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## ► Comparative analysis of the standards and procedures on recruitment and placement of foreign temporary workers

Canada, El Salvador, the United States, Guatemala, Honduras and Mexico





- ▶ **Comparative analysis of the standards and procedures on recruitment and placement of foreign temporary workers**

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Guatemala, Honduras and Mexico



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## ► Introduction

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The Global Compact for Safe, Orderly and Regular Migration (Marrakech 2018) constitutes an unprecedented step by the international community in favour of promoting coordinated measures that are centred on people, human rights and the primacy of legality in order to improve the conditions of security, certainty and dignity in which migration occurs, including migration for economic reasons and the temporary migration of workers. In objective 6, the Global Compact points out the need for governments to take actions to facilitate fair recruitment and safeguard conditions that ensure decent work for migrants. Under objective 6(c), it is considered instrumental to improve regulations on public and private recruitment agencies in order to align them with international best practices, and to prohibit recruiters and employers from charging or shifting recruitment fees to migrant workers, including by establishing enforceable mechanisms for effective regulation and monitoring of the recruitment industry.

Although few countries in Latin America and the Caribbean and North America have ratified it, the Private Employment Agencies Convention, 1997 (No. 181) provides a clear governance framework to guide the regulatory and supervisory work of governments with regard to private employment agencies, as well as their role as a fundamental actor in the labour market. Convention No. 181 recognizes the important contribution of private employment agencies in the labour market and seeks a balance between the facilitation of these activities and the protection of the workers who receive their services. Article 3 establishes that the conditions governing the operation of private employment agencies should be determined in accordance with a system of licensing or certification, except when they are otherwise regulated or determined by appropriate law and practice. Convention No. 181 also establishes that agencies must respect the right to unionize, the treatment of private data, the principle of non-discrimination and the prohibition of charging workers for services, as well as the prohibition and sanction of fraudulent and abusive practices by agencies, and their supervision through labour inspection. Finally, one key provision of the Convention is that it promotes collaboration between private employment agencies and public employment services, including by forwarding or exchanging statistical reports on the activities of private employment agencies.

This study compiles, analyses and synthesizes the different national and international regulations and procedures that the countries of North America (Canada and the United States) and of northern Central America (El Salvador, Guatemala, Honduras and Mexico) apply to the recruitment and placement of temporary foreign workers. The first section describes and analyses the rules that regulate employment agencies in the receiving or destination countries of migrant workers, including the United States, Canada and Mexico, as well as in their countries of origin, including El Salvador, Guatemala, Honduras and Mexico. The second section synthesizes and analyses common practices and identifies ten good practices for the regulation of private employment agencies in the countries of origin and destination of migrant workers and temporary workers. A comparative table with the most relevant variables covered by the regulations in the above-mentioned countries, giving a concise overview of the common trends and differences or unique practices of each country, is provided in the appendix.





# 1

- ▶ **Rules governing the operation of private employment agencies in Canada, the United States, El Salvador, Guatemala and Honduras**

▶ **1.1.**  
**Canada**



The governance model of temporary labour migration in Canada is structured based on differentiated categories for high-skilled and low-skilled migrants. In 1973, Canada introduced the *Non-Immigrant Employment Authorization Program (NIEAP)*. With this regime, workers were allowed to enter Canada for specific periods under contract to a specific employer who could demonstrate a scarcity of local labour in the labour market. Under the NIEAP regime and within the legal framework for immigration prevalent at the time, applicants whose work fell into the category of unskilled or low-skilled occupations made up the majority of workers admitted on a temporary and employer-specific basis.

The NIEAP was succeeded by the Temporary Foreign Worker Program (TFWP), under the Immigration and Refugee Protection Act. This programme allows Canadian employers to recruit foreign workers to fill temporary jobs when they can demonstrate through a labour market impact assessment that there are no Canadian workers available to fill the job openings. The TFWP was designed to address temporary labour shortages for short periods and only when Canadian or permanent resident workers are not available. Various authorities participate in the implementation of this programme, including Immigration, Refugees and Citizenship Canada, the Canada Border Services Agency and Employment and Social Development Canada (ESDC). Through its Service Canada processing centres, the ESDC screens applications from employers seeking permission to recruit temporary foreign workers and conducts labour market impact assessments to determine the likely effect these workers may have on the Canadian labour market.

In Canada, labour migration is governed by both federal and provincial laws. Federal laws regulate the authorizations for migrant workers to enter Canada, but the supervision and regulation of the recruitment of workers and the monitoring of labour rights under the TFWP are the responsibility of provincial laws and authorities.

## 1.1.1. Canadian province of Ontario

### The Employment Protection for Foreign

The Employment Protection for Foreign Nationals Act (EPFNA) was enacted in the Canadian province of Ontario in 2009 with the purpose of providing protection to a specific segment of migrant workers engaged in nursing home care employment; as of 2015, its coverage was extended to other occupations and sectors recruiting foreign labour within the TFWP and the International Mobility Program.

#### Coverage

The EPFNA applies both to recruiters of foreign workers in Ontario and employers recruiting foreign workers in Ontario, and establishes the following **obligations for recruiters and employers**:

- Employers using recruiters must keep records of the names and addresses of the recruiters hired, as well as the amounts and dates of payment.
- Recruiters are required to keep records of the names of foreign workers they have placed or attempted to place in employment, as well as the names and addresses of the employers to whom they provided services and from which they received payments, as well as the dates, amounts and types of payments.

#### Prohibitions

The EPFNA prohibits employers and recruiters as follows:

- Recruiters may not charge foreign workers and employers may not attempt to recover from workers any commissions or costs related to their recruitment.
- Foreign workers' documents, such as passports or work permits, may not be withheld.
- Foreign workers may not be threatened with reprisals for reporting abuses to labour authorities.
- Employers may not use recruiter services, or recruiters using the services of other recruiters, that **charge commissions or recruitment fees** to foreign workers, thereby reimbursing the fees illegally charged to the worker. (The only exception to this prohibition is that employers can recover travel and permit-processing costs from the worker under the TFWP).<sup>1</sup>

#### Complaints

The EPFNA includes a section dedicated to the reception and processing of complaints against those who violate its standards.

#### Penalties

The EPFNA provides for penalties for violations by employers and recruiters, ranging from monetary penalties as high as 100,000 Canadian dollars (CAN\$) to prison terms of 12 months or more. Importantly, the **EPFNA also contemplates the publication and dissemination through the internet of the names of the people who violate its standards.**

<sup>1</sup> <https://www.capellekane.com/ontario-employment-protection-foreign-nationals-act-epfna-new-rules-prevent-ontario-employers-recouping-expenses-associated-hiring-foreign-workers/>.

## Reforms to the Ontario Immigration Act

In addition to the EPFNA, the Ontario Immigration Act was reformed in 2015, incorporating an eighth chapter for the purpose of regulating matters related to the admission and temporary recruitment of foreigners.

### Coverage of the Immigration Act

This amendment to the Immigration Act of the Canadian province of Ontario incorporates a broad definition of recruiter, to include not only those who directly offer or provide job-matching services to employers and jobseekers but also to **those who assist third parties (organizations or individuals) to carry out recruitment or who refer foreigners to recruiters.**

### Registration

The most important aspect of the 2015 reform to the Ontario Immigration Act is the incorporation of **the obligation of recruiters and employers to process their registration in the register of recruiters and in the register of employers, respectively,** as recruiters of foreign workers. In that regard, only employers who are registered in the register of employers may recruit foreign workers. Similarly, only recruiters who are registered in the register of recruiters may offer and carry out recruitment services for foreign workers. The registration of recruiters is subject to the payment of a fee and the deposit of a guarantee, in addition to the personal information of the recruiters and/or members of the recruiting entity.

It is important to note that the Ontario Ministry of Agriculture, Food and Rural Affairs maintains a separate, voluntary register of employers for employers involved in the recruitment of farmworkers under the TFWP.

### Penalties

The administrative sanctions for violating the register or falsifying information include deregistration, a five-year ban on application for registration and therefore on acting as a recruiter or hiring workers, and **the publication of the name of the sanctioned party and the duration of the ban.** Penalties for serious offences against the law include fines of up to CAN\$250,000 and prison terms of up to two years.

## 1.1.2. Canadian province of Manitoba

### The Manitoba Worker Recruitment and Protection Act

The Manitoba Worker Recruitment and Protection Act (WRAPA) was issued in 2008 and entered into force in 2009. Since then, different commentators and analysts have considered this law as a best practice in Canada, which has inspired its emulation by other Canadian provinces to copy it, such as Saskatchewan, Nova Scotia and New Brunswick, as it is guided by a migrant rights framework and is based on proactive principles for the ethical regulation of recruiters. Manitoba law contains five relevant elements (Faraday 2014):

- Recruiter licences.
- Proactive employer registration.
- Mandatory financial reporting.
- A security deposit requirement for recruiters.
- Investigation and proactive monitoring of compliance with the law by the province's Department of Employment Standards.

#### Recruiter licensing

WRAPA requires those who act as recruiters to obtain a compulsory licence, without which the recruiting service cannot be exercised or provided. Currently, the licence application fee is CAN\$100. To evaluate the application and issue the licence authorization, the recruiter's track record, vendors and primary clients are reviewed. Licences are valid for one year, ensuring continuous supervision. The licence is personal and is not transferable.

#### Recruiter register

All licensed recruiters are identified in a public register, and only registered recruiters can match foreign workers with employers or search foreign candidates for Manitoba vacancies. In addition, **Manitoba restricts the eligibility of individuals who can be licensed as recruiters to attorneys, paralegals, Quebec notaries and immigration consultants**, all of whom must be in good standing with their respective professional regulatory bodies. This further ensures multilayered oversight, as licensed recruiters are not only overseen by WRAPA's Manitoba Employment Standards but may also be subject to professional standards oversight by their professional unions. Manitoba Employment Standards updates and publishes a monthly list of individuals and organizations with a valid and unexpired licence, including the name of the representative or person holding the licence, the company or business name, the telephone number and the email address, as well as the expiration date of the licence. As of July 2022, the Manitoba licence register contains 35 current records of foreign worker recruitment licence-holders..

#### Employer register

WRAPA requires that all employers that wish to recruit foreign workers in Manitoba (with certain exceptions for existing forms of temporary work permits) must first register with Manitoba Employment Standards. For the registration of employers, the law requires that employers provide information on their tax registration with the Canada Revenue Agency, as well as detailed information on the names and addresses of each person or individual who will participate directly or indirectly in recruitment activities on behalf of or for the benefit of the employer. The law states that the registration of employers may be denied if there are reasonable grounds to suspect or believe that the employer or any person employed by them that is involved in recruitment activities may act in contravention of the law, standards of integrity and honesty or the public interest.

## Mandatory financial information

WRAPA requires both employers and recruiting agencies to maintain and provide detailed records of workers' place of employment, job duties and wages, as well as up-to-date contact information for workers. Recruiters are also required to keep detailed records of each contract of a foreign worker and each worker they have recruited.

## Security deposit

Before a recruiter is licensed, they must provide the government with a security deposit for CAN\$10,000. If a recruiter violates the WRAPA in any way, the security deposit is forfeited and the proceeds used to reimburse the migrant worker for any improper fees or charges.

## Prohibitions

A core principle of the WRAPA is the prohibition against charging any commission or recruitment or hiring fee to migrant workers by the employer or recruiter. Employers cannot recover the costs of recruiting or hiring workers except in certain situations, such as (a) they do not show up for work, or (b) they conduct themselves in a dishonest, violent or unauthorized manner with the employer, or fail to comply with the conditions of their contract. Other WRAPA prohibitions include that no employer may recruit a foreign worker unless they are registered and no employer may use unlicensed recruiters.

## Active supervision

Manitoba Employment Standards may request the employer or recruiter's financial and other records relating to migrant worker recruitment activities at any time.

There are three phases of active supervision: (a) prior to/upon registration; (b) during registration; and (c) after registration. These are elaborated below.

- (a) *Prior to/upon registration.* The Manitoba Labour Authority reviews government labour standards violation records, payroll audits and other records to determine if the employer has a history of unresolved employment standards violations or a history of non-compliance. In addition, the employer must provide detailed information of its activities and of the persons involved in recruiting activities on its behalf.
- (b) ***During registration. Manitoba Employment Standards meets with prospective employer applicants and offers guidance on exploitative practices that can occur in cross-border recruitment. This increases the awareness and vigilance of the employers themselves and leads to a significant number of employers choosing to decline registration and instead to seek and recruit local workers.***
- (c) *After registration.* When hiring foreign workers, the employer must notify the labour authorities of the name, address and telephone number of each worker, their job position and the location where they will perform most of their job duties. Upon a specific request, the employer must also provide information on the costs incurred in hiring a worker, any contract or agreement to recruit foreign workers and any contract or agreement that the employer has entered into with the migrant worker. In addition, the Manitoba Department of Employment Standards may conduct routine inspections of certain industries and companies that recruit foreign workers.

## Penalties

WRAPA may apply sanctions for non-compliance, including fines of up to CAN\$25,000 for natural persons and CAN\$50,000 for legal entities.

### 1.1.3. Canadian province of Alberta

#### Employment Agency Business Licensing Regulation

In the Canadian province of Alberta, the Employment Agency Business Licensing Regulation is derived from the Consumer Protection Act. **The Regulation provides for two kinds of licensing: one for national employment agencies that recruit Canadian jobseekers to work in Alberta , as well as Alberta jobseekers who seek to work in the rest of Canada; and another for agencies that recruit foreign workers to work in Alberta.** International employment agency licences allow the recruitment of jobseekers from jurisdictions outside Canada for hire in Alberta. The same agency can apply for and obtain both types of licence.

#### Licensing requirements

An employment agency may apply for one or both types of licence, but may in no case carry out recruitment activities without holding the respective licence. The cost of the licence or its renewal is CAN\$120 and it is valid for 24 months. Applicants for an employment agency licence must provide information about their business, pass a criminal background check and (for international employment agencies that recruit low- and medium-skilled workers) provide a deposit of CAN\$25,000 as a guarantee.

#### Authorization for agents and third parties

**One of the relevant elements of the Alberta licensing model is the requirement for licence applicants to provide the names of all agents who will be authorized to act on behalf of the employment agency, whether inside or outside Alberta. This includes the requirement that any overseas recruiting agencies that engage in recruiting or any negotiations on behalf of a licensed agency in Alberta must also be registered as licensed agents. Registration of such foreign agencies by the licence applicant in Alberta places joint and several liability on the principal applicant. To avoid joint and several liability for the actions of these foreign agencies, they will need to apply for a separate employment agency business licence.**<sup>2</sup>

<sup>2</sup> However, the analysis of the register of licensed agencies revealed no registered agency with a domicile outside Canada; of the 384 employment agencies with a current license in Alberta, only two records correspond to employment agencies domiciled in other Canadian provinces (Saskatchewan and British Columbia; in the latter case, as an employment agency with international recruitment).



## Reports, records and files

Licensed employment agencies must maintain the following records for at least three years:

- ▶ contracts entered into with employers or jobseekers who have been connected or placed
- ▶ contact information of any jobseeker who has been connected with an employer
- ▶ copies of all correspondence sent or received from employers or jobseekers, including job offers

## Prohibitions

The Regulation prohibits authorized employment agencies from:

- ▶ charging fees or recovering placement costs from jobseekers (however, employment agencies may charge for services not directly linked to placement, such as training or advice on putting together a resume, provided that their rates are reasonable and that they enter into separate contracts for those services);
- ▶ exerting undue pressure, threatening or harassing jobseekers;
- ▶ offering any false or misleading information about jobs, rights, immigration or general conditions of life or work in Alberta;
- ▶ requiring any person seeking employment to provide a deposit, guarantee or bond for any reason; and
- ▶ demanding or collecting any fee, reward or compensation prohibited by the Regulation.

## Registration of employment agencies with a valid authorization licence

The **Alberta government maintains and publishes the Register of Current Licensed Employment Agencies, which can be viewed online in downloadable Excel format.** The record contains the company name or name of the business, if it is an agency with a security deposit, which implies that the agency recruits internationally, as well as its address, licence registration date and licence expiration date. As of July 2022, 384 employment agencies are registered in the province, of which 40 per cent (160) conduct international recruitment.

## 1.1.4. Canadian province of British Columbia

### Temporary Foreign Worker Protection Act

In 2018, the Canadian province of British Columbia enacted the Temporary Foreign Worker Protection Act (TFWPA), which is intended, among other things, to regulate the recruitment services provided by foreign worker recruiters to employers in British Columbia. The TFWPA establishes that any person who recruits foreign workers under the federal TFWP must have a licence to do so; otherwise they cannot carry out foreign worker recruitment work in the Canadian province of British Columbia, even if the main operations are carried out outside the province.

#### Licensing requirements

To obtain a licence to recruit foreign workers in British Columbia under the TFWPA, it is essential to apply as a natural person, as only natural persons can be authorized to obtain a licence as a recruiter. The applicant for the licence must submit the data, the name of the licence-holder, the company name and the contact information of the business. The authorities may deny the issuance of the licence based on the applicant's conduct record, if there is a well-founded reason why it is considered that the applicant could act in violation of the law, standards of integrity or the public interest. The licence to recruit foreign workers is granted to successful applicants for a period of three years and is personal and non-transferable.

#### Security deposit

Applicants for a licence to recruit foreign workers do not have to pay for the process; however, they must deposit a deposit of CAN\$20,000.

#### Recruiter and employer register

The register of licensed recruiters includes the name of the licensed recruiter, the company name under which it operates, the street address, telephone and email contact details, including the city and country, and the date on which the licence expires. Currently, British Columbia's register of foreign worker recruiters has 358 valid licence records.<sup>3</sup> The register of certified employers of foreign workers includes the trade name under which the registered employer operates, the business address, telephone number, email address, and date of registration and date of expiration. The register currently has more than 2,380 valid registrations. Under the TFWPA, employers who recruit workers must also obtain certification and register with the register of certified employers of foreign workers managed by the province's Ministry of Labour. No employer who is not certified and registered in that register may recruit or hire temporary foreign workers. To do this, the employer must provide the labour authorities with the name or business name of the business, its address and contact details, in addition to not having any unresolved breaches of the relevant labour regulations. The certificate authorizes employers to recruit and hire temporary foreign workers and is valid for three years.

**The Ministry of Labour must manage and update the public register of currently licensed recruiters and certified employers.**

<sup>3</sup> Based on the analysis of licence records, only two of them are domiciled outside Canada (the Philippines and Mexico).

## Obligations of the recruiters and employers

The TFWPA establishes obligations for recruiters and employers to provide information about their members and activities:

- ▶ **Contracts:** Recruiters must establish written contracts with their clients, whether they are employers or jobseekers, which clearly establish the rates (in the case of employers) for the services provided.
- ▶ **Disclosure of partners: Foreign worker recruiters must report to the labour authority the names and addresses of all partners, affiliates or agents acting on their behalf to recruit foreign workers independently operating within or outside of British Columbia.**
- ▶ **Files and documents:**
  - ▶ **Recruiters** must keep all records related to recruitment and services provided to foreign jobseekers, including all contracts entered into with foreigners; the name and address of foreign customers; the description of the contracted services provided; the name of each employer to which the foreign jobseekers are referred; and, where applicable, the name of each employer that hired the foreign workers and the payment amounts the recruiter received for services rendered.
  - ▶ **Employers** are required to keep all records related to recruitment services received from a recruiter of foreign workers and about the hiring of foreign workers, including all contracts entered into with recruiters of foreign workers, all fees and costs paid to recruiters of foreign workers, as well as the names, addresses and place of work of the foreign workers hired and, where applicable, the authorization or permit granted by the Government of Canada to the certified employer associated with the positions for which the foreign workers have been hired and all payroll records associated with the foreign worker.

## Prohibitions

The TFWPA prohibits the foreign workers recruiters and employers from:

- ▶ (recruiters) charging foreign workers or (employers) recovering recruitment costs from foreign workers through deductions;
- ▶ disseminating false or misleading information related to recruitment services, employment contracts, immigration, employment or provincial or federal laws;
- ▶ withholding the passports or identity documents of foreign workers;
- ▶ altering or distorting information about the characteristics or conditions of job vacancies, including job tasks, duration of employment, wages and benefits or contract conditions; and
- ▶ threatening deportation or other legal action to file complaints with authorities or cooperate with authorities in their investigations.

## Surveillance and supervision

Under the TFWPA, labour authorities can initiate investigations triggered by complaints or denunciations with regard to bad practices or breaches of obligations and prohibitions for employers and recruiters.

## Penalties

- Recruiters operating without a licence could be fined up to CAN\$10,000.
- Non-compliance or misrepresentation on the part of recruiters and employers may lead to the suspension or cancellation of the recruiter's licence or employer's registration.
- Serious violations of the law can result in fines of CAN\$50,000 to CAN\$100,000.

### 1.1.5. Canadian province of Saskatchewan

#### Foreign Worker Recruitment and Immigration Services Act

The Foreign Worker Recruitment and Immigration Services Act (FWRISA) was passed in 2013 in the Canadian province of Saskatchewan. This law follows a similar approach to the law in Manitoba and other Canadian provinces, with some notable differences.

First, FWRISA not only provides for the licensing of recruiters of foreign workers but also requires the mandatory licensing of immigration consultants who provide advisory services to foreign jobseekers in processing their work permits in Saskatchewan. As in other Canadian provinces, only individuals in their personal capacity may apply for foreign-worker recruiter licences; however, in Saskatchewan the same person may be authorized to hold an international recruiter licence and an immigration consultant licence simultaneously, in which case that person may charge jobseekers fees for immigration legal advice but may not charge jobseekers for job recruitment and placement services.

Secondly, FWRISA provides that **recruiters of foreign workers and migration consultants must report all the names and addresses of all their partners, affiliates or representatives who operate on their behalf inside or outside Saskatchewan. That implies that any malpractice or violation of the obligations and prohibitions of employers and recruiters by partners or their representatives may result in subsidiary liability for both employers and recruiters.**

## 1.1.6. Canadian province of Quebec

### Regulation respecting personnel placement agencies and recruitment agencies for temporary foreign workers

In Quebec, the Regulation respecting personnel placement agencies and recruitment agencies for temporary foreign workers<sup>4</sup> regulates the activity of both placement agencies, which are understood as agencies that temporarily supply personnel to others (subcontracting), and agencies for the recruitment and hiring of temporary foreign workers.

#### Governance model

Unlike in other Canadian provinces, employment agencies in Quebec, as well as agencies dedicated to the recruitment of foreign workers, do not require a licence or registration; instead, they must obtain a permit that enables them to operate as such.

#### Liabile parties

Within the framework of the Regulation, regulated subjects include any company, organization, or corporation or any person that provides personnel placement services in the province. Any company that offers personnel placement services as a main or auxiliary activity must be in possession of a **permit**<sup>5</sup> issued by the Commission for Equity, Health and Safety at Work Standards (CNESST) to carry out its activities in Quebec.

#### Authorities

The authority responsible for the implementation of the Regulation is the CNESST, which is also responsible for issuing the operating permits that are required for recruitment agencies.

#### Requirements

The requirements that employment agencies and recruitment agencies for temporary foreign workers must meet to obtain an operating permit include the following:

- ▶ The permit must be requested through a representative (natural person) over 18 years of age who will act as guarantor of the entity or agency, which can operate as a legal person or as an individual (natural person). The guarantor must have a formal function or position in the agency.
- ▶ The permit application must indicate the name and address of the person who will act as guarantor, as well as the trade name under which the agency will operate if it is a legal entity.
- ▶ Certification by the Quebec tax agency must be provided.
- ▶ Evidence must be provided that for two years prior to the permit application:
  - ▶ no member of the employment agency has been charged in a court or trial with crimes related to discrimination or harassment at work;

<sup>4</sup> Available at <https://www.legisquebec.gouv.qc.ca/en/document/cr/N-1.1,%20r.%200.1>.

<sup>5</sup> Available in French at <https://www.cnesst.gouv.qc.ca/fr/organisation/documentation/formulaires-publications/demande-permis-dagence>.

- ▶ none of the applicants has served as director of any employment agency whose permit has been revoked or suspended; and
- ▶ none of the persons requesting the permit have been directors or officers of companies that have declared bankruptcy or insolvency.
- ▶ Evidence must be provided that during the five years prior to the permit application:
  - ▶ the applicants have not served as directors or officers of an entity or company convicted of serious crimes related to the activities covered by the employment agency permit; and
  - ▶ the applicants have not served as directors or officers of an entity convicted in a foreign jurisdiction for legal violations that, if committed in Canada, would amount to crimes or offences prosecuted criminally, and that are related to the activities for which the permit is requested.
- ▶ The permit fees must be paid in the amount of CAN\$1,850 in two annual instalments, half at the time the permit is issued and the second half a year after it is approved.
- ▶ In no case, except when there is evidence that justifies it, will any person or entity whose renewal has been suspended, revoked or denied in the last two years be issued an employment agency permit.

### Validity

- ▶ The permit issued to persons or entities to operate as an employment agency will have a duration of two years and may be renewable.
- ▶ Renewal of the permit will not require any additional procedure or documentation to that provided at the time of its first issuance, provided that the applicant demonstrates that none of the circumstances that warranted the issuance of the permit have changed.
- ▶ **A security bond must be deposited for the licence of a personnel placement agency.** Any application for a personnel placement agency permit submitted to the CNESST must be accompanied by the deposit of a bond of CAN\$15,000 to guarantee that the client employers of the employment agencies comply with their obligations towards the workers placed by them. The bond must be valid during the entire validity of the permit.

### Register of foreign-worker placement and recruitment agencies

- ▶ The CNESST operates a register of placement agency permit-holders, which provides a list of agencies with a permit granted by the CNESST, as well as the status of the permit – current, suspended, revoked or expired.
- ▶ All agencies must be registered in the register to be able to offer the services of placement and recruitment of temporary foreign workers.
- ▶ The register contains the following data on agencies that recruit workers:
  - ▶ trade name under which agency operates
  - ▶ other trade names under which agency operates
  - ▶ contact details of agency, such as telephone, address and email

- ▶ type of permit (whether it corresponds to worker placement agency or temporary foreign worker recruitment agency)
  - ▶ business register number of commercial entity
  - ▶ permit number granted by CNESST
  - ▶ validity status of permit
  - ▶ last update date of agency record
- ▶ Only those agencies that appear in the register and whose status is current or valid can offer the services of placement or recruitment of temporary foreign workers.

### Obligations of employment agencies

Any agency for the placement or recruitment of temporary foreign workers to which the CNESST grants an operating permit must comply at all times with **the obligations and regulatory requirements** <sup>6</sup> and comply with the **conditions related to the issuance and maintenance of the permit**. <sup>7</sup> The most important of these include the following:

- ▶ Agencies must be registered in the register of licensed agencies, in which users, client companies or workers can verify if an agency has a permit.
- ▶ The CNESST must be notified of any change in agencies' data or operations or in their guarantor.
- ▶ The operating permit must be visibly displayed in agencies' offices and their operating permit number must be included in any advertisement of their services.
- ▶ **Temporary foreign workers must be provided by agencies at the time of recruitment with:**

- ▶ documentation that describes contract and employment conditions, including salaries and employer data; and
- ▶ any available documentation published by CNESST on the obligations of employers and the rights of workers.

- ▶ **Agencies must ensure that every employee who provides immigration guidance or advisory services for foreign workers to obtain work permits complies with the requirements established in the regulation of migration consultants.**

### Preservation of files and records

- ▶ Employment agencies must also keep records of all their contractual relationships with their client companies, including invoices or receipts, for at least six years.
- ▶ Agencies must preserve for at least six years the data of recruiting companies on each foreign worker placed, including the dates of employment.

<sup>6</sup> Available in French at <https://www.cnesst.gouv.qc.ca/fr/obligations-agences-placement-personnel>.

<sup>7</sup> Available in French at <https://www.cnesst.gouv.qc.ca/fr/conditions-delivrance-maintien-permis>.

## Obligations of employers and companies that contract the services of employment agencies

- Employers who recruit temporary foreign workers must inform the CNESST accordingly, by completing a temporary foreign workers recruitment statement, which can be done online, in which they must indicate:
  - the starting date of the contract of the worker; and
  - the duration of the contract.
- Client companies of a placement agency must ensure that the agency has a valid permit issued by the CNESST that is recorded in the register of licensed agencies. If the agency does not have a valid licence, the client company is liable for a fine ranging from CAN\$600 to CAN\$6,000. In the event of a repeat offence, the sum increases from CAN\$1,200 to CAN\$12,000.

## Prohibitions for employment agencies

- **Recruitment fees for workers.** Recruitment agencies may not charge workers for the costs of recruitment or placement.
- **Retention of workers' documents.** Employment agencies may not require from temporary foreign workers the custody of their personal or travel documents or of any other property or personal effects.

## Surveillance and penalties

- **Health and safety at work.** The placement agency and the client company must jointly guarantee the protection of the health, safety and physical and psychological integrity of workers. All of them must ensure that the obligations related to the **Act respecting occupational health and safety**<sup>8</sup> are respected and that neither agencies nor client companies can evade their responsibilities.
- **Joint liability.** The **client company**<sup>9</sup> and the **recruitment agency**<sup>10</sup> are held jointly and severally liable if amounts owed to workers under their employment contract are not paid, such as the payment of salaries or **annual vacations**.
  - An employer who recruits or provides the services of workers, such as an employment agency, and a person who uses their services, such as a client company, cannot transfer or evade their legal obligations by contract or agreement with each other.

<sup>8</sup> Available at <https://www.legisquebec.gouv.qc.ca/en/document/cs/S-2.1>.

<sup>9</sup> For more information (in French), see <https://www.cnesst.gouv.qc.ca/fr/demarches-formulaires/agences-placement-personnel-recrutement/agences-placement-personnel/entreprises-clientes-dune-agence-placement>.

<sup>10</sup> For more information (in French), see <https://www.cnesst.gouv.qc.ca/fr/demarches-formulaires/agences-placement-personnel-recrutement/agences-placement-personnel>.



- ▶ **CNESST compliance certificate.** At the end of each contract, a client company can ask the CNESST for a **certificate of compliance**<sup>11</sup> confirming that the placement agency has paid its contribution to the CNESST in terms of occupational health and safety. This certificate releases the client company from any responsibility to pay the contribution owed by the agency at the end of each contract.
- ▶ **Penalties.** Sanctions for violations of the regulations for temporary foreign workers and personnel placement agencies mainly include administrative sanctions that range from fines to suspension and/or revocation of their operating permit.

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<sup>11</sup> For more information (in French), see <https://www.cnesst.gouv.qc.ca/fr/demarches-formulaires/employeurs/dossier-dassurance-lemployeur/conformite/etre-conforme>.

## Conclusions

In general, the existing legislation in various Canadian provinces on recruitment agencies for the recruitment of temporary foreign workers observes a number of principles established in international labour standards and fair recruitment, including the following:

- ▶ The prohibition against the collection of commissions from workers by recruiters and the recovery of recruitment costs by employers is widespread. However, there are some exceptions to this rule in a number of provinces, if the commissions are related to occupational and/or immigration advisory services (Alberta and Saskatchewan) that are different from those of job-matching and placement.
- ▶ Employers and recruiters are also prohibited from withholding identity and travel documents from jobseekers and contract workers.
- ▶ In general, misleading or false representation of vacancies, employment opportunities and working conditions is prohibited, as well as exerting pressure on or threatening workers for filing complaints about abuse or deceit.
- ▶ Licensing systems linked to a public register are a constant, not only for recruiters but also for employers, which guarantees the joint responsibility of employers and recruiters for bad practices.
- ▶ Licences generally have a limited duration, ranging from one year in Manitoba to three years in Alberta.
- ▶ In some provinces, only the licensing of individuals is allowed in order to avoid the dilution of liability in corporations.
- ▶ As part of the registration and licensing processes, one of the most important practices is the obligation to be transparent and inform the authorities about all persons inside and outside the respective jurisdiction who will act as agents, representatives or partners in the activities of recruitment.
- ▶ With regard to security deposits, few provinces charge a licence-processing fee to recruit foreign workers. However, in almost all provinces, with few exceptions and with some differences in criteria, the recruiters of foreign workers must provide a guarantee in the form of a bond or deposit with the authority in order to compensate for any damage or breach of obligations. Such security deposits range from CAN\$10,000 in Manitoba to CAN\$25,000 in Alberta.
- ▶ One of the most notable practices is that of the Canadian province of Manitoba, which restricts the group of people who can be recruiters, requiring that they form part of associations or unions linked to the legal profession, thereby generating double supervision, both from the authority and from the professional association.
- ▶ Another very relevant practice in the provinces that have a register of licensed recruiters is the publication of the effective or expiration dates of the licences, so that the public knows if the recruiter is authorized to carry out activities and services.

▶ **1.2.**  
**United**  
**States**



In the United States, there is no federal law dedicated specifically to the regulation of placement or employment agencies. Title VII of the Civil Rights Act is one of the few federal laws that defines employment agency in the United States, as follows: “The term ‘employment agency’ means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person”.<sup>12</sup> Each state in the United States has the power to regulate employment agencies. Only 24 states of its 50 states require a licence to operate employment agencies.

## Immigration and Nationality Act

The Immigration and Nationality Act (INA) regulates the admission of temporary non-immigrant foreign workers to the United States, including H-2A and H-2B non-agricultural temporary worker visas. The INA provides obligations primarily for employers regarding the recruitment of temporary foreign workers from a list of eligible countries approved by the United States Citizenship and Immigration Services (USCIS) for the different categories of temporary foreign worker visas. The fundamental requirement is that employers must obtain a certification from the Department of Labor that guarantees that the recruitment of foreign workers responds to a real need due to a shortage of local labour, which they must demonstrate through reliable evidence that they have made local recruitment efforts. It is important to note that only employers who have obtained a labour certification from the Employment and Training Administration can carry out actions to recruit and hire temporary foreign workers that are duly authorized by the USCIS.

The INA refers to procedures for the labour certification of employers who recruit non-agricultural foreign temporary workers in the H-2B visa regime and the following requirements are established for employers:

### Reporting the recruitment of foreign workers and prohibition of recruitment commissions

- **The employer or its representatives must provide copies of all contracts with recruiters involved or with whom it agrees to carry out the recruitment of workers under H-2B visas.**
- The employer or its representatives must provide the details and location of all persons and organizations recruited by or working for the recruiter and the agents or employees of those persons and organizations who recruit foreign workers for job vacancies under the H-2B visas authorized to the employer.

### Prohibitions for employers

- Contracts between the certified employer and recruiters must contain the **express prohibition of charging recruitment fees or costs to workers.**
- Employers may not make deductions from the wages of workers for amounts paid to third parties or those paid by the employer, agent, or recruiter, including the agents or employees of the latter, and must pay or reimburse the worker in the first week for all visa costs and costs of procedures related to the authorization of the H-2B visa that have been assumed by the worker.

<sup>12</sup> United States, Title VII of the Civil Rights Act of 1964, SEC. 2000e. [Section 701], para. (c).

- ▶ Employers or their representatives are prohibited from threatening, harassing, discriminating against, blacklisting or firing temporary foreign workers who file complaints or reports with authorities or who approach or consult with lawyers or unions.
- ▶ **The employer must prohibit, contractually and in writing, any representatives or recruiters (or their employees) directly or indirectly involved in the recruitment of foreign workers for the employer, from requesting or receiving any payment or compensation from workers. The contract must include a standard clause in this regard:**<sup>13</sup>

Under this agreement, [name of agent, recruiter] and any agent of or employee of [name of agent, recruiter] are prohibited from seeking or receiving payments from any prospective employee of [employer name] at any time, including before or after the worker obtains employment. Payments include but are not limited to, any direct or indirect fees paid by such employees for recruitment, job placement, processing, maintenance, attorneys' fees, agent fees, application fees, or petition fees.

## File maintenance

All employers applying for employment certification to recruit temporary workers under H-2B visas must retain the following files or records for at least three years:

- ▶ written contracts with recruiters and the list of persons or organizations recruited by or working for the recruiter and their locations;
- ▶ records of wages paid to workers, hours and places of work.

## Recruiter register

- ▶ **The Department of Labor is authorized by the INA to compile and manage a publicly available list of information provided by employers on the names and locations of the persons or entities hired to conduct recruitment of prospective workers pursuant to their H-2B visa applications.**<sup>14</sup>
- ▶ This record is updated quarterly and contains the following data: the name of the recruiter, the business name or name of the company or entity; the city, country and zip code where it operates; and the unique numbers of the H-2B visa petitions or cases by employers that specifically associate the recruiter with the employer that the employer has hired or will hire.
- ▶ The Foreign Labor Recruiter List allows the United States Department of Labor to monitor and detect fraudulent schemes or abuse by verifying that recruiters are recruiting workers for existing job openings that have been applied for under the H-2B visa scheme.

<sup>13</sup> United States, Code of Federal Regulations, Title 29, 503.16(p), available at <https://www.ecfr.gov/current/title-29/subtitle-B/chapter-V/subchapter-A/part-503/subpart-B/section-503.16>.

<sup>14</sup> This register can be consulted at: <https://www.dol.gov/agencies/eta/foreign-labor/recruiter-list>.

## H-2B visa job opportunity exchange

- One of the most important functions of making the list of recruiters transparent is that the applicants themselves to be hired as temporary workers under H2B visas can also use the case numbers associated with each recruiter registered in the list to identify the applications and job opportunities in the electronic job opportunity exchange linked to the labour certification process for H-2B visas, which is administered by the Office of Foreign Labor Certification, and for which the recruiter or employer is seeking workers.
- In this job opportunity exchange, <sup>15</sup> current opportunities for workers under the H-2A and H-2B visa scheme are advertised for public consultation, and it is also available in Spanish.

## Employer register

Pursuant to the INA, the Department of Labor also manages a publicly available electronic register, which contains information on all employers applying for temporary non-agricultural worker (H-2B) labour certifications. This record includes information on the number of workers requested, the filing date, the decision date and the final certification date. The INA also regulates the certification processes for temporary employment in agriculture (H-2A visas) and the processes associated with the recruitment of those workers. The law does not address issues related to recruiters for H-2A visas. However, it provides the following obligations and prohibitions for employers:

## Prohibitions

- **Discounts.** Employers are prohibited from making deductions from payments to workers that represent a profit for the employer or for any person. This also includes complying with the prohibition against charging any fees or costs to workers. The employer and its agents must not charge any fees to workers in connection with the H-2A labour certification process, including recruitment costs. The only exception to this provision is that workers can reimburse employers for costs that are the responsibility and mainly for the benefit of the worker, such as passport processing costs.
- **Abuse.** Employers are prohibited from intimidating, threatening, coercing, blacklisting, firing or discriminating against any worker who files a complaint or report with the authorities or assists them in investigations of labour violations.

## Obligations

- **Contract disclosure.** Employers hiring temporary farmworkers for H-2A visas must provide each H-2A worker with a copy of the employment contract no later than the day they begin work, in a language the worker can understand.
- **Security deposit.** Contractors who act as employers and recruit agricultural workers with H-2A visas must deposit a guarantee of \$5,000 to \$75,000, depending on the number of workers to be recruited.

<sup>15</sup> This electronic job opportunity exchange can be consulted at <https://seasonaljobs.dol.gov>.

- ▶ **Joint and several liability.** Contracts between an employer and a recruiter of foreign workers (or any agent of the contractor or recruiters of foreign workers that the employer directly or indirectly involves in the recruitment of workers for the jobs covered by H-2A visas) must expressly include the prohibition against charging any costs to workers and must be made available for review by the authorities.

## Conclusions

The United States INA stands out for establishing obligations for employers regarding the recruitment and placement of foreign workers, mainly within the framework of the H-2B visa programme for temporary non-agricultural workers.

- ▶ Employers that obtain certification to recruit foreign workers must be registered in a register of certified employers that is publicly accessible, and only employers that have obtained such a certification can recruit foreign workers, which is an important filter for controlling whom they can recruit.
- ▶ For the purposes of efforts to recruit foreign workers, it is worth noting that the INA establishes obligations for employers to be jointly and severally responsible for the conduct of the agents, representatives or intermediaries they hire to carry out such recruitment. In this way, employers are obliged to inform the authorities of the contractual relationships they have with all recruiters and provide information about them.
- ▶ Another notable practice is the obligation for employers to keep the files and records of contracts and payments made to recruiters for at least three years after the conclusion of such contracts.
- ▶ One of the most important aspects of the legislation and control instruments for the recruitment of foreign workers in the United States is that as a result of the mandatory disclosure process of the contractual relationships of employers with recruiting agents, the Department of Labor compiles a publicly accessible list, which includes specific details and is updated quarterly, of all recruiting agents in workers' countries of origin who manage recruitment cases for authorized work visas on behalf of certified employers, which allows the traceability of those agents.
- ▶ Finally, the existence of mandatory model contracts between recruiters and employers that establish standardized clauses to prohibit both parties from charging any fees or commissions to workers was also highlighted.

# ▶ 1.3. Guatemala





## Migration Code and recruitment agencies

The Migration Code of the Republic of Guatemala of 2016 states in its article 218 that Guatemalan workers can participate in programmes for temporary migrant workers abroad on their own or through legal entities for the recruitment of workers, if previously authorized and duly registered by the Ministry of Labour and Social Welfare, in collaboration of the Ministry of Foreign Affairs. To that end, the Migration Code refers to article 34 of the Labour Code to specify that the Ministry of Labour and Social Welfare will issue forms in which recruiters must specify the companies that require the services of workers abroad, as well as the occupational categories in which such work will be carried out.

## Labour Code and recruitment agency regulations

Article 34 of the Guatemalan Labour Code (amended in March 2022 by Decree 1441) stipulates the regulatory principles for hiring Guatemalan workers to work abroad, as well as the role of recruiters, recruitment agencies and shipping agencies, including the obligation of the natural or legal persons involved in intermediation work that recruits Guatemalan workers to work abroad to request and obtain prior authorization from the Ministry of Labour and Social Welfare, including the following requirements:

- ▶ **Permanent legal representative in Guatemala City.** The recruiter must maintain a legal representative domiciled in Guatemala City to resolve any legal matter that arises during the entire term of the employment contracts.
- ▶ **Payment of transfer costs by the recruiter.** The recruiter or contracting company must pay the costs of transferring the worker abroad, including the costs of cross-border passage and immigration procedures, as well as the costs of repatriation at the end of the contract, regardless of the cause of termination.
- ▶ **Security deposit.** Recruiters must deposit a bond or guarantee in a national banking institution, in the account of the Ministry of Labour and Social Welfare, against the cost of repatriation of workers or compensation for breaches of contract, deception or fraud. The deposit will be partially or totally cancelled to the extent that the contracts are fulfilled.
- ▶ **Written contracts.** The recruiter must enter into written contracts with the workers, which must specify the form of accommodation and the form and conditions of repatriation of the workers. The recruiter must also present and register a copy of the contracts with the Ministry of Labour at least five days prior to the departure of the workers abroad.
- ▶ **Consular surveillance.** The Ministry of Labour will notify the Ministry of Foreign Affairs about Guatemalan workers recruited abroad.

## Regulation on the registration of recruiters of Guatemalan workers

On February 24, 2022, Government Agreement 50-2022 was published, which issued the new regulation on the registration of recruiters of Guatemalan workers for the provision of services or execution of jobs outside the territory of Guatemala. The regulation establishes the procedures for the registration, authorization and updating of recruiters under the oversight of the Ministry of Labour and Social Welfare as the executing authority of the regulation.

## Coverage

The regulation specifically covers the recruitment of workers being hired to work outside Guatemala and its purpose is to create a physical or digital record of recruiting agents. **The regulation applies to recruiters, whether natural or legal persons, regardless of whether they are nationals or foreigners, who perform intermediation functions between Guatemalan workers and employers abroad.**

## Recruiter register

The regulation provides for the creation of a register of recruiters of Guatemalan workers for the provision of services or performance of jobs outside the territory of Guatemala, under the authority of the Ministry of Labour and Social Welfare. The registration of a recruiter simultaneously implies, without the need for any other procedure, the registration and authorization to carry out activities to recruit Guatemalan workers to work abroad.

## Requirements for registration

The requirements for registration in the register of recruiters are different for natural persons and for legal persons, as follows:

- **Natural persons:** They must submit a copy of an identification document; a declaration of compliance with labour obligations; an email address; proof of not having a criminal record; proof of registration in the current tax register issued by the tax authority; and a copy of the business licence of the company, if applicable, indicating the type of recruitment activity.
- **Legal persons:** They must submit a copy of the company registration and commercial business licence issued by the commercial register in which the line of recruitment activity is indicated; and a registration form completed by the legal representative, containing a declaration of compliance with labour obligations in accordance with the Labour Code, an address where notifications can be received, current proof of registration in the Tax Register, and proof, duly registered in the Mercantile Register, of the appointment of the legal representative and their identification document.

## Register authorization

Once the requirements have been met, the Ministry of Labour and Social Welfare will verify compliance with labour obligations by the applicant, prior to the authorization of the registration of recruiters.

## Registration validity

Once the requirements have been met, the registration is valid for three years and can be renewed upon expiration; however, each recruiter who is registered must update their information in the event of changes in their information related to the registration.

## Renewal

The application for registration renewal must be submitted two months before the expiration date; otherwise, the registration and authorization of the recruiter will be invalid and the initial process must be repeated, during which time the authorization to carry out recruitment and intermediation activities will be suspended until the registration is reapproved.

## Recruiter obligations

### ▶ Reports

Recruiters must submit monthly reports to the Ministry of Labour and Social Welfare so that it may prepare and submit a report to the General Labour Inspectorate, including the list of registered recruiters, who will be included in the inspection operational plan. Recruiters must inform the Ministry of Labour and Social Welfare, five days prior to the transfer or departure of Guatemalans abroad, of the number, names, contact details and dates of departure of the workers, the names of their employers abroad, country and place of work, their occupations and the terms of their contracts. In addition, recruiters must inform the Ministry of Labour and Social Welfare about any complaints, reports or violations of the labour and contractual rights of Guatemalan workers abroad.

### ▶ Protection of personal data

Recruiters must protect the private information of workers and prevent its use for purposes other than the recruitment and hiring processes.

## Prohibitions

The regulation establishes the following prohibitions for recruiters:

- ▶ **Failing to comply with the registration requirement.** Recruiters are prohibited from recruiting who are not duly registered with the Ministry of Labour and Social Welfare.
- ▶ **Charging costs to workers.** Recruiters may not, directly or indirectly, carry out or allow any type of method of collecting commissions or costs for the advertisement, recruitment or training of workers or jobseekers, related to their work application or recruitment abroad.
- ▶ **Providing misleading or fraudulent information.** Recruiters may not offer non-existent vacancies, falsify working conditions, or hide or distort the information offered to jobseekers.
- ▶ **Retention of documents.** Recruiters are prohibited from taking or withholding personal identity documents from workers.
- ▶ **Recruitment for occupations or employers that present risks.** Recruiters are prohibited from recruiting workers for employers that have been reported for abuses or malpractices, and from recruiting workers for occupations that pose risks to their safety or integrity.

## Dissemination of the register

The Ministry of Labour and Social Welfare publishes the list of registered recruiters monthly.

## Law for the Promotion of Guatemalan Merchant Marine Labour Abroad

In March 2022, Decree 10-2022 was issued, which regulates the provision of services for Guatemalan workers on ships outside the territory of Guatemala. Based on this Law, article 34 of the Labour Code was amended, concerning the recruitment of Guatemalan workers for jobs abroad. The Law includes a specific definition of recruitment agency in the field of merchant mariners, since its coverage is specific to this field of activity: "Any person, company,

institution, agency or other public or private entity whose activity consists of recruiting seafarers on behalf of shipowners or placing them at the service of employers” (art. 1).

## Obligations of the Ministry of Labour

The Law establishes the following obligations for the Ministry of Labour:

- Registering recruitment or placement agencies.
- Creating a digital record, including by:
  - recording work contracts authorized under the labour regime of merchant mariners;
  - recording the address of the employer’s representative in Guatemala;
  - recording the number of Guatemalan workers, by employer;
  - carrying out annual inspection visits to the employer’s representation or to its intermediaries; and
  - keeping statistics to determine the number of workers recruited in that labour regime.

## Employer obligations

Under the Law, employers who recruit Guatemalan workers to work on ships must comply with the following:

- **Recruitment costs.** The employer must cover all the costs of obtaining licences or administrative authorizations, translations and legal services, as well as the round-trip transfer of the worker.
- **Written contracts.** The employer must clearly establish the contractual and working conditions in a written contract and ensure that the worker understands it.
- **Certification of labour compliance.** The employer or their representative must obtain from the Ministry of Labour a certification of compliance with labour regulations, purchase insurance that covers the return costs of Guatemalan workers, and certify that the employer maintains a representative domiciled in Guatemala to meet the requirements and locations of the authorities.

## Penalties

This new Law governing work on ships provides for sanctions to employers and their recruiting agents in the event that the Government must assume the costs of repatriation of Guatemalan workers hired by ships, as follows:

- **Repatriation costs.** The employer or placement agency must provide restitution of 100 per cent of any costs associated with repatriation paid by the Government.
- **Fine.** The employer or recruiter will be fined an additional amount equal to 100 per cent of the repatriation costs incurred.
- **Embargo.** The Government may seize the assets in Guatemala of the representative or recruiter in order to enforce the payment of repatriation costs.

## Law for the Promotion of Temporary Work Abroad

In June 2022, the Government of Guatemala issued Decree 31-2022, which aims to promote the legal and orderly recruitment of Guatemalan workers to work abroad, either through government recruitment by the Ministry of Labour or through private recruiters.

### Coverage

The Law has as its beneficiaries the Guatemalan workers themselves for whom air tickets are issued to work abroad and whose employers register their employment contracts with the Ministry of Labour and Social Welfare.

### Benefits

The main benefit of the Law is the exemption from value-added tax and the exemption of the air departure tax payable in Guatemala for airline tickets purchased for Guatemalan workers with contracts to work abroad.

### Requirements

To obtain this economic benefit, recruiters must be registered with the Ministry of Labour and Social Welfare, and foreign employers recruiting Guatemalan workers must register contracts with the Ministry of Labour.

## Conclusions

In recent years, Guatemala has comprehensively modernized its legislation regarding the regulation and control of the recruitment of Guatemalan workers, including by establishing a monthly update of the register of recruiters. One notable piece of new legislation is a regulation that focuses specifically on the registration of private recruiters who recruit abroad and is applicable to both national and foreign recruiters. A key aspect of the new legislation is that recruiters must inform the Ministry of Labour and Social Welfare in advance about the scheduled departure of workers, indicating the names, places of work and number of workers, among other details, which allows a more dynamic monitoring of mobility flows and the results of recruitment activities.

Another notable innovation is the issuance of specific instruments for sectors in which there is a sectoral or industry demand, such as the Merchant Navy and the cruise fleet, for which a specific law was issued to regulate the recruitment and hiring of Guatemalan workers in that industry. Other key provisions include the obligation of recruiters to obtain a certification of labour compliance (absence of infractions arising from non-compliance or violation of the relevant labour regulations) and their obligation to contract insurance that covers the repatriation costs of workers in case of non-compliance by companies. A final important provision is the inclusion of economic incentives for the registration of recruiters through the new law on the promotion of temporary work abroad, which offers tax exemptions for airfares for recruiters who are registered.

▶ **1.4.**  
**Honduras**



## Labour Code

The Honduran Labour Code was reformed in 2003 to modernize its seventh article and recognize the growing mobility of the Honduran labour force abroad, as well as the role of employment agencies in the labour market of that country. Accordingly, the updated text of the seventh article of the Labour Code addresses the issue of private employment agencies, conferring the General Directorate of Employment of the Ministry of Labour and Social Security with the responsibility to regulate and supervise their operation, in addition to establishing a record.

Article 7 stipulates that private employment agencies are any natural or legal person, independent of public authorities, that provides services aimed at linking job offers and demands; and that the Secretary of State in the Offices of Labour and Social Security, through the General Directorate of Employment, will regulate, supervise and control the operation of private employment agencies in order to guarantee the fundamental rights of workers and will keep a record of them.

In comparison, article 43 of the Labour Code establishes the powers of the Ministry of Labour to regulate and supervise the recruitment and hiring of Honduran workers abroad and guarantee their rights, whether the recruitment is done through governments or companies domiciled inside or outside the country. Article 43 also stipulates that the General Directorate of Employment, under the Ministry of Labour and Social Welfare, should be in charge of regulating and supervising natural or legal persons who recruit and/or hire Honduran workers to work abroad, as well as to issue the corresponding regulation.

Lastly, article 44 establishes that the Ministry of Labour has the duty to ensure that in the contracts of Honduran workers abroad, the contractual conditions are met and the dignity and rights of the workers are protected.

Based on the 2003 reforms to the Labour Code and its articles 7, 43 and 44, the Honduran Government issued at different times two instruments for the regulation of recruitment entities and activities, one focused on the recruitment of workers abroad, based on the STSS-252-08 Agreement of July 2008, and subsequently the STSS-141-2015 Agreement of September 2015 for the regulation of private employment agencies. In this way, the governance of recruitment agencies in Honduras is dual: one is specialized and focused on the regulation and supervision of the recruitment and hiring of Honduran people abroad; the other regulates private employment agencies throughout the Honduran territory.

## Regulation for the Recruitment and Hiring of Honduran Workers Abroad

The Regulation, which was issued in 2008, establishes the powers of the General Directorate of Employment related to the supervision, authorization and control of the recruitment, hiring and displacement of Honduran workers to carry out paid work abroad, as well as the requirements and conditions that must be met by the recruiting agents and workers who are participants in employment contracts for the performance of work abroad. With the support of the ILO, the Ministry of Labour and Social Welfare is currently leading a consultative process, with the participation of employers' organizations, workers' organizations and private employment agencies, to update this regulation.



## Coverage and scope

The 2008 Regulation includes the regulation of natural and legal persons – both for-profit and not-for-profit – that are domiciled inside or outside Honduras and carry out recruitment activities of Honduran workers to work abroad; the only exceptions concern workers with a professional title and specialized technicians and merchant seafarers.

## Certificate of operation and travel authorization

In Honduras, the main requirement for recruiters of Honduran workers to work abroad is to have a certificate of operation issued by the General Directorate of Employment, without which recruiters are not allowed to carry out intermediation functions for recruitment abroad. In addition to the certificate of operation, the General Directorate of Employment must authorize the departure of Honduran workers abroad through an authorization for the transfer of workers abroad, which enables recruiters to transfer contracted workers to their work destinations abroad. This authorization must be obtained by the recruiters before the departure of the workers and will only be issued to those who have a certificate of operation.

### ▶ Cost

Obtaining the certificate of operation for work abroad requires the payment of an amount equivalent to five monthly minimum wages in local currency.

### ▶ Validity

The certificate of operation is valid for two years from its issuance, with the possibility of renewal for the same duration provided that it is up to date and that recruiters are in compliance with the obligations set forth in the Regulation.

### ▶ Requirements for certificate of operation

To obtain a certificate of operation, the Regulation provides that for-profit and non-profit recruiters must:

- ▶ be legally constituted as a natural or legal person on a for-profit or non-profit basis, and (for-profit recruiters) be registered in the public Mercantile Register;
- ▶ have an operating structure and staff;
- ▶ not have labour, administrative or judicial violations pending with the Government;
- ▶ have a valid business operation permit; and
- ▶ pay the equivalent of about \$3,000 to obtain the certificate.

## List of authorized recruiters

The General Directorate of Employment will publish on an annual basis the list of people who have been authorized to recruit Honduran workers abroad.

## Recruiter obligations

The Regulation establishes a series of obligations that private for-profit and non-profit recruiters who participate in the recruitment and hiring of Honduran workers abroad must observe, as follows:

- ▶ They must have a current recruiter operations certificate.

- ▶ They must provide workers with written copies of their employment contracts in Spanish.
- ▶ They must ensure that the job offers they manage for foreign employers offer equal conditions to those granted to their own nationals.
- ▶ They must notify the General Directorate of Employment of changes of domicile or address.
- ▶ They must provide the General Directorate of Employment with information on the occupations, number of jobs, the tasks to be carried out, a copy of job offers and the country of destination of job opportunities abroad, and where appropriate, work employment contracts to subscribe.
- ▶ They must register with the General Directorate of Employment the employment contracts signed to work abroad.
- ▶ They must provide workers with orientation and information in relation to the characteristics of the jobs, the laws and the country of destination.

### Work contracts

The employment contracts of Honduran workers who plan to work abroad must be in writing, signed by the employer, include provisions on the repatriation of workers, and be approved by and registered with the General Directorate of Employment.

### Prohibitions

The Regulation establishes the following prohibitions for recruiters of Honduran people to work abroad:

- ▶ Recruiters may not charge workers for channelling them to job vacancies. The Regulation establishes that under certain exceptions, payment for certain related services may be authorized, but these must not exceed 20 per cent of the monthly salary for a maximum of the first three months of the worker's contract.
- ▶ Recruiters may not practice discrimination in the recruitment and/or contracting of workers abroad.
- ▶ Recruiters may not falsify or distort information regarding employment opportunities abroad.
- ▶ Recruiters may not recruit and/or hire minors under 18 years of age to work abroad.
- ▶ Recruiters may not recruit and/or hire Honduran workers to work abroad in security activities, illegal activities or activities that pose risks to their integrity or life, or that involve human trafficking and/or trafficking.

### Requirements for the transfer of workers abroad

In order for recruiters to be able to manage the transfer of workers recruited abroad, they must obtain an international transfer authorization, which must be presented to the immigration authority upon leaving the country and for which they are required to provide:

- ▶ a current operating certificate, as well as an operating certificate from the employer;

- ▶ personal and occupational data for each of the contracted workers who will move abroad (copy of identification document; passport; visa of the country in which they will work; proof of air tickets);
- ▶ the name, full address and domicile of the contracting company(ies) and place of work in the country of destination;
- ▶ a copy of the job offer abroad and of individual employment contracts; and
- ▶ proof of access to medical services for workers.

### Surveillance and penalties

In terms of surveillance, the Regulation requires the coordination of actions with other offices or ministries, such as the Ministry of Foreign Affairs, which must be informed of the transfers of workers in order to protect their rights through diplomatic representations abroad. In addition, the Ministry of Labour and Social Welfare must notify the authorities of the destination country and employers, through diplomatic channels, of any irregularity committed by recruiters operating in Honduras, regardless of whether they are affiliated with national or foreign companies, including concerning recruiters that operate without having obtained a certificate of authorization for recruitment, of which notice will be given to the relevant authorities in the countries of destination..

### Penalties

Penalties for non-compliance by recruiters with any of the obligations or prohibitions of the Regulation can range from the temporary suspension of the certificate to its permanent cancellation or the imposition of fines.

### Joint and several liability of the recruiter

In order to guarantee compliance with contracts signed between foreign employers and Honduran workers abroad, the private recruiter will be jointly and severally liable to the workers for any breach by the employer.

## Regulations for the Operation of Private Employment Agencies and Related Services

Through Agreement STSS-141-2015, which was published in the *Official Gazette* on 10 September 10 2015, the Regulations for the Operation of Private Employment Agencies and Related Services were approved in Honduras. On 20 June 2017, Agreement No. STSS-155-2017 was issued, which amended the Regulations to include aspects related to the regulation of charges, in particular eliminating the principle of gratuities and not charging jobseekers, and regulating the maximum rates in terms of the percentages of one month's salary that private employment agencies are permitted to charge jobseekers.

### Scope and coverage

The Regulations cover the operation of private employment agencies and those that offer related services, whether for profit or not for profit, for all occupations and branches of economic activity. In Honduras, the Regulations consider private employment agencies to be natural or legal persons that provide services aimed at linking employment supply and

demand, and they distinguish services for profit (which may charge jobseekers for related services). The Regulations consider users of private employment agencies to be **both national and foreign employers**.

The Regulations also provide for the regulation of different modalities of intermediation services, such as job boards, online services, union and educational job fairs, and related support services for the intermediation services carried out by public and private agents.

### Authorities responsible

The Regulations identify the General Directorate of Employment of the Ministry of Labour and Social Security as the authority responsible for regulating, registering, authorizing and supervising the operation of private employment agencies, as well as sanctioning non-compliance. In addition, it should be noted that the Regulations create the **Department for the Regulation of Private Employment Agents** (currently, the Private Employment Agencies Regulation Unit of the Policy, Strategy and Employability Department), with the following main functions:

- Maintain the register of (both for-profit and non-profit) private employment agencies that provide services in the territory of Honduras.
- Issue general guidelines for the control and management of private employment agencies.
- Set caps on the fees that private employment agencies can charge candidates once they have been placed.
- Process applications and issue operating licences for private employment agencies.
- Process complaints filed against private employment agencies for abuses; initiate investigations; and propose the cancellation of operating licences, as appropriate.
- Schedule control and follow-up visits to supervise private employment agencies.
- Provide guidance and technical assistance to private employment agencies.

### Registration and licensing

In order for private employment agencies to function, they must obtain an operating authorization licence from the General Directorate of Employment, and they must also register in the register of private employment agencies of the Department of Regulation of Private Employment Agencies.

### Requirements

To obtain the registration and authorization licence, private employment agencies must:

- **complete the induction process managed by the Department of Regulation of Private Employment Agencies, in which the contents of the Regulations, labour laws and non-discrimination in employment are addressed;**
- submit a written application for registration and licence;
- copy of the incorporation of the company or sole trader;
- provide proof of no criminal record;

- ▶ provide proof of inclusion in the National Tax Register;
- ▶ provide evidence of not having been penalized for violations of labour laws in the last three years; and
- ▶ provide the contact information and address of the agency, as well as the organizational chart, branches, services provided and rates.

### Duration, cost and renewal of the licence and registration

The authorization licence for private employment agencies costs 2,000 lempiras (about \$86); is granted for a period of one year; and can be renewed upon expiration, subject to meeting the requirements of the Regulations and with the exception of previously revoked or cancelled licences.

### Obligations of private employment agencies

- ▶ They must adequately inform jobseekers of the working conditions offered by companies.
- ▶ They must ensure the veracity and legality of the jobs offered or disseminated.
- ▶ They must guarantee the treatment of personal data in accordance with legislation.
- ▶ They must communicate changes of address or status of private employment agencies.
- ▶ They must inform the General Directorate of Employment of any request from companies to recruit Honduran workers to work abroad.
- ▶ They must provide quarterly reports to the Department of Regulation of Private Employment Agencies on the statistical data of their operations, through an electronic form.

### Prohibitions

Among other prohibitions, private employment agencies are prohibited from placing workers in positions or jobs that involve risks or that involve illegal activities; promoting vacancies that generate any type of discrimination; promoting their services through false or misleading information; charging workers fees that exceed 50 per cent of one month's salary; and participating in the recruitment of Honduran workers abroad without fully complying with the respective regulatory requirements.

### Surveillance and penalties

The Department of Regulation of Private Employment Agencies will ordinarily supervise private employment agencies every six months and may carry out extraordinary supervision. Sanctions for non-compliance with the Regulations by private employment agencies range from written reprimands to the imposition of fines, temporary suspensions and even permanent cancellation of licence and registrations.

## Conclusions

- ▶ Honduras is notable for having differentiated and specialized instruments for work abroad, and another more general and broader scope that covers a wider spectrum of labour market activities that recruiting agents can perform, in providing not only intermediation or linking services but also related services, counselling and occupational guidance and jobseeking training.
- ▶ Among the regulations that govern agencies that recruit abroad, it is notable that recruiters must obtain not only a record of operation but also an authorization to transfer workers abroad to perform jobs in the countries of destination, which allows for more dynamic supervision of recruiters' activities and better control and protection of Honduran migrant workers.
- ▶ Another notable practice is the stipulation in the regulations for the recruitment and hiring of Honduran workers abroad that the Ministry of Labour and Social Welfare must inform the authorities and employers in the countries of destination of any irregularities committed by recruiters, regardless of whether they are nationals or foreigners.
- ▶ In terms of the regulations for the operation of private employment agencies, it is notable that they create a dedicated unit for that purpose within the General Directorate of Employment, namely, the Department of Regulation of Private Employment Agents, which among other things is responsible for compiling and maintaining the register of employment agencies.
- ▶ It is also notable that the regulations do not fully adhere to the principle of not charging workers; as the existing regulations allow in some Canadian provinces (such as Alberta), agencies in Honduras can directly charge workers for certain related services when they have been placed in a job, establishing limits to such charges.
- ▶ Finally, one of the most notable aspects of the regulations is the requirement for employment agencies to obtain an authorization licence to complete the induction process given by the Department of Regulation of Private Employment Agencies, in which the content of the regulation, labour laws and non-discrimination in employment is addressed.

▶ **1.5.**  
**Mexico**



In the case of foreign workers in Mexico, article 7 of the Federal Labour Law establishes that Mexican companies are obliged to observe a limit to the temporary hiring of foreigners, which must not exceed 10 per cent of the category of the specialty for technical and professional workers. On the other hand, in terms of Mexican workers who work abroad, the Federal Labour Law indicates in its article 537, section II, subparagraph (d), in reference to the activities that the National Employment Service is responsible for, that in terms of placement of workers, the Secretariat of Labor and Social Welfare is responsible for intervening, together with the Departments of the Interior, of the Economy and of Foreign Relations, in the recruitment of nationals who seek to provide their services abroad. Articles 28-A and 28-B of the same law, amended in 2012, establish the requirements that must be observed when recruiting Mexican workers in Mexico to carry out fixed-term work abroad, (a) if the jobs are the result of agreements or mechanisms between governments, and (b) if the placement of workers is carried out by private employment agencies. In the specific case of article 28-B, this indicates that employment agencies must be duly authorized and registered to operate; ensure that the employment conditions offered are transparent and do not incur in any kind of discrimination; ensure that recruited workers complete the necessary procedures to obtain the permits or visas of the country in which the services will be performed; inform workers about the consular protection network in those countries; and cover the repatriation costs in cases of fraud.

## Regulations for employment agencies

The Employment Agencies Regulation (RAC-2014) in Mexico is the legal instrument whose purpose is the implementation of sections I to III of article 28-B of the Federal Labour Law, which is of a mandatory nature for individuals and legal entities (for-profit and non-profit) throughout the territory of Mexico that provide recruitment, selection and liaison services between job offers and jobseekers. The Regulation was amended in 2014 to respond to the reforms of the Federal Labour Law of 2012, by which article 28-B was incorporated regarding the recruitment and placement of Mexican workers to work abroad and the role played by placement agencies in these processes.

Although the Regulation has a long history in Mexico since it has existed since 1934, the current Regulation of 2014 has its immediate antecedent in the Regulation of Employment Agencies of 2006, which incorporated and enabled private employment agencies to participate in the recruitment of Mexican workers to be recruited abroad (the previous Regulation of Employment Agencies, dating from 1982, had prohibited it).

The RAC-2014 maintains the structure and most of the provisions of the 2006 Regulation, such as the governance model for agency activities based on an authorization record, the principle of prohibition against charging jobseekers for services, and the principle of non-discrimination, since it did not abrogate but rather amended the previous Regulation, expanding and updating its assumptions and expanding or detailing its scope. For example, among the most important changes was the explicit incorporation into article 7 of the scope of application of the Regulation and of the agencies that carry out recruitment of workers to work inside and outside the national territory, as well as the establishment of a mandatory bond or deposit for private for-profit employment agencies that recruit Mexican workers to work abroad in order to cover repatriation costs in case of breach of contract (partly in line with what is established in article 28, section II, of the Federal Labour Law).

The operating guidelines of the Employment Agencies Regulation in force in Mexico were issued in 2015, and it details the administrative procedures for registration, including the authorization formats (which were reformed in 2018) and the legal deadlines.



## Object and scope of placement agencies regulations

The Employment Agencies Regulation is intended to regulate the provision of worker placement services provided by private for-profit and non-profit agencies in the territory of Mexico, and it covers in the same instrument both the regulation of those that recruit workers to perform jobs in Mexico and those who do so for jobs to be performed abroad.

## Authorization and registration of operation

The Employment Agencies Regulation follows the operational registration model, in contrast to licensing models such as those existing in some Canadian provinces, the United States or South-East Asian countries, which require agencies to have a licence for their operation. The operational authorization is applied only in the case of for-profit worker placement agencies; for non-profit agencies, the notification of and registration with the Ministry of Labour and Social Welfare is sufficient and it is not necessary to obtain operational authorization. The Federal Ministry of Labour and Social Welfare grants agencies a certificate of authorization for operation and registration. It grants the agency the authorization to operate and its duration is for five years and is renewable. For the renewal of the registration, the documentary procedures established in the Regulation itself must be fulfilled, with no additional procedure being required.

## Requirements for registration

The requirements that the placement agencies must present to obtain registration are:

- ▶ name or business name, and for legal persons the company's articles of incorporation
- ▶ proof of address
- ▶ proof of federal taxpayer registration
- ▶ proof of registration with the Mexican Institute of Social Security
- ▶ service contract model that specifies the type of services and about their being free of charge to jobseekers
- ▶ deposit of guarantee bond

## Prohibitions

- ▶ **Prohibition of collection.** The Regulation prohibits employment agencies from charging workers in any way or agreeing with employers that their fees be deducted from workers' salaries.
- ▶ **Discrimination.** The Regulation also prohibits making any type of distinction based on ethnic or national origin, gender, age, disability, social condition, health condition, pregnancy, religion, immigration status, opinions, sexual preferences, marital status or any other condition that may give rise to discrimination.

## Obligations of placement agencies

Among the main obligations that the Regulation confers on employment agencies are to provide their services bearing in mind the dignity of jobseekers and workers, as well as to participate in the development of a national employment system.

- **Veracity in advertising vacancies.** Agencies must be transparent in the advertising and information they provide to jobseekers regarding the vacancies they promote, and in the publication of their data (such as address, telephone, and the number and registration of authorization in advertising), in addition to placing their authorization in a visible place.
- **Quarterly reports.** The Regulation mandates that agencies have the duty to provide information on their placement activities to the Ministry of Labour on a quarterly basis.
- **Notices of changes in operations.** Agencies must also notify the Ministry of Labour and Social Welfare of any change in their domicile, in the event of suspending or permanently ceasing their activities.
- **Guaranteeing the solvency of the employer.** When recruiting Mexican workers for fixed-term jobs abroad, placement agencies must take responsibility for ensuring that the employers for which they recruit are solvent in terms of the seriousness of their job offers, compliance with the rights of the workers and the working conditions regarding housing, transfers, social security and repatriation, with respect to which they are responsible for covering the repatriation costs of the workers in case of non-compliance of employers with the working conditions.
- **Security deposit.** In order to guarantee the payment of repatriation costs, employment agencies that carry out recruitment activities for the placement of workers abroad must post a bond for an amount equivalent to 5,000 times the minimum wage.

## Central register of employment agencies

Article 19 of the Regulation's operational guidelines stipulates that the Ministry of Labour and Social Welfare must establish a statistical register of for-profit and non-profit worker placement agencies, as well as those that participate in the recruitment and selection of Mexican workers for specific employment abroad for a fixed duration. This record must be made public and available on the website of the Ministry of Labour and Social Welfare. In addition, article 21 of the guidelines state that the Ministry of Labor and Social Welfare will keep a record of user comments on the services of employment agencies, which serves for surveillance purposes.

### ► Renewal

Employment agencies in Mexico can request the renewal of their registration for several periods of five years. However, the operational guidelines of the Regulation establish as a renewal requirement only a demonstration that the original requirements that led to the issuance of the registration continue to be met; there is no mechanism for evaluating agencies' performance, conduct and compliance with obligations towards the workers and the authorities.

## Collaboration with the authorities

Article 9 of the Regulation states that employment agencies must report quarterly to the Ministry of Labour and Social Welfare on their participation in the labour market and on the placement that they have made of workers abroad. To this end, it indicates that they may comply in electronic form through web pages or sites provided by the Ministry of Labour and Social Welfare.

## Inspection and penalties

The Regulation establishes that once the proof of operation is issued, the worker placement agencies will be inspected within the following 30 calendar days. The main cause of an extraordinary inspection after the initial ordinary inspection is the failure of the agencies to submit quarterly reports; however, in practice this does not occur. Sanctions for non-compliance with the Regulation include:

- ▶ a fine of 50 to 5,000 times the minimum wage;
- ▶ suspension of registration; and
- ▶ revocation and cancellation of registration.

### Conclusions

- ▶ The Employment Agencies Regulation and its guidelines regulate both for-profit and non-profit private job placement service providers, who recruit workers both for the national labour market and for jobs abroad.
- ▶ Key features of the Regulation include its emphasis on equitable recruiting principles, such as non-discrimination; the non-charge of commissions to workers; the prohibition on retention of workers' documents; and the stipulation that agencies must ensure the seriousness of vacancies and assume joint responsibility for contractual breaches by employers by providing a deposit to guarantee the repatriation of workers in the case of foreign work contracts.
- ▶ The fact that the procedure, registration and authorization are free of charge, as well as the five-year validity and the ease of renewal, constitute in theory an important incentive that should facilitate the registration of agencies.
- ▶ One practice established by the Regulation that is infrequent in other contexts is the requirement for employment agencies to submit the rates that they charge to employers to the Ministry of Labour and Social Welfare for authorization.
- ▶ Another unique practice consists in establishing in the operational guidelines that the Ministry of Labour and Social Welfare will compile a register of comments by users of the employment agency services.
- ▶ Compared to the regulations of other employment agencies around the world, the Regulation has a number of important regulatory shortcomings and gaps, such as the absence of active joint responsibility for employers or for intermediary agents of recruiters, as well as the complete omission of employers and labour-recruiting agents that are not based in Mexico.

▶ **1.6.**  
**El**  
**Salvador**



## Law on the Organization and Functions of the Labour and Social Welfare Sector of El Salvador

The Law of Organization and Functions of the Labour and Social Welfare Sector of El Salvador of 1996 (Decree No. 682) foresees and regulates activities involving the recruitment and placement of workers by both public authorities and private employment agencies. In this regard, the Law establishes in its article 67 that worker placement services will be provided free of charge by the state through the corresponding unit of the National Employment Department. At the same time, regarding private employment agencies, the Law states that private employment agencies will be subject to the control of the Ministry of Labour and Social Welfare. In particular, regarding the recruitment and placement of Salvadoran workers to work abroad, Title IV of the same regulatory instrument addresses the hiring of Salvadorans to provide services outside the country in its article 74.

### Requirements and obligations

- ▶ Permission to enter into employment contracts for Salvadorans abroad must be obtained from the Ministry of Labour and Social Welfare, provided that the interests of the workers are guaranteed.
- ▶ Employment contracts must be submitted to the Ministry of Labour and Social Welfare for approval and obtain said approval so that the immigration authorities may approve the departure of the workers. For this, employment contracts must observe the following requirements:
  - ▶ the workers must be over 18 years of age;
  - ▶ the transportation costs of the recruited workers to the destination where they will work must be borne by the employer; and
  - ▶ a bond must be deposited that guarantees the repatriation costs of the workers.

### Conclusions

Despite the fact that El Salvador has a relevant dynamic in terms of the mobility of temporary workers, especially to the United States and Canada, there is no detailed regulatory framework for regulating the recruitment of Salvadorans abroad by private agencies for temporary work. There are recruitment and mobility practices in which these agencies participate, especially international agencies or those of destination countries, which carry out the recruitment hand in hand with the Government of El Salvador, complying with the provisions of article 74 of the Law on the Organization and Functions of the Labour and Social Welfare Sector, so that the limited existing requirements leave important gaps regarding the obligations of recruiters, employers and the protection of workers once in the country of destination. However, El Salvador is currently developing an amendment to the Law in order to incorporate more detailed regulations of private employment agencies and consider making their registration mandatory.



# 2

- ▶ **Lessons learned and good practices**

The review of the normative elements and regulatory frameworks of the employment agencies of the countries analysed in detail show a very varied panorama in terms of the definitions and normative designs of the regulation of private employment agents and the functions of intermediation by providers (whether private for-profit or non-profit). The regulatory instruments, their most common characteristics and outstanding practices are analysed below.

## 2.1. Typology of regulations

In the five countries analysed, **migration and employment laws interact** to provide a regulatory framework for the recruitment and hiring of migrant workers and the role of recruitment agencies in the above-mentioned processes of human mobility. There are also different rules that regulate employment agencies, some of which are specialized in the protection and recruitment of foreign workers or certain target groups, while others apply to employment agencies in general. While in the United States and Canada regulation occurs through specific laws, in Mexico, Honduras and Guatemala specialized regulations have also been developed to regulate employment agencies.

### 2.1.1. Regulatory instruments

- In general, almost all countries have interactions between migration and labour laws, and only in the Central American countries and Mexico does the regulation of employment agencies occur in detail through regulations. In North America, only the Canadian province of Alberta regulates the activity of agencies through a regulation.
- In Honduras, Mexico and the Canadian province of Alberta, the regulations refer to agencies that recruit workers to work both in the country and abroad. In the other cases analysed, the regulatory instruments are specialized in the recruitment of foreign workers (United States and the provinces of Canada reviewed) or nationals to work abroad (Guatemala, Honduras and Mexico).



#### Key practice 1

##### **Special regulations for agencies recruiting workers to provide services abroad: Canadian provinces of Manitoba, Ontario and British Columbia; Honduras; and Guatemala**

The Canadian provinces of Manitoba, Ontario and British Columbia have developed specialized legislation to regulate the recruitment of, and provide protection for, temporary foreign workers. Honduras has two regulations: one that exclusively governs the recruitment of Honduran workers abroad by recruiting agents inside or outside Honduras; and another that regulates private employment agencies, not only recruitment agencies but also those who provide services related to jobseeking.

Guatemala has a special regulation that covers the activities in Guatemala of agencies that recruit workers to work abroad, regardless of whether they are carried out by Guatemalan or foreign companies or individuals.



## 2.1.2. Regulated subjects

The different circumstances faced by the countries of destination and countries of origin of migrant workers, as well as the protection needs of migrant workers, largely determine the subjects covered by regulations. In general, the regulations focus on natural or legal persons that carry out recruitment activities for profit, although in some cases private non-profit agencies are also regulated, albeit with a lighter regulatory burden. In the United States and Canada, regulations focus on recruitment agencies for foreign workers, while in Honduras and Guatemala they focus on the recruitment of nationals to work abroad. It is notable that in cases such as Honduras, Guatemala and the Canadian province of Alberta, the same regulatory requirements are established for national and foreign recruiters.

### Key practice 2

#### Employers as regulated entities in Guatemala

The recently issued Law for the Promotion of Guatemalan Merchant Marine Labour Abroad not only imposes specific requirements on recruiters of Guatemalan workers for jobs on foreign ships but also establishes obligations for the foreign employers who hire them, including the requirement to obtain a certificate of compliance with Guatemalan labour regulations from the Ministry of Labour and Social Welfare, as well as the requirements to establish contractual conditions in writing for workers and to contract insurance that covers their return of the worker to their place of origin.



## 2.1.3. Scope and object of regulations

Overall, the review of the five countries and six Canadian provinces analysed shows that regulations focus primarily on the activity of intermediation, that is, the search for foreign workers to fill vacancies, as well as the promotion of vacancies for candidates seeking employment abroad.

Convention No. 181 also considers “other services relating to jobseeking” as a function of these agencies. Only in Honduras and the Canadian province of Alberta do regulations contemplate a wider range of activities, including the provision of related services such as job search guidance (for example, the preparation of résumés) or job search training, for which agencies may charge jobseeking clients.

From the point of view of territorial coverage of regulations, it is clear that in no case are exemptions provided for those entities based abroad. In the United States and Canadian provinces such as British Columbia, registered or licensed employers and recruiters must inform the authorities of the names and addresses of all the agents who will recruit on their behalf, including those who are based abroad.



### Key practice 3

#### Authorization and registration of foreign recruitment agents and representatives in the Canadian province of Alberta

Although in practice it also occurs in the Canadian province of British Columbia, in principle the province of Alberta is the only province that takes the issue of territorial coverage a step further. Its regulations require recruiters licensed in the province and employers that use the services of third parties (employment agencies or recruiters) located abroad to ensure that they are registered in the province of Alberta and, where appropriate, obtain an international recruitment licence from the Alberta government.

## 2.2. Facilitation of the labour intermediation function and authorization governance

### 2.2.1. Governance model

In order to authorize the operation of employment agencies and regulate their activities in recruiting workers through private agents, the countries analysed generally opt for one of two options: licensing or registration.

#### ► Registration

In Mexico and Guatemala, the registration of employment agencies is the procedure by which their operation is authorized, without any additional procedure.

#### ► Licensing

In the Canadian provinces of Alberta, British Columbia and Manitoba and in Honduras, obtaining a licence is the first and indispensable requirement for operation, but there is also an obligation for licensed agencies to process and obtain registration in order to operate with full authorization.

#### ► Employer register

In the United States and the Canadian provinces of British Columbia, Ontario and Manitoba, in addition to agencies, employers who recruit foreign workers must also register.

#### ► Work certification

In the United States and Guatemala, employers must undergo a labour certification (verification of compliance with employment regulations and standards) in order to be authorized as contractors of workers and users of recruitment agencies.

On paper, Honduras has the most complete regulation to authorize the operation of employment agencies, with two separate regulations (one for recruitment of Hondurans to work abroad and the other regulating the services of private employment agencies). Therefore, it not only requires private employment agencies to obtain a licence and registration but also requires recruiters of Honduran workers abroad to obtain for them both a certificate of operation and an authorization to travel abroad.

## 2.2.2. Requirements for obtaining authorization to operate

The requirements that employment agencies must meet to obtain their licence, registration or authorization to operate vary from country to country, but a number of common elements and relevant lessons and practices can be identified that contribute to increasing the quality of the recruitment function and services, ensuring due diligence and protecting workers from fraud.

### ► Authorized subjects and legal representation

Employment agencies are commonly moral or legal persons, so that in almost all the cases analysed the recording of the company's registration in the commercial register or in the corresponding public register is required, in addition to the regulatory compliance applicable to companies. In several of the Canadian provinces analysed, it is common practice that, regardless of whether the agency operates under a trade name, the licence and registration are issued in the name of a natural person and not a legal entity. In Manitoba, British Columbia and Saskatchewan, only natural persons can register and obtain a licence as employment agencies or recruiters of foreign workers. In Guatemala, Honduras and Mexico, it is possible to issue and authorize legal entities through their legal representatives.

### Key practice 4

#### Controlled issuance of employment agency licences to accredited individuals: Canadian province of Manitoba

The Canadian province of Manitoba only issues employment agency licences for the recruitment of foreign workers to natural persons, in order to prevent legal entities from escaping liability through dissolution or name changes. As an additional protection and quality assurance measure, the province only issues employment agency or foreign-worker recruiter licences to individuals with law degrees, notaries or government-certified immigration consultants who are active members of professional unions or associations.



### ► Processing of licence or registration

In most cases, obtaining a licence or registration requires the payment of a fee or processing fee; however, in the Canadian province of British Columbia and Mexico, the processing is free of charge. Among the common requirements for the processing and obtaining of licences or registration is to obtain registration in commercial and tax public registries, and the review of records of compliance with labour regulations.

A common practice for employment agencies recruiting foreign workers or for work abroad is to comply with a security deposit or bond, the amount of which varies from case to case. Other common requirements include criminal background checks, the approval of capital requirements or having physical offices and providing the names of all the partners and managers that are part of the company in the case of legal entities. All these requirements aim to guarantee the legal and operational solvency of employment agencies and the prevention of fraud or abuse of workers.

A less common practice but present to varying degrees in Honduras, Mexico and the Canadian province of Alberta is the approval or authorization of fees, within specific limits, for the services provided by employment agencies to their clients. Honduras also requires agencies to describe their staff and structure.



### Key practice 5

#### Obligation to attend an induction and orientation process: Honduras and Canadian province of Manitoba

Honduras and the Canadian province of Manitoba make the authorization of the operating licences of employment agencies that recruit foreign workers (Manitoba) or recruit Honduran workers abroad conditional on the attendance of agency personnel at induction courses on the regulations and legal and operational implications of the recruitment of foreigners or workers to work abroad. The aim is to raise awareness of these issues and bring the authorities and private employment agencies closer together.

The validity period of licences varies widely among the countries and provinces analysed: Honduras and the Canadian province of Manitoba issue a licence that is valid for one year, which allows stricter surveillance; Guatemala and the Canadian province of British Columbia issue a licence for three years; and Mexico issues an operational registration for up to five years, the longest validity among the countries and provinces surveyed.

## 2.3. Prohibitions and obligations of employment agencies

### 2.3.1. Prohibitions

Regarding the main prohibitions imposed on employment agencies, in almost all cases a strict principle is stipulated to prohibit charging workers or applying discounts to their earnings for recruitment or placement in a job or the recovery of hiring costs.



### Key practice 6

#### Contract model to establish the prohibition against charging fees for workers' recruitment: United States

In the United States, the INA establishes that employers who contract the services of employment agencies or recruiters to recruit foreign workers must sign model contracts that establish a standard clause that includes clear language establishing the express prohibition against charging fees or commissions for worker recruitment.

Other prohibitions commonly present in the cases analysed are prohibitions of the withholding of documents from workers or candidates; discriminatory practices; false or misleading advertising of vacancies or working conditions; the recruitment of minors or workers to carry out hazardous jobs; and exerting pressure, coercion or threats against workers or candidates to accept vacancies, working conditions or discounts, or to prevent them from reporting abuse.

### 2.3.2. Obligations

The most common obligations in all cases are those related to reporting changes in the operation, domicile or representatives of agencies; maintaining files and historical records of service contracts with clients, jobseekers or recruiters; and the preparation and periodic delivery of statistical operational reports to the authorities (in Guatemala, Honduras, Mexico and the Canadian province of Alberta), in addition to the obligation to observe the protection of personal data. Another common obligation is that of preserving and disclosing to the authorities all the contracts entered into, in case they are required for possible audits or inspections, and to have written contract models for foreign workers (destination countries).

#### Key practice 7

##### Disclosure of partner agents and recruiting representatives abroad: United States and Canadian province of Alberta

A notable practice in the United States and the Canadian provinces reviewed is the obligation for employers who use the services of recruiters and the employment agencies themselves to compile and disclose to authorities a complete list of partners, representatives, agents or third parties who will participate in the recruitment chain for an agency or an employer.

This practice is taken a step further in the United States and in the Canadian province of Alberta as a requirement and obligation of employment agencies and the employers that recruit them, since in both cases authorized recruiters or registered employers are required to disclose to the authority an exhaustive list of all agents, representatives and third parties that maintain a contractual relationship, or carry out recruitment activities on behalf of or in favour of the authorized agency or registered employer, which allows the traceability of the entire chain of the recruitment effort, even at the transnational level.



## 2.4. Instrumentation of records and information management

### 2.4.1. Agency register

In most of the cases reviewed, the authorities responsible for regulating private employment agencies have a mandate to compile lists or registers of employment agencies or authorized recruiters. Those registers may be administrative or internal control instruments, or may act as market-signalling mechanisms to provide certainty and legal certainty for their users, making them available to the public for consultation through electronic pages. The contents and characteristics of these registers vary between countries, but a number of common elements and notable practices may be identified.

#### ► Online public access

In Mexico, the United States and the Canadian provinces of Alberta, Manitoba and British Columbia, the records are available for public consultation through internet pages, with different levels of detail or data access. While in Mexico it is a static register, in the United States and the Canadian provinces of Alberta, British Columbia and Manitoba these lists are available for consultation and downloading by users in spreadsheet format.

► **Basic data of the register**

Among the most common agency registration data published in the registries are the name and address of both the business and the legal representative, the contact numbers or email address, and the date of registration. In the Canadian provinces of Alberta, British Columbia and Manitoba, the expiration dates of the licences or authorizations are also published, in addition to the date of registration. In Mexico and the Canadian province of British Columbia, the licence and authorization numbers, respectively, are also published in the register, or in the United States, the numbers of cases or the work permits of foreign workers in process that the agencies carry.

The Canadian province of Alberta also includes in the publicly available registration data whether the employment agency is subject to bond or escrow, as this serves as a flagging mechanism to indicate that the agency is licensed internationally and therefore authorized to recruit foreign workers.



**Key practice 8**

**Publication of listings of recruitment agencies located abroad that recruit foreign workers: United States and Canadian provinces of Alberta and British Columbia**

The United States Department of Labour, through the Employment and Training Administration, Employment Standards of the Canadian province of British Columbia, and the Alberta Consumer Protection Agency, respectively, publishes recruitment agency listings of nationals that provide services for employers in their respective territories. In addition, on a mandatory basis, the agencies that carry out recruitment in favour of these employers from the countries of origin of the foreign workers must also appear in the registers of recruiters, and in the Canadian provinces of Alberta and British Columbia they must have a valid licence in the provinces, so that the workers and governments of the countries of origin can be in a position to know that such agencies are duly authorized by the governments of the countries of destination, and therefore are duly monitored.

► **Update**

The updating of the information in these registries varies from case to case – for example, it is updated monthly in the Canadian province of Manitoba, quarterly in the United States and annually in Honduras.

► **Employer registration records**

In the United States and the Canadian provinces of Ontario and British Columbia, in addition to the register of employment agencies that recruit foreign workers, there is also a register of employers that hire them.

## 2.5. Surveillance and protection of workers

A number of activities linked to the surveillance of agencies and the protection of workers against fraud or abuse, among others, can be derived from the different regulations through inspections, complaints mechanisms and sanctions.

### 2.5.1. Inspections

In general, in Mexico and the Canadian provinces of Manitoba and Alberta, regulations stipulate inspections of employment agencies; however, while in Mexico inspections occur immediately after the authorization, in Manitoba they only occur as a result of complaints.

### 2.5.2. Complaint mechanisms

The Canadian provinces of Ontario and British Columbia include in their regulations detailed mechanisms for complaints against abuses or infractions by employment agencies, as well as mechanisms for processing such complaints by workers or users of employment agencies.

### 2.5.3. Repatriation

In Guatemala, Honduras and Mexico, as countries of origin of workers, the respective laws and regulations oblige agencies – and in some cases employers – to cover repatriation costs in case of breach of contract or fraud.

#### Key practice 9

##### **Joint liability of recruiters and employers: United States and Canadian provinces of Alberta and Saskatchewan**

In the United States, and in the Canadian provinces of Alberta and Saskatchewan, employment agencies and employers that recruit foreign workers through the use of recruiters, agents, representatives and contractors, in both the country of destination and the country of origin, are considered jointly liable for any breach of contract, fraud, abuse against workers or infringement of laws governing the hiring or recruitment of foreign workers, regardless of whether the infringement is committed by partners or third parties in other countries.



### 2.5.4. Penalties

In most of the regulations analysed, sanction mechanisms are stipulated for employment agencies that violate the various provisions contemplated in the laws or regulations that govern them. In general, all the regulations consider fines and administrative sanctions, such as the temporary suspension of licences or registrations or the cancellation or revocation of these in cases that are more serious. Only in the Canadian province of Ontario are custodial sentences of up to two years considered.



#### **Key practice 10**

##### **Public dissemination of recruiters who violate the regulation: Canadian province of Ontario**

The Canadian province of Ontario stipulates in its foreign worker protection law, which regulates the recruitment of these workers and the duties of the employment agencies that recruit them, a mechanism of reputational sanction and public signalling, which consists of the power of the director of Employment Standards to publish the name of the violator, the infraction and the sanctions imposed on those who violate any of the stipulations of the law.



# Appendix

- ▶ **Systematization of regulatory practices of private employment agencies, by country/province**









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