

APSO Code of Ethical & Professional Practice

INTRODUCTION

The aim of this Code is to set the standards by which members will achieve the highest principles of ethics, equity, integrity, professional conduct and fair practice in all their professional dealings, to conduct their business in a manner that will enhance the image and reputation of APSO and the recruitment industry

GOAL & SCOPE OF THE CODE

- 1.1. Members are expected to observe the highest principles of ethics, equity, integrity, professional conduct and fair practice in dealing with other Members, Clients, Candidates, Employees and relevant stakeholders and to conduct their business in a manner that will enhance the image and reputation of the recruitment industry. APSO will offer guidance, advice and training to Members to achieve these standards.
- 1.2. APSO promotes freedom of association.
- 1.3. APSO has a zero tolerance for fraud or corruption.
- 1.4. This Code shall be binding on all Members of APSO and their employees who shall ensure that they are fully aware of the obligations contained herein.
- 1.5. Members shall not operate under Terms & Conditions or Service Level Agreements that are contradictory to the Code of Best Practice & Ethics.
- 1.6. Members shall not behave in a manner prejudicial to, or likely to bring discredit upon, the prestige and good reputation of APSO, its Members or the recruitment industry.
- 1.7. Members, and their staff, shall work diligently to develop & maintain a satisfactory and up-to-date level of relevant professional knowledge. Members shall ensure that their staff is adequately trained and skilled to undertake their responsibilities and assure a high quality service.
- 1.8. Only the National Executive may issue statements to the media concerning the activities of APSO or its policies or in response to media articles or programmes.
- 1.9. Members shall familiarize themselves with and comply with all relevant South African statutes, regulations, registrations and other legal requirements which relate to their activities in the industry.
- 1.10. Members shall respect the rights of competitors and refrain from defamatory statements or acts of unfair competition.
- 1.11. In the event of a Member, Client, Candidate or employee of a Member becoming aware of and being able to substantiate any breach of these codes by a Member, it is incumbent upon that Member to report the matter to APSO National Office in writing.

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- 1.12. Members shall not, directly or indirectly, approach employees of another Member with offers of alternative employment.
- 1.13. Members shall observe ILO Conventions 29 and 105 and shall not enter and/or use directly or indirectly forced or bonded labour. The principle that employment is freely chosen shall always apply.
- 1.14. Members shall not, directly or indirectly, use child labour. In accordance with ILO 138 only workers above the age of 15 years, or over compulsory school-leaving age if higher, shall be employed.
- 1.15. Members shall observe ILO Convention 182 which directs that children under 18 years of age may not perform work which, by its nature, is likely to harm their health, safety or morals.
- 1.16. Restraint of Trade agreements may only be used to safeguard a Members' protectable business interests and not to unfairly prevent a restrained employee from working in the industry.

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CLIENT SERVICE SECTION

- 2.1 A bona fide Client is defined as any entity from which a Member has a current Service Level Agreement or has accepted a fee within the last six (6) months.
- 2.2 Client may be defined as a Business Unit, Division, Site, Branch, Region or legal entity within, or subsidiary to, the client company.

Members shall:

- 2.3 Obtain from the Client such information pertaining to the Client and job assignment as is necessary to ensure accurate selection of Candidates for the vacancy.
- 2.4 Ensure that Clients receive a written copy of their Terms & Conditions of business, including fee structure, guarantee periods and clear description of services rendered, prior to the commencement of the assignment or at the time that candidate referrals are sent.
- 2.5 Ensure, as far as possible, that all Candidates referred meet the Client's requirements.
- 2.6 Ensure that information contained in CV's/Reports/Resumes submitted to Clients is as accurate as possible:
 - 2.6.1 Clients should be notified of any information that cannot be verified.
 - 2.6.2 Details of a Candidate referred to a Client more than six (6) months from the date of the initial interview must be updated before submission.
 - 2.6.3 Reference checks shall be taken out at an appropriate time in the recruitment process as mutually agreed with the Client.
 - 2.6.4 Verification of qualifications shall be carried out at an appropriate time in the recruitment process as mutually agreed with the Client.
 - 2.6.5 Requirements for Credit, Criminal and other checks must be agreed with the Client
- 2.7 Ensure that Candidates are properly and adequately interviewed and that interview notes are kept for at least two years in written or scanned format. The method of interviewing used shall be clearly stated on the CV or Résumé submitted to the Client.
- 2.8 Treat all information relating to the business of Clients with confidentiality and for the exclusive purpose of recruitment and selection.
- 2.9 Incorporate wording to the following effect into appropriate documentation (CV or Résumé) to protect both Members and Candidates:

"All information concerning the Candidate is furnished to the Client in strict confidence and on condition:

 - (i) That it is not divulged by the Client to anyone without the Candidate's written consent, and
 - (ii) That no contact whatsoever shall be made with the Candidate's present employer without the Candidate's express consent, and
 - (iii) That no references shall be taken on the Candidate without the prior permission of the Candidate or Member."
- 2.10 Not, directly or indirectly, approach a Candidate currently in a position placed by them with an offer of alternate employment, unless the Candidate initiates re-activation of his/her application.
- 2.11 Not approach an employee of a *bona fide* Client unless previously agreed with that Client.

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CANDIDATE SERVICE SECTION

- 3.1 Members shall not, directly or indirectly, charge any fees to applicants.
- 3.2 Members shall not discriminate unfairly against any Candidate at any time in the recruitment process, except when obliged to do so in terms of prevailing legal requirements, regardless of ethnic origin, colour, gender, age, religion, political opinion, nationality, social origin, sexual orientation, or any other distinguishing characteristics.

Members shall:

- 3.3 Respect the privacy and dignity of the individual at all times.
- 3.4 Observe the principle that employment is freely chosen.
- 3.5 Not prevent candidates from seeking work via other sources.
- 3.6 Not download CVs from jobseeker portals and/or websites and submit them to any Client without first having registered the Candidate and conducted an interview.
- 3.7 Ensure that all Candidate information is treated as confidential, used exclusively for the purpose of recruitment and selection and not divulged in any way that may jeopardize the Candidate's current employment.
- 3.8 Obtain from the Candidate in as much detail as possible, all information pertaining to their personal record, employment history, qualifications, skills, experience, and job/career requirements as are necessary to ensure proper non-discriminatory matching on their behalf.
- 3.9 Not submit details of any Candidate to any Client without first:
 - 3.9.1 Describing all relevant details relating to the job opportunity including the ***name of Client***, title and nature of the position, key performance areas, hours, salary, benefits etc, and
 - 3.9.2 Obtaining the Candidate's express permission to represent them at that specific Client for that specific vacancy.
 - 3.9.3 Disclosing the name of the Client.
- 3.10 In the absence of an assignment, Members may market a Candidate to specified Clients on express approval from the Candidate.
- 3.11 Inform Candidates of the result of any interview with either the Member or a Client of the Member.
- 3.12 Not offer inducements of any kind to any Candidate in order to persuade him/her to accept an offer of employment.

INTERVIEWING

- 3.13 All interviewing shall be conducted in such a manner as to preserve the Candidate's privacy, confidentiality and, as far as possible, anonymity from other Candidates.
- 3.14 All Candidates should be interviewed by a Consultant of experience and/or qualification appropriate to the status of the assignment and the seniority of the Candidate.
- 3.15 Adequate notes shall be taken during the interview and form the basis of the Consultant's report to the Client.

This Code of Ethical & Professional Practice was ratified by majority vote at the APSO AGM held on 21 July 2009.

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REFERENCE CHECKING

- 3.16 Reference checking shall be undertaken discreetly, in a manner that will not endanger the Candidate's present employment, and only with the permission of the Candidate.
- 3.17 No referee shall be given the name of the Client without the Client's permission.
- 3.18 If credit and criminal reference checks are undertaken they should be done in strict accordance with applicable legislation.

AGREEMENTS

- 3.19 Members shall ensure that any agreements and/or contracts between Candidates and Members are clearly explained by the Member to the Candidate to ensure that these are understood and entered into openly and transparently. Any financial implications shall be fully disclosed and clearly defined in a written agreement, a copy of which shall be provided to the Candidate.
- 3.20 Should a Member wish to enter into an exclusivity agreement with a Candidate such agreement shall be limited to specified Clients to whom applications must be submitted within seven days. .

SEARCH SECTION

- 4.1 Search is defined as any recruitment activity that involves a direct or indirect approach by the Member to a prospective Candidate, who has not previously indicated a wish to consider alternative employment.
- 4.2 Members shall ensure that all approaches are made in a manner that will ensure confidentiality and not jeopardise the Candidate's current employment.
- 4.3 Members shall at all times respect their Client's wishes regarding confidentiality which should be recorded in writing.
- 4.4 No employee of a *bona fide* Client may be contacted by a Member directly, or indirectly, with an offer of alternative employment.
- 4.5 No Candidate, once placed by the Member, may be contacted again directly, or indirectly, regarding alternative employment whilst employed by the Client, unless such former Candidate so requests in writing or the Candidate has notified the Client of his/her intention to leave.
- 4.6 Potential conflict of interest due to business relationships between Members and their Clients or Candidates shall be disclosed to Clients before Candidate referral presentations.

ADVERTISING SECTION

- 5.1 Members shall not advertise in a misleading manner.
- 5.2 Members may only advertise *bona fide* job vacancies in newspapers, on job portals, notice boards and other print or electronic media.
- 5.3 Members shall, at all times, adhere to the Advertising Authority's Code of Best Practice.
- 5.4 Positions on all electronic media, including job portals, must be removed once filled or withdrawn for any reason.

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This Code is applicable to Members who provide Temporary Employment Services (TES) as defined in the Skills Development Act (as amended).

TEMPORARY EMPLOYMENT SERVICES (TES) SECTION

LEGAL OBLIGATIONS

- 6.1 Members shall fulfill all legal and contractual obligations of employers to temporary employees, observe fair labour practices and respect freedom of association.
- 6.2 Members shall ensure that all temporary employees are furnished with a contract of employment and that a copy is given to the temporary employee as soon as possible after signature.
- 6.3 Members shall ensure that all temporary employees are given details of their working conditions, the nature of the work to be undertaken, rates of pay and pay arrangements and working hours.
- 6.4 Members shall ensure that their contracts of employment with temporary employees comply with all statutory requirements, legislation and Bargaining Council agreements which set conditions of employment.
- 6.5 Members shall comply with all applicable Collective Bargaining Agreements, Wage Determinations and Sectoral Agreements.
- 6.6 Members shall ensure that they pay over the employer's portion of statutory benefits, tax deductions and other such insurances and taxes as required by law.
- 6.7 Members shall register with the required statutory authorities, including Bargaining Councils, SARS, UIF, SDL and the Compensation Commissioner.
- 6.8 Members shall annually submit to APSO proof of their compliance in respect of their statutory obligations as referred to in Clauses 6.6 and 6.7. (Eg Letters of Good Standing and Tax Clearance Certificates)
- 6.9 Members shall ensure that Service Level Agreements reached with Clients honour the letter and spirit of labour legislation.
- 6.10 Members shall not market their services on the basis that utilization of a TES will circumvent labour legislation.
- 6.11 Limited Duration Contracts of Employment shall not be used to circumvent the dismissal procedures prescribed in Section 198 of the Labour Relations Act.
- 6.12 Members shall act diligently in assessing risks in order to promote the safety of agency workers in their workplace.

INDUSTRIAL ACTION

- 6.13 In a strike or lock-out situation, Members shall only supply replacement labour in accordance with the requirements of the Labour Relations Act. Furthermore, in any form of industrial action, whether lawful or not, Members must be adequately satisfied that the personal safety of their Temporary employees is not endangered. In addition, such Temporary employees must be advised of the strike or lock-out situation at the Client to which they are assigned.

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TRANSITIONING OF TES

- 6.14 Members shall be aware and acknowledge that in an open and competitive market, circumstances may arise when a Client wishes to change suppliers.
- 6.15 Members shall not encourage employees of competitor companies, who are assigned to Clients where they also have temporary employees on assignment, to terminate any assignment prematurely.
- 6.16 Members shall not encourage Clients to act in breach of their contractual obligations with other service providers.
- 6.17 Members shall not commit unfair labour practices when “transferring” employees from one service provider to another.
- 6.18 Clients should be advised in writing that they must notify the present TES of their intention to change suppliers. All parties, including both TES companies and the temporary employees, should be adequately informed by the Client during the transition process.
- 6.19 The present TES shall inform affected employees as soon as possible after a transition has been agreed.
- 6.20 Employees must be advised in writing by the Client and/or the incoming TES which party is liable for payment of accrued benefits.
- 6.21 Significant resources are invested in temporary employees and a transferee TES should be prepared to negotiate, in an open and equitable manner, any request by a transferor TES for a transition fee.

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ETHICS SECTION

The Ethics Committee was established with the objective of adjudicating fee disputes and considering complaints from Clients, Candidates and Members in order to promote and protect the professional status of Members and the recruitment industry.

ETHICS PROCEDURES

- 7.1. A complaint brought by a Member, Candidate, Client, or employee against any Member (hereinafter referred to as the “respondent”) for breaking the Code of Best Practice & Ethics shall be made in writing to the APSO National Office. The complainant shall indicate which sections of the Code are alleged to have been breached and state the facts upon which the complaint is founded together with substantiating evidence.
- 7.2. As soon as a complaint is received and validated, the National Office shall inform the respondent of the complaint against them and call for their reply.
- 7.3. The respondent shall have ten (10) working days to submit a written response/defence to the complaint.
- 7.4. The Ethics Committee shall investigate all complaints. If they are of the opinion that the complaint is unfounded, they shall give written reason for the rejection to the complainant.
- 7.5. The Ethics Committee has twenty one (21) days in which to provide an official ruling to both parties. Rulings will be provided in writing and records shall be kept on file.
- 7.6. Subject to their right of appeal and their right to initiate arbitration Members shall comply with rulings made by the Ethics Committee.

RIGHT TO APPEAL

- 7.7. The complainant and/or respondent shall be entitled to appeal on any ruling made by the Ethics Committee provided that it is made within seven (7) working days from the date after which the ruling was made. Appeals must be made in writing clearly setting out the grounds for the appeal and providing substantiating evidence in support thereof.
- 7.8. If the Ethics Committee considers that the appeal has sufficient merit for an appeal to be considered, the Chairperson of the Ethics Committee will refer the matter to the Ethics Appeal Board.
- 7.9. The Ethics Appeal Board shall be made up of the National Executive Committee. It will have the power to confirm or change any decision made by the Ethics Committee and shall provide all parties with the reasons for the decision reached. Members of the National Executive Committee, who were part of the Ethics Committee when the original ruling was made, whilst retaining their right to speak, shall not have voting rights. The quorum for such an appeal shall be five (5) National Executive Members entitled to vote on that issue.
- 7.10. The party that loses the appeal shall have the right to initiate outside arbitration. The South African Institute of Arbitrators will be asked to propose a panel of three (3) arbitrators. All costs relating to this arbitration procedure shall be borne by the appellant.
- 7.11. As a quicker and more affordable alternative to formal arbitration the party that loses the appeal shall have the right to initiate expedited private arbitration by requesting APSO to refer the matter to a recognized Dispute Resolution organization. The dispute resolution organization will appoint an appropriate arbitrator. The arbitrator will consider the matter on written submissions from the

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parties. The arbitrator's decision will be final and binding on the parties. All costs relating to this arbitration procedure shall be borne by the appellant, unless ordered otherwise by the arbitrator

PUBLICATION OF RULINGS

7.12. Any findings of the Ethics Committee and the Ethics Appeal Board may be published, but in a confidential manner not naming the parties concerned, unless the National Executive Committee of APSO decrees otherwise.

SANCTIONS

7.13. If the Ethics Committee determines that a complaint is well founded it may, inter alia:

- (i) Impose conditions relating to non-repetition of the offence within a stipulated period
- (ii) Issue a written warning
- (iii) Issue a reprimand
- (iv) Impose a fine
- (v) Suspend membership for any period not exceeding one (1) year
- (vi) Cancel membership

7.14. An expelled member may apply for renewed membership after six (6) months and may be reinstated at the discretion of the National Executive Committee.

7.15. A respondent who is an owner, principal, director, member or senior executive, may not plead that he/she is not responsible for the policy of his/her organization, or the actions of its employees.

In all cases relating to fee disputes the Ethics Committee uses the following principles, which take precedence over Members' Terms & Conditions.

FEE DISPUTES

8.1 The party who completed all of the following three (3) steps will usually be regarded as the one who was the effective cause of the placement and therefore entitled to the fee:

- (i) Interviewed the Candidate;
- (ii) Obtained the Candidate's permission to release his/her details to that specific Client for that specific vacancy; and
- (iii) Obtained the Client's acceptance of the Candidate as an applicant for that vacancy. Client's acceptance occurs when the Client acts upon the introduction and this is generally defined as an interview between the Client and the Candidate that is arranged by the Member at the request of the Client.

In neither party completes all three (3) steps, the Ethics Committee shall use its discretion in making a decision.

8.2 Adherence to all sections of the Code of Best Practice & Ethics will be taken into account when deliberating cases and arriving at decisions.

8.3 Both parties will be required to submit a chronological sequence of events in writing, together with supporting documentation, to the Ethics Committee so that they can objectively and accurately assess the circumstances surrounding the fee dispute.

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- 8.4 The Ethics Committee has a maximum of forty-five (45) days in which to provide an official ruling to both parties. Rulings will be provided in writing, communicated to both agencies and the client and records shall be kept on the Member's file.
- 8.5 The complainant and/or respondent shall be entitled to appeal on any ruling made by the Ethics Committee provided that it is made within seven (7) working days from the date after which the ruling was made. Appeals must be made in writing clearly setting out the grounds for the appeal and providing substantiating evidence in support thereof.
- 8.6 If the Ethics Committee considers that the appeal has sufficient merit for an appeal to be considered, the Chairperson of the Ethics Committee will refer the matter to the Ethics Appeal Board