



RESPONSIBLE SOURCING TOOL

Construction
Industry |
Tool 7

PROTECTIONS TRAFFICKING IN PERSONS

Criteria for Screening and Evaluating Recruitment Agents in the Construction Industry

The risks of human trafficking, including forced labor,¹ can be mitigated by properly designed and implemented processes for recruitment, selection, and hiring of workers. Those risks are greater and more difficult to control when recruitment, selection, and hiring are outsourced to third-party recruitment and labor agents. Therefore, construction companies and their subcontractors and suppliers should, whenever possible, recruit, hire, and employ workers directly.

When direct recruitment is not possible, companies must exercise careful due diligence in the screening and selection of recruitment agents to minimize the risk of forced labor because of fraudulent or misleading recruitment practices. Recruitment-related intermediaries are common in the construction industry; they formally supply workers to services and materials companies of all sizes for full time, part time, seasonal and daily work, and recruit workers through both formal and informal means.

Intermediaries may be referred to as labor agents, brokers, contractors, or gangmasters, depending on the country and regional context. In some cases, recruitment agents are paid by the number of workers they supply and the length of time that worker remains at the employer, which may incentivize coercive recruitment.¹

The following sample tool recommends a generic approach to due diligence but is not intended to ensure compliance with specific legal requirements, such as the U.S. Federal Acquisition Regulation (FAR): Combating Trafficking in Persons².

The goal of screening recruitment agents is to acquire enough information to have reasonable confidence that the agents selected will comply with all applicable legal requirements and standards for ethical recruitment. When evaluating a potential recruitment agent, this process will entail looking for the presence or absence of

¹ The United States recognizes two primary forms of trafficking in persons: forced labor and sex trafficking. For the purposes of this and other tools in the set, several terms are used such as “trafficking in persons,” “human trafficking,” and “forced labor.” In relation to these tools, they refer to a crime whereby traffickers exploit and profit at the expense of adults or children by compelling them to perform labor.

² For guidance on complying with the Federal Acquisition Regulation (FAR): Combating Trafficking in Persons, please review Tool 12, RST’s Sample Compliance Plan Guidance.

policies and procedures that relate to issues of fair recruitment. Because evaluating potential recruitment agents' practices is both challenging and vitally important, companies may consider prioritizing recruitment agents or agencies that participate in fair recruitment certification programs. Participation in certification programs allows recruitment agents to demonstrate their commitment to ethical practices and increased transparency and oversight. Examples of recruitment certification programs include: International Organization for Migration's International Recruitment Integrity System (IRIS);³ On the Level;⁴ and Clearview Global Labor Provider Certification Scheme.⁵ Assessing recruitment agents' ongoing performance occurs as part of the management and monitoring process.

THE EVALUATION CRITERIA

Verité recommends defining a set of performance requirements that complement the company's *Code of Conduct* (human rights expectations), *legal requirements* (licensing requirements, applicable laws and regulations, government procurement requirements, etc.) and *technical requirements* (ability to source suitable workers within a defined timeframe and budget). This will help the company to better understand the recruitment agents' policies and approaches to preventing forced labor.

Each company will have its own specific criteria in this area. To determine criteria, a company should undertake a careful review of the following documents and guidance:

- Legal requirements in the origin country, transit country, and country of operation (Tool 4);
- Any other applicable legal requirements, including international labor standards. (Tool 4);
- Company Code of Conduct or other high-level policy;
- Client company Code of Conduct or other high-level policy;
- Ethical recruitment standards and certification schemes such as:⁶
 - International Organization for Migration, IRIS Recruitment Standard: iris.iom.int/

³ [International Recruitment Integrity System \(IRIS\) | International Organization for Migration \(iom.int\)](https://iris.iom.int/)

⁴ [On The Level Principles and Standards | The Fair Hiring \(fair-hiring.org\)](https://www.fair-hiring.org/)

⁵ Clearview. [Responsible Recruitment Toolkit Clearview UK](#)

⁶ The standards have also been consulted in creation of these tools.

- International Labor Organization, General principles and operational guidelines for fair recruitment: www.ilo.org/global/topics/fair-recruitment/WCMS_536755/lang--en/index.htm
- On the Level, Principles and Standards of Ethical Recruitment:
- Clearview Technical Standards
responsiblerecruitmenttoolkit.org/download/8210/

Once the screening criteria have been defined, each criterion should be paired with indicator(s) that serve to measure whether it is being met. For example:

Sample Criteria	Sample Indicators
Compliance with legal operating requirements	<ul style="list-style-type: none"> • The recruitment agent is fully licensed. • The recruitment agent has no record of legal sanctions in the past three years, or violations have been corrected or are on-track for correction. • The recruitment agent participates in a fair recruitment certification program.
Compliance with broad human rights and labor rights standards as specified in ILO Declaration in Fundamental Principles and Rights at Workⁱ	<ul style="list-style-type: none"> • The recruitment agent formally expresses a commitment to uphold the company's social (labor and ethics) standards. • The recruitment agent has written policy and commitment statements that address social (labor and ethics) standards, including fundamental labor rights. • The recruitment agent has a process to ensure continuously updated knowledge of applicable social standards, including fundamental labor rights.
Compliance with company standards and legal requirements on recruitment	<ul style="list-style-type: none"> • The recruitment agent has an operational process to ensure continuously updated knowledge of applicable legal requirements in the countries of origin, transit, and destination. • Recruitment agency staff receive regular training on applicable customer and legal requirements on ethical recruitment.

	<ul style="list-style-type: none"> • The recruitment agent has a policy that prohibits the use of misleading or fraudulent recruitment practices, including failing to disclose basic information, or making material misrepresentation, about the key terms and employment and living conditions, including wages, benefits, hours of work, location of the work, living conditions, employer provided or arranged housing and associated costs, any significant cost to be charged to the worker, and, if applicable, the hazardous nature of the work. • The recruitment agent has a policy stating that no worker shall be charged recruitment fees of any sort. • The recruitment agent has processes in place to inform workers of their right not to be charged recruitment fees. • The recruitment agent has a procedure for verifying that workers are not charged fees by origin country agents or sub-agents. • The recruitment agent has a policy stating that all workers shall retain access to their identity documents.
<p>Compliance with company standards and legal requirements on employment contracts</p>	<ul style="list-style-type: none"> • The recruitment agent has a policy to ensure that workers' contracts meet all legal and client requirements. • Worker contracts include accurate and verifiable information on worker position, location of job, length of contract, housing, name of the employer, wages, working hours, any legal wage deductions, and all applicable benefits. • Worker contracts detail which party (recruitment agent or employer) is responsible for various aspects of the employment relationship (in accordance with applicable law). • Recruitment agent maintains records demonstrating that workers receive accurate copies

	<p>of contracts in a language they understand prior to departure.</p> <ul style="list-style-type: none"> Recruitment agent has processes in place to validate that the terms of employment do not differ from those offered to other workers.
<p>Compliance with company standards and legal requirements for grievance mechanisms</p>	<ul style="list-style-type: none"> Recruitment agent participates in available grievance mechanisms. Recruitment agent demonstrates that workers are provided with information on their legal rights and on the procedures for accessing grievance mechanism/s available via government or employer. Recruitment agent has a policy of non-retaliation for worker participation in grievance mechanisms.

CONDUCTING A SCREENING INTERVIEW

When interviewing prospective recruitment agents, the agent should be asked to describe how they are able to meet the company’s selection criteria. In addition to assessing objective criteria, such as whether policies and processes are documented, the company may wish to evaluate the degree to which the potential recruitment agents are open to engagement around issues of fair recruitment. Reference the table below, for some examples of questions that could be asked in this regard.

Sample Criteria & Indicators	Sample Screening Questions
<p>Compliance with legal operating requirements</p>	<ol style="list-style-type: none"> Does your company have a license to operate? Has your company been subject to any regulatory actions where monetary penalties were assessed? If formal corrective actions were mandated by the issuing government agency, can you provide documentation to show that violations have been corrected or are on track for correction?

	<p>4) Do you agree to adhere to the legal requirements of the origin and destination countries, and to register your agreement by signing a contract to this effect?</p>
<p>Compliance with broad social responsibility standards and labor rights as specified in ILO Declaration in Fundamental Principles and Rights at Workⁱⁱ</p>	<p>1) What is the scope and coverage of your labor and ethics policies?</p> <p>2) Do your labor and ethics policies have executive management endorsement?</p> <p>3) How often are your labor and ethics policies updated? What is the process for updating them?</p> <p>4) What actions might you take if you were unsure about the legality of a recruiting practice?</p>
<p>Compliance with company standards and legal requirements on recruitment</p>	<p>1) Does your company have a policy prohibiting misleading or fraudulent recruitment practices? If yes, what is included in the policy?</p> <p>2) Does your company have a “no-fee” policy on charging employees recruitment fees and expenses? If yes, how is this policy communicated to workers?</p> <p>3) How do you communicate working and living conditions to prospective workers? How do you ensure that this information is accurate?</p> <p>4) Where in your recruitment, selection, and hiring process do you think the risk of noncompliance with the no-fee policy is highest?</p> <p>5) What operational controls have you put in place to minimize these identified risks and to ensure that workers are not charged fees?</p> <p>The following are some examples of controls:</p> <ul style="list-style-type: none"> a. Formal procedures to implement the no-fee statement in the Code of Conduct. b. A safe procedure for workers to report violations of the no-fee policy by internal staff or sub-agents, without retaliation. Such a procedure should include an investigation and response to reports of violations.

	<ul style="list-style-type: none"> c. Implementing procedures that prevent the use of illegal sub-agents or subcontractors. d. If the company uses sub-agents or subcontractors, a procedure to ensure these sub-agents are paid by the agency for their services and that they sign and comply with the agency's no-fee policy. e. If workers are being recruited from remote or interior regions, the company has staff (on the company's payroll) in these areas. f. Workers, upon arrival, are routinely interviewed to verify that they have not paid recruitment fees. <p>6) Who holds workers' personal documentation at various points throughout the recruitment and hiring process?</p>
<p>Compliance with company standards and legal requirements on employment contracts</p>	<ul style="list-style-type: none"> 1) Are the terms of the workers' contracts and the contracting process itself consistent with origin and destination country laws and other applicable legal requirements? 2) Does the employment contract include terms and conditions that are consistent or aligned with the hiring company's fair recruitment standards? 3) Do employment contracts comply with the requirements of the hiring company's client/customer (for example, U.S. Federal Acquisition Regulation: Combating Trafficking in Persons)? 4) Do you have a process for reviewing and assessing accuracy of worker contracts? 5) How do you communicate terms of contracts to workers who speak a language other than the language the contract is written in, or who have limited literacy?

Compliance with company standards and legal requirements on grievance mechanisms	<ol style="list-style-type: none"> 1) What can workers do if they encounter a problem at any point in the recruitment and hiring process? 2) What are some of the ways you communicate available grievance mechanisms to workers? 3) What happens when workers use one of these mechanisms?
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EVALUATING THE RESULTS AND MAKING A FINAL DECISION

After recruitment agent candidates have been screened, the responses must be analyzed with a transparent methodology for evaluating recruitment agents against screening criteria. Such a methodology should define how candidates will be evaluated, by whom, and the process by which a final decision will be made, and a contract issued.

One approach is to use a rating system that assigns each criterion a weight and performance score as shown below. This allows the company to score each recruitment agent candidate's performance on each criterion, while also giving appropriate emphasis to the areas of compliance that are most important to the company and/or the company's customers.

The results of such a rating process allow for the performance of all candidates to be cross-analyzed and compared with ease, which will then allow companies to rank and compare candidates.

Example Recruitment Agent Rating System			
Criteria	Weight (%)	Score (%)	Performance Rating
Compliance with legal operating requirements			
Compliance with broad human rights standards and labor rights as specified in ILO Declaration			

in Fundamental Principles and Rights at Work⁷			
Compliance with company standards and legal requirements on recruitment			
Compliance with company standards and legal requirements on employment contracts			
Compliance with company standards and legal requirements on grievance mechanisms			
Total	100%		
<i>Note: Companies should determine their own weighting systems based on applicable legal requirements, their policies and (where relevant) those of their clients.</i>			

Once the successful recruitment agent candidate has been selected and hired, companies can use the information from this due-diligence selection process as baseline data for managing and monitoring the performance of the recruitment agent.

⁷ International Labor Organization. Declaration on Fundamental Principles and Rights at Work. www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm.

In countries and supply chain segments where broker registration systems are weak or non-existent and informal brokers predominate, companies should move progressively towards direct hiring. However, in some contexts, such as in very small-scale enterprises, some labor recruitment will likely continue to occur through informal channels. Informal brokers are inherently more difficult to monitor. However, whenever a third party is connecting workers to employers they should still be held to basic standards of fair practice.

With the exception of the requirement for a valid license number, all the policies and processes listed above should apply to informal providers as well. For example, informal labor providers can still be held accountable for accurately explaining terms of conditions of work to job seekers, not charging recruitment fees, and not retaining identity documents. The burden of communicating these expectations and monitoring against their performance is on the business who engages the third-party labor agent.
