



HEALTH CARE CODE

FOR ETHICAL INTERNATIONAL RECRUITMENT
AND EMPLOYMENT PRACTICES



Alliance for ETHICAL
INTERNATIONAL
RECRUITMENT *Practices*
A division of CGFNS International, Inc.®

This Code was approved by the Alliance Board of Governors (2015-17):

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FOR ETHICAL INTERNATIONAL RECRUITMENT AND EMPLOYMENT
PRACTICES

September 2017

PREAMBLE

The following *Health Care Code for Ethical International Recruitment and Employment Practices* (Code) reflects the mutual recognition of stakeholder interests relevant to the recruitment of foreign-educated health professionals (FEHPs) to the United States. It is based on an acknowledgement of the rights of individuals to migrate, as well as an understanding that the legitimate interests and responsibilities of health professionals, source countries, and employers in the destination country may conflict. It affirms that a careful balancing of those individual and collective interests offers the best course for maximizing the benefits and reducing the potential harm to all parties.

While the Code acknowledges the interests of these three primary stakeholder groups, its target audiences are the organizations that recruit and employ foreign-educated health professionals (e.g., third party recruiting firms, staffing agencies, hospitals, long-term care organizations, health systems). For the purposes of the Code, “Recruiters,” refers to those who contract with FEHPs in a source country in order to facilitate their migration to the United States and their placement in health care employment. “Employers” refers to those health care organizations that employ FEHPs in the United States. Some entities provide both services (i.e., a health care employer may engage in direct recruitment and a recruiter may employ FEHPs under a staffing agency model in which the agency employs and contracts health professionals to healthcare organizations on a short or long-term basis). Where recruitment and employment services are the shared responsibility of two or more entities, each is responsible for ensuring ethical conduct throughout the process.

Recruiters and employers certified by the Alliance voluntarily agree to comply with ten guiding principles and the specific standards agreed upon by stakeholders to advance these principles. Certification also implies full cooperation with the monitoring system developed by a representative Board of Governors.¹

In addition, they must comply with the laws of any foreign country in which they operate, whether through a permanent office, an agent relationship, or on an occasional basis, and comply with the laws of the United States, including relevant employment and immigration laws.²

¹ The Board of the Alliance for Ethical International Recruitment Practices was formally seated in November 2009. The Alliance Board of Governors was seated in February 2015, following the Alliance’s acquisition by CGFNS.

² Examples include, but are not limited to: Fair Labor Standards Act (FLSA), Title VII of the Civil Rights Act of 1964, Age Discrimination in Employment Act (ADEA), Equal Pay Act (EPA), Family and Medical Leave Act

PRINCIPLES OF ETHICAL CONDUCT

Section A.	Recruiter and employer accountability
Section B.	Migrant rights and responsibilities
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(FMLA), Americans with Disabilities Act (ADA), National Labor Relations Act (NLRA), Occupational Safety and Health Act (OSHA), and Immigration and Nationality Act (INA).

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RECRUITER AND EMPLOYER ACCOUNTABILITY

Workers shall have the right to be recruited for work in the United States under a system that holds the employer accountable for providing a fair, transparent recruiting process and a work experience that aligns with the representations made.

- Where recruitment and employment services are the shared responsibility of two or more entities, each will be responsible for ensuring ethical conduct throughout the process.
- Recruiters and employers certified by the Alliance shall be held accountable under the Alliance code for the actions of their subcontractors. The principal (recruiting / employing company) must be cognizant that agents function as an extension of them; they must ensure that the agent's / subcontractor's representations are aligned with their objectives, motivations, contractual obligations and applicable law.
- All employment agreements should incorporate all rights, duties, and obligations of the parties and describe the nature of the offered employment with as much specificity as possible including term, pay, location and duration of assignments as soon as that information is known.³
- All employment agreements should have a period to cure any material or non-material breach, for both parties.
- Material changes to the nature of the offered employment or to the agreement should be in writing and mutually agreeable.

³From time to time, location of work may be known subsequent to worker's arrival. In such cases, the nature of the position and the scope of uncertainty should be clearly disclosed to the FEHP.

MIGRANT RIGHTS AND RESPONSIBILITIES

Workers shall have all the same rights and responsibilities as their U.S. counterparts and are responsible for fulfilling obligations to their recruiter and/or employer. They also have the right to be treated and the responsibility to act ethically and professionally.

Employers and recruiters shall inform FEHPs of their rights and responsibilities, including, but not limited to the following:

- The right to ask questions about a contract and consult an attorney before signing it.
- The right to have a copy of the contract with all signatures.
- The right to be treated the same as American born co-workers.
- The right to talk to co-workers about wages.
- The right to remain in custody of all immigration-related paper work and documentation.
- The right to have contract disputes resolved in the jurisdiction in which the nurse works or where the employer is headquartered.
- The right to participate fully in professional organizations and unions.
- The responsibility to read all contracts completely.

- The responsibility to enter into agreements in good faith and fulfill agreed upon contract obligations in exchange for promised compensation.
- The responsibility to be truthful and forthright with both recruiter and employers about experience level and area of expertise.
- The responsibility to alert the recruiter if additional cultural or clinical training is required and disclose any factor which could impede the workers ability to fulfill his/her contractual obligation or professional responsibilities.
- The responsibility to seek resolution of disagreements or misunderstandings with recruiters and employers in good faith.
- The responsibility to only sign up with one employer or agency at a time unless released or discharged from a previous contractual relationship.
- The responsibility to comply with all laws and regulations governing credentialing, licensing, immigration, and professional practice.
- The responsibility to make reasonable efforts to meet employer expectations and appropriately represent the recruitment firm to employers.

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FREEDOM FROM DISCRIMINATION AND RETALIATION

Workers shall have the right to a recruitment and employment experience free of discrimination and retaliation. Certified employers and recruiters shall:

- Provide compensation for work performed by FEHPs based on characteristics related to performance such as experience (both in the U.S. and in source countries), tenure, level of practice, and relevant skills, rather than the country in which they were trained.⁵ Employers may not base such compensation, length of contract, or amount of breach fee solely on national origin or gender.
- Inform the FEHPs of the prevailing wage (PW) requirements and explain which PW level will be used and why.
- Once in the United States, the FEHP must be paid in accordance with the contract even if there is a delay in assignment.
- Practice equity and fairness in all assignments and hours worked, including overtime.

⁵ However, employees are not obligated to compensate a worker purely on years of experience without taking into account differences in skills acquired over a given period of time.

RIGHT TO KNOW

Workers shall have the right to be informed about the recruitment process and their rights under U.S. law in a language they understand. Certified employers and recruiters shall:

- Provide a copy of this Code to the FEHP when a contract is provided to the FEHP.
- Provide sufficient opportunity for FEHP applicants to review and consider written contracts before signing is required.
- Ensure all employment agreements contain an optional thirty (30) day open offer to allow recruits time to seek counsel and advice.
- Ensure all employment agreements contain at least a seven (7) day rescission period after signing to allow recruits time to rescind the employment agreement without penalty.
- Avoid the use of false or misleading information in all forms of communication.
- In recruitment advertising, clearly and specifically indicate the occupational level for which healthcare professional applicants are sought (e.g., RN vs. LPN vs. nursing assistants) and include the minimum standards or qualifications required for each of those occupational levels.
- Explain in writing the steps involved in the migration and licensing process and keep FEHP applicants informed (e.g., by periodic written notice) about their progress throughout the process and upon an applicant's request.
- Disclose the possibility of delays in visa processing before the contract is signed and provide historical processing times for the applicable visa category.

- Provide FEHPs with any and all information related to their immigration case, including but not limited to: case number, priority date, and copies of all documents filed in relation to their case.
- Specify the nature of employment (e.g., direct hire by a hospital or nursing home or employment by a staffing agency) as soon as such information is known. Provide a clear explanation and secure the FEHP's written consent prior to making any change to the nature of employment.
- Identify the geographic location of the future worksite at the time of recruitment, if such information is known. If third-party recruiters and staffing agencies have not yet determined the future worksite location, this should be fully and clearly disclosed to the FEHP at the time of recruitment. The precise place of employment (specific health care facility, set of facilities owned by a system or other worksite, such as a home health agency) must be specified in writing prior to the FEHP's travel to the United States.

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RIGHT TO RECEIVE A CONTRACT WITH FAIR TERMS AND GIVE INFORMED CONSENT

Workers shall have the right to a legal employment contract that respects their rights and the right to provide informed consent before being hired. Certified employers and recruiters shall:

- Make reasonable effort to ensure that the contract terms are explained and understood by the FEHP recruits. The FEHP is free to consult with an attorney for contractual terms that they do not understand before signing.
- Provide sufficient opportunity for FEHP applicants to review and consider written contracts before signing is required (i.e., at least 48 hours).
- Confidentiality clauses should not prohibit or inhibit the recruit/candidate at any time (before or after arrival in the U.S.), from seeking counsel from an attorney, bargaining or labor representative. It is not a breach of contract for a recruit to seek counsel.
- Provide a copy of the signed employment contract for FEHP applicants to keep.
- Provide a clear explanation of any contract changes and secure the FEHPs written consent whenever modifying an executed contract—either at contract signing or subsequently, except when required by law to accommodate and reflect changes in relevant regulation.
- Secure written consent from the FEHP applicant to sell or transfer their contract to another agency or employer, either in the language of the original contract or prior to consummation of any transfer or sale.
- Charge no fees to FEHPs for recruitment services. This provision shall not apply to fees paid solely by a FEHP (e.g., additional services beyond mere placement and/or recruitment).
- Include clear identification of financial responsibilities of all parties in contracts among FEHPs, recruiters and employers, especially as they relate to the period of transition between countries, including but not limited to transportation terms and specification of provisions upon arrival, such as housing.
- If overtime hours do not count toward completion of the contract, the employer should make an effective effort to ensure the FEHP understands this key clause.

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RIGHT TO MOVE FREELY WITHOUT ECONOMIC COERCION

Workers shall have the right to move freely and change employers while working in the United States, without economic coercion.

- When contracts are signed in advance of visa issuance, permit the termination of contracts by FEHPs if deployment is delayed for more than three years from contract execution and all recruitment costs are reimbursed by the FEHP to the recruiter or employer.
- Breach fees should never be used for punitive purposes.
- Recruiters' and employers' pursuit of breach fees should rely upon good faith and reasonableness, in the limited circumstances where they are appropriate.
- In an effort to resolve issues quickly and efficiently, employers or recruiters should establish an internal administrative process to facilitate review of disputes regarding an alleged breach of contracts by either party (e.g., employee complaint policy, explicit employee notice procedure, etc.).
- Green cards, passports, certifications, permits, visas, or other official documents shall not be withheld from FEHP applicants or employees for any coercive purpose. Custody of such documents should be transferred to the FEHPs as soon as the management of the certification, immigration and licensure processes reasonably allows. Recruiters and employers shall not threaten or use immigration enforcement mechanisms to exercise control over FEHPs.⁶
- Non-compete clauses should be tailored as narrowly as possible and should not restrict the ability to "make a living in one's chosen occupation."

⁶ However, if it appears that there may be fraud in procuring any of these documents (such as in cases of apparent imposter use of documents, or initial no-shows, or early abrupt departures that suggest intentional misrepresentation in employment commitments), recruiters and employers are free to forward such documents to issuing authorities with appropriate information about the suspected misuse.

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Section G

RIGHT TO ACCESS JUSTICE

Workers shall have the right to access justice for abuse and discrimination suffered under U.S. work visa programs.

- FEHPs who believe they have suffered a violation of this Code or U.S. law shall not be discriminated against for filing a complaint or taking legal action.
- FEHPs shall have access to justice which may include mediation, non-jury trials, jury trials or arbitration if expressly stated and mutually agreed.
- Agreements with FEHPs shall not include gag orders and/or confidentiality clauses that limit a health professional's ability to have the contract reviewed.
- Agreements should not in any way seek to preclude FEHP's access to counsel and the right to seek legal redress for any violations or breaches.

Section H

RIGHT TO FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

Workers shall have the right to form and join unions and to bargain and advocate collectively to promote their rights and interests.

- FEHP shall have the right to join professional associations and unions.

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RIGHT TO RECEIVE SUPPORT FOR CLINICAL AND CULTURAL INTEGRATION

Workers shall have the right to receive support as they transition into the U.S. workforce. Certified employers and recruiters shall:

- Make reasonable efforts to ensure that the “basic needs” of FEHPs (e.g., safe and clean housing, health care, and transportation when public services are not available) are available during an initial transition period as part of a negotiated employment package.
- Provide or assist in the provision of orientation and placement policies and practices to educate FEHPs about basic facts regarding living and working (e.g., living arrangements, banking, post office, etc.) in the United States.
- Encourage and facilitate health care institutions/agencies to provide or assist in the provision of clinical orientation to ensure appropriate delivery of care, particularly with regard to clinical practices and procedures that may not be familiar to FEHPs.
- Provide or assist in the provision of sufficient training of FEHPs in cultural/linguistic appropriateness.

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RESPECT FOR SENDING COUNTRIES

Certified employers and recruiters shall:

- Abide by all sending country's laws and regulations.
- Respect FEHPs' contractual obligations to serve their home country health system in return for public education or scholarships provided in the source country. Encourage healthcare professionals to honor these obligations. Where appropriate, require that a FEHP applicant provide evidence that his or her public obligations have been satisfied.
- Avoid active overseas recruitment in those countries or areas within countries that are experiencing either a temporary health crisis during which health professionals are in dire need, or a chronic shortage of health workers.
- Ensure that recruitment is conducted in a manner that does not deplete local health services of the best and the brightest health professionals. Examples of best practices include:
 - Establishing relationships with the departments of human resources in local hospitals, so that the training and departure processes have an agreed upon time frame.
 - Pursuing health facilities partnership agreements (e.g., between schools of nursing and hospitals in the U.S. and source country schools and hospitals). Such partnerships, often called twinning, provide source country facilities with visiting faculty, and in some instances medical supplies. They may also allow recruited healthcare professionals to return for temporary periods (two weeks or more) to work in source country health facilities.
 - Matching a portion of the remittances sent by recruited FEHPs and channeling the funds directly to source country health care organizations.
 - Offering the FEHPs periodic home leave to provide technical assistance to their home communities. This option is especially appropriate where there is a critical lack of human resources for health in the source country.
 - Establishing scholarship funds in source country schools.



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