas. With regard to the recruitment and supply of agency workers, E&R agencies inside the EU operate within the regulatory framework established by the [Temporary Agency Work Directive](#). This establishes the important principle of equal treatment as part of a protective framework for agency workers, meaning that the basic working and employment conditions applicable to agency workers should be at least the same as those which would have applied had they been directly hired by the user enterprise to occupy the same job. This includes conditions relating to pay, working hours, overtime and holidays. EU Member States are allowed to derogate from the terms of the Directive with the agreement of the other social dialogue partners.

The EU [Posted Workers Directive EC/96/71](#) concerns the free movement of workers within the EU, and therefore has implications for agency workers. It provides that the basic working and employment conditions in force in a destination state have to be applied to both national and “posted” workers if the latter are employees of a business established in another state (e.g., agency workers employed by an E&R agency).

EU-based E&R agencies participate in social dialogue processes through the European trade organisation, Eurociett. Eurociett and the trade union UNI-Europa are the formal social dialogue partners for the European Commission’s [Sectoral Social Dialogue for Agency Work](#), launched in 2000. In addition, most EU Member States operate their own similar social dialogue arrangements. A number also have high rates of unionisation among agency workers.

Wherever states fail to meet their duty to protect, merely obeying domestic laws is unlikely to be sufficient to demonstrate respect for human rights. E&R agencies will typically need to do further, enhanced [human rights due diligence](#) to meet the increased challenges, as will be discussed in [Part 3](#) of the Guide.

## Business Relationships

Organisationally, the types of businesses involved in the sector range from one-person companies to multinational firms.

When recruiting and placing agency workers an E&R agency will have a direct business relationship with the user enterprise where the agency workers are placed. When recruiting direct hire employees, the business relationship will be with the client company. Typically, the former will be an on-going relationship and the latter will often be a one-off agreement, although this is not always the case. The same E&R agency may offer both types of service – recruitment and employment – and will therefore have a range of types of business relationship simultaneously.

Larger E&R agencies often provide additional services. These may include training for job-specific skills, payroll and tax services, or services associated with the international migration process (such as arranging transportation, accommodation, or immigration visas). Very often, services associated with the international migration process are provided by other individuals or companies, such as travel agents, or loan companies, which are sub-contracted by the E&R agency.

E&R agencies may also engage in business relationships with each other. There are two main situations in which this may occur. First, where there is a large contract for the placement of agency workers (as is common in the food industry), and smaller, local E&R agencies need to collaborate in order to supply enough agency workers. Second, collaboration is common in the recruitment and placement of migrant workers because of the additional challenges raised by cross-border movement of workers. While large E&R agencies with global operations can easily recruit a migrant worker from one state and place him in employment in another state, for smaller E&R agencies this requires partnering with other actors. This means that sub-contracting often occurs between E&R agencies involved in the supply of international migrant labour – this may be directly between the agency that conducts recruitment in the migrant worker’s origin state and the agency that arranges the migrant worker’s

placement in the destination state, or there may be several agencies involved in the process, sometimes operating without clear written contracts.

All businesses – including smaller E&R agencies that are providing services to other E&R agencies, as well as client companies and user enterprises – have their own responsibility to respect human rights. However, in some cases, they may lack the awareness or capacity to meet the responsibility in practice. This poses risks to the E&R agencies that are relying on them, or providing them with services, as will be discussed in [Part 3](#) of the Guide.

## Understanding Potential Negative Impacts

While this Guide acknowledges the range of positive impacts that the E&RA sector can have on human rights, respecting rights – that is, the avoidance of harm to human rights – is the baseline expectation of all companies. The Guide therefore focuses on the prevention, mitigation and remediation of negative human rights impacts.

The following matrix provides examples of the kinds of negative impacts that E&R agencies may have. It is not intended to imply that every company will have these impacts, nor does it represent the full range of potential impacts of an activity. Rather, it is illustrative of the kinds of impacts that may arise and the rights that may be involved.

The matrix is structured in the following way:

- ▶ On the vertical axis, it lists a number of typical activities of E&R agencies;
- ▶ On the horizontal axis, it lists some of the key stakeholder groups that different E&RA activities may impact upon;
- ▶ In each box it gives an example of an impact that the particular activity may sometimes have on the stakeholder group, and the human rights that can be affected.

The matrix aims to show that:

- ▶ Different types of activities (including recruitment and employment services) can have quite distinct impacts on different human rights;
- ▶ Negative impacts can happen at all stages of the recruitment and employment process;
- ▶ Different kinds of negative impacts can fall on different groups, and even on individuals within certain groups. Impacts can be more severe where individuals are vulnerable or marginalised.

## Analytical Framework for Assessing Potential Impacts of Company Activities on Stakeholder Groups

	Internal Staff	Agency Workers in User Enterprises	Candidates for/Direct Hire Employees in Client Companies	Potentially Vulnerable or Marginalised Groups (whether agency workers or direct hire employees)		Other Relevant Groups... (e.g., existing employees of user enterprises)
				Migrant workers	Other Groups	
Recruitment	E.g., Internal staff are required to work excessive hours under conditions of high stress to meet seasonal demand for placing agency workers – <i>Right to Highest Attainable Standard of Health, Right to Just and Favourable Conditions of Work</i>	E.g., Fees are charged to agency workers for recruitment services, leading to debt bondage – <i>Freedom from all forms of Forced or Compulsory Labour, Right to Just and Favourable Conditions of Work, Right to Work</i>	E.g., Discriminatory recruitment request from a client company for direct hire employees with certain characteristics is complied with by an E&R agency – <i>Non-discrimination</i>	E.g., Identity documents are retained, restricting the ability of the migrant worker to leave the employment – <i>Freedom of Movement, Freedom from all forms of Forced or Compulsory Labour, Right to Work, Migrant workers' rights</i>	E.g., Female candidates are required to undergo pregnancy testing as a condition of recruitment – <i>Non-discrimination, Right to Privacy, Women's rights</i>	
Employment	E.g., Local management practices in a particular market inhibit voluntary good faith collective bargaining about conditions of employment – <i>Right to Collective Bargaining, Right to Just and Favourable Conditions of Work</i>	E.g., Agency workers lack the opportunity to join a legitimate trade union or interim measures such as a worker representative body – <i>Right to Form and Join a Trade Union, Right to Collective Bargaining</i>	E.g., Direct hire employees are required to work in a hazardous workplace which does not comply with health and safety standards – <i>Right to Highest Attainable Standard of Health, Rights to Life, Liberty and Security of the Person</i>	E.g., Migrant workers are not afforded equal conditions with nationals with respect to pay, overtime, holidays and health and safety standards – <i>Right to Just and Favourable Conditions of Work, Migrant workers' rights</i>	E.g., Workers with disabilities are discriminated against and humiliated in the workplace through a failure to make reasonable adjustments to accommodate them – <i>Non-discrimination, Rights of persons with disabilities, potentially Prohibition Against Torture, Cruel, Inhuman or Degrading Treatment</i>	
Logistics services (e.g., provision of accommodation, transport)	E.g., Internal staff are pressured to abstain from taking holidays, including religious holidays, to meet demand for provision of transport services – <i>Right to Just and Favourable Conditions of Work, Freedom of Religion</i>	E.g., Agency workers housed in poor quality accommodation that is potentially harmful to health, such as barns on farms lacking adequate sanitation facilities – <i>Right to Highest Attainable Standard of Health, Right to Just and Favourable Conditions of Work, Right to an Adequate Standard of Living</i>	<i>Need to scan for emerging risks if such services are provided</i>	E.g., Excessive deductions are made from migrant workers' wages for provision of transport, without their agreement or being recorded in a written contract – <i>Right to Just and Favourable Conditions of Work, Migrant workers' rights</i>	E.g., Unaccompanied young workers are housed in accommodation without being separated from adults and given proper care and supervision – <i>Children's rights, Rights to Life, Liberty and Security of the Person</i>	
Other Relevant Activities... (e.g., training, payroll services)						