



International
Labour
Organization

▶ Essentials for a successful employment injury insurance system

A practical guide on policy, institutional governance,
legislation, administration and sustainable finance



prevention



compensation



medical care



rehabilitation &
return to work

**Essentials for
a successful employment
injury insurance system**

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Essentials for a successful employment injury insurance system – A practical guide on policy, institutional governance, legislation, administration and sustainable finance

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▶ Abbreviations and acronyms

ADR	alternative dispute resolution
ALMP	active labour market policy
DC	defined contribution
EI	employment insurance
EIN	employer identification number
EISS	employment insurance social security
EL	employers' liability
HI	health insurance
ICA	International Co-operative Alliance
IDWN	International Domestic Workers' Network
ILO	International Labour Office/Organization
ISSA	International Social Security Association
ITUC	International Trade Union Confederation
MFI	microfinance institution
MSE	micro and small enterprises
MSME	micro, small and medium-sized enterprises
NGO	non-governmental organization
NHI	national health insurance
OSH	occupational safety and health
PAYG	pay-as-you-go
PDB	permanent disability benefit
PPP	purchasing power parity
RTW	return to work
SIF	second injury fund
SME	small and medium-sized enterprises
SSI	supplemental security income
UNDP	United Nations Development Programme



► Background and purpose of the guidebook

Social protection of workers and their survivors in cases of work-related accidents and occupational diseases is essential, but is still painfully inadequate in many parts of the world (as the Rana Plaza tragedy illustrated only too clearly). As part of its mission, the International Labour Organization (ILO) promotes employment injury (EI) insurance and mobilizes resources to support governments in their efforts to improve their employment injury benefit schemes.

Essentials for a successful employment injury insurance system is part of the training material produced by the ILO in response to an identified need to build national capacity for effective governance and management of an employment injury social security (EISS) system.

The guidebook is targeted at representatives and working teams involved in the planning, financing and management of workers' compensation schemes. They can come from ministries of labour, social security institutions, or worker and employer associations, among others.

The guidebook is based on materials previously developed by the ILO and draws on actual experience for illustration. It aims to gather, in one package, essential knowledge to understand EISS and to develop the skills necessary for conducting assessment exercises towards introduction or enhancement of an EISS scheme. A detailed presentation of content on all topics is not our objective; rather, the guidebook provides a broad view, a kind of map to assist users in their learning journey, and references to up-to-date sources that allow the user to go further.

The guidebook remains a work-in-progress that will be enriched in the future with new experiences and user feedback. It aims to be multipurpose, so that it can be useful for self-learning, delivering trainings, or conducting feasibility studies on implementing or enhancing an EI benefit scheme in a country. It does not offer a magic formula for successfully conducting a training course or a national assessment exercise, but is intended to provide an approach, a toolbox to be tailored to a particular workshop or country situation. It offers diverse learning approaches to ease understanding, facilitate knowledge sharing, and provide participants with hands-on experience of good practices. In addition to the master modules, complementary materials can be useful for self-learning or to produce a resource package for delivering a training or conducting a feasibility study. Such materials can include, for example, illustrations through Powerpoint presentations or video clips, case studies for integration and simulation exercises, instruction sheets for group activities, quizzes, tests and grids.



► Introduction

How can adequate employment injury (EI) protection be provided at a reasonable and affordable cost? This guidebook attempts to show how to build an EISS system that balances the needs and interests of all stakeholders of a society. To begin, the following questions invite a brief explanation of the concepts of adequacy, affordability, responsibility and implementation for EI protection:

- What does adequate EI protection mean?
- What can be considered reasonable and affordable cost?
- Who is responsible for employment injury protection?
- How can employment injury protection be provided to workers?
- What does it take to provide EI protection under the option of social insurance?

What does adequate EI protection mean?

Ideally, adequate EI protection is provided to all workers at a reasonable and affordable cost (see box I.1). But it is difficult to cover all workers, for reasons related to the labour market where it is often difficult to determine the employment relationship. This topic will be discussed in [Modules 5, 8 and 9](#) and [Appendix 11](#).

Workers have the right to a safe and healthy workplace. Obviously, no accident and no disease is the target. Workplaces should be designed and organized to eliminate risk of occupational accident and disease. Where risk cannot be eliminated, it should be reduced to an acceptable level.

When an accident or a disease occurs, well-trained procedures are set in motion to provide rapid first aid to the injured worker, to secure the workplace for other workers, and to improve the risk control; the injured worker has free-of-charge and timely access to healthcare, medical rehabilitation, social rehabilitation and return-to-work services, as well as adequate compensation (rapidly and fairly). Employment injury benefits are further discussed in [Module 3](#).

What can be considered reasonable and affordable cost?

Reasonable cost is achieved when adequate EI protection can be delivered effectively and efficiently. There exists a mechanism that promotes best service at lowest cost from providers.

The cost of providing adequate EI protection is considered affordable when, as part of production cost, it does not represent an excessive financial burden that would jeopardize the business plan. The affordable cost should also be predictable for the financing of EI protection to be sustainable in the business plan.

The costs of employment injury benefits are further discussed in [Module 6](#).



Who are responsible for employment injury protection?

It has been largely acknowledged for many decades, and for more than a century in some countries, that employers have the responsibility to support the consequences of employment injuries (see the article “A brief history of workers’ compensation” reproduced in [Appendix 3](#)).

In a broad sense, and in line with occupational risk theory, industrial accidents are inevitable and should be compensated regardless of who is responsible for the accidents. Thus, the expenditure for industrial accidents should be considered as a part of production cost.

The roles and responsibilities in providing EI protection are further discussed in [Module 4](#).

How can employment injury protection be provided to workers?

The options can be grouped as follows:

- Employers’ liability (EL) system. Employers individually assume their responsibility and directly compensate workers in case of injury.
- Private insurance system. Employers can choose or are forced by law to subscribe an insurance contract in order to transfer the risk of high cost and volatility of claims to an insurance company.
- Employment injury social security (EISS). Employers collectively finance a workers’ compensation scheme against the risk of work injuries and occupational diseases under the no-fault principle. Employers’ participation is mandatory. The scheme can be national or sector-distinct.

Under the no-fault principle (social compromise theory), employers and workers agree to a trade-off whereby employers are free from individual compensation responsibilities and Court cases for compensation for work-related injuries or diseases, while employees abandon the right to sue their employer when an EI case occurs, but are automatically entitled to benefits of the compensation scheme. It is argued that no-fault liability under the EISS is much more efficient in time and cost than the judicial system which focuses on who is responsible for the accidents (the least social cost theory).

Under EL and private insurance systems, coverage and benefits are defined by law and or settled in Court. The EI system in Bangladesh combines these two options.

The method adopted to provide EI protection reflects each jurisdiction’s historical, institutional, cultural and financial circumstances. It is prescribed by legislation. Ideally, the legislative provisions represent a consensus or compromise reached through a national dialogue. The legal framework is discussed in [Module 2](#).

From the point of view of governments, workers and employers, an EISS scheme contains many advantages compared to the EL system, as shown in [Module 1](#).



What does it take to provide EI protection under the option of social security?

The implementation of an EISS scheme unfolds in three developmental phases:

1. Development of a sound legal framework for the EISS scheme.
2. Design of a sustainable, affordable and self-financed EISS scheme.
3. Building competent administrative capacity in view of the facilities in charge of the administration of the scheme.

The implementation process must respect a logical sequence and involve both stakeholders (mainly in the first two phases) and technical experts (in the third phase). The advantages of grouping occupational safety and health (OSH) and labour inspection under one administrative structure are discussed in [Module 3](#).

► Box I.1 Employment injury protection in Dreamland

Dreamland is a prosperous country that has been enjoying economic and social stability for many years. The unemployment rate and inflation rate are low and are expected to remain stable. The number of employment injuries including occupational diseases is low.

When an accident or a disease occurs, well-trained procedures are set in motion to provide rapid first aid to the injured worker, to secure the workplace for other workers, and to improve risk control. The injured worker has free-of-charge and timely access to healthcare, medical rehabilitation, social rehabilitation and return-to-work services, and adequate compensation (rapidly and fairly).

Appropriate training is provided when a new machine or a new method is set in application. There are regulations making sure all machines have a safety device. Employers and workers are involved in the collection of information on any event or observation that can affect safety and health in the workplace. There are procedures to share and analyse the data collected at different levels (work unit, EISS scheme, national labour research institute).

Employers, workers and the scheme's inspectors take an active part in the prevention programme.

The return-to-work programme intervenes early in the process. Injured workers receive personalized service. The scheme agent works with the employer and the worker on a plan of rehabilitation for the return of the worker to work.

All workers are covered under the EISS scheme regardless of the nature of their employment.



Elements and steps to build a system that provides adequate EI protection at a reasonable and affordable cost, as well as the conditions for the realization of each element and step, and possible paths to such realization, are treated in **Modules 1 to 9**. The main objectives of each module are as follows:

- **Module 1** presents different approaches to providing EI protection, and arguments in favour of employment injury social insurance (EISS). The module provides a description of core elements of an EISS scheme as background for further discussion in the following modules.
- **Module 2** discusses the legal and institutional framework of an EISS system.
- **Module 3** focuses on the establishment of EISS benefits, their type and level, by situating the EISS within the social protection context.
- **Module 4** presents guidance available in the ILO standards.
- **Module 5** discusses the vital importance of contribution collection, the types and causes of evasion, and the measures to enforce compliance and to reduce moral hazard.
- **Module 6** addresses the questions “Who pays?” and “How much has to be paid in a specific time period?” (financial systems), and discusses the issue of spreading the cost among the stakeholders identified to pay for the social security plan (rating systems).
- **Module 7** discusses justification for the linkage relations between prevention, compensation and return to work, methods of making linkage happen, linkage theories and evidence, and further thinking on the introduction of return to work in developing countries.
- **Module 8** discusses the issue of EISS coverage of workers in the informal economy within the ILO framework for facilitating transitions from the informal to the formal economy. The informal economy, the related regulatory environment at the international and national levels, and an integrated policy framework are described.
- **Module 9** presents an outline of the International Social Security Association (ISSA) *Handbook on the Extension of Social Security Coverage to Migrant Workers*, which provides a description of these workers and discusses how social security coverage can be extended to them.

**Module 1.
Employment injury social security
and other approaches**

1





Objective

This module describes the main characteristics of an employment injury social security (EISS) scheme, and then compares this type of scheme to the employers' liability (EL) option, including private insurance.

Key questions

This module provides answers to the following questions:

- What does the no-fault principle consist of?
- How is an EISS scheme usually administered and by whom?
- Who contributes to the financing of the scheme and how is the contribution determined in an EISS scheme?
- When is a worker entitled to EI benefits under an EISS scheme?
- Under an EISS scheme, what EI benefits does the worker receive in case of employment injury?
- What are the advantages of a tripartite composition of an EISS scheme?
- Is an EISS scheme more administratively costly than an EL programme?
- Is an EISS scheme more expensive for employers than an EL programme?
- What are the advantages of an EISS scheme offering better benefits than EL programmes and under the no-fault principle for workers, employers and government?
- What are the advantages of regrouping compensation and health and safety into the same public institution?
- What is the theoretical background of an EISS scheme?
- Why is a social assistance system that is tax-financed not suitable for employment injury?
- How does an EL system co-exist with a social or private insurance system?

► Main characteristics of the EISS scheme

Mandatory social insurance is the most prevalent option for providing EI protection in comparison to voluntary insurance and employer liability (EL) programmes.

The EISS schemes show various characteristics from one country to another, depending on their socio-economic context and the rate of development of their policies in social security. But they all have an important number of points in common.

What does the no-fault principle consist of?

The employers take on the collective responsibility to finance a workers' compensation plan against the risk of work injury or occupational disease, and in return they cannot be individually sued by the worker to obtain compensation for the injury or the disease.

The employees abandon the right to sue their employer when a employment injury occurs, but they are entitled to full benefits of the workers' compensation plan with no need to prove the responsibility of anybody.

How is an EISS scheme usually administered and by whom?

The administration of the EISS scheme is usually under the responsibility of a specific public institution; in some countries, it is a department of an institution with wider responsibilities in the social security area, such as sickness, maternity or unemployment.

This specific public body has to manage the operations regarding financing (registration of employers, collection of their premiums, investment of the assets in the reserve, and so on) and compensation (processing the claims from workers or their dependants, payment of cash benefits and healthcare services, delivery of rehabilitation services, support for reintegration into the workforce). In many countries, the institution is also mandated to promote various activities to prevent work injuries and occupational diseases; it takes advantage of the overall data in its possession to identify priorities for intervention.

In all jurisdictions, employers have the obligation to maintain a safe working environment, and officers of the EISS public institution have powers of inquiry to verify statements made by the employers and the workers, and also to inspect work sites to ensure that company practices are in accordance with the safety standards fixed by regulation. In some jurisdictions, compliance with OSH regulations is fully administered by the EISS public institution, including the power to impose penalties and close work sites.

The responsible public institution is usually under the authority of the Ministry of Labour and its direction is supervised by a governing board composed, in accordance with the ILO Conventions, of members representing the government, the workers and the employers. This tripartite board is responsible for the strategic planning of the institution, its financial statements, and its policies relative to financing, compensation and prevention; for making agreements with other institutions with regard to the delivery of services to workers and employers; and for recommending to the Ministry of Labour the actions to take in matters of regulation.

Who contributes to the financing of the scheme and how is the contribution determined in an EISS scheme?

The employers are usually the only contributors to the financing of the scheme. Sometimes the government pays a small part of the costs, for example to cover a part of administrative expenses at the start of the programme or to cover the expenses for certain OSH services. Workers normally do not contribute to the financing. The coverage is mandatory for all employers belonging to a category or an economic activity determined by the legislation.

The employers' contribution is calculated as a percentage of their workers' wages and is paid through periodic payments during the year, usually monthly payments. The contribution rate of the employer may depend (or not) on the risk that employment injuries occur in the company. The contribution of employers is determined yearly and depends upon the funding method. One of the most common approaches is to use the pay-as-you-go (PAYG) method for short-term benefits (temporary incapacity and medical care) and terminal funding for periodic payments to permanently disabled workers and survivors of workers deceased from an employment injury. The contribution rate must cover payments for short-term benefits paid during the year and the present value of periodic payments awarded in the year.

Various methods are used to determine the contribution rate of each employer. In some countries, a fixed rate is charged to each employer, whatever may be its economic activity, its size or its experience of injuries; we then say that these countries aim at an objective of solidarity between companies.

In most countries, the contribution rate of the employer varies depending on the risk associated with its economic activities; these countries apply insurance principles aiming at respecting fairness between employers of different economic activities. Finally, many countries add an adjustment factor to take into account the employer's experience of injuries; this kind of measure aims at encouraging employers in preventing accidents and diseases, and reintegrating injured workers into the workplace in order to maintain a good record and to obtain rate discounts.

This subject is discussed further in [Module 6](#).

When is a worker entitled to EI benefits under an EISS scheme?

The EISS scheme is a no-fault programme. So, the worker victim of an injury during work is entitled to the benefits of the programme with no need to demonstrate the responsibility of anybody. A usual exception to entitlement to benefits is an injury due to an intentional gesture of the worker. Also, in many countries, injuries causing an interruption of work for less than two or three days are excluded for cash benefits.

Workers suffering an occupational disease typical of the work, as listed in a chart of recognized diseases included in the law or with medical proof, are entitled to the benefits of the programme if they can demonstrate that they hold a job for which this disease is recognized or that they held such a job in the past. They keep the right to benefits even if they have not held that job since an indefinite time in the case of certain diseases.

Workers should be entitled to the benefits of the programme even if their employer does not respect its obligations, for example if the worker is not registered or the employer has not paid due contributions. In those circumstances, the EISS would register the employer for the future and recover past contributions or impose penalties.

Under an EISS scheme, what EI benefits does the worker receive in case of employment injury?

Workers suffering an employment injury receive all the medical services they need, including hospitalization, surgery, medical treatments, drugs and/or appliances, as long as they need these services. The institution administering the scheme pays the hospitals, clinics or professionals who furnished the services directly, or reimburses the worker if payment has already been made by the worker, for example for drugs.

The injured worker receives periodic cash benefits during temporary disability, beginning after the waiting period, if any, and up to recovery or to the maximum payment period. The amount of these benefits is a percentage of the worker's average wage for the months preceding the injury. The ILO standards prescribe a percentage of 60 per cent, but in many countries with EISS schemes the percentage is higher, often around 70 or 75 per cent. The wages are considered up to a maximum, called the maximum of assessable earnings, which is fixed in order to cover the full wages for a large majority of workers, for example 85 to 90 per cent of workers in many countries.

At the end of the period of temporary disability, the worker with a permanent disability will continue to receive periodic cash benefits paid for the whole life (or up to presumed retirement age according to a coordination mechanism with the pension system). Total permanent disability benefits are paid at the same rate as temporary benefits, and partial permanent disability benefits are the product of that temporary benefit multiplied by the degree of disability. When the degree of disability is relatively small (for example 20 per cent or less), the periodic payments can be converted into a lump sum representing the present value of the benefits, if it is in the interest of the worker. The amount of benefits is adjusted from time to time, often yearly, to protect against increases in the cost of living.

Workers suffering a permanent disability such that they cannot reintegrate into their work are entitled to rehabilitation benefits, including physical and vocational rehabilitation. The objectives of these measures are to help workers so that they will be able to take up their current activities again and to develop, with learning and training, their ability to carry out a new job.

If the worker dies due to an employment injury, survivors' benefits are paid to the dependants. As with temporary and permanent disability benefits, survivors' benefits are calculated as a percentage of the worker's average wage for the months preceding the injury. This percentage depends on the structure of the family: usually, the percentage allowed to a widow or widower with two young children is higher than 50 per cent, which is the percentage prescribed in the ILO standards. The periodic benefits to a widow or widower are paid for life or until a remarriage, and those to children are paid up to majority or later if attending schools. Some EISS schemes have provisions stipulating that a part of survivors' benefits is paid to other dependants, such as parents who were mainly supported by the worker preceding that worker's death. Finally, the survivors receive a funeral benefit in order to cover the expenses of an average funeral arrangement.

Key features of EI programmes in the world are summarized in table B7 of the ILO *World Social Protection Report, 2017–19* (ILO 2017). [Appendix 1](#) presents a table providing information on EI protection: coverage and financing.

► Comparison between the EL (including private insurance) and the EISS scheme

Governments, workers and employers, despite their different points of view on EI protection, can find more advantages in an EISS scheme than in EL schemes. The advantages are discussed below according to the core elements of EI schemes (administration, financing, entitlement, benefits and prevention). EI protection can be provided through a complex system whose arrangements are a result of the cultural, historical and political circumstances of the country. Boxes 1.1 and 1.2 illustrate such complexities in a social insurance system (Switzerland) and in an EL system (United States).

What are the advantages of a tripartite composition of an EISS scheme?

The tripartite composition of the governing board makes it possible for workers' and employers' associations to be involved in the adoption and the review of the policies regarding management, financing, claims processing and so on. It is a great opportunity for them to make sure that the administrative institution maintains a good financial record and remains efficient.

Is an EISS scheme more administratively costly than an EL programme?

The government may consider that the creation of a new entity dedicated to the EISS is a burden which could be too costly and that it could be difficult to find all the competent staff that it needs. On the other hand, it should be noted that even a better EL programme requires the addition of specialized staff to ensure the compliance of employers and the effectiveness of the insurance market.

Is an EISS scheme more expensive for employers than an EL programme?

Employers, or at least those belonging to a specific group or category, may be opposed to the fact that the EISS scheme is compulsory. As the EL programme should also force them to purchase group insurance, the difference is rather that, in an EISS scheme, employers do not have the choice of their insurer but have to contribute to the public institution. An important advantage of the EISS scheme for employers is that they cannot be sued, so they do not face excessive costs even if a major accident occurs. At first sight, one may fear that the cost of the public insurance is higher, at least from the fact that the benefits of the EISS scheme are higher. However, we have to remember that private insurers have additional specific expenses such as marketing, and that they need to make some profit. So it is not clear which scheme is more costly in the end.

What are the advantages of an EISS scheme offering better benefits than EL programmes and under the no-fault principle for workers, employers and government?

It is certain that in an EISS scheme workers have better access to benefits: they can be entitled to benefits even if their employer does not meet its obligations, and in the case of occupational disease they can be entitled to benefits even if they are no longer doing the job for which the disease is recognized. Workers do not have to prove the responsibility of their employer. In EISS schemes, the treatment of claims is usually fast and the delay before receiving compensation is small.

Employers may be opposed to the fact they cannot demonstrate that they are not responsible for the accident or the disease, but at least they have fewer expenses for lawsuits. An EISS scheme mitigates undue economic burden and thus helps them operate their companies. Government can also find satisfaction in the fact that fewer disputes means fewer lawsuits and Court decisions, and that the scheme contributes, in addition to the tripartite composition of the board, to a better social climate.

Employees, in particular victims of severe injuries, should clearly prefer the benefits of an EISS scheme, among other things for their permanent nature: they receive periodic cash benefits as long as they suffer economic losses; they will have medical treatment, services and supplies as long as they need them, even many years after the occurrence of the injury; and the survivors of deceased workers will receive periodic payments for the complete duration of their presumed dependency. Workers with no earnings capacity will have physical rehabilitation services to help them carry out their personal activities again; those who cannot resume the job they occupied at the time of the accident, but who still have some earning capacity, will receive vocational rehabilitation services to enable them to do a new job. Moreover, those benefits paid for a long period will be adjusted to take into account increases in the cost of living. The benefits of an EISS scheme are in accordance with the standards of the ILO Conventions and are generally higher than those usually seen in EL schemes.

Employers should also be interested in the fact that their employees are entitled to a better programme. The fact that fewer victims would still, after injury and recovery, have to live with no or few financial and medical resources is favourable to the government too.

What are the advantages of regrouping compensation and health and safety into the same public institution?

In an optimal EISS scheme, all staff members involved in the health and safety department and in the compensation programme administration can be regrouped in the same public institution, which increases the efficiency of prevention activities and inspection of workplaces for OSH compliance. In fact, such an organizational structure improves the collection and circulation of data on injuries and risks present in the workplace, which helps to identify priorities of intervention. This should be a significant advantage from all stakeholders' points of view. Besides, international studies have revealed that modern workers' compensation programmes are more effective when they are closely related to good practices in health and safety in the workplace, in particular to good prevention measures (see ILO 2013a).

What is the theoretical background of an EISS scheme?

EISS has a well-accepted theoretical background that comprises three theories: social compromise theory (no-fault principle), least social cost theory, and occupational risk theory.

Why is a social assistance system that is tax-financed not suitable for employment injury?

Given the EISS objective of providing a replacement income based on the worker's previous income level, the EISS financing by contributions based on income is a more responsive financing system. A tax-based financing system, the loose link between revenue (tax-based) and expenses (earnings-based) would not provide self-adjustment.

Some countries partially finance the EI system through a tax-based universal health scheme that covers occupational medical care (as in the **United Kingdom**) or through government subsidy to the EISS fund (for example, the Government of **Israel** pays 0.03 per cent of insured and self-employed persons' earnings; the Government of **China** provides subsidy as needed; the Government of **Guatemala** pays 1.5 per cent of gross payroll).

How does an EL system co-exist with a social or private insurance system?

In some countries, employers' liability goes beyond their contribution to the compensation scheme.

A country can have a risk-pooling mechanism through either social insurance or private insurance, but EI legislation can put a maximum on the total amount of benefits covered. For example, in **Thailand**, the Workmen's Compensation Fund pays up to 45,000 Baht per incident of work injury or occupational disease. This maximum can be increased to 300,000 Baht in certain cases determined by the medical committee of the Office of Workmen's Compensation Fund. If the total medical cost is beyond the maximum, employers are liable for the amount not covered by the EISS scheme. In **Sri Lanka**, employers buy private insurance policy on a voluntary basis. An insurance company pays beneficiaries for their claims, but the compensation amount paid by such insurance can be smaller than that stipulated in the Workmen's Compensation Act.

In countries where employees have access to both a tort system and an EISS scheme, employers may have liability beyond EISS contributions. In a system where workers must choose between a tort system and an EISS scheme, employers can expect their liability to go beyond their obligation of EISS contributions. Tort systems are usually limited to specific circumstances such as the existence of employer negligence in the case of industrial accident or disease, which workers have to prove. The public system generally takes into account the amount paid for damages and reduces its compensation. In another approach, a tort system provides additional compensation equal to the amount of damages minus the amount paid by the public system. In such a tort system, the EL is provided through private carriers even when a public scheme exists (as in the **Republic of Korea** and the **United Kingdom**).

The total damage is often compensated to a certain extent under different systems in different forms of payment. While compensation under an EISS scheme generally comprises a pension for earnings loss and a lump sum for physical loss, compensation under the tort system is generally in the form of a lump sum. Illustrations on compensation for total damage caused by occupational injury or disease versus coverage under an EISS scheme are provided in [Appendix 2](#).

► **Box 1.1 Co-existence of public and private insurance providers: Switzerland**

In Switzerland, insurance is provided through

- Swiss National Accident Insurance Fund (SUVA);
- authorized private insurance companies;
- public sickness and accident insurance funds; and
- sickness funds subject to the federal law on health insurance.

The *Loi fédérale sur l'assurance-accidents* (LAA) prescribes the sectors of activity which employers must insure with the SUVA. The SUVA is a public autonomous body that mainly covers enterprises in the secondary sector, which comprises about 50 per cent of all workers and 25 per cent of employers. The employers whom the SUVA does not have the competence to insure must, in accordance with the present law, be insured against accidents by the other entities listed above.

There is a distinction between supervision of (1) the uniform application of the law (law enforcement or application) and (2) management and solvency (institutional supervision). Supervision of law enforcement is the responsibility of the Federal Office of Public Health (FOPH) for all insurance companies that offer insurance prescribed by the LAA, whether they are private insurers, the SUVA or public accident insurance funds.

The FOPH must ensure through institutional supervision that all insurers properly report the data used for the calculation of premium rates. LAA insurers are legally obliged to contribute to uniform statistics through the transmission of their data and through a financial participation. The concept and content of the LAA statistics are determined, if they are not already in the legal bases, by the Accident Insurance Statistics Coordination Group (CSAA), composed of representatives of the insurers and chaired by the SUVA. Statistics are compiled by the centralization service, led by the SUVA.

Institutional supervision is the responsibility of the Swiss Financial Market Supervisory Authority (FINMA) when it comes to private insurers. The FOPH and FINMA must coordinate their activities. The SUVA is subject to the Federal Council for high-level institutional supervision, which is exercised by the FOPH, while its direct institutional supervision is the responsibility of its board of directors. Public sickness accident insurance funds, for their part, are supervised by the communities that set them up. Sickness funds subject to the federal law on health insurance are submitted to the FOPH both for the supervision of law enforcement and for institutional surveillance.

Supervision of work accident and professional diseases insurance

Supervision	SUVA	Private insurance companies	Public sickness and accident insurance funds	Sickness funds subject to the federal law on health insurance
Law enforcement	FOPH	FOPH	FOPH	FOPH
Management and solvency	FOPH and board of directors	FINMA	Groups that set them up	FOPH

FINMA's institutional supervision on private insurers focuses on the themes of corporate governance, risk management, outsourcing, technical provisions and asset management. Insurers are subject to on-site inspections. These themes do not include checks on insurance premium calculation.

FOPH monitors the solvency of the companies under its jurisdiction. Since the LAA provides that contribution rates must be established according to actuarial principles and that a database be fed by all insurers, FOPH also intervenes in the area of rate setting to ensure compliance with the law. Pricing control does not include rate approval but is limited to monitoring that premiums are actuarially determined and rely on a database of claims that is properly updated.

Sources: Switzerland: CSAA 2019; FINMA 2018; FOPH 2019; LAA 2014 and 2017.

► Box 1.2 Employers' liability system – Workers' compensation in the United States

The workers' compensation system in the United States is an EL system. It is made up of individual state programmes and four federal programmes of limited jurisdiction (two comprehensive workers' compensation programmes and two programmes that provide limited benefits to workers in selected industries with selected medical conditions). Each state, with the exception of Texas, has a mandatory workers' compensation system. There is no federal requirement for states to have workers' compensation systems and no minimum federal standards for state systems. Each programme is different and operates under its own set of laws, regulations and legal precedents; there are some common elements to these systems.

Exclusive Remedy

Workers' compensation is the exclusive remedy available to workers and their families for damages related to covered injuries, illnesses and deaths. They are not permitted to sue their employers to recover any costs (including costs not paid by workers' compensation or costs related to pain and suffering) or to seek punitive damages. They generally may sue third parties that may be responsible for their injuries, illnesses or deaths. In such cases, the employer generally has a right of subrogation.

Exclusive remedy does not keep all cases out of the Courts. Decisions of administrative bodies can be appealed to state Courts. Some workers can allege that their injuries were caused by the employers' acts, or inactions, so grievous that they amount to intentional torts subject to litigation and exempt from workers' compensation. Workers' compensation does not cover railroad workers and crew members of ships, who are thus entitled to use the tort system to recover damages from occupational injuries, illnesses and deaths.

Workers' Compensation Insurance

Employers generally finance workers' compensation through the purchase of insurance. Insurance premiums are regulated by the states and are generally affected by the risk involved in the specific types of jobs being insured and the experience rating of the employer. Four types of insurance arrangements are used in workers' compensation:

1. Insurance through an exclusive state fund

In the four states with exclusive state funds, employers may not purchase workers' compensation insurance from private insurers.

2. Insurance through a competitive state fund

In 18 states, the state funds operate in open markets with private insurers and employers may purchase insurance from either the state funds or private insurers.

3. Private insurance

In the majority of states, there are no state funds and workers' compensation is exclusively offered through private insurers. They are state-regulated, which limits their ability to set premiums and establish the benefits required by statute. Private insurers are generally not required to provide insurance in all cases and high-risk employers can be unable to purchase coverage in a state. States either assign them to insurers based on the insurer's market share in the state or provide insurance through an assigned-risk pool managed by the state.

4. Self-Insurance

All but two states (North Dakota and Wyoming) allow employers with sufficient resources to self-insure for workers' compensation. In some cases, self-insured employers must post bonds to ensure that future benefits will be paid even if the employer is unable to pay them.

The workers' compensation market

In a truly open market, employers and insurers would be able to come to agreements on optimal levels of premiums, benefits and other services, which is not the case for the workers' compensation market. The benefits provided by insurers and the premiums charged by insurers are regulated by the states. This regulation may somewhat blunt the possible cost savings and efficiencies that could otherwise be gained, but it ensures that all workers receive benefits deemed appropriate and that no employer pays premiums deemed too high.

The market is closed in the four states with exclusive state funds. Although monopolies are often associated with higher prices, state funds have the potential to offer cost savings over private insurers because of their non-profit status with no advertising or customer acquisition costs..

Second injury funds (SIF)

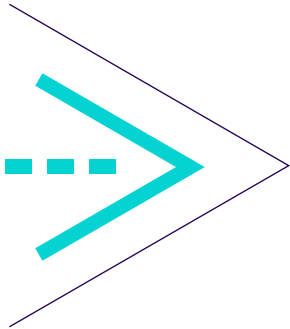
This is a state-administered fund that pays the difference between the employers' responsibility for partial disability benefits and the actual costs of total disability benefits for cases involving workers who were partially disabled before working for the employer. By reducing these potential costs of hiring a worker with a pre-existing disability, the SIFs are intended to reduce discrimination against persons with disabilities in hiring and compensation.

During the period after World War II, each state with private workers' compensation insurance or self-insurance operated an SIF. Since then, 20 states have abolished their SIFs or significantly limited their coverage. Some have argued that SIFs are no longer necessary due to enactment of the Americans with Disabilities Act. In addition, it is argued that SIFs have not resulted in the intended increased employment of persons with disabilities, have accumulated large unfunded deficits, deviate from the principle that employers should be responsible for the costs of their own workers' injuries, and result in increased transaction costs and disputes.

Sources: Congressional Research Service 2019; McLaren, Baldwin, and Boden 2018.

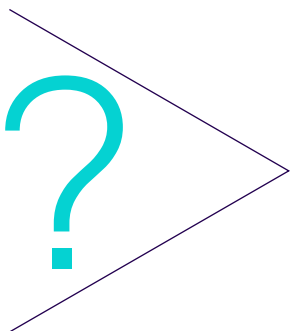
Module 2.
Legal and institutional framework

2



Objective

Why should we go beyond the goodwill of a workplace's stakeholders to provide EI protection if they have traditionally worked out some way to compensate injured workers or their families? This module examines the advantages of providing a legal framework to EI protection, which also applies to other social security measures. The tripartite mechanism in the governance of an EISS scheme is also discussed, as well as the types of institution required in the legal framework for implementing EI protection. Legal and institutional frameworks vary in accordance with each country's cultural, historical and political background.



Key questions

This module provides answers to the following questions:

- What is the importance of establishing EI protection by law?
- What are the main elements and functions of an EISS law?
- What are the main laws in a country that include EI protection?
- What is tripartite social dialogue?
- What are the different positions of tripartite partners in a social dialogue on employment injury?
- How does social dialogue work under an EL system?
- How does social dialogue work under EISS?
- What is expected in a tripartite social dialogue on EISS?
- What is the typical structure of an organization in charge of administering an EISS?

► Legal framework

What is the importance of establishing EI protection by law?

Employment injury protection should be established by law to ensure that workers' rights to a safe workplace and to adequate protection in case of work accident are enforceable. Enforceable legal provisions provide a framework for people to make claims or to obtain redress in case of violation of their rights, and for effective public action (enforcement and compliance measures). The law should specify the types of benefits, the qualifying conditions and the levels of benefits. It should guarantee legal access to complaint and appeal procedures that are impartial, transparent, effective, simple, rapid, accessible, inexpensive and free of charge to applicants.

The adoption of a piece of legislation is part of a long-term strategy and ensures the continuity of people's rights and entitlements through time. The law acts as a safeguard, in contrast to other measures such as small-scale social transfer programmes or pilot programmes. A variety of legislative instruments (laws, decrees, regulations, directives...) can contribute to the building of the legal framework. The choice of instrument can depend on the nature of the provisions and the adoption process. For example, a provision that needs regular updating would be prescribed by a decree or directive rather than by a law.

What are the main elements and functions of an EISS law?

Table 2.1 lists the main subjects generally found in an EISS law. An example is shown in [Appendix 4](#), which presents a list of sections included in the Employees' Social Security Act of Malaysia.

► **Table 2.1 Content of a typical EISS law: An outline**

Insurability	<ul style="list-style-type: none"> • Applicability of the scheme • Registration of industries and coverage of insured workers
Contributions	<ul style="list-style-type: none"> • Determination of amount • Method of payment • Validation of contributions collected • Employers' obligations to furnish and maintain information • Inspection (functions, duties, powers) • Recovery of contributions (penalty and interest on contributions in arrears)
Benefits	<ul style="list-style-type: none"> • Contingencies covered: work-related accident, occupational disease, commuting accident • Determination of invalidity or disability • Benefits: medical benefit, invalidity pension and grant, constant-attendance allowance, survivors' pension and grant, funeral benefit • Qualifying conditions of benefit • Determination of benefit amount • Coordination of multiple sources of benefits • References to medical boards • Appeals to appellate medical board • Review of decisions by medical board or appellate medical board • Conditions for payment of benefits to be continued and updated or suspended • Protection of benefits against creditors • Claim procedure for benefits • Benefit for two or more successive accidents • Facilities for physical or vocational rehabilitation • Prevention activities
Administration	<ul style="list-style-type: none"> • Administration of the social security scheme • Chief executive officer (Director-general) • The social security organization • Establishment of the board • Establishment and maintenance or selection of service providers
Finance and audit	<ul style="list-style-type: none"> • Social security fund • Administration of the fund • Expenditure on administration • Investment of funds • Investment panel • Budget estimates • Accounts • Audit • Annual report • Valuation of assets and liabilities
Dispute	<ul style="list-style-type: none"> • Constitution of social security appellate board • Matters to be decided by the board • Institution of proceedings • Reference to High Court • Appeal

The rule of law to which a social protection system adheres acts as a safeguard against arbitrary governance. The rules clearly laid down in legislation that build in checks and balances, and control mechanisms in the system, protect people from arbitrary or discretionary selection and decision-making, facilitate access to social protection and help to guarantee equality of treatment. Transparent rules contribute to the predictability of the system, and if applied consistently, the confidence of people in the system and its administration.

A legal framework is crucial for establishing the responsibility and duty of governments to take action and the ability of national Courts and tribunals to monitor government action. It allows for the clarification of roles and the attribution of responsibilities of the entities involved in administering, managing, delivering and enforcing a social security system. The legal framework is essential for the effective functioning of the system and avoiding any overlaps, duplication, multiplication or gaps. It thereby contributes to making the system more consistent and coherent and thus less costly and more efficient.

A legal framework introduces coherence into a process governed by a diversity of actors and a plurality of mechanisms. Many actors are involved in the design and implementation of a social security strategy, and in the administration and monitoring of the system. Their roles must be clearly and legally defined, and complementary toward achieving the highest possible level of protection and coverage.

A clear and coherent legal framework facilitates the development of overarching aims for the system as a whole and the identification of gaps in protection. It allows linkages to be established between the various components of the system, mainly statutory and non-statutory schemes, to create possible economies of scale, to extend coverage to vulnerable populations unreached by statutory schemes, and to enhance the administration of community-based schemes.

EI policies should be linked with active labour market policies (ALMP). They can remove some of the barriers that limit the participation of injured workers in the labour market. EI benefits should contribute to improve the employability of injured workers, in the same way that basic social protection, access to education, healthcare and nutrition are preconditions for being able to work.

A legal framework helps to guarantee the financial sustainability of schemes through adequate financing, reserve and investment rules, and political sustainability through provisions against abuse and corruption (good governance).

What are the main laws in a country that include EI protection?

The provisions of an EISS scheme may be provided in a labour code or in a social security law. Table 2.2 presents the situation in four countries. The models presented differ, and they do not cover all the possibilities.

► Table 2.2 EISS schemes: Four types of legislation

Country	Type of programme	Insurance provided by	Statutory basis
Bangladesh	Employer liability	Private insurance companies	Labour law
Belgium	Social insurance system	Accidents: Private insurance companies Occupational diseases: Public fund	Accidents at work: Act 10 April 1971 on accidents at work Occupational diseases: Laws on the prevention of occupational diseases and right to compensation for damages resulting thereof, coordinated on 3 June 1970
Chile	Social insurance system	Private sector: Employers' mutuels Public sector: Occupational Safety Institute	Ley 16.744 - Social insurance against risks of work accidents and professional diseases Laws and decrees regarding coverage of civil servants, independent workers, students and apprentices
United Republic of Tanzania	Social insurance system	Public fund	Workers' Compensation Act

Bangladesh and the **United Republic of Tanzania** are two countries where the workers' compensation system is fundamentally different. In Bangladesh, the system is based on the individual responsibility of employers, who can purchase insurance from private insurance companies. In the United Republic of Tanzania, a public fund manages a no-fault compensation scheme to which employers contribute. The two countries share the fact that the provisions of the regime are contained in one single law. For Bangladesh it is the labour code, while for the United Republic of Tanzania it is a specific law dealing only with industrial accidents and occupational diseases.

In **Belgium**, there is a social insurance system where insurance coverage is provided by private insurers for accidents and a public fund for occupational diseases. This system is supported by two laws covering each of the two components.

In **Chile**, the social insurance system is administered by non-profit employers' mutuels (Asociación Chilena de Seguridad, Mutual de Seguridad de la Cámara Chilena de la Construcción, and Instituto de Seguridad del Trabajo) and a public agency (Instituto de Seguridad Laboral).

► Tripartite mechanism in EISS schemes

This section discusses the definition of tripartite social dialogue, the different positions of tripartite stakeholders, aspects of the functioning of the tripartite mechanism in workers' compensation, and coordination mechanisms through social dialogue in designing and implementing an EISS scheme. Given that tripartite partners have different perspectives and limited resources on issues in workers' compensation, various tripartite mechanisms exist in current workers' compensation systems and processes for the introduction or revision of EISS.

What is tripartite social dialogue?

Social dialogue plays a critical role in achieving the ILO's objective of advancing opportunities for women and men to obtain decent and productive work in conditions of freedom, equality, security and human dignity. Social dialogue includes all types of negotiation, consultation and exchange of information between and among representatives of governments, employers and workers on issues of common interest.

How social dialogue actually works varies from country to country and from region to region. It can exist as a tripartite process, with the government as an official party to the dialogue, or it may consist of bipartite relations between labour and management, with or without indirect government involvement. It can be informal or institutionalized, and often is a combination of the two. It can take place at the national, regional or at enterprise level. It can be inter-professional or by economic sector or a combination of these.

Tripartite social dialogue is encouraged in the design and implementation of national policies. Achieving fair terms of employment, decent working conditions, and development for the benefit of all cannot be achieved without the active involvement of workers, employers and governments, including a broad-based effort by all of them. To encourage such an approach, one of the strategic objectives is to strengthen social dialogue among the tripartite constituents. This helps governments and employer and worker organizations to establish sound labour relations, adapt labour laws to meet changing economic and social needs, and improve labour administration.

The relevant ILO Conventions on social dialogue are:

- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87);
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98);
- Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144);
- Labour Relations (Public Service) Convention, 1978 (No. 151); and
- Collective Bargaining Convention, 1981 (No. 154).

Successful social dialogue structures and processes show great potential to resolve important economic and social issues such as encouraging good governance, advancing social and industrial peace, and stabilizing and stimulating economic growth. Effective social dialogue depends on:

- respect for the fundamental rights of freedom of association and collective bargaining;
- strong, independent worker and employer organizations with the technical capacity and knowledge required to participate in social dialogue;
- political will and commitment of all parties to engage in social dialogue; and
- appropriate institutional support.

What are the different positions of tripartite partners in a social dialogue on employment injury?

A tripartite mechanism calls for consideration of the different perspectives and limits of resources of stakeholders. Given the differences, social dialogue can be a good *modus operandi* for them to discuss certain issues, find a solution and reach an agreement best accepted among them.

In general terms, **workers** want safe working surroundings and conditions, and prompt and proper workers' compensation. Income replacement is crucial to workers, as they count on the income earned from their provision of labour to employers to provide themselves and their families with resources for daily living and savings for their future. Facing occupational accidents or diseases is a matter of survival for them. If the costs of workers' compensation are financed by employers and in some case by government subsidy, workers would not have to hold financial resources for this contingency. Because of the limited ability of individual workers to negotiate with their employers to get adequate employment injury insurance, they rely on labour unions to negotiate it through collective bargaining. Where individual workers have to take legal action to get compensation, they tend to claim for the maximum amount.

Employers' survival depends on their capacity to generate profit. They are concerned about operating business in competitive national and global markets. They focus their efforts on containing or reducing production costs. Before the no-fault principle was introduced in workers' compensation, employers had to protect themselves against workers' claims for compensation in adversarial legal dispute under the tort system, which involved important litigation costs. The introduction of the no-fault principle has reduced total workers' compensation cost and the portion attributed to litigation and labour disputes. However, whether under an EL or an EISS scheme, employers do not have unlimited resources to dedicate to compensation, whether for benefits, contribution rates or prevention activities. Employers can sometimes succumb to the myopia of giving preference to cash flow by escaping the periodic expense of EI insurance.

Government priorities are strongly influenced by the political situation, national development plans, political pressure from interest groups, and the economic and demographic situation. For example, around the time EISS was introduced in **Germany** in the 19th century, a strong labour and socialist movement was leading to social unrest; the ruling regime suppressed the movement but accepted its policies, realizing them in the social insurance system.

In developing countries, EISS can be regarded as a prerequisite for industrialization by policymakers. That may explain the introduction of EISS at the beginning of the implementation of the national development plan in the **Republic of Korea**.

Even where an EISS scheme is commonly financed from employers' contributions, there is room for government input. This can take many forms, such as covering the cost of the staff payroll of the institution administering the EISS scheme, the cost of implementing prevention policies, or the initial investment cost of operating the EISS scheme at its inception. Governments have to consider their financial input in EI policy within the limits of their resources and the other priorities that always compete for funds.

How does social dialogue work under an EL system?

Under an EL system, workers' compensation is regarded as an employer's direct payment to its occupationally injured or sick workers, or to the workers' survivors in case of death. The communication pattern is thus usually bipartite between labour and management at an individual workplace. If workers are unionized at a workplace, workers' compensation can be dealt with through collective bargaining. There are often disputes involving legal action and settlement in court. Even when employers purchase private insurance for the liability, disputes still arise.

As workers' compensation disputes are rather specialized and relate to the enforcement of labour standards, governments can engage in the bipartite relations by establishing a Workers' Compensation Commission. The commissioner receives the worker's claim and requests the employer's answer. If there is no settlement, both parties and their supporting witnesses will be examined in a judicial process of the Commission. At the end of the process, the order issued by the commissioner is binding on both parties. Through this process, the commissioner enforces the legislation on workers' compensation. Workers may select the option of going to the civil Court under a tort system instead of going to the Commission.

How does social dialogue work under EISS?

EISS is a social insurance using the risk-pooling mechanism to address the financial constraints of an EL system and to secure workers' compensation rights. The introduction of this scheme in each country is a result of historical compromise reached by the tripartite stakeholders.

Under EISS, the government through the relevant ministry and a governing body supervises the institution that implements and administers the EISS scheme; the institution can be newly set up, or an existing social security organization administering other schemes. It administers contributions and benefits and contracts with healthcare providers for medical services. In many cases, the governing body is a tripartite board.

Employers are responsible for providing lists of their workers and the occurrence of occupational injuries and diseases to the EISS institution, and pay due contribution to the scheme. In return, they are free from legal liability under the national workers' compensation legislation and, if the social compromise exists, they are also free from litigation risk under the tort system. Periodic contribution to the EISS scheme makes the cost of workers' compensation predictable in the production cost.

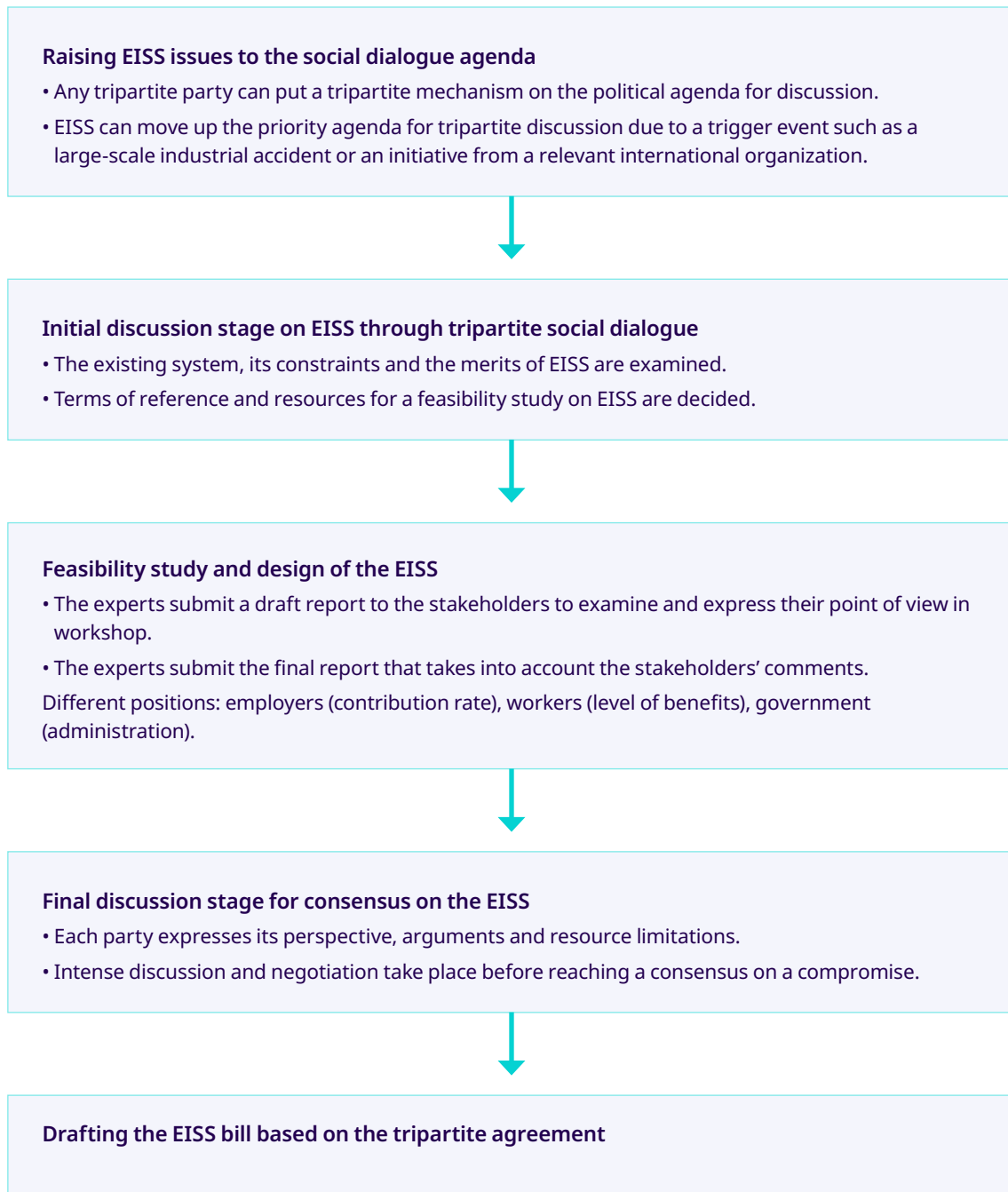
Workers, in case of occupational injury or sickness, have quick access to their benefits from the EISS institution, benefits that are known in advance and guaranteed.

What is expected in a tripartite social dialogue on EISS?

In the design and implementation of a new social security scheme, as well as in the revision of an existing one, social dialogue among the relevant stakeholders is a prerequisite. A tripartite social dialogue for the introduction of an EISS generally goes as follows:

- At the beginning, the issue of, for example, converting an existing EL system into an EISS scheme needs to be raised politically. Stakeholders can add the point to their own political agenda in order to discuss it at the tripartite forum. It is possible that the necessity for conversion of the system has been felt, but for various reasons the issue has not been able to reach the main agenda. Circumstances such as a large-scale industrial accident or an initiative from a relevant international organization can push the topic to higher priority on the tripartite discussion agenda.
- At the initial discussion stage, active social dialogue starts in a tripartite forum such as a national tripartite workshop. If the country has a permanent mechanism for social dialogue such as a national tripartite committee on social and economic development, the mechanism can be used from the start. Tripartite social dialogue includes discussion on the current system and its issues, as well as the merit of an eventual EISS scheme. In many cases, EISS experts help to build the tripartite partners' capacities through training on EISS. They might reach the conclusion that conducting a feasibility study on EISS in the country is needed, and the resources necessary for such a study must be determined. Sometimes, for the sake of the feasibility study's objectivity, the social dialogue may be extended to the selection of experts to carry it out.
- During the research, the cooperation of all tripartite stakeholders is needed for the experts to obtain relevant data. Before the final version of the feasibility study comes out, a draft is submitted and shared among the stakeholders, who examine it from their own point of view and give their feedback during the intermediate workshop planned for the presentation of the draft. The experts take this feedback into account for their final report. Employers, for whom the contribution rate will be the main issue, may ask for more justification of the necessity to convert an existing EL scheme into EISS in terms of cost and benefit. Workers tend to ask for as high a level of EISS benefits as possible, and to keep collective bargaining on workers' compensation at the individual workplace along with EISS. Government concerns include whether EISS is in line with the national development strategy, what effect the EISS scheme will bring to the national economy, and what type of administrative structure is suitable for implementation of the EISS.
- Further to the results of the feasibility study, general options for the design of the scheme are submitted to the tripartite stakeholders. Political negotiations take place among the stakeholders through tripartite social dialogue. During this stage, the stakeholders express their respective perspectives, arguments and resource limits, sometimes through intense discussion and negotiation. In practice, after much give and take, a compromise can be agreed upon.
- Next comes the drafting of the EISS bill based on the tripartite agreement.

Figure 2.1 summarizes the above process.

► **Figure 2.1 A tripartite social dialogue process for introduction of an EISS**

Getting to a consensus through social dialogue on a new EISS scheme or on how to reform an existing one is a time-consuming process which can take more than two or three years. When discussion among the stakeholders is at an impasse, government leadership and political will are most needed to end the deadlock.

► Institutional framework

What is the typical structure of an organization in charge of administering an EISS?

The institutional framework is how the institution is structured and organized to meet its mission of service delivery in a sustainable manner. There are various possible organizational structures, reflecting the cultural, historical and political characteristics of a country. A typical organization in charge of administering an EISS established by law has three components:

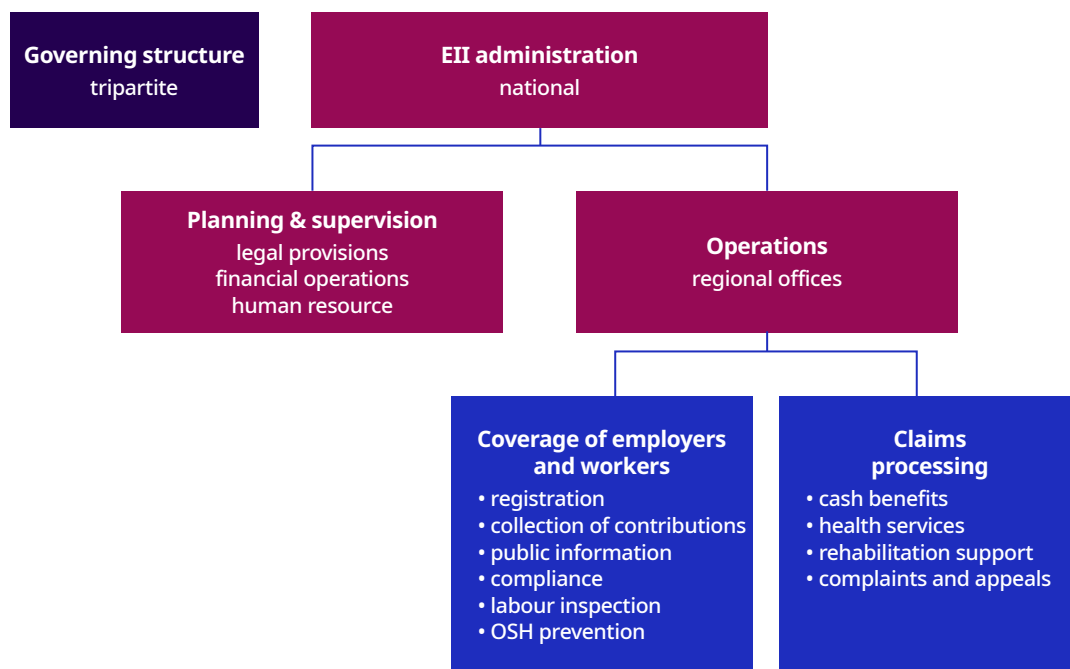
1. **Governing structure.** Usually this is a tripartite board of direction.
2. **Independent review authority.** Usually this is a commission in charge of reviewing appeals relating to decisions made by the administration staff.
3. **Administration staff headed by a chief executive officer.** The staff is organized into divisions responsible for specific functions of the institution. The divisions can be grouped as follows:
 - Planning and supervision divisions at the central office which take care of legal provisions, financial operations and human resources:
 - management service division providing general administration services;
 - treasury division providing financial and accounting services;
 - investment division in charge of investment, property, equity research, bonds research;
 - human resource division in charge of management, planning and development of human resources;
 - internal audit division in charge of auditing branch offices, finance and general audit, anti-fraud and investigation; and
 - IT division in charge of establishing and managing the IT network and facilities for insurance operations and communication (website, social networks).
 - Operation division with its services rolled out in regional offices:
 - coverage of employers and workers: registration, collection of contributions, public information, enforcement/compliance and labour inspection, OSH prevention; and
 - claims processing: cash benefits, health services, rehabilitation support, return to work, complaints and appeals.

Figure 2.2 shows the typical institutional structure of an EISS scheme. The structure assumes that OSH and labour inspection are administered by the same institution, as recommended by the ILO in similar situations:

► The ILO has stated that an effective employment injury scheme is one that adopts a holistic approach, linking the functions prevention (reducing the number of workplace accidents and diseases), rehabilitation (ensuring that individuals affected by employment injury can return to work, if possible) and compensation (where affected workers are unable to return to work). This is in line with the present-day approach of social security, which is not merely curative (only providing compensation) but also preventive and re-integrative.

► Mpedi and Nyenti 2016

► Figure 2.2 Typical institutional structure of an EISS scheme



In several countries, the EI benefits are administered by a stand-alone organization, as for example the Workplace Safety and Insurance Board (WSIB) of **Ontario, Canada**. WSIB is an independent trust agency that administers compensation and no-fault insurance for Ontario workplaces. It provides services linking the three functions: prevention, compensation and financing.

Most of the time, and particularly in developing countries, the administration of EI benefits is done by an organization that administers several branches of social security. **Thailand** provides an example for such a case. Box 2.1 outlines the duties and responsibilities of the Social Security Office (SSO) of Thailand and figure 2.3 shows its organizational structure. The SSO administers the EI programme through its Office of Workmen's Compensation Fund.

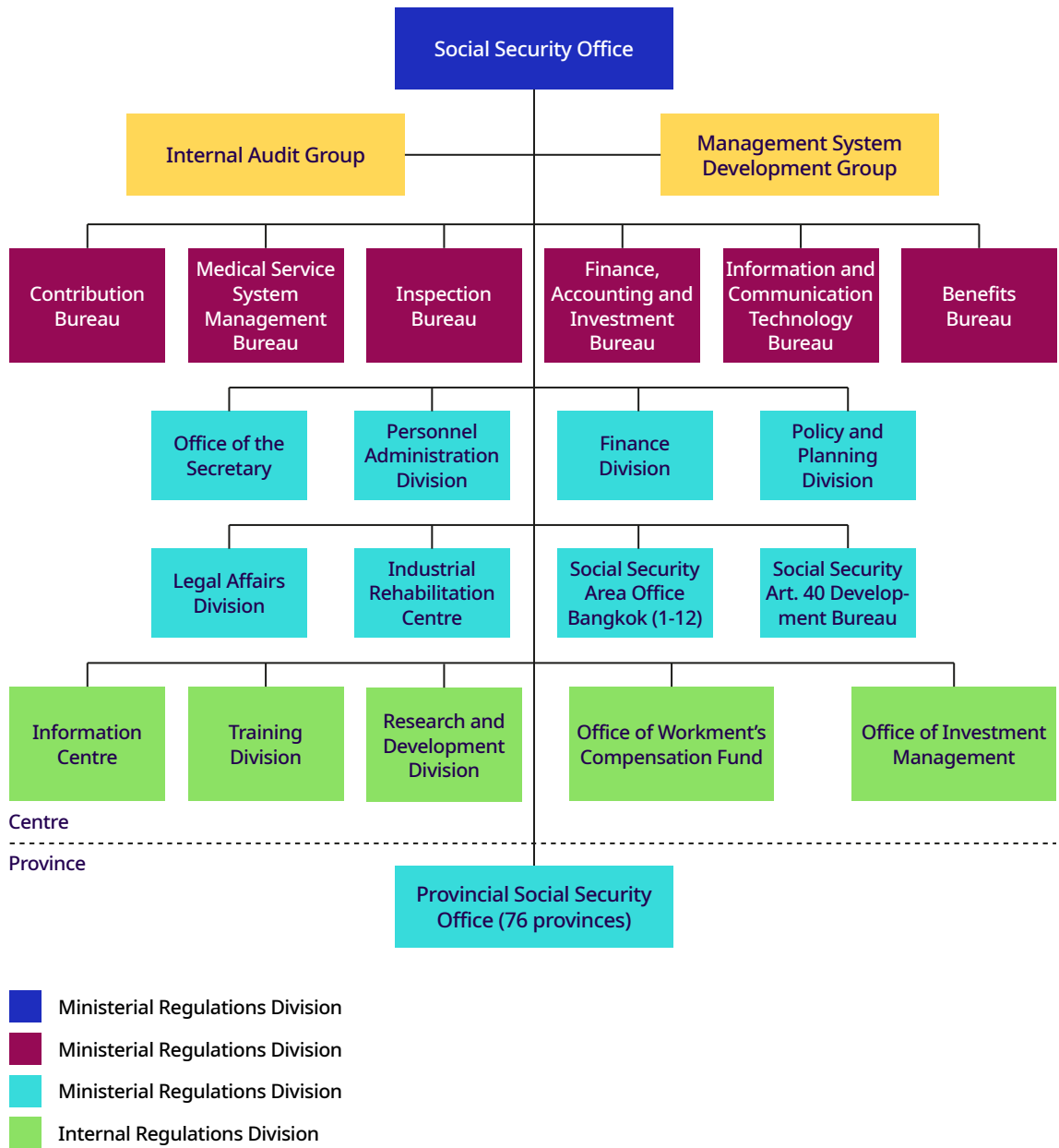
► Box 2.1 The Social Security Office of Thailand: Duties and responsibilities

The Social Security Office (SSO) is a department of the Ministry of Labour. The primary responsibility of the SSO is to manage the Social Security Fund and the Workmen's Compensation Fund according to the Social Security Act (1990) and the Workmen's Compensation Act (1994). The major functions of the SSO are as follows:

1. To provide protection and security for employees/insured persons who are injured, sick, disabled, or have died from non-work-related causes, including maternity, child allowance, old-age pension and unemployment benefits under the Social Security Fund.
2. To provide protection and security for employees who are injured, sick, disabled, or have died from work-related causes according to the Workmen's Compensation Act.
3. To propose suitable policies and guidelines on social security relevant to the situation.
4. To disseminate knowledge and understanding about social security to employees/insured persons, employers and the public.
5. To collect contributions and pay compensation and benefits as prescribed in the Workmen's Compensation and the Social Security Acts.
6. To inspect and monitor all activities to ensure compliance with the Workmen's Compensation and the Social Security Acts.
7. To provide rehabilitation services to employees/insured persons with disabilities to help them to re-enter their previous employment or to find other suitable jobs.
8. To manage the investment of the Workmen's Compensation and the Social Security Funds.
9. To provide medical services for insured persons under the Social Security Scheme.
10. To accomplish any other tasks assigned by the Acts to the SSO.

Source: <http://www.sso.go.th>.

► Figure 2.3 Organizational Structure of the Social Security Office of Thailand



Source: <http://www.sso.go.th/wpr/eng/organization-chart.html>.

For the system to function well, work at branch office level needs to be systematic. The main role of a branch office is to provide insurance services to its target population. This means that branch offices register employers and collect contributions on a mandatory basis and on a voluntary basis for some groups such as the self-employed. The branch offices' duties also include enforcement and compliance. Box 2.2 provides an example of organization of a branch office. It is crucial that compensation services be properly and promptly provided. Many EISS institutions have a client chart that presents the institution's commitment to deliver its services within a target period.

► **Box 2.2 Organization of a branch office:
Workers' Compensation Board of Quebec, Canada**

The operation division of the board includes three directions at headquarters (Centralized Operations, Administrative Revision and Client Relationship) and 20 regional directions. The regional direction of Mauricie-Centre-du-Québec is described below.

The branch office is assisted by the Medical Evaluation Office (Ministry of Labour) which provides opinion on medical subjects when there is divergence of opinions between the worker's doctor and the one designated by the employer or the board. The staff of the branch office also interacts with the Occupational Injury Board which is a independent administrative Court.

The branch office covers 16,000 establishments spread over 31 economic sectors and many construction sites.

The regional director manages four teams: prevention and inspection, benefits and two return-to-work teams.

The service is maintained 24/7 with a call centre, and at least one of the four managers and one of the 16 inspectors are on call.

The prevention-inspection team includes 16 inspectors (five are dedicated to the construction sector). The background of the inspectors includes engineering, chemistry, industrial relations and occupational hygiene.

Inspection can be initiated by an employer's request for support (such as for new machines), a union complaint or workers' refusal of dangerous work. In case of serious accident, the inspection is made in tandem. The inspectors collect information and secure the site. They present a report to the worker's family, the employer and the media. Enforcement favours fines over juridical proceedings. The decision is jointly taken by the inspectors, juridical advisor and the branch office director. The investigation must trace back to the source of the accident.

Early and sustained intervention prevents risk factors from becoming impediments to the return to work. The compensation service is organized by type of injured worker in order to customize the rehabilitation and return-to-work services. These services require highly skilled agents. Training is crucial (an agent can take as much as 12 weeks of training over a year at the beginning of a career).

Scheme entrance service

Fifteen agents take care of injured workers when they first make a claim.

They continue to manage the cases of injured workers without risk of long-term disability (about 60 per cent of the total number of cases).*

Other cases are referred to the customized service (two return-to-work teams).

Team 1

Six agents manage cases with high probability of a return to work (about 20 per cent of cases).

Profile with income replacement indemnity:

- Four agents handling 75–100 cases each
- Interventions take place every 30 days
- Qualified as cases with long-term invalidity risk after 180 days

Profile without income replacement indemnity:

- Two agents handling 150 cases each
- Interventions take place every 60 days
- Qualified as cases with long-term invalidity risk after 300 days



► **Team 2**

Forty agents spread in 16 tandems (compensation agent, rehabilitation advisor)

- Eight tandems for 32 large employers
- Other agents for 55 cases per tandem

Intervention during compensation includes rehabilitation. Assessment of physical, social and professional needs identifies **reasons why the worker does not work**. The help relation is delicate, possibly perceived as harassment.

Chronic cases represent 4 per cent of compensated persons and 75 per cent of compensation costs. Thus the top objective is to return the worker to work (Article 1, Occupational Accident and Disease Law). Rehabilitation targets the worker's reality as closely as possible, following a concentric approach:

- Prior-injury job
- Suitable job at current employer
- Suitable job on the labour market
- Respect of residual capacity
- Respect of professional qualification
- Reasonable recruitment prospects
- Safe work according to the board
- Appropriate work (corresponding to the worker's interest and reality)

The following factors have been identified as contributing to the risk of chronic invalidity:

1. Health professionals recognizing invalidity without offering intervention toward improving the worker's functioning
2. Health professionals advising the worker to quit or change job
3. Emotional distress
4. Pain spreading to lower limbs
5. Incident(s) at the same injury site
6. Job dissatisfaction
7. Conflicting relationships at work
8. Low expectation or uncertainty of returning to work before three months
9. Not believing oneself capable of performing all one's tasks
10. Stopping or avoiding physical or daily life activities
11. Opting for only passive rehabilitation strategies
12. Catastrophic thoughts
13. Feelings of injustice
14. Repetitive and monotone job at imposed rhythm .

Note: Risk assessment is performed by a team composed of case managers and two medical doctors. Frauds are estimated at 3 per cent of cases.

Source: <http://www.csst.qc.ca/>.

Box 2.3 illustrates the administrative process of employment injury compensation in **Ethiopia**.

► **Box 2.3 Mapping of the administrative process of employment injury compensation: Ethiopia**

In Ethiopia, social security intervenes at the last stage in the compensation for employment-related injuries and occupational diseases. The social security agencies Private Organizations' Employees Social Security Agency (POESSA) and the Public Servant's Social Security Agency (PSSSA) provide a long-term disability benefit only in case an injured worker cannot engage in any remunerated work. They do not cover short-term needs or some long-term benefits such as income replacement for families of deceased workers. The short-term benefits (medical care and income replacement during the first year) are under the responsibility of the employer, who can transfer this responsibility, in whole or in part, to a private insurer. Survivors' benefits are also provided by the employer as a gratuity in the form of a lump sum. The compliance of private sector employers in social security coverage is very low.

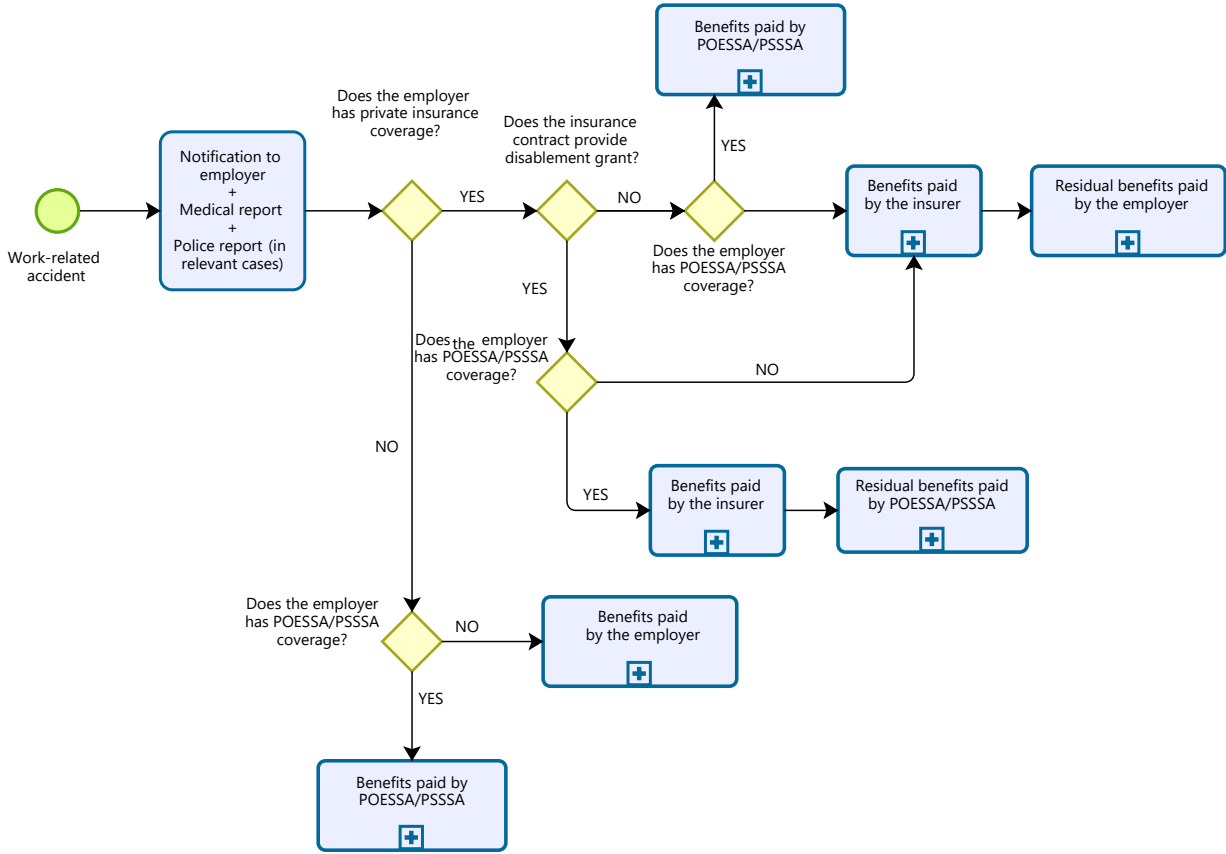
The following figures present a detailed mapping of the EI compensation process. The first presents the general compensation process, while the following six present a more detailed mapping of the sub-processes identified in the general map.

The first four figures show the benefit payment process in case of a work injury. The claim process differs depending on the situation of coverage of the employer, whether it has a contract with a private insurer or contributes to social security.

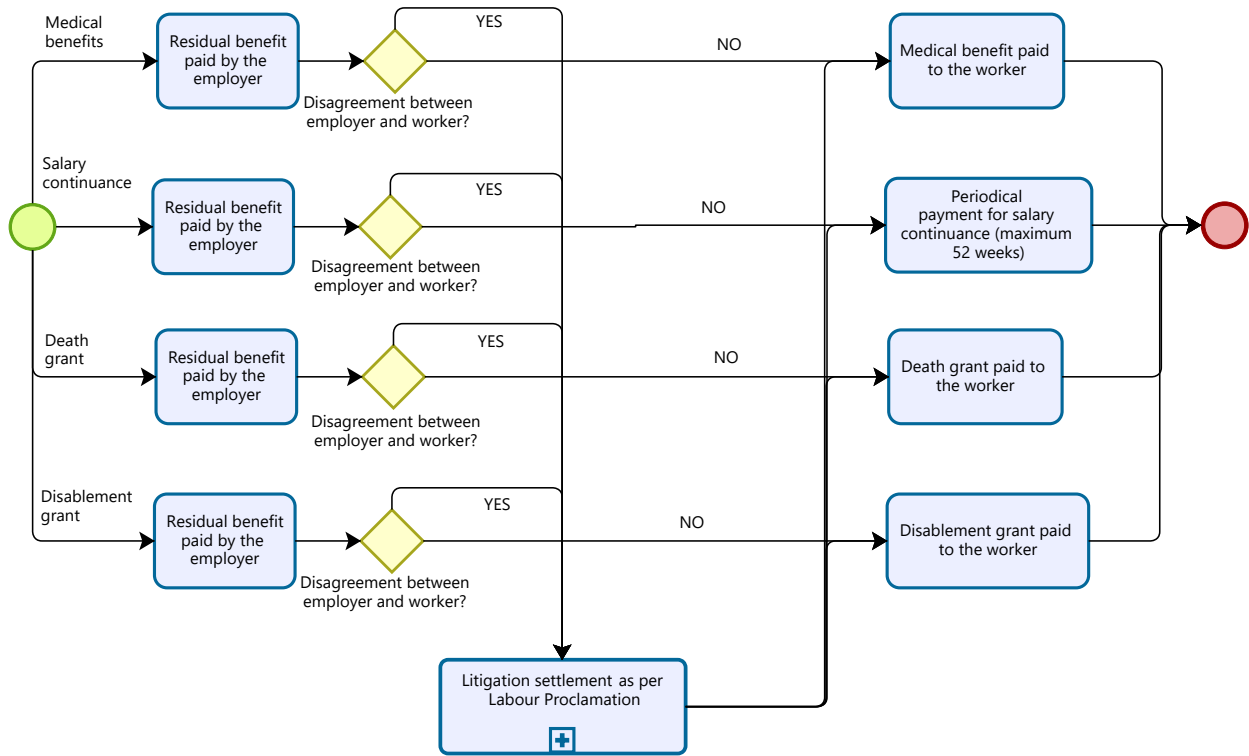
The last two figures show the litigation settlement process when the worker challenges the entitlement and/or calculation of his/her work injury benefits. The applicable litigation process depends on the entity responsible for the payment of benefits. If the benefit is payable by the employer or by a private insurer, the lawsuit follows a regular court process which entails long delays in payments. If the benefit is payable by one of the social security agencies, the Social Security Appeals Board (SSAB) first makes a decision and the worker is able to make a case to the Supreme Court if s/he disagrees with the decision of the SSAB.



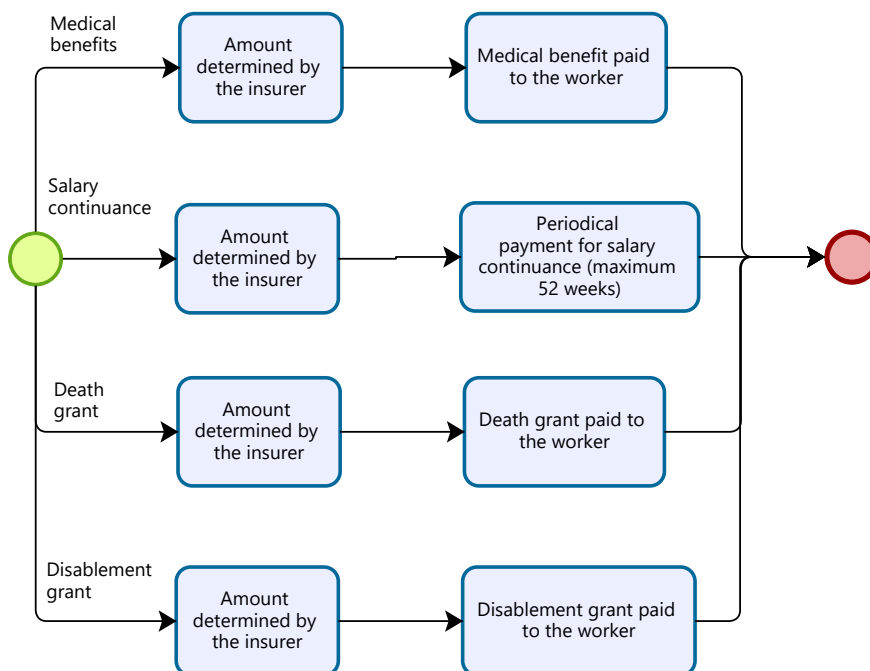
Work related accident claim process



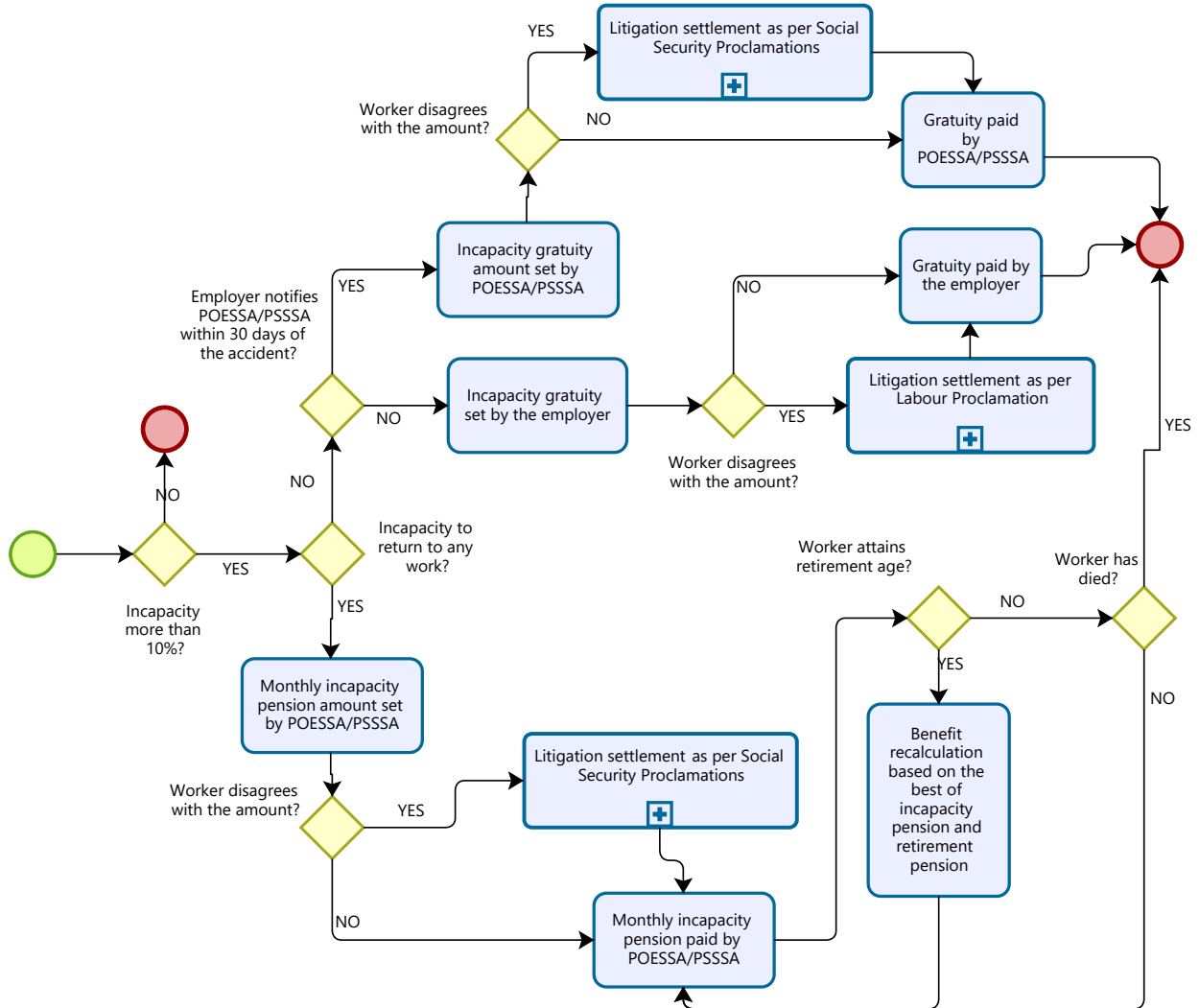
Benefits paid by the employer



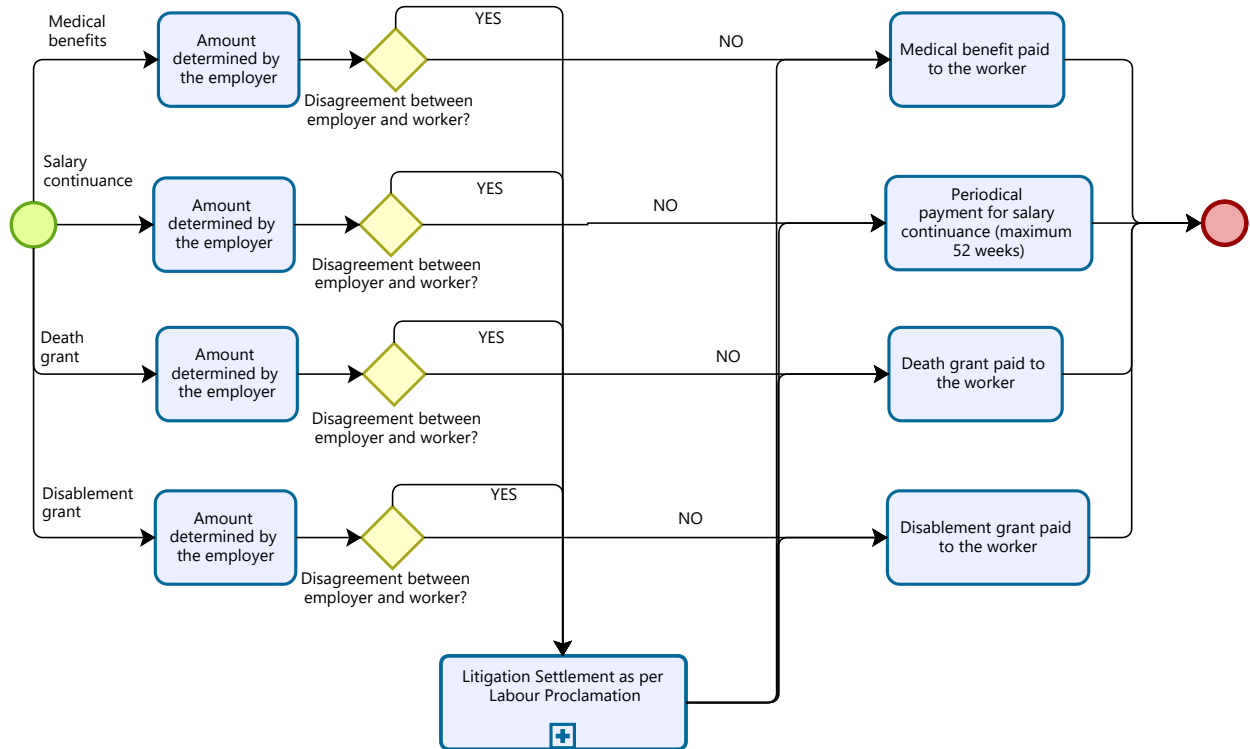
Benefits paid by the insurers



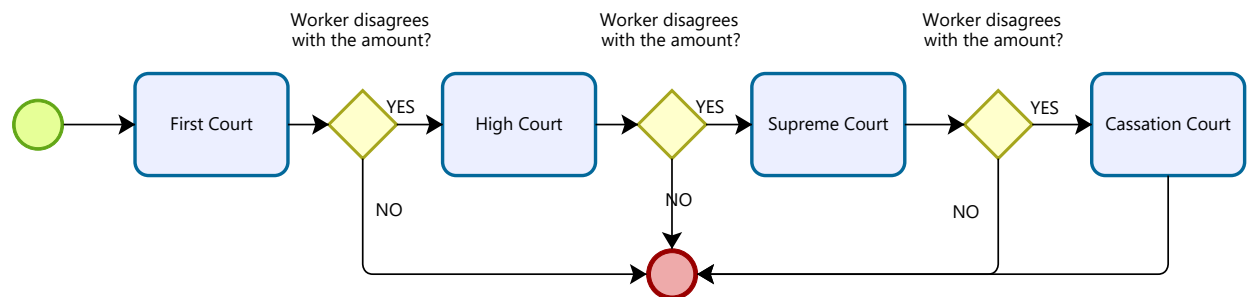
Benefits paid by the POESSA/PSSSP



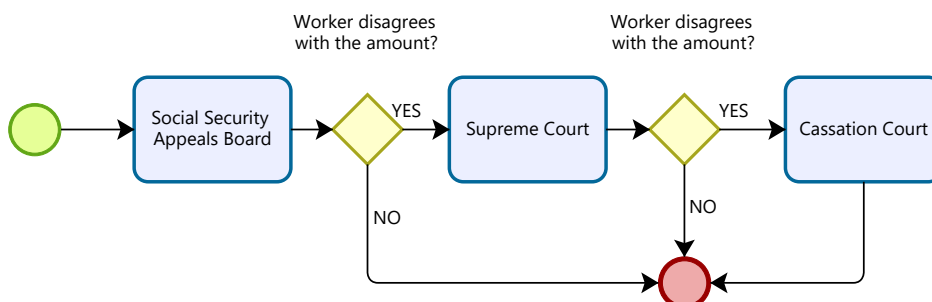
Residual benefits paid by the employer



Litigation settlement as per Labour Proclamation

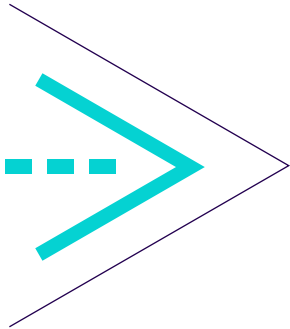


Litigation settlement as per Social Security Proclamation



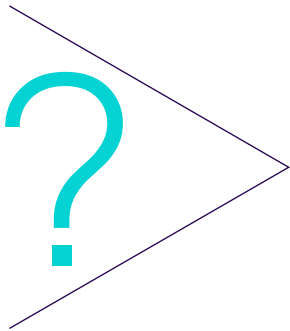
**Module 3.
Employment injury within the social
protection system**

3



Objective

This module examines EISS from different broad angles: the social protection system, coordination of social security benefits, and ILO instruments. Coordination between EISS benefits with other social security benefits is examined under several situations including umbrella coverage. Offsetting benefits practice is also analysed as one important part of the coordination of benefits.



Key questions

This module provides answers to the following questions:

- ▶ What is social protection?
- ▶ What consequences do occupational injuries and diseases have at individual, enterprise and national levels?
- ▶ Why should EISS benefits be coordinated with other social security benefits?
- ▶ How is coordination achieved under umbrella coverage?
- ▶ How can coordination operate through offsetting benefits from different social security schemes?
- ▶ Does an EI service provider have the right to claim reimbursement of EISS benefits from a third party recognized as responsible for causing the occupational injury or disease?

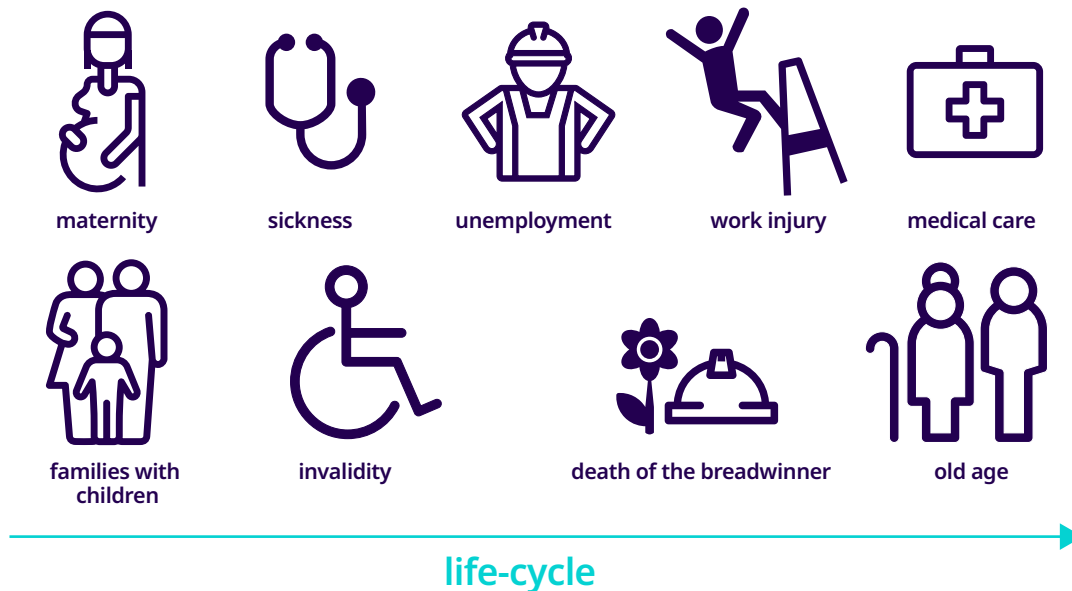
► EI within the social protection system

This section presents an overview of social protection and a view of EISS within this broader context.

What is social protection?

During their life-cycle people face contingencies which have negative consequences. Social protection is provided to members of a society against the physical, economic and social distress caused by such contingencies.

► Figure 3.1 Life-cycle contingencies



Social security is a fundamental human right, as stated in Article 22 of the Universal Declaration of Human Rights:

► Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

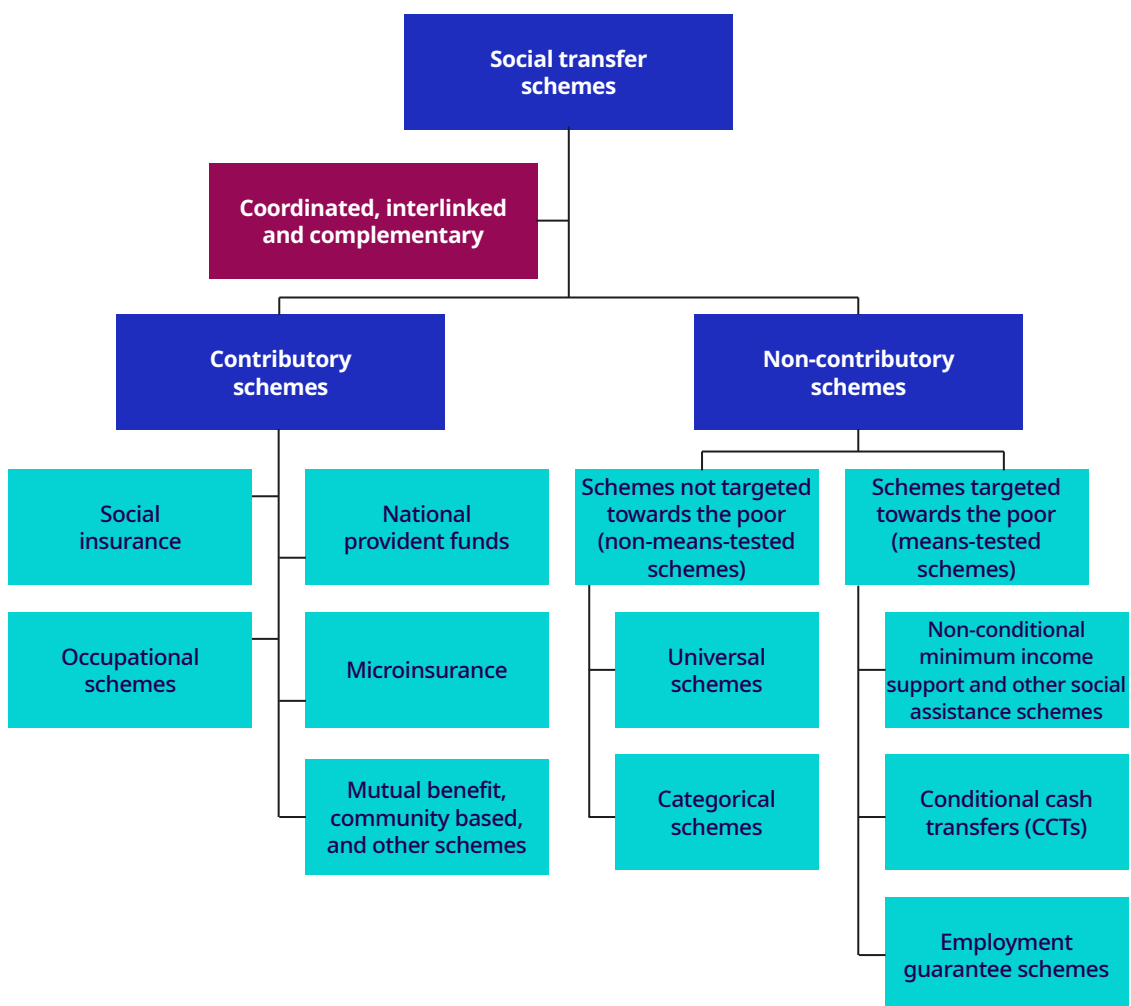
Social protection is often referred to as measures addressing the most vulnerable members of the society. The concept tends to be broader than social security alone. While social security often refers to measures addressed to formal workers, social protection would also encompass measures that reach out to those not covered or incapable of being covered easily by social security. For the International

Labour Organization (ILO), social security and social protection are synonymous and are both part of the same social policy concept. In its Social Security (Minimum Standards) Convention, 1952 (No. 102), the ILO defined the traditional contingencies covered by social security. Its Social Protection Floors Recommendation, 2012 (No. 202), provides practical guidance for setting national social protection floors and building comprehensive social security systems.

All social security benefits represent social transfers, either in cash or in kind. Through social transfers, society provides financial support in compensating for loss of income, covering healthcare expenditures, facilitating access to social services and fulfilling basic needs.

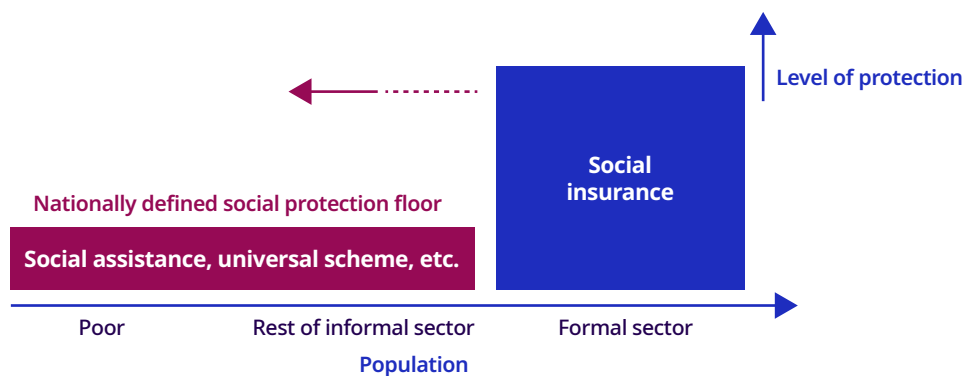
Figure 3.2 shows how social transfers can be organized through different social security schemes. These schemes can be classified by financing mechanisms (contributory and non-contributory schemes) and targeting mechanisms (means tests, populations). EI protection is often provided under a social insurance scheme whereby the social security schemes and institutions in a country are interlinked and complementary in their objectives, functions and financing, and together form a national social security system. For reasons of effectiveness and efficiency, it is essential that there is close coordination within the system, so that the planning and financing of the schemes comprising the social security system are carried out in an integrated way.

► Figure 3.2 Classification of social transfer schemes



EISS compared to social assistance. Employment injury social security protects people from falling into poverty, while social assistance aims at protecting people who are already in poverty. An EISS scheme is often contributory, while social assistance programmes are often tax-financed. EISS financing from tax revenue would not be coherent with EISS compensation that is based on workers' income. Social assistance programmes aim at providing beneficiaries with a minimum livelihood to help lift them above the poverty line. Both social insurance and social assistance programmes are needed to build comprehensive social protection. The extension of social security should attempt to cover all persons in need and to provide each of them an adequate level of protection; these two dimensions are illustrated in figure 3.3.

► **Figure 3.3 The two dimensions of social security**



What consequences do occupational injuries and diseases have at individual, enterprise and national levels?

Why do we need to calculate the economic costs of poor working conditions? Answering this action-oriented question is crucial for decision-makers tasked with improving OSH (see ILO 2012a). Recognizing the economic benefits of OSH would:

- raise awareness and strengthen incentives for meaningful OSH policies at all levels;
- reveal the total costs of poor working conditions and their distribution among the major stakeholders;
- reveal the net costs of policies by comparing the costs of action and inaction;
- identify particular safety and health risks or sectors that require priority attention; and
- facilitate policy integration by making more visible the linkages between OSH and other policy interventions.

The economic step consists in identifying the costs borne by employers, workers and the wider community resulting from preventable injuries and diseases.

Employer costs can be divided into “direct” and “indirect” costs. The direct costs include payments made by firms to workers who have suffered an injury or disease, or to medical providers to defray treatment costs. The indirect costs primarily include lost, delayed or degraded production.

Worker costs are primarily tangible, in the form of lost income and medical expenses not replaced or defrayed by the employer or EISS scheme/workers' compensation insurance. Some economists believe that pain and suffering can be given a monetary equivalent via a questionnaire or through market analysis. There are also indirect costs. For example, health-impaired workers may face poorer economic prospects than those in better health. Their other household members may also pay a price, reducing home production, market work or education in order to care for them.

The employer and worker costs add up to the costs to the national economy of occupational injuries. The costs to society are manifested through programmes that indemnify workers and employers or directly finance healthcare providers when the funding is not tied to the health events themselves.

For example, if an employer's EI insurance premium increases as the result of an accident, that increase is part of the employer's cost of the accident. The excess of the payment made by the compensation system over the increased premium is borne by the pool. If the premium is unrelated to the compensation cost, the entire compensation cost is borne by the pool.¹ The same principle applies to public and private health insurances, whose rates are at most only partially sensitive to individual claim histories, as they serve the function of risk-pooling.

Where a fatal work accident or a series of work accidents can become a financial liability burden for an employer, its business can be jeopardized. The loss in financial terms and number of working days lost due to occupational injuries and diseases can be greater than loss due to labour disputes. Box 3.1 illustrates such loss, drawing on the experience of the **Republic of Korea**. Unsuccessful prevention policies and inadequate compensation systems prevent a national economy from growing sustainably, as occupational accidents and diseases hinder national development by causing loss to the country's economy and harming its international competitiveness.

► Box 3.1 Illustration of national loss: Republic of Korea

In 2003 in the Republic of Korea, over 39 million working days were lost due to occupational injuries and diseases. This number is 45 times larger than the number of working days lost (1.3 million days) due to labour disputes in the same year. The estimated economic loss due to occupational injuries and diseases in 2003 was 124,091 million Won, which includes workers' compensation and indirect loss. This compares with 24,972 million Won of production setback and 1,053 million US dollars of export setback due to labour disputes in the same year.

These figures suggest that occupational injuries and diseases can cause losses in financial terms and number of working days to levels that may hinder the competitiveness of the enterprises and countries concerned.

Sources: Republic of Korea 2004a and 2004b.

¹ This is an oversimplification of the experience rating system mechanism. The purpose of such systems is rarely to charge the cost of accidents (this is the case in retrospective systems only, see **Module 6**), but to improve the accuracy of the expected cost for each employer on the basis of its past experience.

► Coordination of EISS benefits with other social security benefits

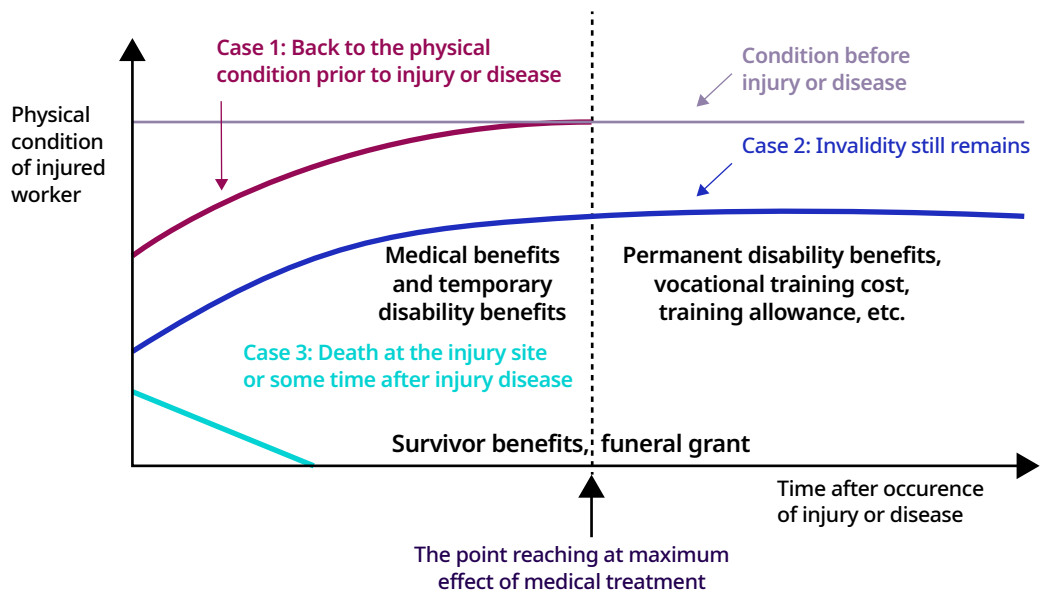
This section examines the rationale and methodology of coordinating EISS benefits with other social security benefits. The right to claim EISS benefits from a third party will also be examined.

Why should EISS benefits be coordinated with other social security benefits?

Coordination of disability benefits is recognized as a desirable public policy to ensure that disability payments come from the appropriate programme and that the total amount of disability benefits paid does not become a deterrent to return to work.

Figure 3.4 presents EISS benefits grouped by type of service delivery, while table 3.1 presents them grouped by specific purpose.

► Figure 3.4 EISS benefits in accordance with the physical condition of the injured worker



► **Table 3.1 EISS benefits by service delivery type and purpose**

	Type of service delivery	Purpose	Other related social security scheme
Medical benefits	In kind	Medical care	Medical care under sickness scheme
Temporary disability benefits	In cash	Income security for invalidity during medical treatment	Cash benefits under sickness scheme
Vocational training cost	In kind (as a type of payment to training institution)	Support for return to work	Vocational training under employment insurance scheme, the scheme for facilitating the disabled to find jobs, etc.
Vocational training allowance	In cash	Support for return to work	Vocational training under employment insurance scheme, the scheme for facilitating the disabled to find jobs, etc.
Permanent disability benefits	In cash	Income security for invalidity after medical treatment	Invalidity benefit provided by a specific scheme or included in an old-age, disability and death scheme
Survivors' benefits	In cash	Income security in the case of breadwinner's death	Death benefit provided by a specific scheme or included in an old-age, disability and death scheme
Funeral grant	In cash (as a type of payment to actual performer of funeral)	Reimbursement for funeral cost	Death provided through a specific scheme or included in an old-age, disability and death scheme

As shown in table 3.1, other social security schemes without regard to the occupational cause can provide benefits for the same purpose as an EISS scheme. In order to avoid overcompensating, similar benefits across the social security schemes should be coordinated. Where several branches of social security benefits are provided under an umbrella scheme, the overlapping coverage would be more obvious and coordination made easier.

Boxes 3.2 and 3.3 present questions that can arise in practice regarding the management of medical expenses. Box 3.3 provides answers in the context of the province of **Quebec, Canada**, where health insurance and EI schemes are public and universal.

► **Box 3.2 Questions and answers on management and control of medical expenses****Questions**

A worker who has sustained a work-related injury or an occupational disease will have to report the incidence to the immediate supervisor who will then fill in the appropriate forms and forward them to an EISS office for further processing.

1. While the forms are being processed, what happens to the injured or ill worker who needs urgent medical treatment? What if the injured or ill worker does not seem in need of urgent medical treatment?

In order to provide medical treatment to its covered workers, the EISS scheme selects hospitals and has an agreement with them regarding terms of service.

2. How will a hospital which is an EISS service provider identify a patient as a worker covered by the EISS scheme?
3. Once the hospital has identified the patient as an EISS covered worker, how will this hospital confirm that the required treatment is caused by a work-related injury or an occupational disease, so as to be sure that the cost is covered by the EISS scheme?
4. What are the most appropriate procedures for handling an occupational disease at the point when it is diagnosed, i.e. how will the cost incurred prior to diagnosis be borne by the EISS scheme?

Answers

The practicability of the measures proposed below may depend on the circumstances of the country.

1. Urgent medical treatment should be provided regardless of where the paperwork stands. A fast-track procedure can be put in place. An example in a developing country is a letter of identity from the employer confirming that: (i) the patient is an insured person under the employment of the employer; (ii) the employee had an accident during the course of work; and (iii) the prescribed form will be presented as soon as possible to the panel clinic.

If injured workers can only be treated at a clinic or hospital recognized by the EISS institution, the time necessary to receive emergency treatment should be expected to be reasonably safe, taking into account the ambulance service capable of providing primary care and the extent of the network of recognized service providers.

A non-urgent situation often becomes urgent if medical treatment is postponed too long. The EISS institution should have guidelines or a commitment schedule to handle different situations (the accident report on the filing form should provide the administrator with enough information to classify the case as an appropriate priority for administrative and medical treatment). The best practice is: in principle, a medical need is addressed as a priority, irrespective of how the treatment is financed.

2. In case of emergency, the employer should communicate with the hospital. In other situations, a mechanism for swift authorization should be put in place. One example is an ID card that allows online access to the injured worker's current status with the EISS institution.
3. Eligibility is the responsibility of the EISS institution, not of the service providers. Normally the EISS institution analyses the accident report and, as needed, conducts interviews with the injured worker and other parties to confirm the work-related nature of the case to medical service providers.
4. The short answer is to refer the case to the medical panel. The right to benefits should start at the date of the first diagnosis of occupational disease, irrespective of the time elapsed between the diagnosis and the acceptance by the EISS institution of the claim.

► Box 3.3 Management and control of medical expenses: Quebec, Canada

In an EISS scheme, workers are only treated or compensated if they have sustained an occupational injury or illness. If the injury or illness is not considered work-related, no benefits are due to the injured or ill worker from the scheme. For medical treatment, the EISS scheme uses the service providers of the National Health Insurance scheme and eventually pays the NHI for the cost of treatment and service.

Question

What are possible control measures for avoiding forgeries or cheating from people who might go to a hospital as if they were insured by the EISS scheme while in fact they are not?

Answer

In Quebec, both the public health insurance (HI) and the employment injury (EI) schemes are universal. The EI scheme reimburses the HI scheme for all healthcare services provided to injured workers. Each resident (citizens as well non-citizens eligible to the HI scheme) is delivered a card by the HI scheme with an identification number (ID), photo and signature that gives access to healthcare services.

Anyone receiving a service from the HI scheme is asked if the service is related to an employment injury (except in obvious cases such as children or very old people). This information is captured by the HI scheme and is used to bill the EI scheme when the service is related to an employment injury. This billing is made by each hospital (for hospital services) or by the public agency which pays those doctors who are remunerated on a fee basis (most of them are). In the billing procedure by the HI scheme to the EI scheme, enough information is provided to the EI scheme to validate the reasonableness of the claim (identification number of benefit recipient, date of delivery and nature of service).

On its side, when the EI scheme receives a claim for an employment injury, it opens a file to compensate for temporary disability. It allocates a claim number to the injured worker, but also collects his/her ID delivered by the HI schemes.

The HI scheme bills the EI at regular intervals for services provided to injured workers after having made a first validation process. Upon reception of the bills, the EI merges the data with its own data in order to validate the request and detect potential anomalies. Finally, the payment is made by the EI scheme. There is of course a process to discuss rejected claims. This system has been fine-tuned by experts of both schemes and is considered reliable. It is based on mutual trust.

It may happen that the HI scheme delivers services to workers suffering a minor injury and for which the EI scheme does not open a file because there is no claim for income replacement. The amount of money is not significant. There is an agreement between the HI and the EI schemes which stipulates that the EI scheme reimburses such amounts on an aggregate basis. The amount is a low percentage of the total amounts paid. This percentage is based on analysis made on a sampling basis.

How is coordination achieved under umbrella coverage?

Under an umbrella coverage, EI benefits may be provided without regard to the cause of injury or sickness. Different types of EI benefits can be provided by different schemes. This type of coverage sometimes allows a worker to file a lawsuit in the civil Court if the employer was negligent. This configuration is found in the **United Kingdom**:

- There are two sources of disability income security available to a worker in the United Kingdom: the social security benefit system administered by the Department for Work and Pensions and the employers' liability insurance. Any worker who is injured or made ill due to occupational causes is entitled to claim benefits under the social security system and to receive healthcare services from the National Health Service. Statutory sick pay coverage is provided for a period up to 28 weeks. Beyond that duration of disability, incapacity benefit is covered under the Industrial Injuries Scheme administered by the Department of Work and Pensions.
- Employers' liability insurance is compulsory in the United Kingdom, enabling employers to meet the cost of employees' injuries or illnesses whether they are due to occupational causes or not. Injuries or illnesses resulting from motor accidents that are work-related are usually covered separately by motor insurance. State benefits do not involve establishment of fault. In contrast, EL insurance requires the Courts to establish the negligence of an employer. This is done through actual or threatened litigation. Employees in the United Kingdom who are injured or made ill due to occupational causes can sue their employer for compensation in civil Courts within a three-year period.

Another example of umbrella coverage is provided by the case of **New Zealand**. The Accident Compensation Corporation (ACC) insures all New Zealand citizens for rehabilitation and wage replacement benefits arising from all accidental causes, whether they occur at work, at home or the sport field. The ACC administers six insurance accounts:

1. **Work account** covers all work-related injuries and is funded by levies paid by employers and the self-employed.
2. **Earners' account** covers non-work injuries to earners and is funded by earners' levies.
3. **Non-earners account** covers injuries to people not in the paid labour force and is funded by government revenues.
4. **Motor vehicle account** covers all personal injuries involving motor vehicles on public roads and is funded from petrol excise taxes and motor vehicle registration fees.
5. **Treatment injury account** covers injuries arising from medical care (medical misadventure).
6. **Residual claims account**.

How can coordination operate through offsetting benefits from different social security schemes?

Where several schemes are operated separately by one or more institutions, the EI scheme is usually a stand-alone scheme and only provides benefits upon occupational injury or disease. One way of coordination is for the beneficiaries, the occupationally injured or sick workers (and their survivors in fatal cases), to choose the scheme among those from which they are entitled to claim benefits. For example, in **Malaysia** workers with permanent invalidity due to occupational causes can choose between the EISS scheme and the invalidity scheme for income security.

Where the health scheme is separate from the EISS scheme, the health scheme institution can claim reimbursement from the EISS institution or from employers for medical treatments of occupational injury or disease provided.² Box 3.4 provides further questions and answers on the administration of EISS schemes.

► Box 3.4 Questions and answers on the administration of EISS

Questions

In many countries, the public health insurance (HI) scheme covers medical treatments related to occupational injury or sickness and bills the EISS scheme for these treatments.

1. Why wouldn't the EISS administration be part of the HI organization?
2. Why can't there be one organization with two different departments or directorates, one running the HI scheme and the other running the EI scheme? Would such a structure lead to synergy and economies of scale?
3. Should all social security institutions (i.e. pension scheme, HI scheme and EI scheme) be merged under a single institution to gain economies of scale?

Answers

The above questions are very broad in scope and would merit an empirical study to identify the diversity of models in workers' compensation. Nevertheless, here are some thoughts:

EISS is probably the oldest branch of social security in many countries. This may explain why, in many developed countries, public agencies administering this branch and standing on their own have developed a set of specialized activities related to the workplace, not only for compensation through cash benefits but also in healthcare and rehabilitation services, in promotion of OSH, and sometimes in inspection of workplaces.

In some countries, such agencies have significantly contributed to the development of specialized medical care trauma treatment (as in **Chile**). Over time, agencies have established swift procedures with healthcare providers. The principle that the medical cost related to employment injury should be borne by employers (and recognized as a production cost) is well accepted. In most of those countries, the general healthcare system is so large in relation to the EI system and is under so much pressure that there is no mutual interest on either side to merge. This is the situation in **Canada** and probably some **European countries** and a few other countries in other parts of the world.

² In the **Republic of Korea**, there is a reimbursement system between national health insurance and EISS. If occupationally injured workers are covered by a medical aid programme (a social assistance programme), the EISS scheme has to respond to reimbursement claims by the medical aid institution.

However, in many countries, the EI branch is administered by an agency which also administers other branches of social security. Under this set-up, the capacity or the incentive of the agency to develop expertise and leadership in injury prevention and rehabilitation, and to apply industry-risk contribution rates which are specific to EI, may be more limited.

In a country where social security protection is starting or that needs to be profoundly changed, the determination of the best model is not easy, as it is necessary to balance the advantages resulting from economies of scale (and possibly simplicity in legislative tools) with the need to provide a good service to participants in each branch of social security.

There are certain administrative functions that can benefit from economies of scale. One of them is the collection of contributions, but economies can also be achieved through other means such as a government agency collecting taxes which would also collect social security contributions. This is an advantage to employers who prefer dealing with a single agency for their compliance. If the administration is decentralized and several regions are small, significant economies can be achieved. Finally, the pooling of certain high-technology resources may be an advantage, but one should be aware that applications may be very different by branch of social security for the claim administration and statistics.

Regarding the administration of benefits, the services are very different by branch, and this is where the comparison of making cars and trucks is useful. The management of EI claims requires specialized administrators. Minor injuries can be handled routinely, but the severe ones require great attention including raising the level of collaboration with employers to facilitate the return to work. This is quite different from a comprehensive healthcare system dealing with patients of any age, occupation and healthcare need.

A new EI scheme may take a few years before the benefits of developing specialized claims managers are seen; the number of severely injured workers would then reach a critical threshold.

In some countries, EI insurance coverage is managed by private carriers, such as in the United States. The ILO does not recommend this kind of arrangement, for several good reasons, but this reality indicates the diversity in the delivery of services. Private carriers involved in this area of insurance must develop specific expertise in underwriting and claims management.

Based on the above comments, short answers to the three questions could be:

1. Having EI and HI under one organization would not simplify the management of claims, as specific expertise of EI claims would need to be developed. For simplicity of administration, stakeholders may decide that the cost of healthcare would not be charged to the EI scheme. In the case of a single agency for the two branches, it would not be considered good governance if the costs of cash benefits are not recorded separately and financed differently from the healthcare system.
2. The scope and nature of the schemes are sufficiently different not to justify an appetite for merging. Collaboration between agencies can be achieved through other means. For developing countries implementing new schemes, the answer can be different, especially if the size of the covered population is small.
3. The answer to question 2 provides the background for this one. Each branch has its own specificities, and the more diversified the services to be provided, the more complex it becomes to be excellent in all. Administering pension plans requires keeping individual records of participants for decades, while administering a healthcare system has another kind of requirement. Again, in small developing countries, one single agency may be the best solution.

Vocational training and allowances are often provided by different institutions operating different schemes. Where such services are provided by an EISS scheme, an employment (or unemployment) insurance scheme, and a job placement programme for disabled workers, the worker would have to choose one among these schemes.

Another way of coordination by offsetting benefits is to put a maximum limit on the total level of benefits workers can receive concurrently. This is illustrated by the case of the **United States** (Reno, Williams and Sengupta 2004):

- Disability payments from private sources, such as private pension or insurance benefits, do not affect social security disability benefits. However, workers' compensation and other public disability benefits may reduce social security benefits. Workers' compensation benefits are paid to a worker because of a job-related injury or illness. They may be paid by federal or state workers' compensation agencies, employers or insurance companies on behalf of employers.
- Other public disability payments that may affect social security benefits are those paid by a federal, state or local government and are for disabling medical conditions that are not job-related. Examples are civil service disability benefits, state temporary disability benefits and state or local government retirement benefits that are based on disability. However, the following public benefits would not reduce the worker's social security benefit: veterans' administration benefits; state and local government benefits, if social security taxes have been deducted from the worker's earnings; or supplemental security income (SSI).
- If a worker receives workers' compensation or other public disability benefits and social security disability benefits, the total amount of these benefits cannot exceed 80 per cent of the worker's average earnings before disability began. Social security benefit will be reduced accordingly until the month the worker reaches age 65 or the month the other benefits stop, whichever comes first. The intent of the offset provision is to ensure that the combined benefits from workers' compensation and social security are not excessive.

Does an EI service provider have the right to claim reimbursement of EISS benefits from a third party recognized as responsible for causing the occupational injury or disease?

When a third party is recognized as partially or totally responsible for causing the occupational injury or sickness, the EISS institution may consider exercising the right to reimbursement of EISS benefits from that third party. Employers and fellow workers are generally excluded from the category of a third party. In many cases, exercising this right takes the form of filing a lawsuit against a third party. The amount of liability claimed from the third party depends on the extent of its negligence in contributing to the accident.

Examples of occupational injury involving a third party's responsibility include car accidents while performing duty or commuting,³ accident by malfunction of a machine attributed to its manufacturers' fault, or physical damage to a service worker by violence of a customer, among others. The most common case is physical damage by car accident, with high numbers of cases and high compensation costs. Thus, in modern EISS schemes, there is an increased tendency for administrative institutions to exercise the reimbursement right against automobile insurance companies. In **Germany**, for example, there is a periodic negotiation meeting between the EISS-operating institution and automobile insurance companies to assess and determine the cases in order to reduce disputes in Court. Box 3.5 describes the **Japanese** system for compensating work-related automobile injuries.

³ The ILO Employment Injuries Convention, 1964 (No. 121) considers work-commuting accidents as occupational injury. However, its actual coverage varies as defined in each country's legislation.

The reimbursement right against a third party is important for two reasons:

- First, the compensation liability is distributed among the parties responsible for the accident. Otherwise, the third party would enjoy undue benefit as the EISS scheme would assume its part in the liability.
- Second, money collected from the third party contributes to EISS financial stability. Otherwise, the contribution rate would need to increase to include the undue coverage of third party.

► Box 3.5 Compensation for work-related traffic injury: Japan

In Japan, a worker suffering an injury or illness from work-related activities including commuting to and from work is eligible for compensation by the Workers Accident Compensation Insurance (WACI). This is a public social insurance system supervised and administered by the Ministry of Health, Labour and Welfare. It provides medical and temporary absence compensation benefits as well as disability pensions or grants and pensions to eligible survivors. This comprehensive system for workers aims to support victims' rehabilitation into society, provide relief for workers and bereaved families, and prevent occupational accidents.

When an injury is the result of a traffic accident, the worker can claim benefits from the Compulsory Accident Liability Insurance (CALI). The Automobile Liability Security Act obliges every automobile user to conclude a CALI in order to access compensation. A valid CALI certificate must be presented at initial registration of a vehicle and at each vehicle inspection carried out thereafter. Insurance is provided through general insurance companies. Insurers are prohibited from declining any application for a CALI contract.

Even though CALI is managed by private insurance companies, it is considered as a public insurance scheme since it is a compulsory insurance that obliges all owners of automobiles to subscribe, under the principle of "no loss, no profit". Insurers may use for CALI the premium rates calculated by the General Insurance Rating Organization and filed with the Financial Services Agency of Japan. Benefits are lump sums, and limits are set for each category of benefits. For example, limits for death and permanent disability (1st grade requiring nursing care benefits) were respectively 30,000,000 and 40,000,000 Yen in 2017.

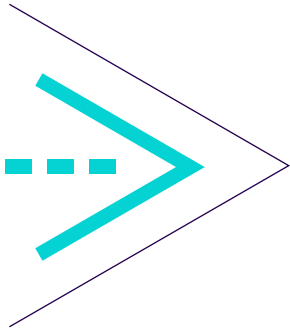
When victims of traffic accidents suffering bodily injury are beneficiaries of the workers' compensation programme, they can receive benefits from either the CALI or the WACI scheme. They cannot receive from both for the same loss. This means that WACI can be subrogated to the claim that the victim has against the CALI insurer up to the amount of the benefit paid. Thus, the amount the victim is entitled to claim against the CALI insurer will be reduced to that extent.

There are some advantages in claiming from CALI. If insurance benefits are granted from CALI prior to WACI, the payment of compensation will be made more promptly. Benefits from CALI have a wider scope compared to those from WACI. For example:

- CALI grants payment for damages for pain and suffering, while WACI does not.
- Items to be included as medical expenses in CALI are greater in number than those included in WACI.
- CALI, in principle, compensates 100 per cent of lost time while WACI compensates only 60 per cent.

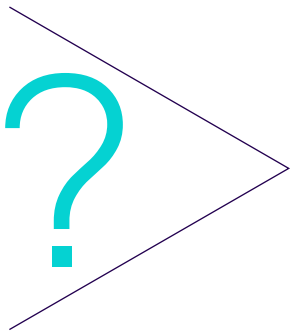
Module 4.
ILO instruments and employment injury

4



Objective

This module provides basic knowledge on the ILO instruments relevant to EI benefit. These instruments include tools developed by the ILO that can be useful in pursuing objectives such as securing EI benefits, updating a list of occupational diseases, and establishing effective linkage between prevention and compensation.



Key questions

This module provides answers to the following questions:

- ▶ What are the main ILO standards on EI protection?
- ▶ What is defined as a contingency?
- ▶ Who are the persons protected?
- ▶ What are the qualifying conditions?
- ▶ What are the benefits?
- ▶ What are the ILO standards regarding the identification of occupational diseases?

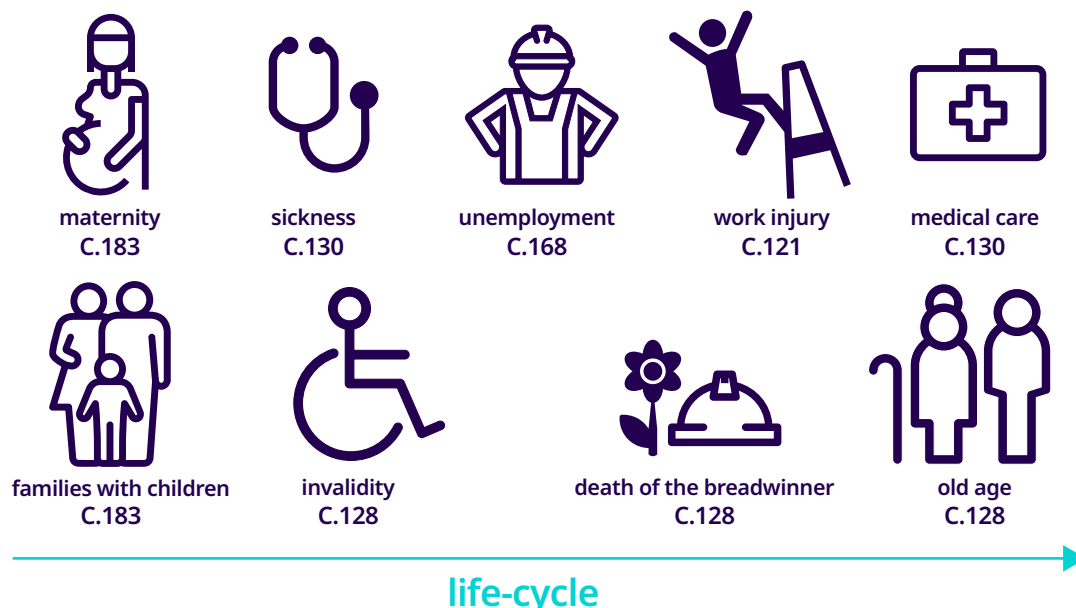
► ILO standards

The ILO sets standards that lay down obligations and guidelines for ILO Member States. These standards are of two types: Conventions and Recommendations. They help in drafting laws and regulations, and in designing and implementing social security systems (see box 4.1). Figure 4.1 provides a glance at the principal ILO standards, while figure 4.2 illustrates the coverage of life-cycle contingencies by ILO Conventions.

► Figure 4.1 Principal ILO standards



► Figure 4.2 ILO Conventions and life-cycle contingencies



► **Box 4.1 International organization of labour**

Since 1919, the International Labour Organization has maintained and developed a system of international labour standards aimed at promoting opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and dignity. In today's globalized economy, international labour standards are an essential component in the international framework for ensuring that the growth of the global economy provides benefits to all.

International labour standards are legal instruments drawn up by the ILO's constituents (governments, employers and workers) and setting out basic principles and rights at work. They are either **Conventions**, which are legally binding international treaties that may be ratified by Member States, or **Recommendations**, which serve as non-binding guidelines. In many cases, a Convention lays down the basic principles to be implemented by ratifying countries, while a related Recommendation supplements the Convention by providing more detailed guidelines on how it could be applied. Recommendations can also be autonomous, i.e. not linked to any Convention. In order to update its instruments, the ILO adopts revising Conventions that replace older ones, or protocols which add new provisions to older Conventions.

Conventions and Recommendations are drawn up by representatives of governments, employers and workers and are adopted at the ILO's annual International Labour Conference. Once a standard is adopted, Member States are required under the ILO Constitution to submit them to their competent authority (normally the parliament) for consideration. In the case of Conventions, this means consideration for ratification. If it is ratified, a Convention generally comes into force for that country one year after the date of ratification. Ratifying countries commit themselves to applying the Convention in national law and practice and reporting on its application at regular intervals. The ILO provides technical assistance if necessary. In addition, representation and complaint procedures can be initiated against countries for violations of a Convention they have ratified.

The ILO Constitution sets forth the principle that workers should be protected from sickness, disease and injury arising from their employment. The ILO has adopted more than 40 standards specifically dealing with occupational safety and health (OSH), as well as over 40 codes of practice. Nearly half of ILO instruments deal directly or indirectly with OSH issues. The fundamental principles of OSH are established by the following:

- Occupational Safety and Health Convention, 1981 (No. 155) and its Protocol of 2002
- Occupational Health Services Convention, 1985 (No. 161)
- Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)
- Occupational Safety and Health Recommendation, 2006 (No. 197)
- List of Occupational Diseases Recommendation, 2002 (No. 194) and its appendix updated in 2010.

Since its first session in 1919, the International Labour Conference has adopted 31 Conventions and 24 Recommendations on social security. The international labour standards on social security covering employment injury include the following:

- Social Security (Minimum Standards) Convention, 1952 (No. 102)
- Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121)
- Employment Injury Benefits Recommendation, 1964 (No. 121).

Further to prevention and compensation comes the topic of return-to-work preparation. The following international labour standards cover this topic more specifically:

- Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159)
- Vocational Rehabilitation and Employment (Disabled Persons) Recommendation, 1983 (No. 168).

Tables 4.1, 4.2, 4.3 and 4.4 provide a broad picture of the international labour standards. Their content can be found on the ILO website (<http://www.ilo.org/global/standards/lang--en/index.htm>).

► **Table 4.1 Subjects covered by international labour standards**

- | | |
|---|----------------------------------|
| ► Freedom of association | ► Wages |
| ► Collective bargaining | ► Working time |
| ► Forced labour | ► Occupational safety and health |
| ► Child labour | ► Social security |
| ► Equality of opportunity and treatment | ► Maternity protection |
| ► Tripartite consultation | ► Social policy |
| ► Labour administration | ► Migrant workers |
| ► Labour inspection | ► HIV/AIDS |
| ► Employment policy | ► Seafarers |
| ► International labour | ► Fishers |

► **Table 4.2 International labour standards on social security**

Comprehensive standards	<ul style="list-style-type: none"> • C.102 - Social Security (Minimum Standards) Convention, 1952 (No. 102) • R.67 - Income Security Recommendation, 1944 (No. 67) • R.202 - Social Protection Floors Recommendation, 2012 (No. 202)
Medical care and sickness benefit	<ul style="list-style-type: none"> • C.130 - Medical Care and Sickness Benefits Convention, 1969 (No. 130) • R.134 - Medical Care and Sickness Benefits Recommendation, 1969 (No. 134)
Old-age, invalidity and survivors' benefit	<ul style="list-style-type: none"> • C.128 - Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128) • R.131 - Invalidity, Old-Age and Survivors' Benefits Recommendation, 1967 (No. 131)
Employment injury benefit	<ul style="list-style-type: none"> • C.121 - Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121) • R.121 - Employment Injury Benefits Recommendation, 1964 (No. 121)
Unemployment benefit	<ul style="list-style-type: none"> • C.168 - Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168) • R.176 - Employment Promotion and Protection against Unemployment Recommendation, 1988 (No. 176)
Social security for migrant workers	<ul style="list-style-type: none"> • C.118 - Equality of Treatment (Social Security) Convention, 1962 (No. 118) • C.157 - Maintenance of Social Security Rights Convention, 1982 (No. 157) • R.167 - Maintenance of Social Security Rights Recommendation, 1983 (No. 167)

► **Table 4.3 International labour standards on occupational safety and health**

General provisions	<ul style="list-style-type: none"> • Occupational Safety and Health (1981): C.155, R.164, Protocol (2002) • Occupational Health Services (1985): C.161, R.171 • Promotional Framework for Occupational Safety and Health (2006): C.187, R.197 • Protection of Workers' Health (1953): R.97 • Welfare Facilities (1956): R.102 • List of Occupational Diseases (2002): R.194
Protection against specific risks	<ul style="list-style-type: none"> • Radiation Protection (1960): C.115, R. 114 • Occupational Cancer (1974): C.139, R.147 • Working Environment (Air Pollution, Noise and Vibration) (1977): C.148, R.156 • Asbestos (1986): C.162, R.172 • Chemicals (1990): C.170, R.177 • Prevention of Major Industrial Accidents (1993): C. 174, R.181
Protection in specific branches of activity	<ul style="list-style-type: none"> • Hygiene (Commerce and Offices) (1964): C.120, R.120 • Safety and Health in Construction (1988): C.167, R.175 • Safety and Health in Mines (1995):C.176, R.183 • Safety and Health in Agriculture (2001): C.184, R.192

► **Table 4.4 International labour standards on employment policy and promotion**

Governance on employment policy	<ul style="list-style-type: none"> • Employment Policy (1964): C.122, R.122 • Employment Policy (Supplementary Provisions) (1984): R.169
Other instruments on employment policy and promotion	<ul style="list-style-type: none"> • Vocational Rehabilitation and Employment (Disabled Persons) (1983): C.159, R.168 • Vocational Rehabilitation (Disabled) (1955): R.99 • Private Employment Agencies (1997): C.181, R.188 • Job Creation in Small and Medium-Sized Enterprises (1998): R.189 • Promotion of Cooperatives (2002): R.193 • Employment Relationship (2006): R.198

► ILO standards and EI protection

What are the main ILO standards on EI protection?

This section examines how the ILO standards shape EISS schemes. Table 4.5 presents the scope of the three standards that are most relevant to EI benefits.

► **Table 4.5 Scope of ILO Conventions Nos. 102 and 121 and Recommendation No. 121**

<p>Convention No. 102</p>	<p>Social Security (Minimum Standards) Convention, 1952 (No. 102)</p> <p>This Convention lays down the minimum standards for levels of social security benefits and the conditions under which they are granted. It covers the nine principal branches of social security, namely medical care, sickness, unemployment, old age, employment injury, family, maternity, invalidity and survivors' benefits.</p> <p>To ensure that it could be applied in all national circumstances, the Convention offers States the possibility of ratification by accepting at least three of its nine branches and of subsequently accepting obligations under other branches, thereby allowing them to progressively attain all the objectives set out in the Convention.</p> <p>The minimum benefits can be determined with reference to the level of wages in the country. Temporary exceptions may be envisaged for countries whose economy and medical facilities are insufficiently developed, thereby enabling them to restrict the scope of the Convention and the coverage of the benefits granted.</p> <p>EI benefit is stipulated in Part VI of the Convention.</p>
<p>Convention No. 121</p>	<p>Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121)</p> <p>This Convention provides more detailed principles of compensation for damages sustained from employment accidents and occupational diseases as well as commuting accidents. Ratification of this Convention substitutes the application of Part VI of Convention No. 102 and its relevant provisions.</p> <p>Similar to Convention No. 102, Convention No. 121 provides flexibility for countries whose economic and medical facilities are insufficiently developed. In these countries, temporary exceptions in regard to some articles in this Convention may apply by means of a declaration which states the reasons for such exception when ratifying this Convention.</p>
<p>Recommendation No. 121</p>	<p>Employment Injury Benefits Recommendation, 1964 (No. 121)</p> <p>This Recommendation supplements Convention No. 121.</p>

What is defined as a contingency?

The contingencies covered by these instruments include:

- A morbid condition;
- Incapacity for work as defined by national legislation;
- Invalidity or a loss of faculty due to an industrial accident or a prescribed occupational disease; and
- Loss of support as a result of the death of the breadwinner following employment injury.

Convention No. 121 places the obligation upon States to prescribe a definition of **industrial accident**, including the conditions under which a commuting accident is considered to be an industrial accident.

With regard to the concept of **occupational disease**, Convention No. 121 offers States three options:

- To prescribe in their legislation a list of diseases to be regarded as occupational diseases, comprising at least the diseases enumerated in Schedule I to the Convention;
- To include in their legislation a general definition of occupational diseases broad enough to cover at least the diseases enumerated in Schedule I to the Convention; or,
- To prescribe a list of diseases in their legislation, supplemented by a general definition of occupational diseases.

Occupational disease reporting is often more complex and requires more technical and political efforts than occupational accidents, and is discussed in more detail later in this module.

There are two main approaches to compensating long-term losses resulting from permanent disability:

- **Impairment-based approach**, based on the degree of impairment and with no links with future earning loss; and
- **Loss of earning capacity approach**, where the economic impact on the ability to re-enter the labour market is projected.

The approaches try to find a balance between the notions of disability and impairment and to propose a fair compensation for the losses of an individual injured at work. The eventual payment of compensation may be offered in two forms:

- A **lump sum** for non-pecuniary damage based on the impairment rating and a pension (usually payable until retirement age) based on the loss of earning capacity; or
- A **pension** (usually a life annuity) for the occupational damage but in practice mainly based on physical damage.

Differentiating impairment and disability is imperative, as one person can be impaired significantly and have no disability, while another can be quite disabled with only limited impairment. Box 4.2 focuses on this distinction in the **United States**, compared to the World Health Organization (WHO), while box 4.3 demonstrates how disability is assessed in the **Republic of Korea**. Physicians are encouraged to rate impairment based on the level of impact that the condition has on the performance of activities of daily living rather than on the performance of work-related tasks.

► **Box 4.2 Employment injury compensation: Impairment and disability definitions and rating in the United States**

	Impairment	Disability
American Medical Association (AMA)	A significant deviation, loss, or loss of use of any body structure or body function in an individual with a health condition, disorder, or disease. Must be permanent (to be rated) i.e. has reached maximum medical improvement (MMI) and is well stabilized and unlikely to change substantially in the next year with or without medical treatment.	Activity limitations and/or participation restrictions in an individual with a health condition, disorder, or disease.
World Health Organization (WHO)	Any loss or abnormality of psychological, physiological or anatomical structure or function.	An activity limitation that creates a difficulty in the performance, accomplishment, or completion of an activity in the manner or within the range considered normal for a human being.
US Social Security Administration (SSA)	An impairment that results from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. Must be established by medical evidence consisting of signs, symptoms, and laboratory findings – not only by the individual's statement of symptoms.	The inability to engage in any substantial, gainful activity by reason of any medically determinable physical or mental impairment(s), which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.

According to the AMA guides, an impairment rating is a consensus-derived percentage estimate of loss of activity, which reflects severity of impairment for a given health condition, and the degree of associated limitations in terms of activities of daily living. Despite the authors' intent to link impairment to daily living activities, most states recognize the impairment ratings determined by the AMA guides as direct measures of disability. Workers' compensation systems usually define disability as a reduction in wage-earning capacity as a result of an injury, illness, or occupational disease that arose out of, or in the course of, employment.

Reporting of impairment ratings

The examiner should act with professionalism and base observations on objective and factual opinions in his or her area of expertise. Physical examination must be performed with patience and understanding. The report of findings should include a precise description and measurements if possible. The examiner must retain independence and avoid conflicts of interest.

Minimum of the examiner's report

- History and physical examination findings
- Statement about medical stability
- Medical record review
- Diagnosis
- Whole-person impairment percentage (with calculations)
- Apportionment of the permanent impairment to prior conditions (when appropriate)
- Functional ability statement regarding the individual's residual functional capacity
- An assessment of the credibility of alleged pain and limitations
- Future medical treatment recommended or required
- Some statement about sincerity of effort or motivation
- Statement about causation of the impairment
- Answers to any other specific questions posed by the requesting adjuster or agency
- References

Who are the persons protected?

Conventions Nos 102 and 121 refer to employees in defining the persons protected. Under Convention No. 102, the persons protected must comprise prescribed classes of employees constituting not less than 50 per cent of all employees.

The scope of Convention No. 121 is broader, since it envisages that all employees, including apprentices in the public and private sector, and in cooperatives, are to be protected throughout their working periods regardless of their length of employment or duration of contribution payment. Exclusion may apply to seafarers and public servants, so long as they are protected by special schemes whose benefits are at least equivalent to those required by this Convention. In countries where temporary exceptions apply, the coverage of EI benefits may be limited to at least 75 per cent of all employees in industrial undertakings.

Recommendation No. 121 calls for the progressive extension of the application of legislation providing for EI benefits to any categories of employees which may have been excluded. It also recommends States to secure the provision of benefits, if necessary, through voluntary insurance, to prescribed categories of self-employed persons and certain categories of persons working without pay.

Under Convention No. 102, the **beneficiaries** in case of death of the breadwinner are the widow or children, while under Convention No. 121, there are prescribed categories of beneficiaries, namely: a widow or a disabled and dependent widower, dependent children of the deceased and any other person prescribed by the legislation (generally parents or grandparents).

With the evolution of the labour force market, atypical work conditions have generated problems. [Appendix 11](#) discusses the matter.

What are the qualifying conditions?

In contrast to other contingencies, the granting of benefits in the event of employment injury cannot be made subject to a qualifying period, either in the case of medical care or of cash benefits. Benefits have to be provided from the first day of the contingency without a waiting period.

However, but only in the case of incapacity for work resulting from employment injury, Convention No. 102 provides that the benefit need not be paid for the first three days in each case of suspension of earnings.

Convention No. 121 is more restrictive in this respect, since the waiting period is only permitted in two cases:

- where the State benefits from temporary exceptions; or
- where the waiting period was provided for in the legislation at the date on which the Convention came into force and if the reasons for having recourse to this exception subsist.

Recommendation No. 121 advocates the removal of any waiting period.

What are the benefits?

The benefits envisaged by Conventions Nos 102 and 121 are of three types:

- medical care;
- cash benefits in the event of incapacity for work and loss of earning capacity (invalidity); and
- where appropriate, cash benefits in the event of the death of the breadwinner.

Medical care has to be afforded with a view to maintaining, restoring or improving the health of the persons protected and their ability to work and to attend to their personal needs. The care must comprise:

- ▶ general practitioner and specialist in-patient and out-patient care, including domiciliary visiting;
- ▶ dental care;
- ▶ nursing care at home or in hospital or other medical institutions;
- ▶ maintenance in hospitals, convalescent homes, sanatoria or other medical institutions;
- ▶ dental, pharmaceutical and other medical or surgical supplies, including prosthetic appliances and eyeglasses; and
- ▶ the care furnished by members of such other professions as may be recognized as allied to the medical profession, under the supervision of a medical or dental practitioner.

Convention No. 121 also envisages emergency treatment at the place of work of persons sustaining a serious accident, and follow-up treatment of those whose injury is slight and does not entail discontinuance of work. For members whose economic and medical facilities are insufficiently developed (where a declaration for temporary exception is in force), medical care and allied benefits shall include at least:

- ▶ general practitioner care, including domiciliary visiting;
- ▶ specialist care at hospitals for in-patients and out-patients, and such specialist care as may be available outside hospitals;
- ▶ the essential pharmaceutical supplies on prescription by a medical or other qualified practitioner;
- ▶ hospitalization, where necessary; and
- ▶ wherever possible, emergency treatment at the place of work of persons sustaining an industrial accident.

The institutions or government departments administering the medical care are required to cooperate, wherever appropriate, with the general vocational rehabilitation services, with a view to the re-establishment of handicapped persons in suitable work. National laws or regulations may authorize such institutions or departments to ensure provision for the vocational rehabilitation of handicapped persons.

The **cash benefits** to be provided in the event of incapacity for work, loss of earning capacity, corresponding loss of faculty or the death of the breadwinner, must be a periodic payment.

In case of temporary incapacity for work, total loss of earning capacity likely to be permanent or corresponding loss of faculty, the amount of the periodic payments must attain for a standard beneficiary (man with wife and two children) 50 per cent of the reference wage under the terms of Convention No. 102. This rate is raised to 60 per cent by Convention No. 121. Moreover, Recommendation No. 121 indicates that the rate of benefits should not be less than two-thirds of the injured person's former earnings.

In case of partial loss of earning capacity likely to be permanent, the rate of benefit must be a suitable proportion of that specified for total loss of earning capacity.

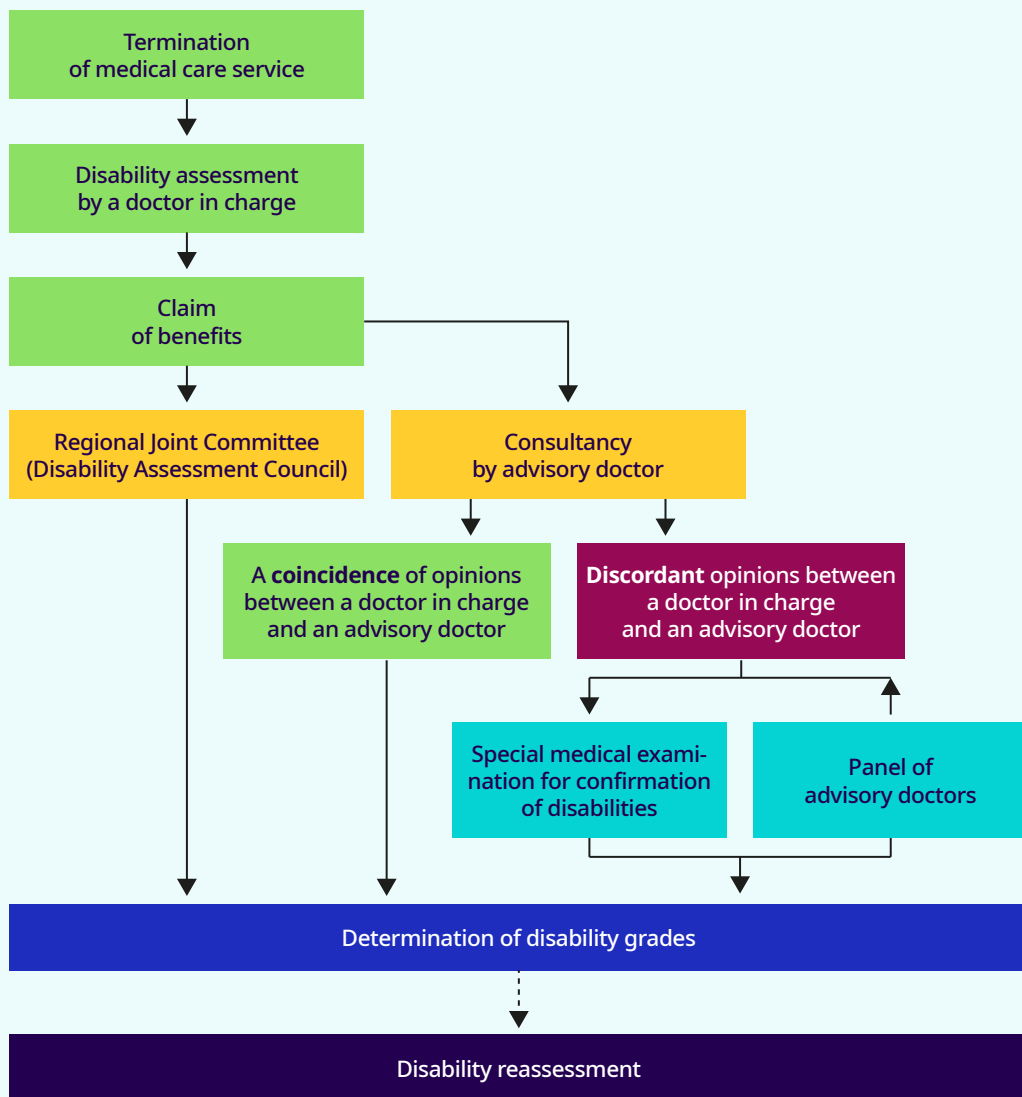
► **Box 4.3 Disability assessment in the Republic of Korea**

Disability is defined as a state in which the ability to work has been lost or diminished due to mental or physical damage. There are 14 grades and 165 types of disability in the EI insurance scheme.

Disability benefits are paid to workers who suffer from a physical disability after recovering from any injury or disease caused by their work. These benefits are paid in the form of an annuity or a lump sum based on the disability grades described by presidential decree.

- Grades 1 to 3: paid only as an annuity
- Grades 4 to 7: paid as an annuity or as a lump sum
- Grades 8 to 14: paid only as a lump sum

Flow of disability assessment



Disability assessment in the Regional Joint Committee

In order to ensure impartiality, disability assessment is carried out not in each branch but by the Regional Joint Committee, which is required to assess the following types of disability:

- ▶ Grade 9 or higher disabilities caused by central nervous system impairment
- ▶ Grade 12 or higher disabilities caused by joint functional movement disorder
- ▶ Grade 11 or higher disabilities caused by spinal nerve root impairment
- ▶ Disabilities caused by impairments in the thoracoabdominal areas, ears, nose and mouth
- ▶ Disabilities that need to be reassessed

What is the Disability Assessment Council?

A deliberative body operated for the Regional Joint Committee. It consists of five to ten members including a chairperson. It organizes meetings by unit of medical subject based on the characteristics of each medical case.

What is the role of an advisory doctor?

An advisory doctor provides necessary medical advice on:

- ▶ determining whether or not a disease is caused by work
- ▶ determining how long medical care service is needed
- ▶ determining whether to terminate medical care service
- ▶ assessing disabilities

Advisory doctors are appointed by the president of the Korea Workers' Compensation and Welfare Service (COMWEL) among candidates who are:

- ▶ recommended by the heads of a branch office of COMWEL
- ▶ recommended by national employers' federations
- ▶ recommended by national employees' federations

Types	Descriptions
Expert advisor	A member who works at COMWEL
Regular advisory doctor	A member who visits COMWEL and advises on a regular basis
Advisory doctor as needed	A member who visits COMWEL and advises on request

Panel of advisory doctors

A panel of advisory doctors is held when different medical opinions on disabilities that are not required to be assessed by the Disability Assessment Council are given, for instance between a doctor in charge and an advisory doctor. The panel consists of five to ten members including a chairperson and is held once a month, in principle. It must include at least three certified doctors who specialize in a relevant medical subject.

Disability reassessment

Disability reassessment is conducted on beneficiaries of a permanent disability benefit (PDB) annuity who have a potential for a change in the disability grade that was previously determined. The reassessment is carried out only once and should be conducted within one year from two years after the date of the original decision.

These instruments nevertheless permit the benefit due in the event of permanent incapacity to be converted into a lump sum (corresponding to the actuarial equivalent of the periodic payment) where the degree of incapacity is slight or where the competent authority is satisfied that the lump sum will be properly utilized. In such cases, Convention No. 121 emphasizes the exceptional nature of this measure and makes it subject to the consent of the person protected. The Convention also permits such conversion in the case of States which lack the necessary administrative facilities for periodic payments.

Finally, the rate of **survivors' benefit** in the event of the death of the breadwinner must attain, for a widow with two children, at least 40 per cent of the reference wage for Convention No. 102 and 50 per cent under the terms of Convention No. 121. In addition to the rules set out in terms of percentages of the reference wage, Convention No. 121 provides that no periodic payment may be less than a prescribed minimum amount.

As in the case of old-age and other long-term benefits, the two Conventions provide that the rates of periodic payments have to be reviewed following substantial changes in the general level of earnings or the cost of living.

The benefits should be granted throughout the contingency, with an exception of the first three days of incapacity for work. A benefit could be suspended due to reasons such as being absent from the territory of the country, making a fraudulent claim, or failing to comply with the rules prescribed for verifying the occurrence or continuance of the contingency.

Convention No. 121 provides broader protection than Convention No. 102. By way of illustration, injured persons requiring the constant assistance of another person should be provided with additional benefits. Moreover, a funeral benefit at a rate which is not less than the normal cost of a funeral should be envisaged by the legislation. States also have to take measures to prevent industrial accidents and occupational diseases, to provide rehabilitation services, and to further the placement of disabled persons in suitable employment.

Rehabilitation and reintegration. Further to the requirements of Conventions Nos 102 and 121, measures for rehabilitation and reintegration of workers who have sustained occupational injury or illness are also an integral part of OSH systems and programmes. Convention No. 159 calls for a national policy on vocational rehabilitation and employment of disabled persons that makes appropriate vocational rehabilitation measures available to all categories of disabled persons and promotes employment opportunities for disabled persons in the open labour market, in respect of the principle of equal opportunity and treatment between disabled workers and workers generally. The representative organizations of employers and workers, as well as the representative organizations of and for disabled persons, should be consulted on the implementation of the policy.

Appendix 5 summarizes the workers' compensation benefits provided in the **United States**, while table 4.6 summarizes employment injury benefits according to Conventions Nos 102 and 121.

► Table 4.6 Employment injury benefits according to ILO Conventions Nos 102 and 121

	Convention No. 102	Convention No. 121
Nature of benefits	<ul style="list-style-type: none"> • Medical care (a list of which is contained in the Convention). • Periodic payments, corresponding to at least 50% of the reference wage in cases of incapacity for work or invalidity. • In case of death of the breadwinner, benefits for the widow and dependent children. Periodic payments corresponding to at least 40% of the reference wage. • Except in the case of incapacity for work, obligation to revise the rates of periodic payments following substantial changes in the cost of living. • Possibility of converting periodic payments into a lump sum where: <ol style="list-style-type: none"> (1) The degree of incapacity is slight; or (2) The competent authority is satisfied that the lump sum will be properly utilized. 	<ul style="list-style-type: none"> • As in Convention No. 102. In addition, certain types of care at the place of work. • Periodic payments, corresponding to at least 60% of the reference wage in cases of incapacity for work or invalidity. • In case of death of the breadwinner, benefits for the widow, the disabled and dependent widower, dependent children, as well as all other persons, as recognized under national legislation. Periodic payments corresponding to at least 50% of the reference wage. In principle a funeral benefit must be provided. • Obligation to prescribe a minimum amount for these periodic payments. • As in Convention No. 102. • Possibility of converting periodic payments into a lump sum: (1) in the case of loss of earning capacity which is not substantial; and (2) in exceptional circumstances, and with the agreement of the injured person, when the competent authority has reason to believe that such lump sum will be utilized in a manner which is particularly advantageous for the injured person. • Supplementary benefits for disabled persons requiring the constant help of a third person.
Condition of entitlement to benefits	<ul style="list-style-type: none"> • Prohibition to prescribing a qualifying period. • In the case of a widow, the right to benefit may be made conditional on her being presumed to be incapable of self-support. 	<ul style="list-style-type: none"> • As in Convention No. 102. Possibility of prescribing a period of exposure for occupational diseases. • Possibility for the national authority to prescribe conditions under which a widow can claim the benefits.
Duration of benefits	<ul style="list-style-type: none"> • No waiting period except in the case of temporary incapacity to work (maximum 3 days) • The benefit has to be granted throughout the contingency. 	<ul style="list-style-type: none"> • Possibility of fixing a waiting period in cases of incapacity to work if the delay was provided for under legislation at the time the Convention entered into force and the reasons for this still exist. • As in Convention No. 102.
Facilitation of return to work		<ul style="list-style-type: none"> • Providing vocational rehabilitation service for disabled workers' return to work, replacement, etc.

What are the ILO standards regarding the identification of occupational diseases?

Schedule I to Convention No. 121, as updated in 1980, identifies 29 categories of occupational diseases (15 initially) and the corresponding types of work involving exposure to the risk.⁴

The ILO List of Occupational Diseases Recommendation, 2002 (No. 194) and its appendix updated in 2010 simplified the procedure for updating lists of occupational diseases through ILO tripartite meetings of experts. The 2010 updated list includes:

- a range of internationally recognized occupational diseases, from illnesses caused by chemical, physical and biological agents to respiratory, skin and musculoskeletal disorders and occupational cancer;
- a section on mental and behavioural disorders;
- specific occupational diseases caused by hazardous agents arising from work activities; and
- open items which allow recognition of a disease not listed where a direct link is established scientifically or determined by methods appropriate to national conditions and practice, between the exposure arising from work activities and the disease contracted by the worker.

Protected persons who are victims of one of these listed diseases, and have been employed in work involving exposure to the corresponding risk, benefit from the presumption of the occupational origin of the disease, as specified in Recommendation No. 121 (para. 6(2)).

Recommendation No. 194 calls upon Member States to establish a national list of occupational diseases for the purposes of prevention, recording, notification and compensation, which should include at least those in Schedule I to Convention No. 121 and, to the extent possible, other diseases contained in the list annexed to Recommendation No. 194. The national list should be periodically reviewed and updated.

The ILO list is a useful reference for occupational health practitioners, government officials, workers and employers. Occupational disease victims need the cooperation of their employers for reporting their disease in order to receive proper treatment and compensation. They also need assistance and advice from medical professionals through a user-friendly consultation system when applying for compensation.

While a list of occupational diseases has the disadvantage of covering only a certain number of such diseases, it has the advantage of listing diseases for which there is a presumption that they are of occupational origin. It is often very difficult, if not impossible, to prove that a disease is directly attributable to the victim's occupation. A list of occupational diseases also has the advantage of indicating clearly where prevention should take place.

Without a list of occupational diseases, a country still can theoretically cover all occupational diseases by including a general definition of occupational diseases in its legislation. A general legal definition of occupational diseases affords the widest and most flexible protection but leaves it to the victim to prove the occupational origin of the disease, and no emphasis is placed on specific prevention. A mixed system, including a list of occupational diseases and a general definition, combines the advantages of both without their disadvantages and has tended to be used in more countries. Box 4.4. provides an example of a mixed system used in the **Republic of Korea**.

⁴ This section is based on Shengli 2010.

There is a need for an internationally agreed reference list of occupational diseases that countries can use to update and maintain their own lists. This, when kept up to date, will help and improve reporting and notification of occupational diseases at the national level and contribute to the harmonization of occupational diseases data collection. This, in turn, would facilitate assessment of the magnitude of the risk and the extent of the problem globally and make international comparison more meaningful.

► Box 4.4 Occupational diseases in the Republic of Korea

The Republic of Korea has adopted a mixed system which combines the “list system and the general definition system when it comes to recognition of occupational diseases entitling workers to compensation benefits.

The Presidential Decree of the Labour Standards Act (LSA) and the Industrial Accident Compensation Act (IACA) stipulate the scope of occupational diseases in the Republic of Korea. In addition, the IACA defines concrete criteria based on the scope of occupational diseases.

If a worker develops a disease included in the scope of occupational diseases, caused by physical, chemical or biological agents, and the disease meets each of the following conditions, the disease is recognized as an occupational disease:

- if the worker has ever handled, or been exposed to, risk factors while performing his/her duties;
- if the worker’s disease was caused during working hours by handling or being exposed to risk factors, the period of engaging in such work and work environment; and
- if it is medically recognized that the disease occurred due to the fact that the worker has handled, or been exposed to, risk factors.

In case of a disease caused by occupational injuries, the disease must meet each of the following conditions in order to be accepted as an occupational disease:

- a causal relationship between the occupational injury and the disease is medically recognized; and
- the disease is not symptomatic of a pre-existing condition.

Nevertheless, the disease can be defined as an occupational disease if the pre-existing conditions are exacerbated or there has been a relapse due to occupational injury.

When determining whether to recognize an occupational disease or death caused by occupational disease, the authorities should also take into account the worker’s age, sex, health and physical condition.

In the past, workers had to prove a significant relationship between their work and the disease in order for it to be approved as an occupational disease. However, in reality, it was difficult for workers to prove this relation or the occupational origin of the disease.

In order to alleviate the burden of proof placed on workers, since 2018 the Republic of Korea has introduced a presumptive provision in the IACA and applied it to determining whether it is an occupational disease (clause “m” in the table below on the IACA scope of occupational diseases). Through this clause, any disease can be accepted as occupational if it meets diagnostic criteria and there is a casual relationship between the work and the disease. As a result, this has allowed the EI insurance scheme to enhance protection of workers.

It is important to specify the exact name of the disease in order to identify a causal relation between the work and the disease. According to the IACA, the classification of an occupational disease which is subject to Workers' Compensation Insurance (WCI) benefits should be based on the Korean Standard Classification of Disease and Cause of Death (KCD) announced by the head of Statistics Korea, and the disease also should be medically diagnosed. The date of occurrence for an occupational disease is the date when the disease is identified by medical diagnosis. However, if a medical examination or treatment is inevitably needed to identify whether to determine if it is an occupational disease, the day the worker starts the medical examination or treatment can be recognized as the date of occurrence for the occupational disease. From the date of identification by medical diagnosis, the worker is entitled to compensation benefits.

Scope of occupational diseases: Labour Standard Act

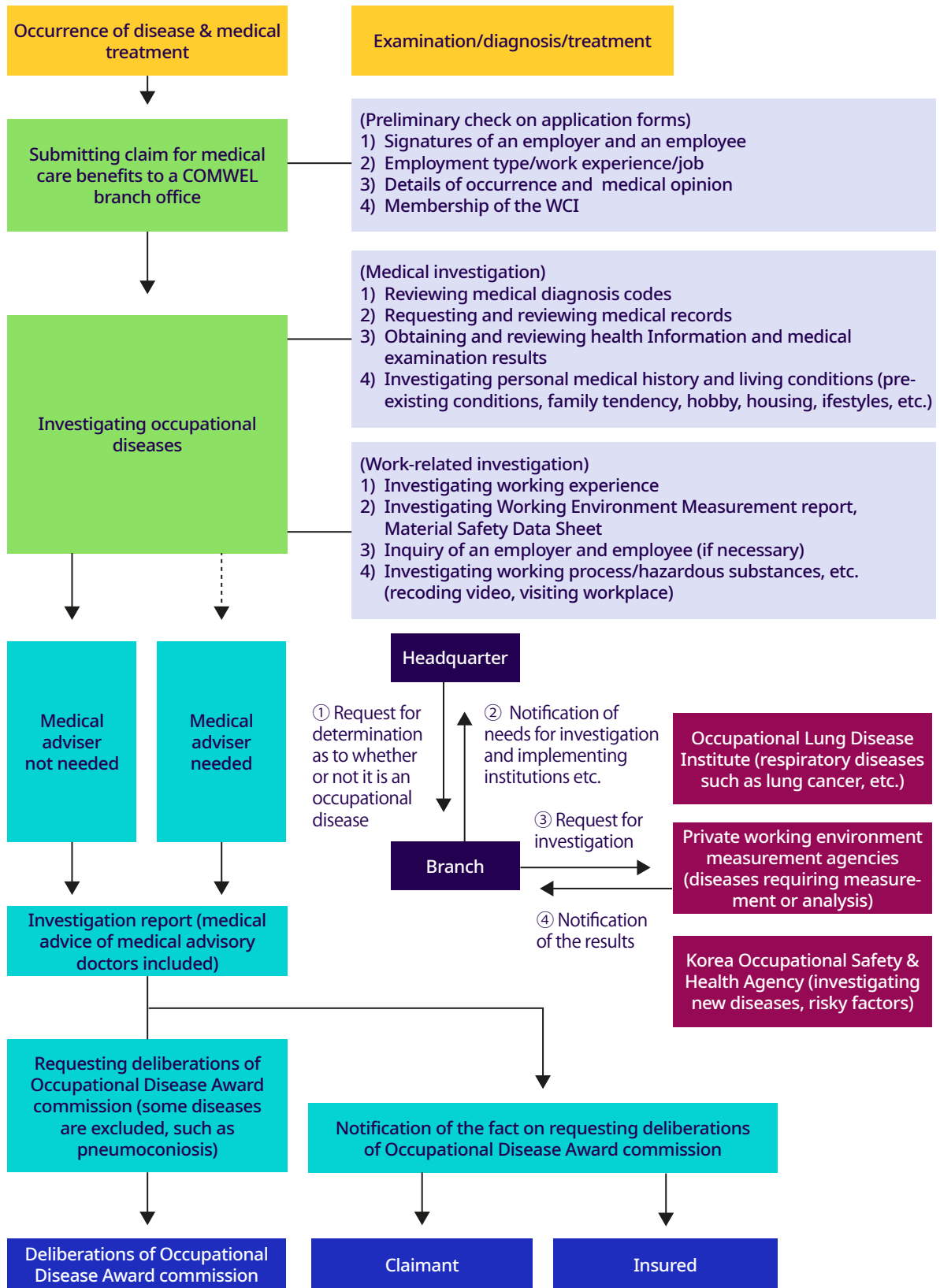
- a. Diseases caused by occupational injuries
- b. Diseases caused by physical agents
- c. Diseases caused by chemical agents
- d. Diseases caused by biological agents
- e. Occupational cancer
- f. Musculoskeletal disorders caused by work activities
- g. Cerebro-cardiovascular diseases caused by overwork
- h. Post-traumatic stress disorders caused by psychological trauma relating to work
- i. Diseases defined by the Minister of Employment and Labour, except diseases listed in clauses a to h
- j. Other diseases clearly caused by work except diseases defined by clauses a to i

Scope of occupational diseases: Industrial Accident Compensation Act

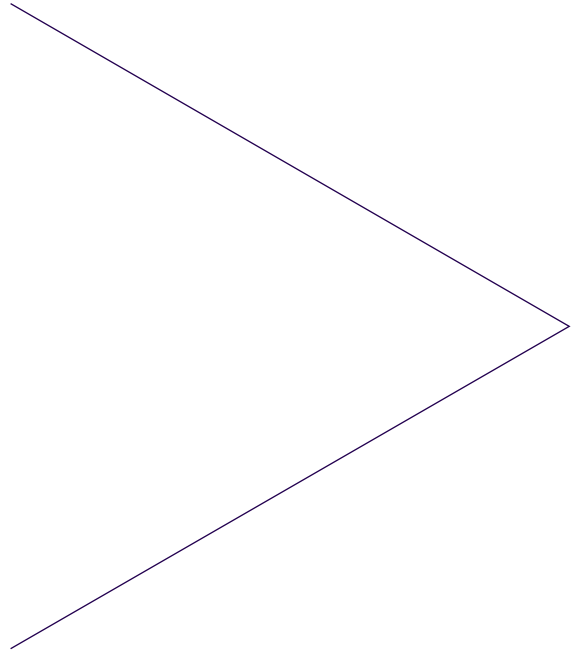
- a. Cerebro-cardiovascular diseases
- b. Musculoskeletal disorders
- c. Respiratory diseases
- d. Neuropsychiatric disorders
- e. Lymphoid, hematopoietic diseases
- f. Skin diseases
- g. Eye and ear diseases
- h. Liver diseases
- i. Infectious diseases
- j. Occupational cancer
- k. Diseases caused by chemical agents including acute intoxication
- l. Diseases caused by physical agents
- m. Other diseases suggested by the causal relation between work and diseases although they are not defined by clauses a to i.

Figure 4.3 shows the general working process for the determination of occupational diseases in the Republic of Korea, for which COMWEL is responsible.

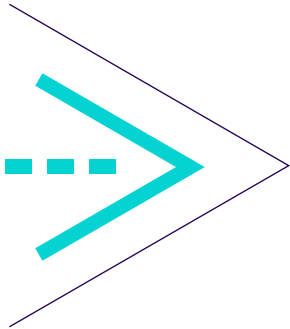
► Figure 4.3 Working process for occupational diseases: Republic of Korea



**Module 5.
Compliance issues**

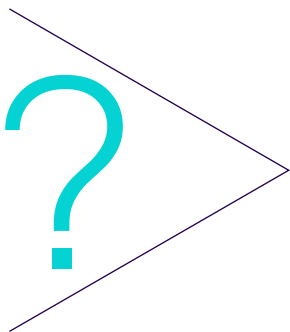


5



Objective

As more countries move from employer liability as the basis for employment injury protection to a mechanism based on social insurance, levels of protection for workers are likely to improve – but only if new laws are effectively enforced. This module aims to make participants aware of the vital importance of compliance for the administrative organization, to enumerate the types and causes of evasion and to propose measures to combat its causes and reduce moral hazard. Finally, the advantages and disadvantages of a unified collection system are discussed.



Key questions

This module provides answers to the following questions:

- What is of vital importance to a social security contributory scheme?
- What are the principal types and causes of evasion?
- What measures can be taken to enforce compliance and combat evasion?
- What measures can be taken to reduce moral hazard in workers' compensation?
- What does a unified collection system consist of?

What is of vital importance to a social security contributory scheme?

While the coverage of a social security scheme may be well-defined, it is difficult to assess its effective coverage as few statistics are available. Compliance is important, as a contributory social security scheme, no matter how well designed it may be, will not achieve its objectives if compliance with the statutory contributory provisions fails. Since the nature and extent of contribution evasion result from national circumstances, appropriate measures which promote compliance depend on appropriate national initiatives and the resources available for their implementation.

Non-compliance threatens the scheme's legitimacy, its objective of adequate social protection and its financial viability. Contribution evasion in an EISS scheme has implications for individuals as well as for the State and other social security schemes, which may have to supplement inadequate protection (spillover effect). High levels of evasion and avoidance can indicate low public credibility of a social security scheme and reflect on the quality of governance of the scheme and the efficiency of its administration. Evasion creates inequities between those employers who meet their contribution obligations and those who do not. Evasion can also result in lower real replacement rates and/or a higher contribution rate than would otherwise be required.

As contributions are the main financial sources of an EISS scheme, their collection and enforcement of compliance are of vital importance and constitute a major function of the administrative organization, requiring important resources. The statutory contributory provisions are normally defined in the law establishing the social security scheme and are normally published in the official gazette and other government media. The organization in charge of the scheme's implementation and administration has the responsibility and obligation to inform and educate all parties concerned about their rights and obligations (for example, that employers must register their workers and make contribution payments on their behalf).

What are the principal types and causes of evasion?

Knowing the nature of contribution evasion and the reasons why contributions are evaded helps to find possible practical measures to promote compliance.

Employers can evade contributions by under-reporting insurable employees, or by designating them as belonging to uninsurable categories such as casual, part-time or temporary workers or contractor workers. [Appendix 11](#) presents an overview of the mechanisms used by enterprises to prevent workers from being considered as employees while ensuring that they receive their services on a regular basis. Employers can also evade their contribution liability by under-reporting the earnings subject to contribution. They can also delay or fail to remit contributions to the social security scheme.

Some scheme provisions may facilitate evasion, such as voluntary coverage of self-employed workers, non-mandatory coverage for small-size businesses, or the exclusion of certain income elements from workers' wages subject to contribution.

One of the main reasons why employers may evade paying social security contributions is to reduce their labour costs. Other factors include:

- complex administrative procedures for contribution assessment and collection;
- poor record-keeping on the part of the employer, making inspection more difficult;
- low risk of being caught, or low levels of consequent financial penalties and damages;
- ignorance of the law, especially by small employers and those in the informal sector;
- both employers and workers lacking confidence in the scheme;
- workers facing high unemployment or job insecurity; or
- employers facing financial difficulties.

What measures can be taken to enforce compliance and combat evasion?

Social security organizations (and governments) cannot rely only on education and persuasion to encourage compliance; effective enforcement is also needed. Social security organizations can combat evasion, but they must have the **statutory authority** required for effective enforcement of contribution conditions. They need:

- ▶ The **right to inspect** employer records, and unfettered access to ancillary information such as an employer's bank statements, income tax returns, among others, from which estimates of the number of employees and the wage bill can be made and compared to social security registrations and contributions paid. Confidentiality should not be invoked in order to conceal or abet evasion of social security contribution obligations.
- ▶ The **right to assess and collect contributions due and unpaid, and to assess enforceable penalties**, with social security debts having priority over other creditors, and the possibility of attachment of employers' assets, among other remedies.

They can then take a number of steps to enforce compliance, such as:

- ▶ **Streamline administrative procedures.** Contribution regulations can be simplified. The contribution conditions required by different social security schemes can be harmonized and consolidated. Collecting EISS scheme contributions along with contributions for other social security benefits can improve administrative efficiency, reduce employers' reporting burdens, and increase workers' awareness and interest in their social security programmes. **Module 8** describes several country examples that have simplified their labour laws and procedures with the objective of channelling workers from informal to formal employment.
- ▶ **Strengthen enforcement through focused and timely inspections.** Effective enforcement requires timely verification of employer returns and prompt investigation of possible discrepancies. Inspectors must be in sufficient number, well-trained, well-equipped and adequately remunerated. Enforcement activities are expensive, but they are a legitimate and necessary expense of a social security scheme. Rotation of employers to be inspected reduces the risk of developing complicity between inspectors and employers. Decentralization of the inspectorate to increase proximity with employers can improve the compliance rate. **Module 8** includes several country examples on how inspections can combat the informal economy through reporting social security institutions' information on those employed without insurance and can help to legalize informal employment.
- ▶ **Initiate and enforce punitive, but realistic, administrative penalties for evasion.** Procedures for recovery of arrears may range from routine correspondence to Court cases. Penalties should be high enough to deter enterprises from persistent late payment but should not be so severe that they are unlikely to be respected or applied successfully or sustained by the Courts. Many schemes have a surcharge that increases progressively over the delay period. The recovery action may cost more than the amount of the fines.
- ▶ **Undertake public relations campaigns to encourage compliance.** Public education campaigns can be designed to offset the "myopia effect" of employers and workers who undervalue the social security benefits.
- ▶ **Report regularly.** Periodic reports allow stakeholders to verify that contributions have been properly remitted and recorded.
- ▶ **Enforce compliance indirectly through realistic regulations.** Regulations can require employers to be in good standing with the social security scheme in order to get a business licence, bid on government contracts, or receive an export licence, for example.
- ▶ **Reform the scheme design.** The scheme's provisions should be modified to eliminate incentives for and possibility of evasion.
- ▶ **Coordinate verification and enforcement activities with the tax collection agency.** Such coordination facilitates the sharing of data and information on properties of employers with contribution arrears, as well as identification of unregistered employers.

- **Declare amnesties to encourage evading employers to comply in the future.** However, frequent amnesty declarations may not promote compliance if employers anticipate a subsequent amnesty.
- **Avoid creating expectations that are difficult to achieve.** For example, the extension of coverage to self-employed workers can only progress slowly and requires the administering body to have the will and the capacity to enforce compliance.

Modern information technology makes possible or easier many compliance measures. Here a few of them:

- Extranet can be used for contribution remittance and information flow between the social security organization and its employers, workers and beneficiaries.
- Extranet and intranet can improve the information flow between head office and regional offices. Field inspectors can have real-time access to employers' information.
- An analytical database requires a unique registration number for each employer and each worker. An Employer Identification Number (EIN) can be a sequential number or have a more complex format that combines a sequential number, prefix and suffix to embed useful information such as geographical area and economic activity (usually using the international standard classification). For workers, the format of a social security registration number varies, from a simple sequential number to a complex number including alphanumeric components.
- A biometric system can be used to perform three different tasks – recognition, verification and identification. Biometrics commonly implemented and studied include fingerprint, face, iris, voice, signature and hand geometry.⁵
- Analytical database applications can issue schedules of contributions due, optimize inspection schedules and provide appropriate statistics for the management to monitor and make decisions.
- Information systems can efficiently assist the prosecution unit, as several reminder notices and letters of demand are normally sent to the defaulting employer before initiating legal action.
- Public education campaigns can take advantage of social networks and media channels (such as radio, television, posters, dramas or short documentary films) to disseminate continuous specific information in the principal languages of the country to target groups, even those in the remote areas. Information technology also allows virtual access to seminars, conferences and workshops periodically organized at workplaces, during trade fairs or promotional activities,
- A well-designed database facilitates the development of tools for meeting high standards of governance (monitor and audit functions) and exchange of information among institutions.

Box 5.1 describes the Sharoushi system in Japan, which provides advice to employers and workers on labour and social insurance, labour management and dispute resolution.

► Box 5.1 The Sharoushi system: Japan

Sharoushi – labour and social security lawyers (attorneys) – are nationally certified experts in personnel affairs, labour management, and public medical insurance and pension systems, which are closely related to daily life. They offer advice to business managers and workers about labour issues. In addition, they give personal explanations of the pension system to anyone who does not understand it.

The number of Sharoushis, considered as experts in Japan, now totals 38,000. In order to become a Sharoushi, candidates must pass an examination to obtain a licence. After passing the examination, they must acquire two years of work experience in the laws and regulations related to labour and social insurance in order to apply for membership in the prefectural associations

5 <http://www.biometrics.gov/documents/faq.pdf>.

of labour and social security attorneys, for subsequent registration with the Japan Federation of Labour and Social Security Attorneys Associations.

Sharoushi services range widely, from procedures in laws and regulations governing labour and social insurance to consultations on labour or pension issues. In addition, Sharoushis actively work as experts in supporting business managers and workers as well as their families, from children's birth to pensions for the post-retirement years. The major services include:

1. Procedures for labour/social insurance

The procedures related to the labour and social insurance laws and regulations are very burdensome for business owners due to the increasing complexity of the systems. If the procedures are not completed because personnel are busy or because of lack of knowledge of the systems, employees may suffer significant losses, including loss of insurance benefits for work accidents, unemployment, occupational diseases and injuries, or loss of retirement pensions. Sharoushis can complete the complicated office procedures related to these laws and regulations.

With regard to workers in the building industry who have not joined the social insurance scheme promoted by the Ministry of Land, Infrastructure and Transport, the Japan Federation of Labour and Social Security Attorneys Associations works with the prefectural associations to support the development of a consultation system offering advice and instruction about the importance of joining an appropriate social insurance plan as part of the corporate compliance consultation system.

2. Consultation and instruction for labour management

A Sharoushi supports the development and revision of employment regulations for maintaining good labour-management relations to achieve a management style that respects people. Sharoushis review the working conditions to verify the status of compliance and the attitude of workers in order to give advice on improvements that can help to meet these needs, secure proper working conditions, and contribute to the development of workplace policies.

3. Proxy service for dispute resolution procedures

In the past, problems in the workplace were generally settled in Court, but recently the alternative dispute resolution (ADR) system has come to be used as a simple, speedy and reasonable measure for dispute resolution. Providing a proxy service for dispute settlement procedures, Sharoushis support the resolution of problems by giving advice to companies and workers and concluding negotiations and agreements by proxy for an amicable settlement at the Labour and Social Security Attorneys Dispute Resolution Centres or through the procedures for ADR conducted by the prefectural labour bureaux.

The Sharoushi prefectural associations have set up "general labour consultation corners" offering free consultations on problems in the workplace. In these centres, Sharoushis will offer advice to both workers and business managers on ways to reach an amicable settlement of problems in the workplace.

4. Consultation on pensions

As the only nationally certified experts on public pensions, Sharoushis offer consultations to people from the viewpoint of protecting their pension rights. Providing a one-stop service for pension consultations, the complicated pension systems can be plainly explained in order to make them easy for anyone to understand; Sharoushis also then lend a hand in carrying out the procedures as needed.

Source: https://www.shakaihokenroumushi.jp/Portals/0/doc/nsec/kokusai/2017/Leaflet_English.pdf.

What measures can be taken to reduce moral hazard in workers' compensation?

Employers and workers can have less incentive to avoid accidents if their losses are insured. However, insurance pricing mechanisms such as employer's experience rating and industry risk base rating counterbalance this moral hazard effect and provide them with incentives to increase safety and control costs. Injured workers tend to maximize their insurance benefits. Limits on compensation benefits can be designed to counterbalance the workers' moral hazard effect and provide them with incentives to return to work.

Under a monopolistic service provider system such as social insurance, moral hazard can arise from the social security institution under the form of late service delivery, inefficient operation and the organization's interest put before public interest.

Under a competitive market system such as mandatory private insurance, employers choose insurance companies with the lowest cost rather than the workers' best interests in mind. Service providers can care for employers' cost control and their own objective of profit to the detriment of workers.

Mechanisms that can prevent moral hazard in social insurance institutions include supervision at higher levels (such as line ministry, tripartite board of directors), the complaint office and NGO watch. To counterbalance moral hazard in private providers, supervisory authorities can be put in place. The participation of labour unions in selecting insurance companies and policies can help to prevent moral hazard in these companies.

► Box 5.2 Detecting uninsured employers: California

In February 1997, the California Commission on Health and Safety and Workers' Compensation (CHSWC) conducted a public fact-finding hearing in Los Angeles on workers' compensation anti-fraud activities and, among other findings, determined that some employers were not complying with the requirement to secure workers' compensation coverage for their workers.

A series of pilot studies was conducted in 1998 to attempt to identify illegally uninsured employers and bring them into compliance. The stated goals of this project were multiple, including a proof-of-concept exercise, an extrapolation estimate, and applied approaches to cost savings, injured worker protection and enforcement.

The pilot project used data matching techniques to compare coverage records from the California Workers' Compensation Insurance Rating Bureau (WCIRB), the only entity in California which has a complete list of employers with coverage, with data from the Employment Development Department (EDD) which captures reported unemployment insurance and payroll.

Each pilot project targeted a specific group of employers. One pilot tested the incidence of established employers who once had workers' compensation coverage and were established enough to be experience-rated (X-mod), but who then allowed themselves to not renew their policy or let their coverage lapse. Another pilot tested the incidence of certain industries suspected of high rates of non-compliance such as auto repair and restaurants, as well as the incidence of non-compliance in the general population of employers. The last pilot tested the incidence of non-compliance for new employers. All the test pilots drew samples from the EDD database. All the pilots involved follow-up by the Division of Labor Standards Enforcement (DLSE) in either the form of a notice or on-site inspection, or both. In the pilot targeting industries, WCIRB initiated the first letter and DLSE followed up with a notice for non-respondents.

Pilot data matching results led to new legislation in 2007, the Labor Code 90.3 Data Matching Program and Report. According to the first report in June 2009, in order to implement the systematic unlawfully uninsured employer enforcement programme, a new process for

multi-agency data matching was established. Through the new process, each quarter, DLSE receives from EDD a randomly selected list of 500 employers from EDD's database of reporting employers. All 500 employers for the represented quarter are reviewed by WCIRB for evidence of insurance coverage.

It is estimated that 10–12 per cent of employers sampled were found to be uninsured.

The data matching programme is now required and funded by user fee assessments. It saves enforcement resources and is the most effective and efficient method of identifying uninsured employers. Although the programme is running, documentation regarding the findings and methods could be improved (for example, to include the percentage of uninsured employers by industry type and size of employer). As the programme establishes itself, it is expected that the procedures will become more routine and the process more streamlined, thereby facilitating the preparation of future yearly reports.

DLSE will always need to balance its investment in resources in fulfilling the requirements of Labor Code 90.3 with other routine, complaint-driven investigations as well as with collaborative activities with the EEEEC1 which is focused on the broader "underground economy".

Note: 1 Economic and Employment Enforcement Coalition (EEEC), a multi-agency enforcement programme consisting of investigators from DLSE, the Division of Occupational Safety and Health (DOSH), EDD, the Contractors State License Board (CSLB) and the US Department of Labor (DOL), which was created to "combine the enforcement efforts of the agencies and put as many investigators into the field as possible".

Source: Baker and Bailey 2009.

What does a unified collection system consist of?

A joint collection system can be a public agency that collects social security contributions along with income tax. Lower cost can be a justification for a joint collection system. Furthermore, where income tax collection systems are well established, the agency already has extensive infrastructure in place for collecting contributions as well as performing important verification, oversight and enforcement functions.

Despite these advantages, and for various reasons, many countries maintain separate systems of collection for social security contributions and income tax. One reason can be the particular nature of a social security scheme, such as defined contribution (DC) schemes with individual accounts managed by private fund managers. The income tax structure can be another reason for keeping collection of social security contributions separate; for example, an income tax system with high thresholds is not readily prepared to monitor low-paid workers' evasion of their social security contributions.

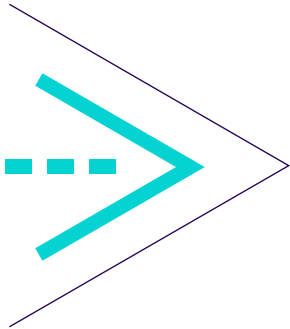
The economies of scale and efficient enforcement with a unified collection system cannot materialize unless two critical conditions are met:

- There must be a **strong fiscal administration**.
- The joint collection body (generally a government body) will act solely as an **agent** which receives and transmits social security contributions to the social security organization without delay or diversion. This confidence can be difficult to build where government faces chronic budget deficits. In former command economy countries, the tax collection authority may not be accustomed to crediting revenues anywhere other than to the state budget.

Although it is tempting to identify the best collection system, it would be inappropriate to do so here. What makes an administrative arrangement to collect social security contributions and taxes appropriate depends on the real circumstances in the country. Real circumstances include the size and characteristics of the population of the country, the resources available to the government (financial, personnel, information technology), political time frames and other constraints, and the national cultural and social situation.

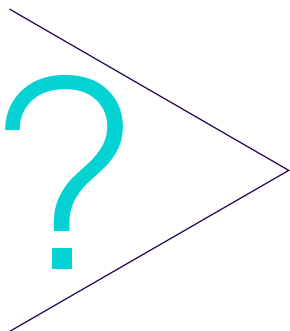
Module 6. Financial and rating systems*

6



Objective

Financial systems are concerned with the questions: “Who pays?” and “How much has to be paid in a specific time period?” – or, in accounting terms, “What cost accrual technique is used?” The first section of this module describes possible financial systems and the role of actuaries in the choice of a financial system. The second and third sections describe the key elements of rating systems and the advantages and disadvantages or challenges of each. The issue of spreading the cost among the stakeholders identified to pay for the social security plan is discussed.



Key questions

This module provides answers to the following questions:

- What factors determine the financial system of an EISS scheme?
- What are the potential sources of funds of EISS schemes?
- What are the basic concepts of the financing of EISS schemes?
- What are the different methods of financing EISS schemes?
- What is the role of the actuary in deciding which financial system to use?
- What are the elements to be considered in choosing a rating system?
- What are the advantages and disadvantages of a uniform rates system?
- What is the basis of a differential rates system?
- What are the criteria for the design of the classification structure under differential rating systems?
- What are the advantages and the challenges of experience rating systems?
- What is the difference between prospective and retrospective experience rating programmes?

What factors determine the financial system of an EISS scheme?

The financing and rating systems for EISS schemes reflect each jurisdiction's historical, institutional, cultural and financial circumstances. In this particular area of social security, it seems that the same questions relating to the cost-effectiveness of financing models can be answered in many different ways. Indeed, there are a large number of financial systems, from the PAYG to the full-funding systems and a wide range of set-ups in between the two. Rating programmes aimed at pricing employers more or less according to their risks are also highly diversified. The spectrum of possibilities goes from the purely collective approach (one single rate for all employers) to the purely individual liability model under which some employers (large enterprises) may be charged the full cost of their workers' injuries.

Obviously, the correlation between the administrative capacity of the institution managing the scheme and the sophistication of the financial arrangements is significant. However, the social security institutions with limited capacities at some points are often in a good position to plan the refinements that become possible through technological improvements. They can then progressively develop their capacities to support financial systems that demand more intensive treatment of information. In all countries, the growth of the economy and the shift of emphasis from compensation to prevention may create demand from the stakeholders for the system to respond better financially to employers' injury experience.

Legislation in occupational health and safety was, for many countries, the beginning of government intervention in social insurance matters. Legislation regarding compensation of employment injury and insurance coverage for workers has been in force in all industrialized countries for many decades now. This does not necessarily mean that the insurance element of a scheme is administered by a public institution. In some jurisdictions, the role of the private sector in insurance coverage is highly important, as in the United States. In this type of environment, private insurance companies have to comply with laws and regulations that dictate their financing arrangements and actuarial practices. Some actuarial practices, which are justifiable and generally accepted in the social security environment, may not be compatible with the private sector, where short-term solvency concerns are of prime importance. This module is not intended to cover specific actuarial practices or standards applying to the private sector. Nevertheless, given that public bodies may adopt financial mechanisms similar to those of the private sector, some practices generally considered more typical of the private sector are covered here.

► Financial systems

What are the potential sources of funds of EISS schemes?

Most EISS schemes result from an explicit or implicit historical trade-off between employers and workers. Workers are compensated for damages resulting from employment injuries without having the burden of demonstrating the negligence of employers, and the employers' liabilities are limited to the premium they pay to the insurance scheme. Employers are protected from excessive damages that can result from tort systems. In some countries, however, employees can have access to the tort system for compensation, but this is limited to specific circumstances. Where this possibility exists, the public system generally provides for reduced compensation, taking into account the amount of the damages paid under the tort system. In such a case, the EL insurance is provided through private carriers (so its actuarial aspects are not considered here).

Determining the source of funds for the social security scheme is not an actuarial decision as such. Political, social, economic and institutional considerations are put together to determine the proper source of funds. The design of the plan may also have to be considered, since the plans that are strongly integrated with other parts of the social security scheme may not give much room for specific rules of financing the EI schemes. Potential sources of funds are employers, workers and the government.

The cost of the protection offered to workers is considered part of the cost of producing goods and services. This economic rationale would suggest including this cost in their commodity price, which is why 100 per cent financing by employers is fairly common. Different circumstances may lead to another reasoning and may suggest sharing the financing between employers and workers, or even general government revenues.

When part of the cost of the system is supported by workers or the government, this may have to be justified on cost considerations, and the actuary does have to play a role in quantifying the elements that need to be considered. For example, if some form of out-of-work protection is granted, then workers may contribute to this part of the system, and the actuary has to quantify the costs associated with this aspect. The actuary will then need to ensure that the database and the actuarial methods and assumptions are adequate enough to perform the relevant actuarial analysis.

What are the basic concepts of the financing of EISS schemes?

Basic concepts and definitions regarding the financing of other social security domains are valuable references in discussing the financing of EISS schemes. It is worth recalling a few definitions.

The **financial system** is a systematic way of raising resources in order to meet the projected expenditures of a scheme. It will determine the contribution rate and the level of assets that will accumulate under the scheme.

The **financial equilibrium** states that the present value of future income (plus any existing reserves) equals the present value of future expenditures of the scheme. The financial system determines the pace at which contributions will be collected, so that the equilibrium is preserved.

The following characteristics of EISS schemes should be considered when selecting the financing arrangements:

1. The annual benefit payments of a typical mature EI scheme are generally a small percentage of the covered earnings (between 1 and 2 per cent).
2. Compensation provisions of EISS schemes are usually a blend of short-term and long-term benefits.
3. The intergenerational equity concept applies to employers. The life span of an enterprise varies significantly by economic sector and is usually much lower than that of human beings.

The maturing of the expenditure pattern depends on the particular mix of benefits. Typically, many injuries will incur a small amount of losses, while a small percentage of injuries will be very severe and costly. Costly benefits do not necessarily mean long-term benefits. For example, lump-sum benefits paid to survivors or the permanently disabled are costly but they are paid a few years after the accident has occurred. However, this is not typical of the majority of schemes (nor is it consistent with ILO Conventions recommending pensions rather than lump-sum payments).

In a relatively stable environment characterized by moderate growth of the workforce and salaries, total compensation payments grow substantially within a few years and rapidly reach a significant percentage of their ultimate level.

► **Box 6.1 Example of a constant EISS record**

An EISS experience is held constant when the number of new injuries each year varies according to the workforce variation, and the average cost per claim varies according to variations in the average assessable salary. The cost of an injury is defined as the present value of all payments made for the injury. The table below is an example of an EISS-considered constant. The annual increases in demographic and economic variables are set at 1 and 2 per cent respectively. The frequency of injuries is set at 4 per cent of the covered population and the severity at 50 per cent of the average salary.

Element	Time			
	Year 0	Year 5	Year 10	Year 20
Covered workers	1 000 000	1 051 010	1 104 622	1 220 190
Average wage per worker	20 000	22 082	24 380	29 719
Number of injuries	40 000	42 040	44 185	48 808
Average cost of an injury	10 000	11 041	12 190	14 859
Total cost of injuries	400 000 000	464 160 008	538 611 283	725 255 285
Cost of injuries/total earnings (as a %)	2.00	2.00	2.00	2.00

What are the different methods of financing EISS schemes?

Pay-as-you-go (PAYG). Under the PAYG system of financing, the EISS scheme benefits are paid out of current premiums, and no significant fund is set aside in advance. Current premiums also cover administration expenses and include a provision to allow the contingency reserve to maintain its appropriate level. The size of the contingency reserve is determined in terms of months of benefit expenditure.

Under a typical plan providing healthcare, rehabilitation benefits and income replacement indemnities, the contribution rate would grow fairly rapidly in the first ten years and would slowly tend to its ultimate level. The formula used by the actuary to estimate the premiums necessary for covering financial needs for any year is the following:

Formula 6.1

$$CR \cdot S = B + A + Cc - I$$

where:

CR = Contribution rate

S = Covered earnings

B = Estimated benefit payments in the period

A = Budgeted administration expenditures in the period

Cc = Contribution to contingency reserve in the period (can be positive, zero or negative)

I = Investment income and other income

Full funding. The full-funding method consists of levying each year the sums required for expected benefit payments regarding the accidents occurring in that year and the occupational diseases reported in that year. When deficits occur, they are amortized over a short period by supplemental contributions. Inversely, when surpluses occur, they can be used to reduce future premiums. This method implies that a portion of the sums levied is invested and the investment income will be used to pay future benefits. This system is called full funding because it accumulates a reserve that equals the value of accrued benefits. Should the plan terminate, there would be enough assets to pay the benefits for all the injuries that occurred until the termination date as well as the management costs associated with them. The components of the formula are provided below:

Formula 6.2

$$CR * S = PVB + PVA + SD$$

where:

CR = Contribution rate

S = Covered earnings

PVB = Present value of benefits to be paid for injuries occurring in the year and occupational diseases reported in the year

PVA = Present value of expenses related to the administration of benefits considered under *PVB*,⁶ plus other current expenses not directly related to the administration of benefits

SD = Sums required to fund previous deficits or credits resulting from past surpluses used to reduce the premium (can be positive, zero or negative)

Terminal funding. Terminal funding refers to the idea of funding the accrued pension when the worker comes to the end of his or her working life and retires. In matters relating to employment injury, the use of the wording terminal funding does not refer to a corresponding event in the life of the worker. Box 6.2 compares full funding with terminal funding.

► Box 6.2 Full funding versus terminal funding

It is interesting to compare the full-funding method with the terminal funding method, which is also known as “assessment of capital constituents”. In the actuarial literature, the system of capital constituents is generally associated with the funding of pensions at the time of the award, while the definition of full funding stated above implies the funding of all benefits related to the injuries of a given year. For example, an injury that occurred in the workplace may initially lead to a short-term incapacity allowance, say, for one year. At the end of the one-year period, the incapacity allowance is replaced by a long-term pension. The full-funding approach includes both the short-term and the long-term components in its present value calculation relative to the injury year, while the terminal funding approach would consider only the long-term pension and only at the time that the long-term pension starts.

⁶ The claims management costs for a cohort of injuries occurring in one particular year are incurred during that year and over many years, that is, as long as benefits are paid.

The rationale for the full-funding method deserves explanation. The financing of EI compensation programmes is more cost-effective if short periods of injury occurrences are successively considered for the rate setting, which then responds to changes in the experience. Under a yearly approach, contribution rates quickly reflect the benefits of prevention measures or the deterioration of the workplace environment. This approach adequately supports the ultimate, but probably unrealistic, target of completely eliminating injuries and diseases related to work. Also, given that benefit recipients tend to have a longer life than companies or even industries, the funding of benefits at the time an accident occurs protects the worker against any slowdown in the industry, and employers against the burden of increasing costs.

The cost accrual differs for accidents and occupational diseases. An accident is an objective event that is easy to identify and there is generally unanimity about its time of occurrence, which is not the case for diseases. When does a disease first manifest itself? At the time of the first exposure to the damaging substance? After the appearance of the first symptoms? At the time of a doctor's diagnosis? For financing purposes, the most practical compromise is generally considered to be informing the EISS institution of the reporting date. This approach is not totally consistent with the idea of full funding for diseases with a long latency period. More refinement should be possible, but a fair degree of arbitrariness concerning the build-up of liabilities as well as their financing makes the construction of reliable models difficult.

Another issue of debate is the question of considering future administration costs in the model. In the social security area, it may be difficult to carry out a proper functional expense analysis of expenditures that would adequately support the modelling. The concept of the present value of administration costs may be difficult to explain to decision-makers in the area of operational expenses. Consequently, the PAYG approach for administration expenditures is often combined with the full funding of benefits.

Mixed systems. In theory, there is an infinite number of intermediate financial systems between the PAYG and the full-funding systems. One of the most popular consists of using the PAYG approach for the financing of temporary incapacity benefits, medical expenses reimbursement and the annual cost of rehabilitation programmes, and full funding for permanent incapacity and survivors' pensions. The terminal funding financial system is normally used to finance these pensions. The formula is as follows:

Formula 6.3

$$CR * S = BST + PVBLT + PVALT + CST + SDLT$$

where:

CR = Contribution rate

S = Covered earnings

BST = Estimated short-term benefit payments in the period

PVBLT = Estimated present value of long-term benefits awarded during the year

PVAL = Present value of expenses related to the administration of benefits considered under *PVBLT*, plus administration expenses related to the administration of the institution for the fiscal year, excluding the portion related to the management of long-term claims

CST = Contribution to contingency reserve related to short-term benefits in the period (can be positive, zero or negative)

SDLT = Sums required to fund previous deficits or credits resulting from past surpluses used to reduce the premium related to long-term benefits

The short-term benefit element of the formula is exactly the same as under the PAYG approach, but the long-term benefit element is not the same as the full-funding one because of the rule governing the timing of the capitalization of long-term benefits. Under the mixed system, the pension is capitalized in the year that it starts to be paid, while under the full-funding system, an estimation is made in the year of injury of the present value of all the pensions that will be awarded for those injuries.

One of the perceived advantages of this mixed system is its greater simplicity; there is no need to calculate benefit liabilities for short-term benefits and potential increases in awards to existing long-term benefit recipients.

Most of the financial systems that apply to retirement pensions, such as the GAP and the scaled premium, can also apply to schemes in the employment injury area. Because the contribution rates that are determined under these systems are generally not very responsive to short-term variations in the injury record, they do not tend to adequately support the incentive for prevention and for an early return to work of injured workers.

What is the role of the actuary in deciding which financial system to use?

The selection of a financial system among the possibilities described above is the first step in designing the financial arrangements of the scheme.

Although selecting a financing method is not an actuarial decision, the actuary is generally the best person to explain the consequences of the decisions taken on the plan's financial monitoring, including the accounting procedures that are most suitable. The financial statements should be designed to clearly show the financial position of the scheme. Accountants need to understand actuarial concepts and actuaries must be sensitive to accounting standards. Close collaboration between the two is important, because experience data used by the actuary should be reconciled with past income and expenditures in the financial statements, and the actuary's projections will eventually be compared with the corresponding observed results in the financial statements. Accounting data have to be rearranged, sometimes in order to be in the format that is necessary for the actuarial analysis. The actuarial analysis should also be understood by the accountants. For that reason, the actuary is usually involved in the design of the accounting system. Accounting procedures need to be adapted to the selected funding system.

The actuary also needs to be familiar with all the procedures and administrative practices that have an influence on the financing of the scheme. The actuary should work closely with those involved in the day-to-day operations so as to develop the database as efficiently as possible. Although the most relevant data are common to all EI systems, the database of each system will probably include some particular features, since benefits and administrative practices are never exactly the same.

► Rating systems

What are the elements to be considered in choosing a rating system?

The risk of occupational injury varies widely among different economic activities. Miners, for example, are exposed to a greater risk of employment injury than primary-school teachers. Moreover, the exposure to risk within the same economic activity can differ between enterprises because of different standards of safety conditions. Prevention activities and the commitment of employers and workers to the early return to work of injured workers will also have an impact on the experience of individual employers. The rating system can be designed to be more or less responsive to the risk. The assessment rate can be uniform or it may vary by economic activity.

The elements to be considered for the selection of the rating system are:

- the degree of integration of the EI scheme with other parts of the social security system;
- the desire to avoid cross-subsidization among industries;
- the need to promote prevention; and
- the administrative capacities of the institution.

In theory, the more refined a system, the better will be the incentives for prevention and the return to work of injured workers, although the costs of administering the system will be higher. However, higher administrative costs can be more than offset by a reduction in the total cost of injuries, and the system can then be considered more efficient. This trade-off is not automatic; in order to achieve the desired result, the rating system needs to be carefully designed.

Each actuary should be aware of the requirements of more refined systems in terms of data availability as well as aware of the daily operations of the staff involved in the allocation of injury costs by employer, even though the current environment does not require the use of sophisticated actuarial techniques.

Rating systems can be grouped under three headings: uniform rating systems, differential rating systems and experience rating systems. The following subsections describe the most relevant actuarial considerations associated with each of them. In theory, each of the three approaches can be used with any financing method. In practice, there may be a correlation between the rating formula and the financing method. More risk-responsive systems can be considered more appropriate for full-funding financial systems. Under the PAYG system, intergenerational equity between employers is generally low. The weight of the experience related to more recent injuries has to be significant when determining differential rates to make them risk-responsive. This condition may be more difficult to meet in a PAYG system, given that the benefit payments related to accidents that have occurred a long time ago still have to be funded.

What are the advantages and disadvantages of a uniform rating system?

Under the 100 per cent collective liability approach, the assessment rate is uniform among employers. It is determined according to the following formula for a given year:

Formula 6.4

$$R = \text{expected cost} / \text{covered earnings}$$

The expected cost can be determined according to any of the financing methods described in the preceding section (however, the full-funding financing method and the uniform rate approach would be a strange combination, and the authors are not aware of any application of this combination). The cost includes all financial needs: compensation costs, administration expenditures and any other provision required by the financial system. The value R can be determined every year or remain constant over a certain period.

The greatest advantage of this system is its simplicity. The collection of premiums can be combined with other social security branches and the sums pertaining to the EI scheme can be determined on an aggregate basis. Under normal circumstances, the rate would not vary significantly from year to year and would be, for that reason, readily predictable to all employers. The disadvantage of this approach is that it provides little incentive to individual employers to introduce safety measures or to implement rapid return-to-work strategies. It also introduces cross-subsidization among industries, which may not be economically efficient.

This system may be appropriate when the integration of the EI system with other parts of the social security is significant and the benefits paid under the EI scheme represent a relatively small part of the total benefits. It may also be the only feasible alternative at the onset of a system when no database exists to support a more refined system.

What is the basis of a differential rating system?

Given that the EI risk varies by economic activity, employers may be grouped or classified according to their risk characteristics for the purpose of rate assessment. Specific rates are set for each class of employers. Such a rating system requires a classification system and an actuarial method for calculating the appropriate rates of each class.

Basic formulae. The general formula for the calculation of the rate of each group can be expressed as follows:

Formula 6.5

$$R_j = L * [(Risk\ relativity)_i * (Compensation\ cost/covered\ earnings)_j] + (F/Covered\ earnings)$$

where:

R_j = Rate for classification group i

$(Risk\ relativity)_i$ = Relation between the risk of the unit and the average risk of all employers

Compensation cost = Estimated cost of compensation programs in the assessment year

Covered earnings = Estimated assessable earnings in the assessment year

L = Loading factor for administration expenses and any provisions related to the financing method that are proportional to risk

F = Administration expenses and any provisions related to the financing method that are not proportional to risk (may be set at 0)

Box 6.3 provides an illustration of this formula.

► **Box 6.3 Illustration of formula 6.5**

An example will clarify the meaning of formula 6.5. We need to determine the rate R_i for unit i . Assume the following data:

$$(\text{Risk relativity})_i = 1.2$$

$$\text{Compensation cost} = 300,000$$

$$\text{Covered earnings} = 20,000,000$$

$$L = 1.25$$

$$F = 0.001 \times \text{covered earnings}$$

Then:

$$R_i = [1.2 \times (300,000/20,000,000) \times 1.25 + 0.001] = 2.35\%$$

while the uniform rate R would be:

$$R = [(300,000/20,000,000) \times 1.25 + 0.001] = 1.975\%$$

It is important to determine the spread of administration expenditures between those that are proportional to risk and those that are considered independent of the injury experience. Usually, all expenditures associated with claims management and financial charges related to the injury experience are financed according to risk. Expenses that are charged through a uniform rate of covered earnings should include specific services that are considered proportional to the size of employers, irrespective of their risk situation. For example, large employers may benefit from more customized services, and the expenditures linked to these services could be assessed by a uniform rate applicable to all employers, irrespective of their risk category.

What are the criteria for the design of the classification structure under differential rating systems?

Differential rates can be used in any financial system. The design of a classification structure is generally the result of an interdisciplinary process. The actuary has an important role to play in assessing the efficiency of the rating system. People with an in-depth knowledge of the industries in the country must also be involved. There is no single profession that combines all the requirements; economists, engineers, specialists in industrial relations can all be of use. Employers, and possibly workers, should also be involved through the appropriate consulting process.

The question as to how many groups should make up the classification structure is a complex one. The objective of the rating system is to calculate a specific assessment rate for each group of employers that exhibit similar risk characteristics. Fairness suggests that one should define as many groups as necessary to charge the proper cost to each employer. In practice, however, the number of groups has to be limited because the injury experience of many groups would not be statistically credible and the administration of the system would be difficult. The workload related to classifying and the risk of making a mistake in classification increases with the number of rate pools. It is generally recognized that a classification structure must meet the following criteria (see the example in box 6.4):

Homogeneity: Risks within a group should exhibit similar characteristics.

Credibility: The experience must be large enough to be statistically credible.

Neutrality: Definitions of each class should be precise enough to avoid the possibility that two similar risks be classified differently by different people.

Cost-efficient: The system should not create an undue burden to employers and to the institution administering it.

► Box 6.4 Classification criteria: British Columbia, Canada

The British Columbia WorkSafe board, along with other jurisdictions in Canada, has chosen to group employers on the basis of the industries in which they operate. In establishing these groups, the size is of critical importance. Since one serious injury can cost in excess of 1 million Canadian dollars, it is apparent that the size of the group must be large enough to provide for an adequate spread of the risk and stability in the assessment rate.

The classification system of WorkSafe BC has the following structure (in hierarchical order): classification unit, industry group, subsector, sector and aggregate, with rate groups made up of industry groups from different subsectors if they share similar cost rates.

Classification unit

Employers are classified into approximately 600 classification units with other employers who produce similar products or provide comparable services. Other criteria used to establish a classification unit include similarity of processes, inputs, and equipment. Each classification unit is made up of a relatively homogenous group of employers who are considered by the board to be peers and competitors in business.

Industry group

The purpose of this classification category is to combine classification units into larger groups that are large enough to allow statistics about their claims history to be calculated. The minimum size for an industry group is a collection of classification units with at least:

- 200 short-term disability claims over the last five years, with a minimum of 25 claims in each of the last two years; or
- 40 million Canadian dollars of annual assessable payroll in each of the last three years.

Minimum size criteria ensure that industry groups are large enough to be regarded as having some predictability for future claims experience. These figures may periodically be reviewed and modified by the board's actuary to ensure that a balance between stable rates and flexible classifications is maintained. To meet the minimum size criteria, classification units that produce similar products or services and show reasonably similar cost rates are classified into an industry group. An example of an industry group might be "Fruit Farms", made up of the classification units "Berry Farms", "Orchards", and "Vineyards".

Subsector

Classification units that are combined into an industry group all come from the same subsector. The purpose of subsectors is to provide boundaries within which classification units are classified into industry groups. This boundary ensures that employers can recognize that they are classified fairly, since they share similarities with other employers in their industry group. An example of a subsector is "Agriculture", which may include the industry groups "Fruit Farms", "Vegetable Farms", and "Animal Farms".

Rate group

The purpose of this category is to combine industry groups into large enough insurance pools that their risk can be measured and therefore their future costs predicted. The board can calculate the appropriate assessment rate to be charged to each rate group. The minimum size for a rate group allows rates to be set using only recent claims data. Employers thus have more incentive to improve their current workplace safety record. A rate group is a collection of one or more industry groups which have similar cost rates and whose size meets or exceeds:

- 2,000 short-term disability claims over the last five years, with a minimum of 250 claims in each of the last two years; or
- 400 million Canadian dollars of annual assessable payroll in each of the last three years.

These minimum size criteria are based on actuarial principles and ensure that rate groups are large enough to be viable for statistical and insurance purposes. These figures may periodically be reviewed and modified by the board's actuary to ensure that the balance of stable rates and flexible classifications is maintained. To meet the minimum size criteria, industry groups – generally from the same sector that have similar cost rates over the last three years – are combined to form a rate group.

Sectors

Sectors are large categories of employers that are involved in the same area of the economy at the broadest level. There are seven principal sectors:

1. Primary resource – the extraction of natural resources and agriculture;
2. Manufacturing – the production of goods;
3. Construction – the building of structures, roads, etc.;
4. Transportation and warehousing – air, land, marine transport, and storage;
5. Trade – wholesale and retail;
6. Public services – publicly funded services; and
7. General services – privately funded services.

The purpose of sectors is to provide boundaries within which industry groups are classified into rate groups. There are exceptions to this practice when an industry group's cost rates differ substantially from those of all the other industry groups in its sector. In this case, industry groups are classified into rate groups with industry groups from a different sector. The category "sector" also permits broad structural data to be derived in determining and communicating injury trends.

Aggregate

The largest classification category is the aggregate, made up of all the employers in the province. This category is used to pool and distribute certain costs that are difficult to allocate to individual rate groups. For example, the board's administrative costs are distributed from this level down to rate groups.

Source: WorkSafe BC, 1999.

Industry classification systems used for the reporting of economic statistics on national economies may not be fully appropriate for the purpose of an EI system. Those systems are based on economic activities and may group together operations that have different risk characteristics, even though they pertain to the same economic sector. Industry classification systems are generally used as a starting point, but they may have to be adjusted to respond to the needs of the rating system. A classification structure should be dynamic and has to be periodically adapted to the changing environment. New risks and safer methods of operations must be recognized properly to ensure equity and acceptance of the system by employers. A permanent updating process must be put in place.

There is no actuarial formula to determine the optimal number of groups in a particular environment. Undue complexity is costly and not necessarily a guarantee of success. Over-simplicity is not desirable because this may generate a significant degree of inequity. Refined classification systems may comprise a few hundred rate units. This is usually not possible nor even necessary in all jurisdictions. Generally, the diversity of operations requires defining several units for each of the main economic sectors. The actuary must ensure that the collection of data can support the actuarial analysis for the calculation of rate groups. Economic sectors can be expressed more or less as follows:

- agriculture and fishing
- forestry
- mining
- construction
- manufacturing (light)
- manufacturing (heavy)
- transportation
- wholesale and retail
- government and public entities
- services.

The number of risk pools within each sector depends on the diversity of the economy of each country. Subsectors may be absent in some and predominant in others. However, it is clear that several units may be necessary in groups that encompass a large number of activities with strongly varying risks. The manufacturing sector is generally significant and diversified in all countries; making furniture is different from making plastics. In the construction industry, the erection of metal structures does not imply the same risk as building residential houses, and so on. The basic classification structure should properly reflect the mix of activities of the particular country and consider the provisions of the system regarding the coverage. Should a complete sector be excluded from coverage, it would not be necessary to consider it in the design of the structure. In many situations, using more than 50 rate units may not be practical.

The number of rate units for classification purposes does not mean that specific rates have to be set for each of them. Whenever two units in two different economic sectors present similar risk characteristics in terms of frequency and severity of injuries, their experience can be pooled together and one single rate can be calculated for both classification units. In theory, a classification structure of 100 units may end with 100 rates or one dozen rates, but the latter alternative should not be the ultimate target. The grouping of risks within rating categories has to be carefully monitored. Risks may migrate from one class to another because of new trends in the experience resulting from a structural change in their operations.

The description of EI protection in 184 countries in the ISSA report *Social Security Programs Throughout the World and the ILO World Social Protection Report 2017–19* illustrate the diversity of existing schemes. Their classification by type of programme and type of contribution rate gives the following picture:

- 121 countries have EI protection provided under a social insurance scheme and financed by employers' contributions. The types of contribution rates differ as follows:
 - 48 schemes have a unique rate;
 - 40 schemes have a risk differential rate;
 - 33 schemes have contribution for EI included in other social insurance schemes (old-age pension and/or sickness);
- 41 countries have EI protection provided under an EL system;
- 14 countries have EI protection provided under a mixed system of social insurance and employer liability.
- 8 countries have no specific EI scheme.

Tables 6.1 and 6.2 present the employer contribution rate for the EI schemes in selected countries according to the type of contribution rate – uniform rates and differential rates respectively.

► **Table 6.1 EISS contributions: Uniform rates**

Region and country	Employer contribution rate
Africa	
Algeria	1.25% of gross payroll
Burundi	3% of covered monthly payroll
Central African Republic	3% of covered payroll
Chad	4% of gross payroll
Congo, Democratic Republic of the	1.5% of monthly earnings (may be higher for high-risk industries)
Congo	2.25% of covered payroll
Djibouti	1.2% (cash benefits); 5% (medical benefits under sickness)
Egypt	3% of covered payroll
Equatorial Guinea	Global contribution under old age (21.5% of gross payroll)
Gabon	3% of gross payroll
The Gambia	1% of covered payroll
Guinea	4% of covered payroll
Guinea-Bissau	2% of covered payroll
Liberia	2% of payroll
Madagascar	1.25% of covered payroll
Mauritania	2% of monthly covered payroll (permanent disability) or 2.5% of gross monthly payroll (medical care and temporary disability benefits)
Niger	1.75% of covered payroll
Nigeria	1% of payroll (may increase after 2 years according to assessed risk)
Rwanda	2% of gross monthly payroll
Sao Tome and Principe	Global contribution under old age (8% of gross payroll)

Region and country	Employer contribution rate
Seychelles	No contribution (total cost financed from earmarked income tax)
Sudan	Global contribution under old age (17% of payroll)
Tanzania, United Republic of	1% of payroll (private sector); 0.5% (public sector)
Togo	2% of gross payroll
Asia and the Pacific; Arab States	
Armenia	No contribution (total cost financed from earmarked income tax)
Bahrain	3% of the employee's monthly earnings
Lao PDR	0.5% of gross monthly insurable earnings
Malaysia	1.25% of monthly payroll, according to 45 wage classes
Oman	1% of payroll
Samoa	1% of payroll
Philippines	0.2% for monthly earnings of at least PHP 14,750; 0.06% for monthly earnings below PHP 14,750
Saudi Arabia	2% of payroll
Syrian Arab Republic	3% of payroll
Europe and Central Asia	
Albania	0.3% of payroll
Austria	1.3% of covered payroll
Luxembourg	1% of covered payroll
Slovakia	0.8% of covered payroll
Sweden	0.2% of payroll
Americas	
Bahamas	Global contribution, under old age (5.9% of covered payroll)
Barbados	0.75% of payroll
British Virgin Islands	0.5% of covered monthly payroll
Dominica	0.5% of employee's gross earnings
Ecuador	0.55% of payroll
Grenada	1% of gross payroll
Guatemala	3% of gross payroll
Nicaragua	1.5% of covered payroll (+1.5% of covered payroll for war victims' pensions)
Saint Kitts and Nevis	1% of covered payroll
Saint Vincent and the Grenadines	0.5% of covered payroll

Source: ILO 2017, table B7.

► **Table 6.2 EISS contributions: Differential rates**

Region and country	Employer contribution rate
Africa	
Cabo Verde	2% to 6% depending on worker's status; flat rate for household workers
Cameroon	1.75%, 2.5% or 5% of gross payroll according to assessed risk
Côte d'Ivoire	2% to 5% of gross payroll according to assessed risk
Lesotho	Percentage of gross monthly earnings (variable according to terms of agreement, industry mandate or ministerial directive)
Mali	1% to 4% of gross payroll depending on assessed risk
Namibia	Total cost (contribution varies depending on industry classification)
Senegal	1%, 3%, or 5% of covered payroll depending on assessed risk
Tunisia	0.4% to 4.0% of gross payroll, depending on assessed risk
Americas	
Brazil	1% to 3% of gross payroll according to assessed risk; 0.1% of gross payroll for employers of rural workers
Canada	Total cost (varies by industry and according to assessed risk; large firms in some provinces may self-insure)
Chile	0.95% + up to 3.4% of covered payroll according to assessed risk (companies with high accident rates pay up to 6.8% of covered payroll)
Colombia	0.34% to 8.7% of covered payroll according to assessed risk
Dominican Republic	Total cost (1.2% of payroll on average, according to assessed risk)
Haiti	2% of payroll (commerce), 3% of payroll (industry, construction, and agriculture), or 6% of payroll (mining).
Mexico	0.5% to 15% of payroll depending on assessed risk
Peru	0.63% to 1.84% of covered payroll depending on assessed risk and the reported accident rate
Venezuela	0.75% to 10% of covered payroll according to assessed risk
Asia and the Pacific; Arab States	
Indonesia	0.24% to 1.74% of monthly wage (contributions vary according to assessed work environment risk level)
Israel	0.37% of earnings up to and 1.96% of earnings above 60% of the national average monthly wage
Japan	0.25% to 8.8% of payroll, according to the type of business
Jordan	2% to 4% of monthly payroll, depending on sector risk and implementation of OSH standards
Mongolia	0.8%, 1.8% or 2.8% of gross payroll according to risk classification of main activity and sector
Myanmar	1 to 1.5% of covered monthly payroll (rate varies according to business size and accident rate)
New Zealand	Contribution rates set each year
Taiwan, China	Cash benefits: 0.22% on average (0.04% to 0.92% of monthly payroll) according to assessed risk + 0.07% for on- and off-duty accidents. Medical benefits: under sickness and maternity

Region and country	Employer contribution rate
Thailand	0.2% to 1% of annual payroll according to assessed risk
Europe and Central Asia	
Belarus	0.3% to 0.9% of payroll according to assessed professional risk
Belgium	0.32% of reference earnings for work injury + insurance premium that varies according assessed risk; 1% of reference earnings for occupational disease + 0.01% for asbestos-related illnesses
Bulgaria	0.4% to 1.1% of payroll according to assessed risk
France	Total cost (varies according to assessed risk)
Germany	1.18% on average in 2016 (contributions vary according to assessed risk)
Greece	Global contribution under sickness (0.25% of covered monthly earnings for cash benefits and 4.3% for medical benefits) + 1% of payroll (depending on the reported accident rate)
Italy	0.04% to 1.3% of payroll, depending on the assessed degree of risk (2.0% on average in 2017). Employers pay two-thirds of the contribution for contract workers.
Liechtenstein	Variable contribution according to assessed risk
Lithuania	0.18% to 1.8% of earnings, based on four employment categories
Poland	From 0.4% to 3.6% of payroll, according to assessed risk and number of employees
Romania	From 0.15% to 0.85% of average gross monthly income according to assessed risk
Russian Federation	0.2% to 8.5% of payroll according to 32 classes of professional risk related to 22 industry categories
Spain	1.98% (0.90% to 7.15% of covered payroll according to assessed risk)
Switzerland	The total cost. Premiums vary depending on the assessed degree of risk.

Source: ILO 2017, table B7.

What are the advantages and challenges of experience rating systems?

Experience rating generally shifts a greater degree of the responsibility for workers' compensation costs from the industry rate group as a whole to the particular employers actually incurring the injury costs. The rate of assessment payable by an employer may vary above or below the standard rate applicable to the rate group or subclass. Experience-rating programmes modify an individual employer's assessments by comparing the firm's claims cost with the average experience for the class in which the employer falls or by comparing the firm's claims cost experience with its assessments.

Experience rating is intended to serve as an incentive for employers to reduce both the number of workers injured and the length of lost time by encouraging the employer to establish and maintain safety and prevention programmes and to assist the worker to return to work as soon as possible. Employers can accomplish these goals by preventing injuries from happening in the first place, by effectively tracking the progress of claims and by rehabilitating and re-hiring injured workers.

Experience-rating programmes make a firm responsible for its injury costs to varying degrees. Employers with claims costs above the industry average must pay a surcharge or an increase in their assessment rate. Firms with costs below the industry average receive rebates or refunds or a lower assessment rate. The adjustment to the employer's rate is based on the employer's past claims experience. Adjustments can be made retrospectively or prospectively to the rate of assessment.

With retrospective adjustments, the employer starts each year by paying the basic assessment rate for the industry; once the year is over, retrospective refunds or surcharges are made to reflect the employer's actual experience. Prospective programmes, on the other hand, adjust future assessments through discounts or surcharges based on the experience of past years. Prospective programmes are generally compulsory. Retrospective programmes are available for large employers and can be compulsory or optional. Experience-rating programmes can be limited to specific sectors of activities or can apply to all employers. When the programme applies only to certain categories and meets its objectives, the demand for extension will naturally come from other employers.

Supporters of experience rating maintain that experience-rated assessments provide a more equitable distribution of injury costs among employers, an incentive for prevention programmes, and a stimulus for claims management programmes. Opponents argue that experience rating compromises the collective liability principle, encourages employers to control costs after an injury has occurred through under-reporting, diverts attention away from accident prevention to claims cost control and increases litigation.

Experience-rating systems require reliable databases pertaining to each employer and more sophisticated tools for the billing of individual employers. They also generate the need for more or better-trained staff, which means higher administrative costs. However, the increase in administration expenditures is generally more than offset by the decrease in the cost of compensation programmes resulting from improvements in the experience. This assertion is difficult to demonstrate in jurisdictions in which programmes have been in force for a long time: the impact is easier to track during the years immediately following the implementation of a programme.

Legislative authority in instituting experience-rating programmes is normally conferred in the jurisdiction's Act. The decision to implement an experience-rating programme is a political one. The success of the programme is related to its acceptance by all the stakeholders, employers as well as workers. It is generally the actuary who designs the provisions of the programme and who should ensure that all the parties fully understand the provisions by going through the appropriate consultation process.

Box 6.5 shows how the experience rating system operates in the **Republic of Korea**.

► **Box 6.5 Rating system in the Republic of Korea**

Basic rule of determination of contribution rates

The Workers' Compensation Insurance (WCI) contribution rate in the Republic of Korea varies according to the type of business. It is prescribed by the Ordinance of the Ministry of Employment and Labour based on the ratio of the total industrial accident compensation insurance benefits to the total remuneration for the past three years as of 30 June each year.

However, in the case of businesses in which less than three years have passed since their insurance relationship was established, the WCI contribution rate is determined by the Minister of Employment and Labour after discussion by the Deliberation Committee on Industrial Accident Compensation Insurance and Prevention under Industrial Accident Compensation Act.

The Minister of Employment and Labour ensures that the WCI contribution rate for a particular type of business does not exceed 20 times the average contribution rate for all types of business.

If the WCI contribution rate for a certain type of business is required to increase or decrease according to the basic rule of determination, the Minister of Employment and Labour adjusts it by no more than 30/100 of the contribution rate for the previous year.

WCI Contribution rates for 2019 in the Republic of Korea ranged from 6/1,000 to 225/1,000 as shown in the table below.

Type of business	Rate	Type of business	Rate
1. Mining and quarrying		5. Transportation, storage and tele-communications	
Coal	225	Rail transportation, cableway and air transport,	8
Limestone, metal ores, non-metal ores and others	57	Land and water transport	18
2. Manufacturing		Storage and support activities for transportation	8
Manufacture of food products	16	Telecommunications	9
Manufacture of textiles and of products of textiles	11	6. Forestry	72
Manufacture of wood and paper products	20	7. Fishing	28
Publishing, printing and bookbinding	10	8. Agriculture	20
Manufacture of chemicals and rubber products	13	9. Other businesses	13
Manufacture of coke, briquettes and re-fined petroleum products	9	Building facilities management, sanitary activities and related services	13
Manufacture of medicaments, cosmetics, perfumes and tobacco products	7	All other businesses	9
Manufacture of glass, ceramic ware and cement	13	Professional and technical activities	6
Manufacture of machinery, non-metal and metal products	13	Human health and social work activities	6
Manufacture of smelting of metal products	10	Education	6
Manufacture of electrical appliances, Electronic products and precision instruments	6	Wholesale, retail trade and repair services for consumer products	8
Building and repair services of ships	24	Real estate activities and renting of real estate	7

Type of business	Rate	Type of business	Rate
Handmade products and other manufacturing	12	Amusement, cultural and sports activities	8
3. Electricity, gas, steam and water supply	8	National projects and local government activities	9
4. Construction	36	Business services	8
		10. Financial and insurance activities	6

Special cases

Special WCI contribution rates aim to maintain equity between an employer who has made an effort to prevent occupational accidents and an employer who has not, by decreasing or increasing the contribution rates applied to their businesses. The special contribution rate can increase or decrease by no more than 50/100 of the standard WCI contribution rate that is illustrated in the table above.

Ratio of sum of benefits to sum of premiums during last 3 years (A)	Increase or decrease ratio to the standard rate
$A \leq 5\%$	20% DOWN
$5\% < A \leq 10\%$	18.4% DOWN
$10\% < A \leq 20\%$	16.1% DOWN
$20\% < A \leq 30\%$	13.8% DOWN
$30\% < A \leq 40\%$	11.5% DOWN
$40\% < A \leq 50\%$	9.2% DOWN
$50\% < A \leq 60\%$	6.9% DOWN
$60\% < A \leq 70\%$	4.6% DOWN
$70\% < A \leq 75\%$	2.3% DOWN
$75\% < A \leq 85\%$	0
$85\% < A \leq 90\%$	2.3% UP
$90\% < A \leq 100\%$	4.6% UP
$100\% < A \leq 110\%$	6.9% UP
$110\% < A \leq 120\%$	9.2% UP
$120\% < A \leq 130\%$	11.5% UP
$130\% < A \leq 140\%$	13.8% UP
$140\% < A \leq 150\%$	16.1% UP
$150\% < A \leq 160\%$	18.4% UP
$A > 160\%$	20% UP

In addition, a business can enjoy a lower contribution rate if it conducts accident prevention activities for the safety and health of workers and obtains recognition from the Minister of Employment and Labour. The special contribution rate can decrease by 30/100.

In order to apply for this special rate the employer has to fulfil the following requirements:

- (1) The number of regular employees should be less than 50.
- (2) The type of business is limited to manufacturing, forestry, and sanitary activities and related services.

What is the difference between prospective and retrospective experience rating programmes?

Prospective programmes. The rationale behind prospective experience rating programmes is that past experience will affect future rates. The past experience of the employer is compared with the past experience of the group in which the employer is classified. The nature of the process is similar to the one used for calculating unit rates, but the technique must be adapted to consider the smaller volume of experience data available for each employer and its vulnerability to fluctuations. Employers' premiums must be responsive to experience, but rebates and surcharges must bear a reasonable relationship to employers' experience variations, taking into consideration their size. Insurance principles dictate that it would not be appropriate to charge a small employer the full cost of claims.

The design of prospective programmes is influenced by the minimum size of employers that are eligible. For very small employers, the merits or demerits have to be related to a very simple indicator of the experience, such as the number of injured workers in a specified period. For this purpose, an employer is considered small according to criteria that have to be defined objectively; for example, employers whose probability of having at least one injured worker in one year is not greater than 50 per cent.

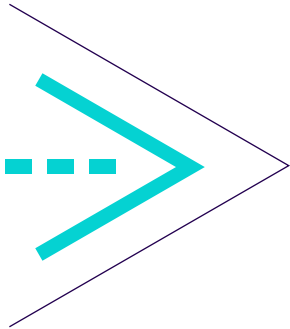
Retrospective programmes. Under the retrospective approach, the prospectively rated premium of the employer is adjusted after a certain period following the end of the injury year. The actual claims cost of the employer for the injury year is then compared with the premium that has been assessed at the onset of the year, and if the actual cost is less than the premium, the difference is reimbursed to the employer (if the actual cost is larger, the difference is charged to the employer). In order to avoid excessive differences between the original premium and the final charges, an appropriate insurance mechanism must be included in the design of the rating system. Retrospective plans are intended to promote prevention and early return to work because employers benefit directly from their good experience or are penalized if their injury record deteriorates. This approach requires particular administrative facilities in order to keep track of the development of the experience of each employer and of their reimbursements and charges.

Retrospective plans are usually accessible to large employers whose experience is highly credible. In theory, they can apply to any employer whose experience has a minimum of credibility, but the adjustments will be proportional to the credibility, and the cost/benefit relationship may not justify application of this rating system to small-sized employers. Moreover, the adjustments usually occur several years after the end of the injury year and a large proportion of small employers may no longer exist after this period. Provisions dealing with the closure of enterprises before the date of adjustment can handle these situations, but the frequency of their utilization should be minimized, given the intricacies of the law and judicial practices regarding the establishment and closure of enterprises.

Participating in the retrospective rating system can be compulsory or optional. Compulsory participation ensures that all large employers are assessed using the same technique and that the particular administrative costs of the plan are spread over a sufficient number of employers. An optional plan may open the door to anti-selection and may require a more sophisticated actuarial device in order to ensure equity among the employers participating in the plan as well as between the group of employers participating and other employers.

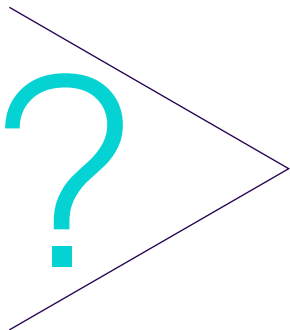
Module 7.
Linkages between prevention,
compensation and return to work

7



Objective

This module discusses the justification for linkages between prevention, compensation and return to work, methods of making such linkage happen, linkage theories and evidence, and further thinking on the introduction of return to work in developing countries.



Key questions

This module provides answers to the following questions:

- ▶ Why do occupational safety and health (OSH) and workers' compensation schemes need to be linked?
- ▶ How can OSH and rehabilitation contribute to EISS financial stability?
- ▶ How can it be proved that prevention pays?
- ▶ What is the impact of return to work for EI schemes?

► Linking occupational safety and health with workers' compensation

Why do occupational safety and health (OSH) and workers' compensation schemes need to be linked?

The short answer is because a workers' compensation scheme is a good and ready source of data on occupational accidents and diseases, and their collection and analysis are crucial in setting OSH policy that contributes to the financial sustainability of the workers' compensation scheme. Box 7.1 presents relevant issues of a reporting system.

► Box 7.1 Recording and notification of occupational accidents and diseases

This is an extract of relevant issues regarding the reporting of occupational accidents and diseases, taken from the ILO report *Recording and Notification of Occupational Accidents and Diseases and ILO List of Occupational Diseases* (2002).

The absence of reliable information about the incidence of occupational accidents and disease is a major obstacle to reducing the number of work-related deaths and injuries. Many audiences need information about occupational accidents and diseases. They include employers, workers, occupational safety and health professionals, insurance institutions, governments, international organizations, and those involved in emergency response. Their needs have the same purpose but differ in the nature of the information required and in the levels of action taken.

The definitions of what is to be recorded and notified have huge implications on the data to be collected and analysed. The 1996 *ILO Code of Practice on the Recording and Notification of Occupational Accidents and Diseases* provides the following:

Occupational accident

An occurrence arising out of or in the course of work which results in fatal or non-fatal occupational injury.

Occupational disease

A disease contracted as a result of an exposure to risk factors arising from work activity.

Commuting accident

An accident occurring on the direct way between the place of work and (a) the worker's principal or secondary residence; (b) the place where the worker usually takes his or her meals; or (c) the place where the worker usually receives his or her remuneration, which results in death or personal injury involving loss of working time.

Dangerous occurrence

Readily identifiable event as defined under national laws and regulations, with potential to cause an injury or disease to persons at work or the public.



Incident

An unsafe occurrence arising out of or in the course of work where no personal injury is caused, or where personal injury requires only first aid treatment.

National practices for definition of occupational accident vary considerably:

- ▶ Some countries only have a simple reference in legislation to accidents occurring in the workplace, or to injuries occurring during the performance of work (Norway);
- ▶ Others have a definition which includes explicit reference to a sudden or unexpected event, as well as violent acts.

Identifying causes of diseases can be complex and difficult due to:

- ▶ The long latency period of some diseases;
- ▶ Multiple causes of certain diseases; and
- ▶ A wide range of diseases that could be related in one way or another to occupation or working conditions.

The ILO's *Encyclopaedia of Occupational Health and Safety* makes the following distinction:

- ▶ Diseases due to occupation (occupational diseases); and
- ▶ Diseases aggravated by work or having a higher incidence owing to conditions of work (work-related diseases).

As knowledge develops concerning the effect of new technologies as well as physical, biological and chemical factors on health, so too does our understanding of their occupational implications. When a causal relationship clearly exists between an occupational exposure and a specific disease, that disease is usually considered both medically and legally as occupational (see ILO Convention No. 121, para. 6(1)).

Commuting accidents are not included in notifiable accidents in some countries and are notifiable in some others.

National practices of notification of dangerous occurrences vary:

- ▶ There are lists of dangerous occurrences which employers are required to record and notify to the enforcement authority;
- ▶ Lists cover a wide range of occurrences (for example, a collapse of lifting machinery and scaffolding, failure of pressure systems, electrical short circuit resulting in the stoppage of plants, malfunction of radiation generators and unintentional explosions) including accidents caused to members of the public as a result of a work-related activity;
- ▶ Notification is extended to dangerous occurrences considered appropriate by the enforcement authority;
- ▶ Employers are required to notify dangerous occurrences such as fire, explosion, collapse of buildings and failure of lifting machines;
- ▶ Statistics are collected on unsafe acts, defined as breaches of a safety procedure;
- ▶ Some other countries include information on dangerous occurrences in accident reports.

Source: ILO 2002, Chapter 1.

OSH-related activities include providing health and safety information, education and resources to stakeholders, establishing OSH standards and guidelines, or conducting worksite inspection. [Appendix 8](#) includes a description of the fundamental pillars of an OSH strategy, the ILO standards setting fundamental principles of OSH, and codes of practice describing these fundamental principles.

Occupational disease is often defined by legislation, but the process of assessment remains a tedious and time-consuming task compared to occupational accident injury. In establishing an occupational disease, the correlation between work exposure and the worker's illness needs to be assessed, which requires data and expertise that an OSH agency can readily have. Where EISS and OSH are implemented in a single organization, coordination of activities and data sharing in real time through a common information technology network would be facilitated. Data analysis helps in making an efficient plan for facilitating injured workers' return to work.

Technology advancements have created opportunities for improvements and innovations in prevention, compensation and rehabilitation. Box 7.2 provides an illustration of the use of modern technology in the three missions of EI protection in the **United Republic of Tanzania**.

► **Box 7.2 Impact of technological progress on prevention and rehabilitation: United Republic of Tanzania**

The Workers Compensation Fund (WCF) and the Occupational Safety and Health Authority (OSHA) both include prevention in their mission. The WCF also has a responsibility for rehabilitation, which is now mainly carried out through contracted healthcare providers. Technological progress has improved the efficiency of WCF processes. It has eased the participation of persons with disabilities in daily activities and increased their educational, social and professional opportunities. It has made caregivers' workload easier, freed them from performing certain tasks and shortened the time required to provide care.

Impact of technological progress on prevention

Equipment for monitoring and surveillance in the workplace and for workplace hazards is now more varied, widespread and reliable (such as multi-gas detectors for detection of hydrogen cyanide gas).

Screening techniques and equipment are available for timely medical surveillance examinations of workers exposed to work-related health hazards to prevent disease or limit its progression. Through advancement of technology, better diagnostics have enabled the development of preventative strategies more likely to improve health and safety at workplaces over the long term.

A survey by the Tanzanian Land Transport Regulatory Authority shows that 76 per cent of road accidents are caused by human error. An example of technology use to monitor driving behaviour is the requirement of Vehicle Tracking System (VTS) for passenger vehicles. VTS hardware and software track vehicles, record driving habits, and issue status reports and alerts. VTS has shown positive results in preventing commuting accidents.

OSH audit and workplace risk assessment (WRA) provide recommendations to employers on the enhancement of health and safety at workplaces. WRA also provides input to the determination of tariffs. In some cases, recommendations are communicated through video conference, television, radio and social media forums. OSH awareness programmes also make use of ITC to bring WCF's messages to the target audience. The use of ITC has facilitated the preparation and distribution of promotional materials and guidelines, which assist in building awareness and understanding on the importance of health and safety measures.

Impact of technological progress on rehabilitation

Rehabilitation programmes help workers return to work when possible or provide them with aid to live and work at their maximum capability. The WCF provides clinical (medical), vocational and social rehabilitation.

To carry out rehabilitation services, the WCF has developed several guidelines in collaboration with other stakeholders (hospitals, OSHA). These guidelines are accessible online. This facility contributes to timely assessment of impairment and disability relating to occupational accidents, and reliable diagnosis of occupational diseases. Online access also reduces the administrative costs of printing, mailing and storage.

The use of ICT has greatly facilitated payment of benefits in making it more efficient and reliable (cycle and waiting time greatly reduced). The WCF has installed three systems: (1) WCF Electronic Payment Gateway which is connected to the Government Electronic Payment Gateway, ERP (enterprise resource planning) and the internal administrative system; (2) an Enterprise Risk Management system for fraud risk controls; and (3) a Customer Relationship Management system which provides WCF employees with instant access to customers' accounts information and history.

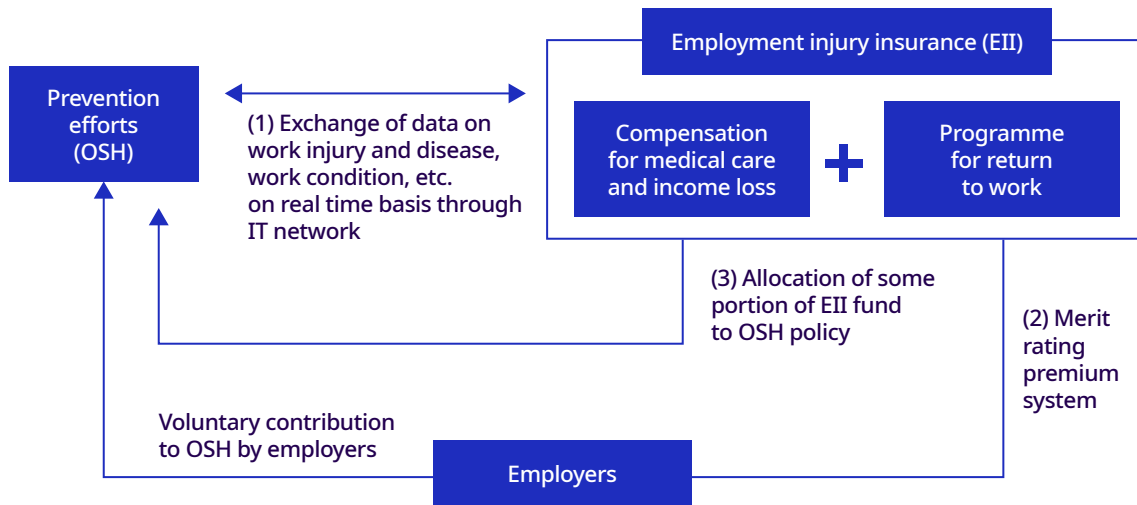
New technologies allow high-quality rehabilitation services. Assistive devices such as artificial arms/legs, wheelchairs, hearing and visual aids improve the functional capacity of persons with disabilities to allow greater participation in activities of daily living and return them to work. Certain services can be provided to all, including those living in the rural areas. For example, exercise videos, computer games and activity monitors (steps counters) are widely used as an affordable way to increase the amount of exercise and overall physical activities for people in rehabilitation, particularly those with mobility limitations due to brain injury, hip fracture or arthritis. Client waiting and travel time for rehabilitation services has decreased.

New technologies have significantly improved the diagnosis of diseases. Diseases of the spine (musculoskeletal disorders) are diagnosed by radiological investigation. Sensorineural hearing loss can be diagnosed by diagnostic audiometry and an auditory brainstem response test. Spirometry, the most common of lung function tests, is helpful in assessing breathing patterns that identify conditions such as asthma, pulmonary fibrosis and chronic obstructive pulmonary diseases.

Source: Mshomba 2019.

EISS and OSH linkage can also contribute to a cooperative relationship between employers and workers. Figure 7.1 illustrates a linkage model between prevention, compensation and return to work.

► Figure 7.1 A linkage model between prevention, compensation and return to work



► Financial stability of the EISS

How can OSH and rehabilitation contribute to EISS financial stability?

Since OSH activities can be expected to enhance workplace safety and the prevention of occupational accident and disease, they can contribute to the stability of the EISS fund and its sound management by reducing compensation expenditure. That can lead to EI cost reductions for an employer in a differential or merit rating system, which in turn can represent an incentive for employers to support the EISS scheme and pay more attention to workplace safety and prevention of accident and disease.

In many countries, part of the EISS fund is allocated for implementing OSH-related policies, as shown in boxes 7.3 to 7.7.

► **Box 7.3 Intervention and training courses: Austria**

The Baufit Programme, implemented by the Austrian Workers' Compensation Board (AUVA), offers subsidized intervention and training courses to reduce stress loads and accident frequency at construction sites.

Working on a construction site can be exhausting and dangerous, with time pressure, bad weather, frequent changes in the location and composition of crews, and changes in the planning burden for workers. Consequences include high accident rates, long sick leave and early retirement from work. This involves high costs for businesses in crisis sectors and a reduced quality of life for employees.

AUVA has developed a programme with an interdisciplinary team on site to:

- Reduce the number of accidents;
- Improve mobility and cooperation; and
- Reduce stress and signs of deterioration.

► **Box 7.4 Training in commuting safety: Malaysia**

The Malaysian Social Security Organization (SOCSO) covers commuting accidents as part of its EI scheme. The number of commuting accidents, especially among motorcyclists, increased significantly over a decade (2008–17). In that period, SOCSO implemented various programmes to reduce the number of accidents but without success. After analysis, SOCSO reached the conclusion that without the involvement of employers, accident prevention programmes were doomed to failure.

In order to improve the situation, in 2017 SOCSO introduced the Commuting Safety Support Programme (CSSP) in collaboration with the Malaysian Institute of Road Safety Research (MIROS). The programme aims to facilitate employers' implementation of commuting safety at the workplace through practical intervention. The CSSP was initiated through partnership with various stakeholders. It is part of the Ministry of Human Resources' Transformation Initiative for 2017, for the promotion of employee well-being.

The CSSP unfolds in four steps

1. **Gap analysis/baseline on commuting safety at the workplace:** This assesses the level of existing commuting safety management at workplaces. The information obtained from the assessment is utilized to determine and propose a suitable intervention programme for the workplace.
2. **CSSP training for employer and employees:** This is done through a train-the-trainer (TTT) workshop, intended to train management and safety committee members on methods of intervention, which may include daily motorcycle inspection, route hazard mapping, family safety reminder cards and road safety performance audits. The training committee members act as the implementors, conducting the interventions with employees at the workplace.
3. **CSSP intervention at the workplace with participating employers and employees:** The training committee members, with the assistance of SOCSO, MIROS and the National Institute of Occupational Safety and Health (NIOSH), conduct the training modules with all the workers at the workplace. The programme consists of seven modules which include motorcycle daily inspection, defensive riding training, commuting safety talk, riding behaviour assessment, route hazard mapping, family safety reminders and fitness to ride assessments.

4. CSSP evaluation: The objective is to evaluate the impact of the programme in terms of the level of commuting safety practices among employees. The findings are used for future improvement of the programme. This evaluation focuses on riding behaviour.

In its 2017 *Annual Report*, SOCSO reported that the programme had successfully trained 2,000 employees in 2017 and that a total of 10,000 employees from 100 selected employers were expected to be trained under this programme in 2018.

In order to evaluate the programme, SOCSO engaged the Malaysian Institute of Road Safety Research (MIROS) to conduct an impact study for the first-year implementation of the programme. The main findings are the following:

- Participating companies showed a reduction in the number of commuting accidents after the implementation of the programme in comparison with the previous year.
- About 85 per cent of participants improved their riding behaviour, specifically on compliance relating to personal protection while riding.
- Commuting safety management was continuously implemented by most of the companies. However, there is room for improvement.

Lessons learnt from implementing the CSSP that can be useful for other countries are:

- An appropriate legal mandate or framework is important to support prevention in social security systems, by clearly defining especially the role played by the government and social partners, professional safety and health organizations as well as social security institutions in promoting prevention through the concept of smart partnership.
- Managerial commitment to implement the programme for the safety of their employees is vital. Such a commitment must be obtained prior to further engagement with the planning and implementation of the programme.
- A systematic approach that can be adopted by employers is important to implement commuting safety activities as part of their safety and health initiatives.

► **Box 7.5 Premium variations combined with funding schemes: Germany**

The German occupational accident insurance system obliges statutory accident insurance bodies to introduce insurance premium variations and enables them to fund health and safety measures in member companies.

The Statutory Accident Insurance Body of the Butchery Industry (Fleischerei Berufsgenossenschaft, FBG) is the accident insurance company for all companies in Germany's butchery industry. It has introduced a sophisticated system of combining both positive premium variations and funding schemes for safety and health. The FBG's funding programme has proved to be successful in reducing accident rates in participating companies.

The FBG has been active in the prevention of workplace accidents for many years. One of the ways it has done this is by offering variable accident insurance premiums. This combines three different programmes with different approaches:

- In the Premium Variation programme (Beitragsnachlass), the member company can be reimbursed by up to 10 per cent of its annual membership premium, depending on its number of notifiable accidents in the previous year.
- The Discount programme (Rabattverfahren) is similar, but if the number of accidents remains below the sector average for five years, the company gets an additional reduction of up to 5 per cent of its annual premium.
- The Funding programme (Pramienverfahren) aims to prevent future accidents and occupational diseases by funding prevention measures within the company to an amount of up to 5 per cent of the annual FBG membership premium.

By taking advantage of the different programmes, companies can gain a rebate of up to 20 per cent of their annual insurance premium.

Source: European Agency for Safety and Health at Work 2010.

► **Box 7.6 Premium discount programme: Finland**

In this insurance scheme for self-employed farmers, fishermen and reindeer herders, a premium discount programme ("MATA bonus") was implemented in 1997.

Insured people who had no compensated injury or occupational disease claims in the following 12 months received a 10 per cent reduction in their MATA premiums starting on 1 July 1998. Thereafter each claim-free year adds another 10 per cent reduction up to a maximum of 5 per cent off after five consecutive claim-free years. Each compensated claim results in a 10 per cent loss of discount, but the premiums never rise higher than the base level even if the personal discount would turn negative from multiple claims. This premium discount gives farmers an incentive to prevent injuries. Using administrative data, Rautiainen et al. (2005) conducted interrupted time series analyses, which showed that the premium discount decreased the overall claim rate by 10.2 per cent. The fall occurred in minor and moderately severe injury categories (up to 29 disability days). The authors concluded that the relatively low decrease in no-lost-time claims and relatively high decreases in moderate lost-time claims suggest that the decreases cannot be explained by under-reporting alone and that the premium discount has a preventative effect.

Source: European Agency for Safety and Health at Work 2010.

► Box 7.7 Premium rate variation system: Italy

Since 2000, Italian companies that carry out activities aimed at improving health and safety (over and above the minimum measures stipulated by the regulations) are rewarded with a discount on the premium they have to pay to INAIL (Istituto Nazionale per l'Assicurazione contro gli Infortuni del Lavoro), in a system called "premium rate variation". This is an innovation on the older system of varying the premium according to accident rate, as it introduces a discount based on the level of prevention investment of each company.

In line with its new role as prescribed by the law (Legislative Decree 38/2000) INAIL planned and implemented a new insurance tool aimed at reducing the tariff rate for specific prevention actions.

The bonus-malus system relating to the average premium variation – which has been in force for many years and thus predates the adoption of the new tariffs – was applicable in the first two years of activity on the basis of actual company compliance with accident prevention and hygiene rules and, after the first two years, on the basis of data relating to accident trends. This system was therefore supplemented by an insurance premium reduction through prevention support measures after the first two years of activity, and suitable self-certification forms were prepared.

Therefore, today there are two types of rate variation:

- variation in the first two years of activity; and
- variation after the first two years of activity.

The second type is divided into:

- accident trend variation; and
- variation through prevention support measures.

The first two years of activity

In the first two years of activity, the national average rate can be either reduced or increased by a fixed rate of 15 per cent, depending on the company situation as regards compliance with accident prevention and work hygiene rules. All employers complying with compulsory provisions in the field of accident prevention and hygiene at work can apply for the reduction rate.

The increased variation is enforced by INAIL whenever the competent public authorities determine that a company is not complying with the accident prevention and hygiene at work rules.

After the first two years of activity

Accident trend variations

Accident trend variations are linked to the company's accident record, that is to say the size of the spread between the values recorded in the single company and those recorded at a national level. In particular:

- A rate higher than the average national rate is applied to those companies with a higher accident trend compared to the national average.
- A rate lower than the average national rate is applied to those companies with a lower accident trend compared to the national average.
- The size of the increase or reduction depends on company size as well as the company's accident record, and it is subject to fixed limits.

The rate developed by INAIL according to the company accident trend is known as the "applied rate" and INAIL has to inform employers what their applied rate is by 31 December each year.



Variation through prevention support measures

As mentioned above, since 2000 companies that carry out actions to improve the hygiene and safety conditions at work, in addition to the minimum actions provide for by the regulations in force, have been awarded a discount on the premium due to INAIL, called the “variation through prevention support measures”.

The new premium rate variation introduces a criterion relating to the prevention investment made by each company. Rate reduction is granted as follows:

- 5 per cent for companies employing more than 500 workers; and
- 10 per cent for other companies.

The average rate reduction relates to preventative measures implemented in the calendar year preceding the year in which the application is made; it is valid for the year in which the application is made and is applied while paying the insurance premium due for the same year. Beneficiaries must be up to date with insurance contributions and comply with the compulsory provisions in the field of accident prevention and hygiene at work. In the year preceding the application for premium reduction, companies also need to have carried out one of the prevention interventions included in Section A of the application form or, alternatively, at least three actions listed in Sections B to I of the report, at least one of which (Section E) involves the training of workers.

INAIL regional structures perform technical evaluations of the self-certification statements made by companies applying for the rate reduction. The technical body of INAIL in charge of these evaluations is CONTARP (Consulenza Tecnica Accertamento Rischi e Prevenzione – Technical Advisory Department for Risk Assessment and Prevention) which uses expert professionals in the field of hygiene and safety.

The reduction granted by INAIL is valid only for the calendar year in which the application was made and is applied by the company itself while paying the insurance premium due for the same year.

Source: European Agency for Safety and Health at Work 2010.

Prevention is thus expected to decrease the number of occupational injuries and the consequent need for rehabilitation, to mitigate the disability degree of injured workers and increase their return-to-work rate. Prevention and rehabilitation efforts should result in reducing EISS expenditure and stabilizing its financial situation. As stated above, a reduction in the EISS cost can lead to a reduction in employer contributions, and the financial system can be designed to provide economic incentives for prevention, such as differential or experience rating.

Most countries operating EISS have recently expanded prevention and rehabilitation. Implementation, however, requires a significant amount of human and financial resources, and timing is important if some of the EISS fund must be available and allocated. A return on investment might take some time to materialize in a reduction of the injury rate and benefits cost, and eventually in the EISS contribution rate.

How can it be proved that prevention pays?

Several interconnected factors can contribute to decreasing the number of accidents, including technological progress, modernization of industry and de-industrialization, to name a few beside prevention. Determining to what extent prevention reduces the number and severity of accidents is crucial for decision-makers on investment in prevention. As costs of work-related accidents and illness are not equally distributed between individuals, companies and society, and not perceived in the same way, arguments for prevention must take into account different perspectives.

Box 7.8 quotes the summary of the results of a study that tackled the question of costs and benefits of investments in OSH from the perspective of employers. The study was realized in early 2010 (and updated in 2013) by the International Social Security Association (ISSA), the German Social Accident Insurance (DGUV) and the German Social Accident Insurance Institution for the Energy, Textile, Electrical and Media Products Sectors (BG ETEM). It addressed the issue of whether workplace prevention benefits a company's bottom line, through interviews of 337 companies in 19 countries. This study refers to another one realized in 2011 by a consortium of experts for the Health, Safety and Hygiene at Work Unit of the Directorate General for Employment, Social Affairs and Inclusion of the European Commission, aimed at evaluating the costs of accidents at work and work-related ill health and at demonstrating the incremental benefit to enterprises if they develop an effective prevention policy in OSH (European Commission 2011). That research project relied on a two-track approach including a desk research (scoping study/literature review) and field research based on multiple case studies. Both studies obtained similar results despite different methodological approaches.

► **Box 7.8 Calculating the costs and benefits of investments in OSH**

The most important results can be summarized in normative terms as follows:

- The strongest impact of OSH is seen in the areas of production, transport, personnel allocation and warehousing.
- The strongest effects of OSH are defined as follows: reduced hazards, increased employee hazard awareness, reduced breaches and reduced workplace accidents as well as improved corporate image, improved workplace culture, reduced downtime and reduced disruptions. The order reflects the difference between direct effects of workplace prevention (e.g. reduction in workplace accidents and occupational illnesses) and indirect ones (e.g. improvements in company image and productivity).
- According to approximately 75 per cent of the companies interviewed, additional investment in OSH will lead to company costs remaining the same or decreasing over the long term.
- The three most significant cost and benefit types of OSH are called: (costs) guidance on safety technology and company medical support, investment costs and organizational costs, and (benefits) added value generated by better corporate image, added value generated by increased employee motivation and satisfaction, and cost savings through prevention of disruptions.
- Expenditure on OSH is an investment that “pays off” for companies, according to the companies interviewed.
- The data collected from the survey identifies significant correlations that point to different prevention cultures.

For methodological and statistical reasons, the results should not be over-interpreted. After all, they are estimates. However, they should not be underestimated either, because the individuals interviewed are professionals in OSH and the interview itself is an ambitious method of data collection. As such, the project sees itself as a first step in the right direction – nothing more and nothing less. Further national and international research is required in the field of prevention accounting.

The legitimization of OSH is founded on three pillars. First and foremost, it protects employees against workplace accidents and illnesses on the basis of ethical and humanitarian grounds. Second, in social terms, only effective OSH can ensure the sustainability of statutory accident insurance and social protection of employees. The importance of both of these pillars justifies the need for legal provisions for occupational safety and health.

In addition, the results of this project show that OSH spending is an investment that pays off in microeconomic terms and can benefit the company itself. This is the basis for defining a third “Prevention Pillar”. In the interest of employees, society and companies, it should play an important role in future national and international OSH policy.

Source: Bräunig and Kohstall 2013.

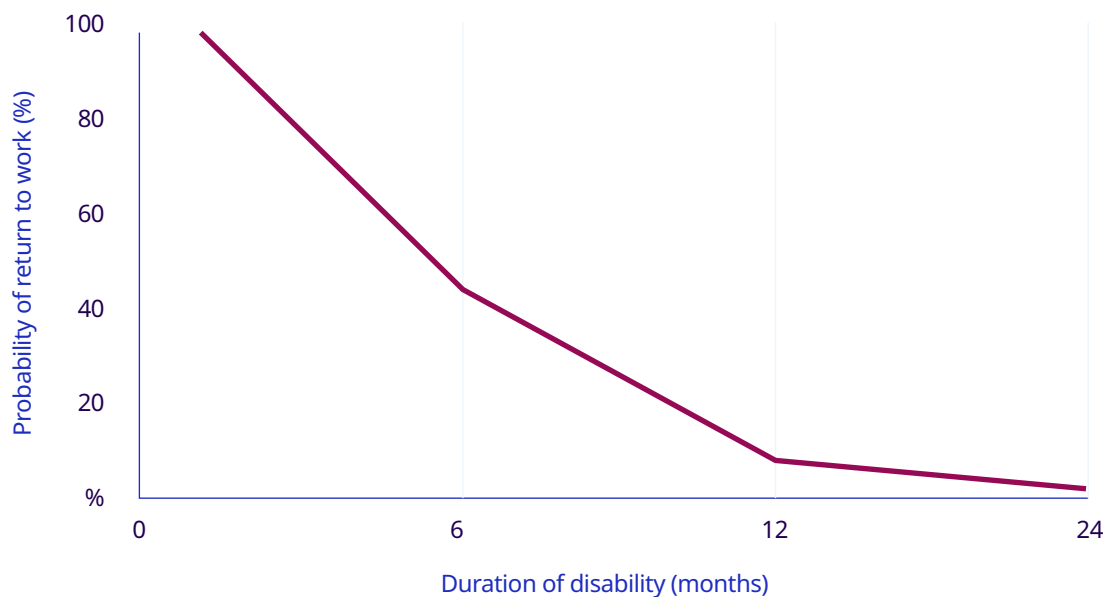
Many countries have introduced prevention and rehabilitation programmes in their EISS scheme, which have demonstrated financial stability and gained the nation’s trust in the scheme. [Appendix 7](#) presents an example of OSH and EISS linkage in the Republic of Korea with a long-standing history of operating EISS. This outline of the history of EISS development provides some evidence of the relation between EISS financial stability and the prevention and return-to-work programme.

What is the impact of return to work for EI schemes?

Another tool to ensure sustainability of the EI scheme consists of return-to-work practices.

It is generally recognized that a relatively small proportion of claims will account for an overwhelming amount of overall long-term disability costs. This fact is clearly associated with the reality of significantly reduced return-to-work outcomes where time away from work exceeds six months in duration (as illustrated in figure 7.2).

► **Figure 7.2 Probability of return to work by duration of disability**



Source: www.issa.int.

In order to address this major challenge, social security institutions, especially workers' compensation boards, have introduced special measures such as triaging of claims as part of their operational procedures.

In simple terms, the only viable approach for a social security institution to proactively address this fiscal and social conundrum is to influence its jurisdictional labour market environment in a manner that ensures that a person who acquires a disabling occupational or non-occupational injury or illness, placing them at risk of losing their workplace attachment (and potentially suffering from the many associated negative consequences), is maintained in economically viable and sustained employment.

The *ISSA Guidelines on Return to Work and Reintegration* (2019) are designed to:

- outline strategic options for social security institutions in order to achieve these outcomes;
- stimulate discussion around good practice return-to-work programmes for social security institutions;
- identify critical success design elements; and
- offer practical implementation tools.

Table 7.1 reproduces the ISSA list of guidelines, which can be used for a paradigm shift from payer to player in modern social security.

► **Table 7.1 ISSA list of guidelines on return to work and reintegration**

General principles	<ul style="list-style-type: none"> • The stakeholders • Legal and policy basis • Working within the legal framework • Understanding and learning from international good practice • Influencing the system
Specific return-to-work principles and guidelines	<ul style="list-style-type: none"> • Holistic process • Comprehensive and integrated approach with an emphasis on prevention • Beginning at the workplace • Combining medical treatment and vocational rehabilitation • Adopting a biopsychosocial approach
Early intervention	<ul style="list-style-type: none"> • Early identification and intervention • Proactive reporting • Beginning during acute medical treatment • Role of facilitators
Individualized approach	<ul style="list-style-type: none"> • Case management • Individual plan • Workplace accommodation • Quality control
Active participation of the person concerned	<ul style="list-style-type: none"> • Engaging with employees • Empowering the individual • Confidence, motivation and self-determination
Collaboration and dispute resolution	<ul style="list-style-type: none"> • Confidentiality • Communication • Working with workplace actors • Working with healthcare professionals and service providers • Working with networks
Qualification of experts	<ul style="list-style-type: none"> • Ensuring the high quality of return-to-work professionals • Education and continuing professional development of return-to-work professionals • Certification of return-to-work professionals
Monitoring and evaluation	<ul style="list-style-type: none"> • Policy evaluation • Programme evaluation • Individual outcomes • Formal audit

For illustration purposes, box 7.10 presents the return-to-work programme implemented by SOCSO, **Malaysia**, while figure 7.3 shows the process within the Malaysian disability management system. Box 7.11 describes the return-to-work process in **Australia**.

► **Box 7.9 Return-to-work programme: SOCSO, Malaysia**

In 2007, SOCSO launched the Return to Work (RTW) Programme for insured persons suffering from employment injury or invalidity. The objective of the programme is to provide opportunities for safe and productive work as soon as it is medically possible, or to ensure that maximum medical improvement is achieved with a primary focus of minimizing the impact of injuries or disabilities.

To achieve its objective, the programme adopts proactive and collaborative approaches. An effective disability management system is implemented and relies on the partnership involving various stakeholders (employers, employees, healthcare providers, rehabilitation service providers, government agencies, non-governmental organizations, and other relevant bodies).

The disability management process starts with referral processes. Cases are referred from various sources (SOCSO's Medical Board or Appellate Board, Special Appellate Medical Board, doctors and employers). Case managers screen the referred cases according to the following criteria:

- the insured person is receiving temporary disability benefits;
- the insured person is referred by the medical board for the RTW programme and has applied for permanent disability benefits;
- the insured person is aged below 50, is referred by the medical board for the RTW programme and has not been certified invalid; or
- the insured person is aged below 40, is certified invalid and is still interested to returning to work.

Case managers play a crucial role in implementing and coordinating the rehabilitation plan with healthcare providers and clients. They ensure that appropriate medical care can be provided at effective cost. Job placement officers also play crucial role along with the case managers in assisting both workers and employers to successfully achieve the return to work.

RTW programme benefits to employers

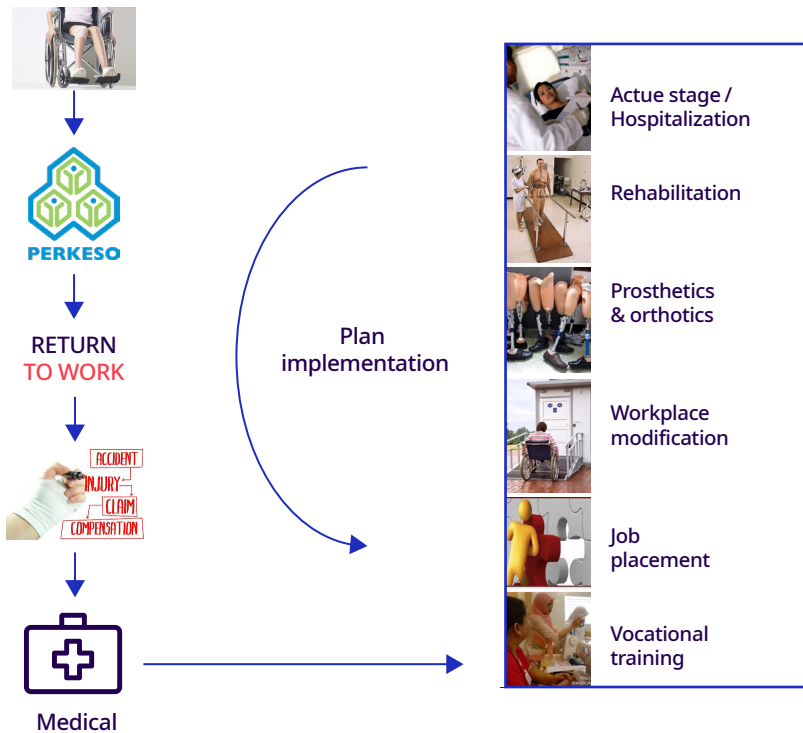
- Reduce disability duration, enable a safe and fast return to work increasing productivity
- Retain experienced and highly skilled workers
- Reduce training and hiring costs of temporary workers
- Optimize rehabilitation period
- Recommended modifications of workstation

RTW programme benefits to workers

- Psychological support through counselling and consultation
- Restore self-confidence (enhance physical and mental ability, prevent low self-esteem caused by the illness or disability)
- Appropriate rehabilitative equipment
- The sooner the recovery, the less impact on the quality of life due to the disability or illness

Source:<http://www.perkeso.gov.my/en/rtw-invalidity-scheme.html>.

► Figure 7.3 Disability management system in the return-to-work process: Malaysia



► **Box 7.10 Safe Work Australia: The National Return to Work Strategy 2020–2030**

Workers’ compensation systems aim to minimize the cost and impact of work-related injury and illness. There are 11 main workers’ compensation schemes in Australia – one for each of the eight Australian states and territories, and three Commonwealth schemes.

The differences between the workers’ compensation schemes present significant challenges for national policy efforts. Unlike Work Health and Safety (WHS) laws, there is limited appetite and incentive to pursue harmonized arrangements at this time.

While specific arrangements vary between jurisdictions, supporting timely, safe and durable return to work for workers is a central objective of all schemes.

“Return to work” is about helping workers to get back to work or to stay at work while they recover from work-related injury or illness. It is a complex process in which many factors at the individual, organizational and system levels interact to influence a worker’s recovery, absence from work and the durability of their return to work. A positive return to work involves all systems working well together.

Policy work in this area has historically been undertaken by individual jurisdictions, with limited opportunity for national collaboration to achieve common objectives. Jurisdictions have continued to review and reform their return-to-work processes and systems to improve outcomes for workers and other stakeholders in the system.

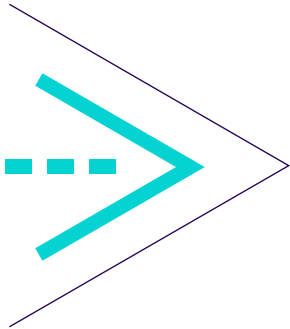
Despite these efforts, challenges remain. While the number of claims from work-related injury and illness has decreased over the last two decades, return-to-work rates have largely remained the same. In addition, emerging trends such as increasing numbers of psychological injuries and whole-of-system shifts towards client-centric approaches present new opportunities to tackle these challenges from a national perspective.

It is with these opportunities in mind that Safe Work Australia developed the National Return to Work Strategy.

Source: <https://www.safeworkaustralia.gov.au/national-return-to-work-strategy-2020-2030>.

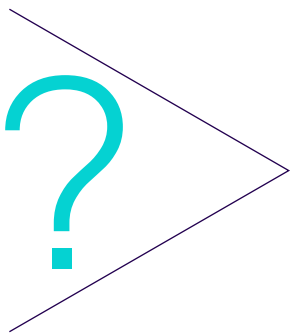
Module 8.
Extension of EISS coverage to workers
in the informal economy

8



Objective

The main objective of this module is to understand the main causes and consequences of the informal economy and to analyse different approaches to combatting informality. The role of the regulatory environment and labour administration and inspection to help the transition towards formality is studied. Finally, the module provides an illustration on how the self-employed are covered under EISS schemes in several countries and the contribution rate needed to cover the costs of this category of workers.



Key questions

This module provides answers to the following questions:

- ▶ What is the difference between legal coverage and effective (actual) coverage?
- ▶ How does the ILO define informality?
- ▶ What are the roots of informality?
- ▶ What are the social and economic costs of informality?
- ▶ What is the ILO comprehensive approach towards formality?
- ▶ How can the national regulatory environment be adapted in order to facilitate the extension of coverage to informal employment?
- ▶ What is the role of labour administration and inspection to track, report and help the transition to the formalization of workers?
- ▶ How can EISS coverage be extended to self-employed persons and at what cost?

Traditional EISS coverage seems out of reach for workers in the informal economy. The ILO report *Transitioning from the Informal to the Formal Economy* (ILO 2013b) was drawn up in preparation for the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204). The report defines informality in reference to the absence or insufficiency of coverage by formal arrangements. Extending social security coverage to workers in the informal economy is part of the transition to formality, an important target of the ILO's Decent Work Agenda launched in 1999. Based on the report's content, this module focuses on the following subjects:

- the limitations of traditional EISS schemes in covering workers in the informal economy;
- the phenomenon of the informal economy (concepts, measures, issue and costs);
- the regulatory environment relating to the informal economy at the international and national levels;
- the role of an integrated policy framework in transitioning to the formal economy; and
- the cost of extension of EISS coverage to self-employed persons.

Although transitions to the formal economy and decent work are desired goals, different views exist on what is meant by formalization and how it can be achieved. Successful transitions to formality require a "new pact" between workers, enterprises and governments. The focus, then, is on the need for an integrated policy framework.

► Traditional coverage of an EISS scheme and its limitations

What is the difference between legal coverage and effective (actual) coverage?

Legal coverage for employment injury protects mostly those in formal employment, whereas workers in informal employment are rarely covered.

Legal coverage rates for EI reflect the general pattern of social protection coverage, with high levels in Europe (both Western and Eastern) and North America, more moderate but still substantial levels in Latin America, and much lower levels in sub-Saharan Africa and most of Asia.

Legal coverage does not necessarily translate into **effective coverage**, for a variety of reasons. These include low contributory capacities in the population covered, a lack of understanding of the importance of coverage, a mismatch between benefits offered and needs experienced, or overly complex procedures that deter participation.

▶ Work in the informal economy

How does the ILO define informality?

According to the guidelines adopted by the 17th International Conference of Labour Statisticians (ICLS 2003), informality is defined as “all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements”; this definition is endorsed in Recommendation No. 204 (para. 2(a)).

Informal employment now refers to all employment arrangements that do not provide individuals with legal or social protection through their work, thereby leaving them more exposed to economic risk than others, whether or not the economic units they work for or operate in are formal enterprises, informal enterprises or households.

In 2012, the ILO published a manual on methodological issues for undertaking surveys of the informal economy at the country level (ILO 2012b); while the 3rd edition of its manual *Women and Men in the Informal Economy: A Statistical Picture* (ILO 2018) provides direct and estimated measures of informal employment inside and outside informal enterprises for more than 100 countries. It also presents statistics on the composition and contribution of the informal economy as well as on specific groups of urban informal workers.

What are the roots of informality?

The growth of the informal economy can often be traced to:

- ▶ macroeconomic and social policies that are inappropriate, ineffective, misguided or badly implemented (frequently developed without tripartite consultation);
- ▶ lack of appropriate legal and institutional frameworks;
- ▶ lack of good governance for the proper and effective implementation of policies and laws; or
- ▶ lack of trust in institutions and administrative procedures.

When macroeconomic policies (including structural adjustment, economic restructuring and privatization policies) have not been sufficiently focused on employment, they have reduced job numbers or failed to create sufficient numbers of new jobs in the formal economy.

What are the social and economic costs of informality?

Pervasive trends towards higher levels of precarious and informal employment not only affect current living standards and working conditions of populations worldwide but also:

- ▶ prevent households and economic units in the informal economy from increasing productivity, reducing their vulnerabilities and finding a route out of poverty; and
- ▶ trap individuals and enterprises in a spiral of low productivity and poverty.

A coherent national strategy to facilitate transitions to formality needs to recognize that the costs of working informally are high for businesses, workers and the community.

Informality cost for individuals. Workers in the informal economy suffer lack of protection in the following events:

- ▶ non-payment of wages;
- ▶ compulsory overtime or extra shifts;
- ▶ lay-offs without notice or compensation;
- ▶ unsafe working conditions; and
- ▶ absence of social benefits (pensions, sick pay and health insurance).

Women, young persons, migrants and older workers are especially vulnerable to the most serious decent work deficits in the informal economy. They are vulnerable to violence, including sexual harassment, and other forms of exploitation and abuse, including corruption and bribery. Child workers and bonded labourers are also often found in the informal economy.

Informality cost for businesses. Most economic units in the informal economy (mainly micro and small enterprises):

- ▶ do not enjoy secure property rights, which deprives them of access to both capital and credit;
- ▶ have difficulty accessing the legal and judicial system to enforce contracts;
- ▶ have limited access to public infrastructure and public markets;
- ▶ lack the necessary size to exploit economies of scale fully (which inhibits investment in bigger businesses and impedes trade); and
- ▶ are less capable of generating sufficient profits to reward innovation and risk-taking (essential ingredients for long-term success).

Company size, productivity growth and export opportunities are closely linked. Large firms:

- ▶ benefit from economies of scale;
- ▶ have easier access to high-skilled labour and banking credit; and
- ▶ tend to be more reliable in fulfilling contracts on time (crucial for long-term client relationships).

Studies show that high rates of informality drive countries towards the lower and more vulnerable end of global production chains (they attract capital flows related to the existence of a large low-wage labour pool).

Informality cost for the community. Unregistered and unregulated enterprises often do not pay taxes or benefits/entitlements to workers. The shortfall in tax and contribution payments is sometimes very significant. Consequences of non-compliance include:

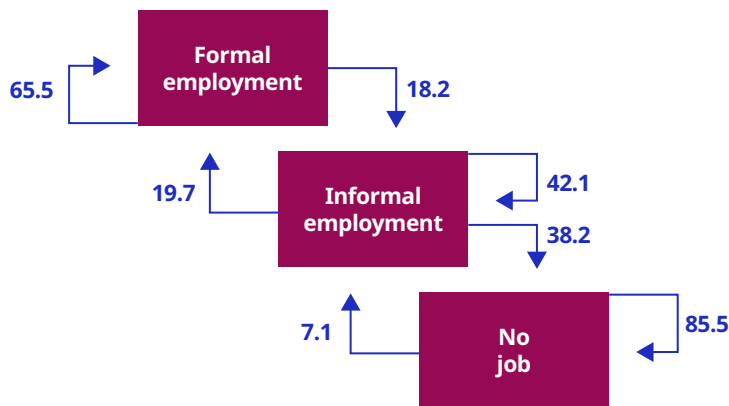
- ▶ workers often being denied protection;
- ▶ unfair competition among enterprises (more burden placed on registered businesses);
- ▶ public revenue being deprived (governments are limited in their fiscal space and ability to extend social protection schemes and other systems vital to national development, such as infrastructure and education and health systems); and
- ▶ informality often associated with weak institutional arrangements and poor governance structures, and therefore susceptible to corrupt practices.

Private means of imposing order in the informal economy are often very costly for businesses and workers. Easing the costs of moving to formality may encourage businesses to come above ground, pay their taxes, observe labour laws and benefit from the judicial system.

Figure 8.1 displays transition probabilities (in percentages) among individuals aged 20 to 60 years across different segments in the labour market in **Mexico** between 2002 and 2005. It illustrates that workers are twice as likely to remain in that sector than to return to formal employment.

Informality is thus often a trap in which informal workers are caught. Comprehensive social protection should contribute to prevent formal workers from falling into informality and help informal workers to escape from an informality trap.

► **Figure 8.1 Mobilization rate among formal, informal employment and no job: The case of Mexico**



Source: ILO and WTO 2009.

► The ILO comprehensive policy approach towards formality

What is the ILO comprehensive approach towards formality?

Workers in the informal economy differ widely in terms of:

- income (level, regularity, seasonality);
- status in employment (employees, employers, own-account workers, casual workers, domestic workers);
- sector (trade, agriculture, industry);
- type and size of enterprise, location (urban or rural);
- employment protection (type and duration of contract, annual leave protection), and
- social protection

Extending coverage to such a heterogeneous set of workers and economic units requires the implementation of several (coordinated) instruments adapted to

- the specific characteristics of the different groups;
- the contingencies to be covered; and
- the national context.

To address the diversity of the informal economy, a common framework at the national level is needed. It can be built on the reflection and action ground already set out by the ILO Decent Work Agenda.⁷ According to the ILO, decent work sums up the aspirations of people in their working lives, which involves:

- opportunities for work that is productive and delivers a fair income;
- security in the workplace and social protection for families;
- better prospects for personal development and social integration;
- freedom for people to express their concerns, organize and participate in the decisions that affect their lives; and
- equality of opportunity and treatment for all women and men.

Transition from the informal economy to the formal economy is clearly an important target in the Decent Work Agenda, which is a balanced and integrated programmatic approach to pursue the objectives of full and productive employment and decent work for all at global, regional, national, sectoral and local levels.

The comprehensive policy approach across the Decent Work Agenda has resulted in a policy and diagnostic framework based on seven key avenues towards formalization. This framework emphasizes the importance of **vertical integration** and coherence across the range of policies to curb informality, while the **horizontal dimension** focuses on intensifying action in each policy area (table 8.1).

► **Table 8.1 The ILO Decent Work Agenda**

Four pillars	Seven policy areas
Standards and rights at work	<ul style="list-style-type: none"> • Quality employment generation and growth strategies • Regulatory environment • Social dialogue, organization and representation • Promoting equality and addressing discrimination • Measures to support entrepreneurship, skills and finance • Extension of social protection • Local development strategies.
Employment creation and enterprise development	
Social protection	
Social dialogue	

Appendix 9 includes a description of ILO instruments that refer to the informal economy.

⁷ <http://www.ilo.org/global/topics/decent-work/lang--en/index.htm>.

How can the national regulatory environment be adapted in order to facilitate the extension of coverage to informal employment?

Different approaches have been adopted to channelling workers from informal employment into formal employment and providing them with better social and labour protection, depending on each country's circumstances (see ILO 2013b, section 2.2).

- Governments in developed countries have combined sanctions against illegal employment (such as employment of irregular migrant workers) and undeclared work, with incentives to encourage employers to declare workers.
- In countries where the informal economy makes up a larger percentage of overall employment, the focus tends to be on extending the legislative framework to cover workers in the informal economy and adopting measures to facilitate their integration into the formal economy.
- In the majority of countries, labour legislation applies to workers in general, while in others it excludes certain categories of workers, who are often found in the informal economy.

Several countries have simplified their labour laws and procedures by:

- reducing or eliminating the costs involved in registering enterprises with labour administrations and social security authorities;
- simplifying the requirements, forms and procedures for hiring workers through public employment offices; and
- recognizing contracts of employment, irrespective of their form, and accepting any means of evidence.

In many developing countries, the main challenge is to include the huge masses working in the informal economy under some kind of social protection scheme. Two approaches have been adopted: reducing the cost of formalization and increasing productivity.

- In **Colombia**, Act No. 1429 provides micro, small and medium-sized enterprises (SMEs) with incentives such as tax reductions to formalize their structures and to create new employment for vulnerable groups such as young workers. Measures to increase productivity include modernizing the institutional framework for SMEs, improving their access to financial markets and providing assistance for technological development.
- In 2010, the General Act on SMEs in **Brazil** created the legal concept of "individual micro-entrepreneur" and simplified registration. A single contribution gives access to social security, medical care and maternity leave. A certificate facilitates their access to markets and credit. It is estimated that three million workers have been formalized in this way.
- In **Chile**, the 2006 SME Act constituted an important step towards a more enabling environment for the formalization of SMEs and introduced a series of changes in the regulatory framework and in SME support services.

Legal protection should cover vulnerable categories of work (such as domestic work, homework and agriculture).

- In **South Africa**, the Basic Conditions of Employment Act of 1997 was amended to establish conditions of employment and minimum wages for domestic work.
- In **Asia and the Pacific**, the extension and application of existing laws to vulnerable categories of workers has helped to ensure their health, safety and financial security.
- Several countries have extended social protection provisions to self-employed workers (**Austria, Bahrain, Croatia, Belgium and Singapore**) and to particularly vulnerable groups of workers such as market workers (Algeria) and small enterprises and handicraft workers (**Mauritius and Peru**).
- In the **Philippines**, the Domestic Workers Act of 2013 defines "domestic work" and "domestic worker" and establishes their rights and protections.

- In **Thailand**, the Home Workers Protection Act of 2010 requires written contracts between hirers and homeworkers with certain minimum information and establishes a non-compliance fine of 10,000 Thai Baht. Homeworkers producing outputs of the same nature, quality and quantity may not be paid less than the minimum wage. The Act established a Home Work Protection Committee to advise on remuneration, safety and other policies, and labour inspectors are permitted to enter the workplace of homeworkers.

What is the role of labour administration and inspection to track, report and help the transition to the formalization of workers?

The Labour Administration Convention, 1987 (No. 150) envisages the extension of the functions of the system of labour administration to include the activities of appropriate categories of workers who are not employed persons.

The Labour Inspection Convention, 1947 (No. 81), applies to industrial and commercial workplaces and the Labour Inspection (Agriculture) Convention, 1969 (No. 129) covers commercial and non-commercial agricultural undertakings. The Safety and Health in Agriculture Convention, 2001 (No. 184) expands the scope and need for labour inspection in agriculture.

Most countries define the scope of labour inspection in the general labour legislation. The determining factor is often the existence of an employment or apprenticeship relationship. Here are a few examples:

- In **Turkey**, inspection officers determine whether or not employees are insured and report information on those employed without insurance to the social security institution. An action plan was adopted to combat the informal economy (raising awareness of the disadvantages of the informal economy, promoting the registration of employment, simplifying the legislation and procedures, developing an effective monitoring system and sanctions, and strengthening the sharing of data and coordination among the institutions concerned).
- Very few countries have formally extended the labour inspection system to members of cooperatives (Article 5(1) of Convention No. 129).
- In some **European countries**, labour inspectors provide OSH training to self-employed agricultural workers, farmers, sharecroppers and family members working on farms.
- In **Norway**, the application of the Work Environment Act has been extended to the many agricultural enterprises that do not employ workers.
- In the **Republic of Moldova**, enterprises and workers operating in the informal economy fall within the scope of the legislation on labour inspection and the employment and social protection of persons seeking employment. In this framework, the labour inspectorate has tracked and helped to legalize informal employment in enterprises operating in the formal sector.

How is EISS coverage extended to self-employed persons and at what cost?

How social security responds to disability among the self-employed is a challenging issue. Although the demand for EI benefits is particularly high among the self-employed, there are a number of problems regarding the monitoring of such claims and the problems of both moral hazard and adverse selection (if such benefits are voluntary). The practice of providing benefits in case of employment injury, long-term disability and short-term sickness for the self-employed varies widely and is often subject to strict conditions. The examples of some countries in Europe highlight the different approaches (see ISSA 2012):

- In **Belgium**, there is a separate sickness and maternity scheme for the self-employed, but they are not covered for employment injury.
- In **Denmark**, the self-employed (and their spouses) are covered for sickness, employment injury and maternity through a voluntary contributory system. Incapacity cash benefits are paid for up to two weeks.
- In **France**, there is a separate sickness, employment injury and maternity scheme for the self-employed.

Table 8.2 presents the contribution rate for a sample of EISS schemes that cover self-employed persons. It includes 30 countries with EI social insurance out of 181 countries reporting. Many of the schemes provide coverage to self-employed persons on a voluntary basis. Box 8.1 presents a more detailed example of coverage, describing the situation in the Republic of Korea.

► **Table 8.2 EISS contribution rates: Self-employed persons, selected countries**

Region and country	Contribution rate
Africa	
Cabo Verde	6%
Côte d'Ivoire	Voluntary basis depending of the assessed degree of risk
Djibouti	7% (medical benefits)
Gabon	Special system
Liberia	1.75%
Mali	2.5% (1–4% depending on assessed risk). Voluntary basis
Niger	1.4%
Nigeria	Financing mechanisms still undetermined
Senegal	1, 3 or 5% depending on assessed risk
Sudan	Global contribution, under old age (25% of declared monthly income)
Togo	2%
Tunisia	Voluntary contributions
Asia	
Indonesia	1% of monthly declared earnings. Voluntary basis
Japan	0.3–5.2% of declared earnings
Korea, Republic of	0.7–28.1% of declared earnings or payroll. Voluntary basis

Region and country	Contribution rate
Europe and Middle East	
Bulgaria	0.4 - 1.1% of income, according to the assessed risk. Voluntary basis
Croatia	0.50%
Israel	0.17–0.78% of earnings above 60% of the national average wage
Italy	Variable contribution according to assessed risk
Liechtenstein	Variable contribution according to the coverage required and the assessed risk. Voluntary basis
Luxembourg	0.9% of covered income
Poland	1.8% of declared earnings
Spain	Voluntary contributions depending on the level of coverage chosen
Sweden	0.2% of declared earnings
Americas	
Bahamas	2%
British Virgin Islands	0,5% of declared monthly earnings
Chile	0,95% declared income + up to 3,4% declared earnings depending on the occupation.
Colombia	0,348 – 4.089% of declared covered earnings according to assessed risk. Voluntary basis.
Grenada	1%
Peru	Flat-rate contribution from 13 to 37 nuevos soles according to the sector and associated risk.

Source: www.ISSA.int.

► **Box 8.1 Extension of Workers' Compensation Insurance coverage to SMEs and special types of workers: Republic of Korea**

The compulsory Workers' Compensation Insurance (WCI) scheme in the Republic of Korea, the Korea Workers' Compensation & Welfare Service (COMWEL), covers workplaces with more than one worker and all construction workplaces regardless of type of employment. Workers covered by the scheme are those who are included within the definition of the term "worker" stated in the Labour Standard Act. Small business owners and special types of workers such as golf caddies and courier workers were previously not protected under the Act despite the fact that their working conditions are similar to other workers defined by the law. In order to address this problem, the WCI Act and WCI enforcement decree include special articles for some of those who used to be in "grey" areas of the traditional WCI scheme.

WCI for SMEs

SME employers are very similar to workers in terms of their economic status and activities. Nonetheless, they are not entitled to any WCI benefits in the event of industrial accidents. As a result, the WCI voluntary scheme has been introduced in order to protect the self-employed and provide them with social security nets ensured by relevant laws or regulations.

To be eligible for the WCI voluntary scheme, the self-employed are required to:

1. Employ fewer than 50 workers, or
2. Be any of the following persons who do not employ a worker.
 - a. A person who is engaged in passenger transport services under the Passenger Transport Business Act.
 - b. A person who is engaged in cargo transport services under the Trucking Transport Business Act.
 - c. A person who is engaged in construction machinery services under the Construction Machinery Management Act.
 - d. A door-to-door courier according to the Korea Standard Classification of Occupations.
 - e. A person who works as an artist as defined in the Artists' Welfare Act.
 - f. A designated driver or a person engaging in a designated driving service entrusted by a designated driver.
 - g. A person who is engaged in certain types of manufacturing defined in the Korea Industrial Classification.
 - h. A person who is engaged in a car maintenance business under the Automobile Management Act;
 - i. A person who is engaged in wholesale and merchandise brokerage as defined in the Korea Industrial Classification.
 - j. A person who is engaged in retail trade as defined in the Korea Industrial Classification.
 - k. A person who is engaged in a restaurant business as defined in the Korea Industrial Classification.
 - l. A person who is engaged in other personal services as defined in the Korea industrial classification.

WCI for special types of workers

“Special types of workers” in the Republic of Korea have both worker and self-employed status. They have freedom to conduct their work without supervision by the company while working in a similar way to an employee. Due to their ambiguous status, these workers were excluded from the traditional WCI coverage. In order to protect them, the Republic of Korea introduced a WCI scheme for special types of workers in July 2018, starting with four “special types” and gradually extended coverage to more. As of 2019, nine special types of workers were included in the scheme.

To be eligible for this WCI scheme, the following requirements must be met:

1. The worker mainly provides one type of labour service necessary for the operation of business on a regular basis, and receives payment for that service.
2. The worker must not use someone else to provide such labour service.

However, unlike the workers defined by Labour Standard Act, special types of workers can apply for exclusion if they do not want to join the WCI scheme. In other words, they are obliged to join the scheme unless they apply for exclusion. However, workers defined under the Act are not allowed to apply for exclusion even though they may not want to join the scheme.

The premiums for those defined as special types of workers are calculated by multiplying the income announced by the Minister of Employment and Labour (shown in the table below) by the contribution rate applicable to the business. The premiums are divided equally between the worker in a special type of employment and his/her employer. The definition of each special type of worker is stated in relevant laws and regulations, such as the Insurance Business Act and the Construction Machinery Management Act, among others.

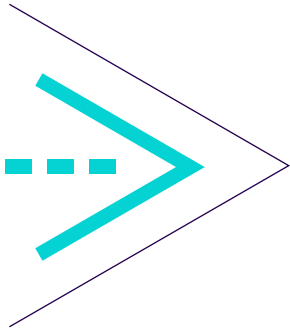
Special type of worker	Announced monthly income, 2019 (KRW)	Average income per day, 2019 (KRW)
Insurance solicitors mostly engaging in a life insurance company	2 623 000	87 433
Insurance solicitors mostly engaging in a non-life insurance company and others	2 183 000	72 766
Owner-drivers of concrete mixer trucks	2 254 040	75 134
Learning-aid tutors	1 684 000	56 133
Golf caddies	2 454 540	81 818
Door-to-door couriers engaged in collection or delivery in courier services	2 200 000	73 333
Door-to-door couriers entrusted from mainly one quick service provider	1 454 000	48 466
Loan solicitors who have a trust contract with financial institutions	1 944 000	64 800
Loan solicitors who have a direct contract with a corporation engaged in loan brokerage	2 638 000	87 933
Credit card solicitors	1 756 000	58 533
Persons engaging in a designated driving service entrusted by mostly one designated driver	1 750 000	58 333

Note: US\$1=1,190 Korean Won (KRW).

Module 9. Extension of EISS coverage to migrant workers*

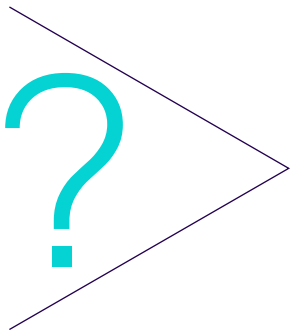
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* This module draws heavily on the ISSA *Handbook on the extension of social security coverage to migrant workers* (ISSA 2014). This handbook identifies key barriers to extending and improving social security coverage to migrant workers, and presents practical measures to address them.



Objective

This module focuses first on the characteristics and needs of migrant workers for social security and then on how social security coverage can be extended to them.



Key questions

This module provides answers to the following questions:

- ▶ Where do migrant workers mostly work and what are their working conditions like?
- ▶ How can regulation of migration be improved?
- ▶ What is the difference between an internal and international migrant worker?
- ▶ What are the reasons for the extension of social security to migrant workers?
- ▶ What does extension imply?
- ▶ Should migrant workers be covered under general schemes or dedicated plans?
- ▶ What are the challenges of extension?
- ▶ What are the legal barriers to affiliation?
- ▶ How can portability of benefits be ensured?
- ▶ What are the main practices and challenges regarding bilateral and multilateral agreements?
- ▶ What are the financial implications of agreements?
- ▶ What are the main effective barriers to extension?
- ▶ How are family members in the home country affected by migration for work?

▶ Profile of migrant workers

Where do migrant workers mostly work and what are their working conditions like?

Migrant workers form a group vulnerable to discrimination. They account for an important segment of the informal economy in all regions of the world and are concentrated in low-skilled jobs, particularly in agriculture, construction, small manufacturing, domestic work and other services. These activities are often temporary, seasonal or casual work, often through subcontracting, and are often inadequately covered by labour regulation and labour inspection.

- ▶ Migrants in an irregular situation are often subject to abusive hiring and firing practices, poor working conditions and wages, the withholding of identity documents, employment below their qualifications or competencies, underemployment, and to a lack of collective agreements.
- ▶ Regular migrant workers may be issued with contracts for fewer hours than they actually perform, or they may receive lower salaries than initially agreed.

How can the regulation of migration be improved?

Certain countries are endeavouring to improve the regulation of migration through bilateral and multilateral agreements, and thereby reduce the risk of informality. For example:

- ▶ **New Zealand** has developed a seasonal worker scheme with the neighbouring **Pacific Island States** to address the demand for low-skilled workers in horticulture and to protect their rights. The scheme is monitored by an advisory group composed of representatives of the governments concerned, the social partners and migrant organizations.
- ▶ Several **EU Member States** have recently introduced measures to simplify registration procedures for migrant workers, such as the use of service vouchers for domestic service providers (see ILO 2013b, section 3.5).

The trend of increasing numbers of migrant workers is likely to continue as the future unfolds the impacts of climate change, globalization and demography. Many more migrant workers than at present may tumble into precarious situations.

What is the difference between an internal and international migrant worker?

A migrant worker is a worker whose working activity is undertaken outside his or her country or area of origin. Table 9.1 outlines the distinction between internal and international migrant workers.

► **Table 9.1 Internal and international migrant workers**

Internal	International
<p>Workers who move within their country of origin.</p> <p>Typical motivations of migration include better work opportunities, family regrouping, climate-related and educational reasons.</p> <p>The rural to urban migration trend can be explained by high demand for workers in urban areas (economic transformation from agriculture to manufacturing, lower fertility rates in the cities).</p>	<p>Workers who are employed outside their country of origin.</p> <p>They change country of residence typically for work reasons for short or long periods, as well as on a permanent basis.</p> <p>They include domestic workers, service industry and agricultural workers, as well as executive-level and highly skilled formal sector workers.</p> <p>Motivations for migration are the same as for internal migrant workers (mainly work-driven); fleeing political persecution or discrimination can also be among the reasons.</p> <p>They face more barriers than internal migrants in a country with a different culture and language from their own.</p> <p>Once resident in a host country, international migrants have a higher propensity to migrate internally than do native-born citizens (fewer family ties in the host country, greater mobility in types of jobs, origins of international migrants).</p>

In large countries with different cultural and linguistic groups and different schemes, covering internal migrant workers may pose a problem. The focus of this module will be mainly on international migration. The contributions of migrant workers to the host country and home country are subject to debate. Some of their general characteristics emerge as advantages, as outlined in Appendix 10, table A10.1. The factors affecting the flow and stock of migrant workers are also presented in [Appendix 10](#).

► Social security coverage of migrant workers

This section examines the extension of social security coverage to migrant workers by focusing on four questions: (1) What are the reasons for extension? (2) What does extension imply? (3) Should migrant workers be covered under general schemes or dedicated plans? (4) What are the challenges of extension?

An illustration of social security coverage for internal migration in **China** is provided in box 9.1, while an example of employment injury coverage for temporary migrant workers in **Canada** is shown in box 9.2.

What are the reasons for extending social security to migrant workers?

Migrant workers and their dependants are to be covered for benefits and services on the ground of rights as well as economic and equity reasons (see table 9.2). Protection of the rights of migrant workers includes equal treatment in social security coverage and entitlements, and the maintenance and portability of social security rights through bilateral or multilateral treaties. The Equality of Treatment (Social Security) Convention, 1962 (No. 118), and the Maintenance of Social Security Rights Convention, 1982 (No. 157), set out important principles in this regard.

► **Table 9.2 Reasons for providing social security coverage to migrant workers**

Greater need of protection	Migrant workers are often separated from their family, in a new and foreign environment (lack of information and social networks). Female migrant workers are at greater risk of discrimination, exploitation and abuse than their male equivalents.
Supporting policy to encourage migration	Social security coverage attracts migrants and ensures their productivity.
Social cohesion	Equitable and fair treatment of all workers prevents marginalization and reduces inequalities, social conflict and tensions.
Facilitating economic development	Provision of income security (e.g. short-term sickness coverage, temporary unemployment benefits)
Equity and public support	Exemption from social security contributions for migrant workers may be seen as unfair to the general population.
Economies of scale	More cost-efficient administration and more robust to shocks.
Employee mobility	Inclusion of migrant workers in the social security system improves job supply and demand matching (internal) and supports the development of free trade areas (international).
Reduction in the exploitation of workers	Social security coverage provides support services to vulnerable groups (domestic workers, informal economy workers, youth, temporary migrant workers and migrant workers with irregular status).
Formalization of the labour market	More tax income and more workers covered by OSH regulations, but not all work can be formalized.
Access to insurance, and financial services	Otherwise, restraint due to a lack of knowledge, language barriers or by not being seen as attractive or reliable by financial services providers.
Reputational and legal issues	International media coverage of cultural or sporting events can put conditions and coverage of migrant workers in the spotlight, and lead to threat of legal action against multinational employers.

What does extension imply?

The extension of social security coverage has three dimensions:

- the number of people covered by existing social security programmes;
- the range of benefits provided; and
- the level of benefits.

Migrant workers in the informal sector are likely to be excluded from social security coverage, while those in the formal sector may be excluded due to restrictive legislation. Some countries cover migrant workers but provide lower benefits. EI and short-term risk benefits such as cash death benefits and sickness benefits may be easier to extend than long-term benefits such as retirement benefits or end-of-service gratuities, as eligibility for short-term benefits typically depends on the current contributory status, while contribution conditions for long-term benefits are more difficult to fulfil.

Should migrant workers be covered under general schemes or dedicated plans?

Inclusion in the host country's main social security scheme

- This typically requires supporting administrative measures and different criteria such as a minimum waiting period to see if short-term migrant workers can be covered by their home country's social security system.
- Advantages: consistency and equity between workers doing the same jobs.
- Disadvantages: fragmentation of entitlements linked to service, and more administration for host countries.

Separate scheme for all migrant workers

- Where host countries exclude migrant workers, the home country may set up a voluntary scheme dedicated to migrant workers only (as in El Salvador).

Inclusion in the home country's social security system

- For a limited period, staying in the home country's system can be advantageous (continuity of service, benefit levels related to the needs of the family and individual, and less administration).
- Normally, bilateral and multilateral agreements set the conditions and regulations in these circumstances.

What are the challenges of extension?

While migration can improve migrant workers' lives and those of their families, and be beneficial to both host and home countries, achieving such results requires overcoming the many difficulties related to migration.

Limited financial resources available to social security institutions require that the financial, economic and political arguments for coverage must be established and the responses of social security institutions need to be efficient and effective. Innovative management techniques (such as the use of ICT for customized approaches to affiliation and communication) and better coordination within and between national jurisdictions (such as through bilateral and multilateral agreements) are prerequisites.

Migrant workers range from the vulnerable and low paid to highly educated high earners. Social security coverage for them requires appropriate policy design and important organizational efforts. The issue is often sensitive, requiring effective communication by public authorities to both the workers themselves and the wider population. Table 9.3 lists some of the challenges.

► **Table 9.3 Social security coverage of migrant workers: Issues and constraints**

<p>Host countries struggle with integration of immigrant workers, while home countries have to deal with “brain drain” and reintegration of returning migrant workers.</p> <p>Economic downturns are likely to cause loss of jobs in host and home countries. Migrant workers returning to their home countries may experience extra difficulty in job search due to loss of contacts and information.</p>	<p>There is a cost to cover migrant workers under social security programmes (fully or partly financed by tax revenue), but in many cases migrant workers “pay in” more than they receive (including, for example, consumption taxes).</p> <p>Administrative costs of covering migrant workers can be higher due to tailor-made services and relatively low contribution amounts.</p>
<p>The extension of social security coverage needs to be consistent with wider policy objectives and aims regarding migrant workers.</p> <p>More heterogenic labour force (ethnic, religious and linguistic diversity) makes social security coverage more complex and the feeling of solidarity more difficult (“welfare chauvinism”, decline in support for redistribution).</p>	<p>Public opinion in host countries perceives migration negatively in economic downturns.</p> <p>Downward pressure on wages can be seen as replacing native workers by cheaper immigrant labour. Classical economic analysis and empirical studies indicate that immigrant workers put downward pressure on real wages, but the net effect can be small and represents a transfer from workers to employers.</p> <p>Migrant workers can be perceived as “taking advantage” of a social security system; providing social protection can be argued as encouraging other illegal migrants.</p>
<p>Remittances sent to family members are used mainly for consumption or education costs.</p> <p>There is some debate as to whether remittances actively contribute to the development of the country.</p> <p>Remittances are normally exempt from social security contributions but often subject to other taxes.</p>	<p>According to a 1996 EU Directive, posted workers must comply with the labour laws of the host country, but their employers pay social security contributions to the home country. This has created “social dumping” due to the wide disparity of costs between different EU countries. Flexible social security agreements and options available should not lead to unfair competition.</p>
<p>The self-employed cannot count on an employer’s support to overcome the numerous barriers to social security coverage.</p> <p>Assessing salary for contribution and benefit purposes is a challenge. Notional salary (as in China) can be used to increase compliance and simplify administration procedures.</p>	<p>Difficulty of applying the conditions of existing schemes to migrant workers. For example, means-tested benefits are difficult to administer.</p>

► Box 9.1 Rural to urban migration: Social security coverage in China

China has seen significant shifts in population, with the main flows being from rural to urban areas. One of the key difficulties raised by this is ensuring social security coverage for workers as they change their location.

According to 2013 official statistics, there was a total of 269 million farmer-turned-migrant workers (including 166 million farmer-turned-domestic migrant workers); around 50 million of these workers participate in the Urban Employees' Basic Pension Scheme and in the Urban Employees' Basic Health Insurance Scheme, some 73 million in the Work Injury Insurance Scheme and 37.4 million in the Unemployment Scheme. There are still significant gaps in coverage.

In response to repeated infringements by certain employers, the Ministry of Human Resources and Social Security promulgated in 2013 a regulation requiring that short-term contract workers (generally recruited for filling temporary, auxiliary or substitute job positions) should not exceed 10 per cent of the workforce. The regulation also requires the employer to undertake the affiliation procedures with local social insurance agencies and to pay social insurance contributions for employees with a minimum two-year contract.

There is a plan to unify pension plans for rural and non-employed urban residents. The planned new system would provide urban and rural residents with equal rights and opportunities, and ensure pension portability between the Rural Residents' Pension Scheme and the Urban Employees' Basic Pension Scheme. This should lead to enhanced protection for domestic migrant workers.

A similar integration process in health insurance coverage has been achieved or announced in many provinces. In Dong Guan City of Guan Dong Province, a unified health insurance scheme covers all migrant workers (non-employed residents, local employees including civil servants) with the same standards.

The comprehensive use of social security cards (covering all branches and equipped with financial functions) has facilitated the payment process. For example, claimants pay only their share for medical treatment (even when the claim occurs in another city or province) while the remainder is settled between service providers and social insurance agencies.

▶ **Box 9.2 Employment injury coverage for temporary migrant workers: Canada**

Migrant workers are individuals whose permanent home is not Canada, but are brought into Canada by a Canadian employer to work for a defined, temporary period of time and who meet the definition of worker under the workers' compensation legislation in the jurisdiction in which they are working.

Canada's Seasonal Agricultural Worker Programme offers an example of good practice:

- ▶ Migrant workers have similar social protection rights to those of Canadian workers (including for health benefits and family allowances).
- ▶ The Government involves employers in designing and implementing the programme, and gives administering agencies discretion in implementing the rules.
- ▶ Canadian law treats non-citizen status as an issue for anti-discrimination law, giving migrants the same status as other expressly protected groups.

Profile

- ▶ Every year over 150,000 foreign workers enter Canada to work temporarily.
- ▶ A work permit allows them to work in a specific job for a specific period of time.
- ▶ Once the job is finished, regardless of the reason, the worker must return home.
- ▶ It is estimated that over 200,000 are working illegally in Canada at any given time.

Process

- ▶ Employers apply for a Labour Market Opinion (LMO) issued by Human Resources and Skills Development Canada stating that the hiring of a foreign worker will have a positive or neutral effect on the Canadian labour market.
- ▶ Workers apply for a work permit.

Programmes

- ▶ Commonwealth Caribbean and Mexican Seasonal Agriculture Worker Program
- ▶ A general program for seasonal agricultural workers, specifically farm workers and fruit pickers
- ▶ Filipino Domestic Movement
- ▶ Provincial Nominee Program
- ▶ Skilled Worker Program
- ▶ Critical Impact Workers Program
- ▶ Provincial/Territorial Nominee Programs

Agreements

- ▶ North American Free Trade Agreement
- ▶ Canada-Chile Free Trade Agreement
- ▶ General Agreement on Trade in Services

Employment rules for migrant workers

- ▶ Cannot work in Canada without a work permit.
- ▶ Can only work for as long as the work permit is valid.
- ▶ Can only work in the job that the work permit was issued for.
- ▶ Cannot stay in the country once the job ends (for whatever reason).
- ▶ Cannot change jobs without getting a new work permit and the new employer has completed a LMO before the current work permit runs out.
- ▶ Is able to support him/herself in Canada without aid of a social programme.

Guiding principles

- ▶ Provide migrant workers with the maximum extent of service possible under the entitlement provisions of each jurisdiction before they leave Canada; there will be cases where the work permit has expired but the worker remains in Canada for treatment to a reasonable level of recovery.
- ▶ Provide fair and reasonable benefits (similar to Canadians injured on the job).
- ▶ Provide translation services.
- ▶ Provide expedited standardized assessments and clinical services (similar to any other injured workers).
- ▶ Provide workers and employers with information on coverage, claims, risk, assessment and prevention.
- ▶ Provide eligible dependants of fatally injured workers with appropriate documentation and appropriate benefits (similar to other injured workers).
- ▶ Target communication strategy to sectors / employers hiring migrant workers.

Best practices in communicating with temporary migrant workers (list developed by AWCBC)

- ▶ Multilingual translation of health, safety, rights and obligations information.
- ▶ Ready availability of interpretation services.
- ▶ Toll-free multilingual hotline also accessible from home country.
- ▶ Multilingual content on websites.
- ▶ Targeted social marketing.
- ▶ Grass roots community outreach to workers and employers/sectors hiring migrant workers.
- ▶ Linkages and partnerships with representative groups.
- ▶ Use of pictograms and video without language.
- ▶ Application of plain language principles.
- ▶ Use of multi-racial images in product design.

Issues/challenges

- ▶ The presence of migrant workers continues to increase in Canada.
- ▶ The estimated number of undocumented foreign workers continues to rise.
- ▶ Current immigration laws require a temporary foreign worker to leave the country as soon as the job that worker was hired to do ends or the worker is unable to continue working including due to a work injury.
- ▶ Temporary foreign workers may not have the same entitlement (e.g. retraining, return-to-work planning) under current WCB legislation as other Canadian workers due to deportation laws.
- ▶ It is difficult to manage the quality and availability of healthcare outside Canada.
- ▶ Cultural and language differences complicate the management of out-of-country claims.
- ▶ It is difficult to pay ongoing wage loss or fatality benefits outside Canada.
- ▶ Studies show that temporary foreign workers tend not to report claims, seek medical attention or raise workplace safety concerns.
- ▶ Temporary foreign workers are employed, at times, in low-paying, labour-intensive, dangerous jobs.

Source: Association of Workers' Compensation Board of Canada (AWCBC).

► Barriers to extension and solutions

Conventional approaches to designing and delivering social security benefits for salaried workers are not always appropriate for migrant workers. There are a number of barriers and challenges related to the extension of social security coverage to migrant workers, but measures to overcome them also exist. Barriers to social security coverage can be legal (migrant workers excluded from joining social security schemes) or effective (practical, administrative and access barriers).

What are the legal barriers to affiliation?

These include where the law excludes membership, or the exclusion is de facto because of a minimum period condition for affiliating to social security, as immigration rules often impose a limit on the stay in the host country. Table 9.4 lists some measure to reduce legal exclusion, while box 9.3 describes extensions of coverage under the law in Italy.

► **Table 9.4 Measures to reduce exclusion from access to host country social security**

<p>Universal access. Compulsory or voluntary arrangements, irrespective of the status of the worker.</p>	<p>Since 2012 in Russian Federation, foreign citizens and stateless persons (except for highly-skilled specialists) subject to a labour contract lasting at least six months are covered by mandatory pension insurance. The employer pays contributions at the same rate as for Russian citizens.</p>
<p>Easing conditions. Reducing the minimum service period required to join a scheme and the vesting periods for eligibility of benefits.</p>	<p>Requiring ten years of uninterrupted contributory service to be eligible for benefits disadvantages migrant workers.</p>
<p>Moving from nationality-based to resident-based conditions for membership.</p>	<p>Eligibility for benefits in South Africa depends on resident and not citizen status. There should be no distinction between temporary and permanent migrants.</p>
<p>Easing minimum residency-based requirements. A waiting period may be justified on administrative grounds and the nature of any bilateral and multilateral agreements which allow a migrant worker to stay in the home country plan if the period of working in the host country is short (e.g. up to 12 months). In addition to multilateral and bilateral agreements, a number of international legal instruments also exist to facilitate social security coverage, often as part of wider aims, for migrant workers.</p>	<p>The following international standards are helpful here: The ILO Migration for Employment Convention (Revised), 1949 (No. 97) and Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143). The United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families adopted in 1990 covers regular and irregular migrant workers. The ILO Social Protection Floors Recommendation, 2012 (No. 202) refers to coverage for “residents”. However national definitions of residents may exclude some migrant workers.</p>
<p>Breaking the link between immigration status and eligibility for social security.</p>	<p>Illegal immigrants may be eligible for social security coverage, as there may be no direct coordination between immigration departments and the social security institution. Switzerland, for example, has decided to facilitate the signing up of domestic workers through the Chèque Service system.</p>

► **Box 9.3 Improving the legal protection of migrant workers: Italy**

Traditionally, Italy has been a significant user of seasonal migrant worker labour, commonly in the agricultural sector. Since 1998, a number of laws have been passed to protect such workers. A distinction is made between permanent and temporary migrant workers, but the latter nonetheless have access to healthcare benefits, family allowances and sick leave.

All foreign workers insured as employees or self-employed workers are insured with INAIL (Istituto Nazionale per l'Assicurazione contro gli Infortuni del Lavoro) against physical and economic damage resulting from accidents at work and occupational diseases. Since 2000, this insurance has been extended to people employed in the care industry (family helpers and caregivers). Based on the principle of automatic payment of benefits, insured workers are entitled to benefits from INAIL even if the employer has not properly insured them and/or has not paid insurance premiums (the insurance company will pursue the employer for the unpaid contributions and the cost of the insurance paid).

Source: European Union.

Where social security coverage is not possible or not advantageous for the migrant worker in the host country due to a short stay or frequent moves, the migrant worker should be able to remain covered in the home country system under certain conditions. Maintaining coverage under the home country EI system can be done through the host country's employers contributing to the home country scheme, or by migrant workers being covered as self-employed. Table 9.5 illustrates some of the issues, while box 9.4 describes the situation for migrant workers from the Philippines.

► **Table 9.5 Coverage of migrant workers under a home country scheme**

Financing	How will employee and employer contributions be paid to the home country social security system? How will they be treated for tax purposes? Will an employer located in another country pay contributions?
Benefit calculations	What salary should be used for benefit calculation given the different levels of wages between host and home countries and the different currencies?
Duration	Certain agreements set out a maximum period for coverage in the home country system while working abroad. What happens if the worker stays longer in the host country?
Compliance	It is very difficult to assess and monitor the salary levels of international migrants in another country. For this reason, benefits are normally set at a fixed rate and contributions are notional.
Compulsory/voluntary nature of provision	Compulsory provision is preferable to ensure higher levels of coverage and to reduce adverse selection. Voluntary provision is often more realistic, reflecting the challenges of covering migrant workers.

► **Box 9.4 Social security benefits for overseas workers: Philippines**

The social security system (SSS) offers insurance benefits to Filipino workers, whether they are working in the Philippines or overseas. Affiliation procedures are simplified (forms are downloadable from the SSS website). The Philippines social security system has offices overseas providing direct advice to its Filipino nationals in countries where they are in high concentration.

The SSS for overseas Filipino workers (OFWs) has two programmes: the mandatory Regular OFW Coverage Program implemented in 1995 and the voluntary Flexi-Fund Program established in 2001 (adopted as a National Provident Fund for OFWs).

The monthly contributions are based on the monthly earnings declared at the time of registration, computed in Philippine Pesos.

Under the Regular Program, OFWs are entitled to various benefits and loan privileges, provided qualifying conditions for entitlement are met. Benefits include sickness, maternity, retirement, partial and total disability, death, and funeral. Loans can be made for loss of earnings, housing, house repair or improvement.

The Flexi-Fund Program supplements benefits under the regular OFW coverage payable upon retirement or disability. OFWs' benefits are equal to their total Flexi-Fund contributions plus earnings, in the form of either a monthly pension or a lump-sum payment, or a combination of both.

Flexi-Fund contributions are invested entirely in government securities. Interest earnings are computed based on the average 91-day Treasury bill rate, thus ensuring a transparent, high-yielding and risk-free investment of members' hard-earned income abroad.

Any amount (subject to a minimum) paid in excess of the required contribution is posted to the member's Flexi-Fund account and earns interest.

Flexi-Fund members may opt to apply for early withdrawal of their accumulated funds, as either a full or partial lump sum, in case of urgent financial need. The fund can provide short-term income replacement during unpaid periods of sickness or work-related incapacity. Pre-termination fees, however, will be imposed on withdrawal of contributions that have stayed in the Fund for less than a year.

Source: http://www.ofwguide.com/article_item-1898/SSS-Benefits-for-OFWs.html.

How can portability of benefits be ensured?

Migrant workers may build up rights in the host country social security system, but in the absence of a bilateral or multilateral agreement such entitlements may not be portable or transferable. Regarding EI benefits, a bilateral or multilateral agreement can provide portability of pensions in payment and other benefit entitlements such as reimbursement for medical care and rehabilitation service. Harmonization between the social security schemes that recognizes the period of employment incapacity can be another approach.

The challenge of portability is not only due to benefit continuity issues but for administrative reasons. Even when they are legally entitled to benefits, many migrant workers miss out on accrued pension benefits when leaving the host country due to lack of information or misunderstanding of their eligibility, or the inability of the social security administration to trace them. In many countries, the social security administration has a dedicated department to track beneficiaries who have left the country (as in **Sweden** and **Switzerland**).

Injured migrant workers often return home either to get support from their family or due to migration status, but they may not be able to find adequate medical treatment or rehabilitation services in their home country.

What are the main practices and challenges regarding bilateral and multilateral agreements?

Bilateral and multilateral agreements reinforce the legal coverage of migrant workers, and set out whether coverage is the responsibility of the home or host country, as well as the modalities of the coverage. They seek to avoid both lack of coverage and “double coverage”. Box 9.5 describes coverage in the **European Union** where there is free movement of labour between Member States.

Where social security coverage is voluntary, many migrant workers decide not to join; this creates a gap in social security coverage. In the **United States** the minimum income requirement is relatively high, meaning that many migrant workers who may be self-employed or work for a range of different employers miss out on coverage.

► Box 9.5 Migrant workers in the European Union

The free movement of labour is one of the four fundamental freedoms of the European Union. There are a number of legislative instruments relating to social security, together with supplementary provisions that protect migrant workers under three fundamental principles:

- non-discrimination between nationals of EU Member States and other countries;
- guarantee of portability of social security benefits between Member States; and
- aggregation of periods of coverage for the purpose of determining eligibility for benefit.

The underlying principle is that employees are covered in the social security system of the country where they work. However, for up to 24 months, they can remain in their home country social security system. Aggregation of service for the calculation of benefits promotes mobility. For supplementary occupational pensions, tax treatment must be consistent and there must be no discrimination based on nationality. The EU has also encouraged and supported efforts to create a system of Pan European Pensions.

The Convention on Legal Status of Migrant Workers and Members of Their Families of the CIS Member States (signed in 2008 and ratified in 2011) is an example of a multilateral agreement.

As of 2012, **Ukraine** had concluded bilateral social security agreements with **Bulgaria, Czech Republic, Estonia, Latvia, Lithuania, Portugal, Slovakia** and **Spain** covering all or most branches of social security (retirement, disability and survivors’ pensions, medical care, sickness and maternity, and employment injury). The agreements with Estonia, Latvia, Lithuania and Portugal also cover unemployment insurance.

When deciding what to include in a bilateral or multilateral agreement, it may be helpful to bear in mind that their overall purpose is to reduce the barriers to the payment of accrued rights abroad:

- The pro-rata formula is usually applied in the calculation of pensions to be paid by each country.
- The movement of exchange rates makes the final benefit outcome more uncertain.
- The increase of pensions in payment to inflation can be addressed.
- Control of disability payments made abroad can be complex if they are linked to specific conditions in addition to that of being alive (as for retirement benefits). The monitoring of such payments may require coordination with other countries’ administrations or a simplification of the related rules.

Barriers to implementation of multilateral and bilateral agreements include the following:

- Staff resources dealing with the implementation and administration of the agreement can be insufficient, or relevant skills (such as language or legal knowledge) may be lacking.
- Disability benefits involve different definitions regarding medical conditions and the interpretation of partial disability.
- Access to relevant information involves collaboration between different agencies in the home country and abroad.
- If there are significantly more immigrants than emigrants, this will have an asymmetric financial and administrative impact on the social security institutions.
- Differences in benefit structure and levels (such as a provident fund system in one country and a defined benefit social insurance system in another) make cost-neutral design of a multilateral agreement very difficult.

A key success factor in the operation of international agreements is effective and reliable data exchange between participating organizations. The data issue is set out in the ISSA *Guidelines on Contribution Collection and Compliance* (2020). An example of efforts to find a solution to this issue is the 2005 Baku Declaration, signed by 22 ISSA members and 14 from the International Association of Pension and Social Funds. The Declaration recognizes the need for greater coordination and data exchange between social security institutions, in bilateral and multilateral agreements and the principles of totalization for the determination of benefit entitlements. A Framework Guidance Document defines seven principles related to providing adequate social security benefits to migrants: universality, equality, accessibility, portability, comprehensiveness, credibility and sustainability.

What are the financial implications of agreements?

The aim of ensuring that migrant workers are no worse off than if they had not left their country will lead to cross-subsidies from one social security system to another, or between members of the social security system in each of the countries involved. The extent of these cross-scheme transfers depends on the nature of the benefit structure, rules regarding portability and the flow of migrant workers between countries.

Retirement systems are often redistributive, with cross-subsidies from richer to poorer countries and from younger to older people. The different financing methods of EI schemes can imply cross-subsidy between employers with different risk levels. If the value of benefit entitlements recognized for a migrant worker when leaving the host country's social security system is greater than the value of the employer and/or employee contributions paid during the accruing period, the transfer would have implications for the financing of benefits of others in the system.

Administering bilateral or multilateral agreements has financial and administrative costs for the social security schemes.

What are the main effective barriers to extension?

A change in the law is often insufficient to significantly increase coverage in the absence of supporting administrative and compliance measures. Given choice in voluntary schemes, many migrant workers will choose not to affiliate because of lack of resources, lack of information regarding benefits and costs, and uncertainty about their stay in the host country. Areas where social security effective coverage rates can be improved include:

- ▶ access and affiliation procedures;
- ▶ compliance of employers and roles of other stakeholders (see box 9.6);
- ▶ coverage of migrant workers' family members;
- ▶ returning home issues; and
- ▶ perception of the value and attractiveness of the coverage.

A focus by the relevant authorities on ensuring compliance reduces exploitation of migrant workers and allows equality of treatment for all workers.

▶ Box 9.6 The role of stakeholders: Thailand and Sri Lanka

Thailand: Encouraging migrants to formalize their status and affiliate to social security

The Ministry of Labour and the Social Security Office (SSO) monitor enforcement of the Social Security Act: setting out clear policies and guidelines to encourage registration; disseminating information among employers, migrant workers, and concerned agencies to improve understanding of the system; and imposing sanctions against employers who fail to register.

Sri Lanka: Working with other stakeholders and employee representatives

In May 2009, model bilateral agreements between three Sri Lankan trade unions and their counterpart unions from the Kingdom of Bahrain, Jordan and Kuwait were signed. The agreements follow a rights-based approach and through union action aim at granting Sri Lankan migrant workers the full panoply of internationally recognized labour rights.

How are family members in the home country affected by migration for work?

Many international migrant workers are separated from their family members, sometimes by choice but often because of residency restrictions in the host country. Family members in the home country are often vulnerable or without social security coverage. Migrant workers may not be able to rely on their family members during a period of incapacity in their host country.

The approaches to address the challenge of "split family" involve both policy and administration-driven measures such as a travel grant benefit provided by the social security system; the provision of two ID cards to enable workers to claim benefits (as in **India**); and working with a range of stakeholders to ensure migrant workers' awareness of their rights to benefits.

For example, Mexicans working abroad can register their family members in **Mexico** for the national health insurance scheme by signing up at Mexican Consulates in the United States. The family members are then covered for health benefits, as are the migrant workers when they return home.

Appendix 10 describes some examples of OSH responses to the needs of migrant workers.

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▶ Appendix 1

Key features of EI programmes in selected countries

This appendix presents information on the following aspects of EI programmes in 171 countries:

- ▶ type of programme
- ▶ coverage
- ▶ financing

The data are mainly extracted from section 3.4 of the ILO *World Social Protection Report 2017–19* (ILO 2017) and are updated with information from four reports of the ISSA and SSA *Social Security Programs Throughout the World: Africa* (September 2019); *Asia and the Pacific* (March 2019); *Americas* (March 2018); and *Europe* (September 2018).

More details on specific countries can be obtained from the above source which includes references to the web sites of administrative agencies, as well as from Mpedi and Nyenti (2016) for Eastern and Southern Africa

Table A1.1 presents the number of countries included in table A1.2 grouped by region and type of programme, as well as by type of employer's contribution rate and type of programme.

► Table A1.1 Employment insurance: Number of countries and type of programme, by region

Region	All programme types	Type of programme			
		Social insurance	Employer liability	Mixed	No specific programme
Northern Africa	6	5	1	-	-
Sub-Saharan Africa	42	28	10	4	-
Latin America and the Caribbean	33	26	6	1	-
Northern America	2	1	1	-	-
Arab States	8	6	2	-	-
Eastern Asia	6	4	1	1	-
South-Eastern Asia	10	6	2	2	-
Southern Asia	7	2	3	2	-
Oceania	8	3	5	-	-
Northern, Southern and Western Europe	29	21	2	3	3
Eastern Europe	10	8	-	1	1
Central and Western Asia	10	7	3	-	-
Total	171	117	36	14	4
Type of contribution rate					
Uniform rate	50	47	-	3	-
Differential rates	44	41	-	3	-
Included in other contributions	41	29	-	8	4
Not applicable	36	-	36	-	-
Total	171	117	36	14	4

► **Table A1.2**
Coverage and financing in 171 countries (periodic payments unless otherwise indicated)

Country/ territory	Type of programme ¹	Contribution rate (%) ²				Estimate of legal employment injury coverage as % of the labour force	
		Employee	Employer	Self-employed	Financing from government	Mandatory coverage	Voluntary coverage
Northern Africa							
Algeria	Social insurance	No contribution	1.25% of gross payroll	Not covered	No contribution	31.8	0.0
Egypt	Social insurance	No contribution	3% of covered payroll	Not covered	No contribution	54.5	0.0
Libya	Social insurance	Global contribution under old age for cash benefits (3.75% of covered earnings) and under sickness for medical benefits (1.5% of covered earnings)	Global contribution under old age for cash benefits (10.5% of covered earnings; 11.25% for foreign companies) and under sickness for medical benefits (2.45% of covered payroll)	Global contribution under old age for cash benefits (15.675% of declared income) and under sickness for medical benefits (3.5% of covered income)	Global contribution under old age for cash benefits (0.75% of covered earnings plus annual subsidies) and under sickness for medical benefits (5% of covered earnings)	80.8	0.0
Morocco	Employer liability (involving insurance with a private carrier)	No contribution	Total cost (pays benefits or insurance premiums)	Not covered	No contribution	40.4	0.0
Sudan	Social insurance	No contribution	Global contribution under old age (17% of payroll)	Global contribution, under old age (25% of declared monthly income)	No contribution	62.1	0.0
Tunisia	Social insurance	No contribution	0.4% to 4.0% of gross payroll, depending on assessed risk	Voluntary basis	No contribution	42.0	15.3
Sub-Saharan Africa							
Angola	Employer liability	No contribution	Total cost (pays insurance premiums)	Voluntary basis	No contribution	44.7	0.0
Benin	Employer liability: Temporary disability benefit (Periodic Payment: Congé de maladie)	No contribution	1% to 4% of gross payroll according to assessed risk	Not covered	No contribution	5.2	0.0
Botswana	Employer liability (normally involving insurance with a private carrier)	No contribution	Total cost (pays insurance premiums or provides benefits directly)	Not covered	No contribution	43.1	0.0
Burkina Faso	Social insurance (cash and medical benefits); employer liability (temporary cash benefits only)	No contribution	3.5% of covered payroll; total cost for employer liability	Not covered	No contribution	5.5	0.0
Burundi	Social insurance	No contribution	3% of covered monthly payroll	Not covered	No contribution	4.9	0.0

Country/ territory	Type of programme ¹	Contribution rate (%) ²				Estimate of legal employment injury coverage as % of the labour force	
		Employee	Employer	Self-employed	Financing from government	Mandatory coverage	Voluntary coverage
Cabo Verde	Social insurance	No contribution	2% to 6% depending on worker's status; flat rate for household workers	6% of covered monthly earnings	No contribution	56.6	0.0
Cameroon	Social insurance	No contribution	1.75%, 2.5% or 5% of gross payroll according to assessed risk	Not covered	No contribution	12.4	0.0
Central African Republic	Social insurance	No contribution	3% of covered payroll	Not covered	No contribution	13.9	0.0
Chad	Social insurance	No contribution	4% of gross payroll	Not covered	Subsidizes the programme	4.7	0.0
Congo	Social insurance	No contribution	2.25% of covered payroll	2.25% of income; voluntary basis	No contribution	14.2	0.0
Congo, Democratic Republic of the	Social insurance	No contribution	1.5% of monthly earnings (may be higher for high-risk industries)	Not covered	No contribution	26.2	0.0
Côte d'Ivoire	Social insurance	No contribution	2% to 5% of gross payroll according to assessed risk	Contribution varies according to assessed risk; voluntary basis	No contribution	14.7	46.2
Djibouti	Social insurance	No contribution (cash benefits); 2% of covered earnings (medical benefits under sickness)	1.2% (cash benefits); 5% (medical benefits under sickness)	7% of covered earnings (medical benefits only under sickness)	No contribution	93.6	0.0
Equatorial Guinea	Social insurance	Global contribution under old age (4.5% of gross earnings)	Global contribution under old age (21.5% of gross payroll)	Not covered	Global contribution under old age (at least 25% of annual social security receipts)	67.2	0.0
Ethiopia	Social insurance; Employer liability (temporary disability benefit (periodic payment), medical benefits ³ and funeral expenses)	Global contribution under old age (7% of basic salary)	Global contribution under old age (11% or payroll (civilian) or 25% of payroll (military)); total cost for employer liability (pays insurance premiums)	Voluntary basis	No contribution	17.4	0.0
Gabon	Social insurance	No contribution	3% of gross payroll	Special system	No contribution	80.8	0.0
The Gambia	Social insurance	No contribution	1% of covered payroll	Not covered	No contribution	23.4	0.0
Ghana	Employer liability (normally involving insurance with a private carrier)	No contribution	Total cost (provides benefits directly)	Not covered	No contribution	16.6	0.0
Guinea	Social insurance	No contribution	4% of covered payroll	Not covered	No contribution	30.8	0.0

Country/ territory	Type of programme ¹	Contribution rate (%) ²				Estimate of legal employment injury coverage as % of the labour force	
		Employee	Employer	Self-employed	Financing from government	Mandatory coverage	Voluntary coverage
Kenya	Employer liability system through private carriers	No contribution	Total cost (pays insurance premiums or provides benefits directly)	Not covered	No contribution	9.3	0.0
Lesotho	Social insurance	No contribution	Percentage of gross monthly earnings (variable according to terms of agreement, industry mandate or ministerial directive)	Not covered	No contribution
Liberia	Social insurance	No contribution	2% of payroll	1.75% of declared income	No contribution	80.5	0.0
Madagascar	Social insurance	No contribution	1.25% of covered payroll 1	Not covered	No contribution	10.4	0.0
Malawi	Employer liability (normally involving insurance with a private carrier)	No contribution	Total cost	Not covered	No contribution	6.9	0.0
Mali	Social insurance	No contribution	1% to 4% of gross payroll depending on assessed risk	1% to 4% of gross earnings depending on assessed risk; voluntary basis	No contribution	8.6	57.2
Mauritania	Social insurance	No contribution	2% of monthly covered payroll (permanent disability) or 2.5% of gross monthly payroll (medical care and temporary disability benefits)	Not covered	No contribution	49.1	0.0
Mauritius	Social insurance	No contribution	Global contribution under old age (6% to 10.5% of payroll)	Not covered	No contribution	79.3	0.0
Namibia	Social insurance	No contribution	Total cost (contribution varies depending on industry classification)	Not covered	No contribution	53.5	0.0
Niger	Social insurance	No contribution	1.75% of covered payroll	1.4% of covered annual earnings	No contribution	90.9	0.0
Nigeria	Social insurance	No contribution	1% of payroll (may increase after 2 years according to assessed risk)	Financing mechanisms still undetermined	No contribution	32.8	0.0
Rwanda	Social insurance	No contribution	2% of gross monthly payroll	Not covered	No contribution	19.0	0.0
Sao Tome and Principe	Social insurance	Global contribution under old age (6% of gross earnings)	Global contribution under old age (8% of gross payroll)	Optional global contribution under old age (14% of earnings)	Subsidies as needed	86.4	0.0
Senegal	Social insurance	No contribution	1%, 3%, or 5% of covered payroll depending on assessed risk	1%, 3%, or 5% depending on assessed risk	No contribution	27.3	34.0
Seychelles	Social insurance	No contribution	No contribution	Not covered	Total cost is financed from earmarked income tax	80.0	0.0

Country/ territory	Type of programme ¹	Contribution rate (%) ²				Estimate of legal employment injury coverage as % of the labour force	
		Employee	Employer	Self-employed	Financing from government	Mandatory coverage	Voluntary coverage
Sierra Leone	Employer liability (normally involving insurance with a private carrier)	No contribution	Total cost (pays insurance premiums or provides benefits directly)	Not covered	Annual contribution	6.1	0.0
South Africa	Employer liability (involving insurance with a public carrier)	No contribution	Total cost (pays insurance premiums which vary depending on the industry and reported accident rate)	Not covered	No contribution	63.9	0.0
Swaziland	Employer liability (involving insurance with a private carrier)	No contribution	Total cost (pays insurance premiums)	Not covered	No contribution	62.6	0.0
Tanzania, United Republic of	Social insurance	Global contribution under old age (10% of gross salary)	1% of payroll (private sector); 0.5% (public sector)	Global contribution under old age (amount varies according to scheme); voluntary basis	No contribution	8.8	68.0
Togo	Social insurance	No contribution	2% of gross payroll	2% of declared income	No contribution	84.2	0.0
Uganda	Employer liability (involving insurance with a private carrier)	No contribution	Total cost (pays insurance premiums)	Not covered	No contribution	16.0	0.0
Zambia	Employer liability (involving insurance with a public carrier)	No contribution	Total cost (private insurance varies according to assessed risk)	Not covered	No contribution	93.4	0.0
Zimbabwe	Employer liability	No contribution	Total cost (pays insurance premiums based on the employee's monthly earnings)	Not covered	No contribution	21.7	0.0
Latin America and the Caribbean							
Argentina	Employer liability	No contribution	Total cost (pays insurance premiums or self insures)	Not covered	No contribution	69.7	0.0
Bahamas	Social insurance	Global contribution, under old age (3.9% of weekly covered earnings)	Global contribution, under old age (5.9% of covered payroll)	2% of covered earnings	No contribution	82.6	0.0
Barbados	Social insurance	No contribution	0.75% of payroll	Not covered	No contribution	65.6	0.0
Belize	Social insurance	Global contribution, under old age (flat rate that varies according to 8 wage classes)	Global contribution, under old age (flat rate that varies according to 8 wage classes)	Global contribution, under old age (flat rate that varies according to 8 wage classes)	No contribution	88.3	0.0

Country/ territory	Type of programme ¹	Contribution rate (%) ²				Estimate of legal employment injury coverage as % of the labour force	
		Employee	Employer	Self-employed	Financing from government	Mandatory coverage	Voluntary coverage
Bermuda	Supreme Court administers the lump-sum benefits. Courts supervise the agreement between an employer and the insured on the amounts paid.	No contribution	Total cost (pays insurance premiums or provides benefits directly)	Not covered	No contribution	32.2	0.0
Bolivia, Pluri- national State of	Social insurance (temporary disability and medical benefits) and mandatory individual account (permanent disability and survivor benefits) system (privately managed since 1997).	Global contribution under old age (1.71% of covered earnings for temporary disability benefits)	Global contribution under sickness (10% of payroll for temporary disability and medical benefits); global contribution under old age (1.71% of covered payroll for permanent disability benefits)	Global contribution under sickness (temporary disability and medical benefits); global contribution under old age (1.71% of covered earnings for permanent disability benefits)	No contribution	33.7	57.9
Brazil	Social insurance	No contribution	1% to 3% of gross payroll according to assessed risk; 0.1% of gross payroll for employers of rural workers	Not covered	No contribution	62.9	0.0
British Virgin Islands	Social insurance	No contribution	0.5% of covered monthly payroll	0.5% of declared monthly earnings	No contribution	98.4	0.0
Chile	Social insurance	No contribution	0.95% + up to 3.4% of covered payroll according to assessed risk (companies with high accident rates pay up to 6.8% of covered payroll)	0.95% declared income + up to 3.4% declared earnings depending on the occupation	No contribution	93.8	0.0
Colombia	Social insurance and individual account system	No contribution	0.34% to 8.7% of covered payroll according to assessed risk	0.34% to 8.7% of declared covered earnings according to assessed risk; voluntary basis	Global contribution	44.6	46.3
Costa Rica	Employer liability (involving compulsory and voluntary insurance with a public carrier)	No contribution	Total cost (pays insurance premiums that vary according to assessed risk)	Not covered	No contribution	68.6	0.0
Cuba	Social insurance (cash benefits); universal (medical benefits)	Global contribution under old age (1% to 5% of earnings)	Global contribution under old age (12.5% of gross payroll for the public sector; 14.5% for the private sector)	Not covered	Global contribution under old age (any deficit)	97.3	0.0
Dominica	Employer liability	No contribution	0.5% of employee's gross earnings	Not covered	No contribution	60.8	0.0
Dominican Republic	Social insurance	No contribution	Total cost (1.2% of payroll on average, according to assessed risk)	Not covered	No contribution	47.8	0.0

Country/ territory	Type of programme ¹	Contribution rate (%) ²				Estimate of legal employment injury coverage as % of the labour force	
		Employee	Employer	Self-employed	Financing from government	Mandatory coverage	Voluntary coverage
Ecuador	Social insurance	No contribution. 0.55% of gross earnings for voluntary contributors	0.55% of payroll	0.55% of gross declared earnings	40% of the cost of employment injury pensions	52.9	43.4
El Salvador	Social insurance	Global contribution under sickness (3% of covered earnings)	Global contribution under sickness (7.5% of covered payroll)	Global contribution under sickness (10.5% of declared income)	Annual subsidy	26.8	0.0
Grenada	Social insurance	No contribution	1% of gross payroll	1% of gross earnings	No contribution	60.7	0.0
Guatemala	Social insurance	1% of gross earnings	3% of gross payroll	Not covered	1.5% of gross payroll	58.8	0.0
Guyana	Social insurance	Global contribution under old age (5.6% of covered earnings; 9.3% of average weekly earnings for the voluntarily insured)	Global contribution under old age (8.4% of covered monthly payroll; 1.5% for persons younger than age 16 and aged 60 or older)	Not covered	Covers any deficit	56.6	0.0
Haiti	Social insurance	No contribution	2% of payroll (commerce), 3% of payroll (industry, construction, and agriculture), or 6% of payroll (mining).	Not covered	No contribution	15.7	0.0
Honduras	Employer liability (program administered by Social Security Institute)	No contribution	Total cost (pays insurance premiums)	Not covered (except a few categories; pay insurance premiums)	No contribution	34.5	0.0
Jamaica	Social insurance	No contribution	Global contribution under old age (2.5% of covered payroll; JMD 100 a week for household workers)	Not covered	No contribution	52.0	0.0
Mexico	Social insurance	No contribution	0.5% to 15% of payroll depending on assessed risk	Voluntary basis	No contribution	49.3	8.9
Nicaragua	Social insurance	No contribution	1.5% of covered payroll (+1.5% of covered payroll for war victims' pensions)	Not covered	No contribution	44.9	0.0
Panama	Employer liability (involving insurance with a public carrier)	No contribution	Total cost (pays insurance premiums that vary according to assessed risk)	Not covered	No contribution	64.1	0.0

Country/ territory	Type of programme ¹	Contribution rate (%) ²				Estimate of legal employment injury coverage as % of the labour force	
		Employee	Employer	Self-employed	Financing from government	Mandatory coverage	Voluntary coverage
Paraguay	Social insurance	Global contribution under old age (9% of gross earnings)	Global contribution under old age (14% of gross payroll)	Global contribution under old age (12.5% of the legal minimum wage + 0.5% for administrative fees) Voluntary basis	Global contribution under old age (1.5% of gross earnings)	52.8	41.8
Peru	Social insurance	No contribution	0.63% to 1.84% of covered payroll depending on assessed risk and the reported accident rate	Flatrate contribution from PEN 11 to 39	No contribution	48.4	0.0
Saint Kitts and Nevis	Social insurance	No contribution	1% of covered payroll	Not covered	No contribution	80.6	0.0
Saint Lucia	Social insurance	Global contribution under old age (5% of covered monthly earnings)	Global contribution under old age (5% of covered monthly payroll)	Not covered	No contribution	49.5	0.0
Saint Vincent and the Grenadines	Social insurance	No contribution	0.5% of covered payroll	Not covered	No contribution	59.4	0.0
Trinidad and Tobago	Social insurance	Global contribution under old age (4% of covered weekly or monthly earnings according to 16 wage classes; 11.4% for the voluntarily insured)	Global contribution under old age (8% of covered weekly or monthly payroll, according to 16 wage classes)	Not covered	No contribution	74.3	0.0
Uruguay	Employer liability (through a public carrier) system	No contribution	Total cost (varies according to assessed risk)	Not covered	No contribution	68.3	0.0
Venezuela	Social insurance	No contribution	0.75% to 10% of covered payroll according to assessed risk	Voluntary basis	No contribution	57.9	0.0

Country/ territory	Type of programme ¹	Contribution rate (%) ²				Estimate of legal employment injury coverage as % of the labour force	
		Employee	Employer	Self-employed	Financing from government	Mandatory coverage	Voluntary coverage
Northern America							
Canada	Social insurance	No contribution	Total cost (varies by industry and according to assessed risk; large firms in some provinces may selfinsure)	Not covered	No contribution	78.8	0.0
United States	Employer liability; social insurance (pneumoconiosis benefits only)	Nominal contributions in a few states	Total cost or most of the costs of private insurance; premiums vary according to assessed risk (1.35% of payroll on average in 2014)	Not covered	No contribution	87.6	0.0
Arab States							
Bahrain	Social insurance	No contribution	3% of the employee's monthly earnings	Not covered	No contribution	84.6	0.0
Jordan	Social insurance	No contribution	2% to 4% of monthly payroll, depending on sector risk and implementation of OSH standards	...	Any deficit	44.6	0.0
Kuwait	Employer liability	No contribution	Total cost	Not covered	No contribution	95.1	2.6
Lebanon	Employer liability (involving insurance with a private carrier)	No contribution	Total cost	Not covered	No contribution	47.8	0.0
Oman	Social insurance	No contribution	1% of payroll	Not covered	No contribution	40.2	0.0
Saudi Arabia	Social insurance	No contribution	2% of payroll	Not covered	Any actuarial deficit	89.9	0.0
Syrian Arab Republic	Social insurance	No contribution	3% of payroll	Not covered	No contribution	47.8	0.0
Yemen	Social insurance	No contribution	1% of total payroll (public sector); a contribution is paid (private sector)	Not covered	No contribution	37.7	0.0

Country/ territory	Type of programme ¹	Contribution rate (%) ²				Estimate of legal employment injury coverage as % of the labour force	
		Employee	Employer	Self-employed	Financing from government	Mandatory coverage	Voluntary coverage
Eastern Asia							
Hong Kong, China	Employer liability (involving insurance with a private carrier)	No contribution	Total cost	Not covered	No contribution	88.0	0.0
Japan	Social insurance	No contribution	0.25% to 8.8% of payroll, according to the type of business	0.3% to 5.2% of average earnings, depending on the type of business	Subsidies as needed	85.5	0.0
Korea, Republic of	Social insurance	No contribution	0.75% to 22.65% of total wages and payroll, depending on the type of industry	0.7% to 34% of declared earnings or payroll; voluntary basis 4	No contribution	70.6	0.0
Mongolia	Social insurance	No contribution	0.8%, 1.8% or 2.8% of gross payroll according to risk classification of main activity and sector	Voluntary basis; 1 % of monthly declared earnings (range of contributory income: monthly minimum wage and ten times the monthly minimum wage)	No contribution	61.9	38.1
Taiwan, China	Social insurance	No contribution	Cash benefits: 0.22% on average (0.04% to 0.92% of monthly payroll) according to assessed risk + 0.07% for on and off-duty accidents	Cash benefits: 0.66% to 0.594% of gross monthly income, according to assessed risk Medical benefits: 4.69% of the insured's monthly reported earnings multiplied by one plus the number of dependants, up to three	Cash benefits: cost of administration; 0.044% to 0.396% of gross monthly income for self-employed persons, according to industry's assessed risk. Medical benefits: under sickness and maternity 5	74.1	0.0

Country/ territory	Type of programme ¹	Contribution rate (%) ²				Estimate of legal employment injury coverage as % of the labour force	
		Employee	Employer	Self-employed	Financing from government	Mandatory coverage	Voluntary coverage
South-Eastern Asia							
Brunei Darau-salam	Employer liability	No contribution	Provides benefits directly to employees	Not covered	No contribution	85.3	0.0
Cambodia	Social insurance	No contribution	0.80% of total payroll for social insurance; total cost for employer liability	Not covered	Subsidies as needed	15.3	0.0
Indonesia	Social insurance	No contribution	0.24% to 1.74% of monthly wage (contributions vary according to assessed work environment risk level)	1% of monthly declared earnings	No contribution	93.8	0.0
Lao PDR	Social insurance	No contribution	0.5% of gross monthly insurable earnings	Not covered	0.5% of gross monthly insurable earnings	6.7	0.0
Malaysia	Social insurance	No contribution	1.25% of monthly payroll, according to 45 wage classes	Not covered	No contribution	71.6	0.0
Myanmar	Social insurance	No contribution	1 to 1.5% of covered monthly payroll (rate varies according to business size and accident rate)	Voluntary basis	No contribution	38.2	61.0
Philippines	Social insurance	No contribution	0.2% for monthly earnings of at least PHP 14,750; 0.06% for monthly earnings below PHP 14,750	Not covered	Any deficit	55.5	0.0
Singapore	Employer liability (involving insurance with a private carrier)	No contribution	Total cost (provides benefits directly or pays insurance premiums)	Not covered	No contribution	72.9	0.0
Thailand	Employer liability (involving insurance with a public carrier)	No contribution	0.2% to 1% of annual payroll according to assessed risk	Not covered	No contribution	41.0	0.0
Viet Nam	Social insurance; employer liability (temporary disability benefits)	No contribution	0.5% of monthly payroll; total cost (temporary disability benefits)	Not covered	No contribution	38.5	0.0

Country/ territory	Type of programme ¹	Contribution rate (%) ²				Estimate of legal employment injury coverage as % of the labour force	
		Employee	Employer	Self-employed	Financing from government	Mandatory coverage	Voluntary coverage
Southern Asia							
Bangladesh	Employer liability	No contribution	Total cost	Not covered	No contribution	12.5	0.0
Bhutan	Employer liability (involving insurance with a public carrier)	No contribution	Total cost (provides benefits directly or pays insurance premiums)	Not covered	No contribution	26.3	0.0
India	Social insurance	Global contribution under sickness (1% of wages)	Global contribution under sickness (3% of payroll)	Not covered	Global contribution under sickness (12% of the cost of medical benefits)	7.9	0.0
Iran, Islamic Rep. of	Social insurance	Global contribution under old age (5% of earnings; 9.5% of earnings for commercial drivers)	Global contribution under old age (14% of payroll)	Global contribution under old age	Global contribution under old age (2% of earnings for employed, self-employed and voluntarily insured persons; 9.5% for commercial drivers)	49.7	0.0
Nepal	Employer liability (involving insurance with a private carrier). Mandatory social insurance (private-sector employees, including daily workers) gradually implemented May 2019.	No contribution	Employer liability (total cost). Gradually implemented social insurance since May 2019 (Insured persons 11% and employers 20% = 28.33% old-age, 1.40% disability and work injury, 0.27% survivor, 1% sickness and maternity).	Not covered	No contribution	3.8	0.0
Pakistan	Benefits are paid under both social insurance and employer liability.	No contribution	6% of monthly payroll; total cost of employer liability	Not covered	No contribution	28.6	0.0
Sri Lanka	Universal (medical benefits). Employer liability (private insurance carriers or direct payment of compensation to employees or dependent survivors).	No contribution	1% to 7.5% of gross payroll according to assessed risk (provides benefits directly or pays insurance premiums)	Not covered	Total cost of medical benefits	53.6	0.0

Country/ territory	Type of programme ¹	Contribution rate (%) ²				Estimate of legal employment injury coverage as % of the labour force	
		Employee	Employer	Self-employed	Financing from government	Mandatory coverage	Voluntary coverage
Oceania							
Australia	Employer liability (involving insurance with a public or private carrier)	No contribution	Total cost (insurance premiums vary according to assessed risk)	Total cost of self-insurance. Voluntary basis	No contribution	77.9	16.0
Fiji	Employer liability	No contribution	Total cost (provides benefits directly)	Not covered	No contribution	40.1	0.0
Kiribati	Employer liability (involving insurance with a private carrier)	No contribution	Total cost	Not covered	No contribution	32.8	0.0
New Zealand	Universal; employer liability (Accident Compensation Corporation administers the benefits). Employers may self-manage claims.	No contribution	Contribution rates set each year	Contribution rates set each year	No contribution	100.0	0.0
Palau	Employer liability	No contribution	Total cost	Not covered	No contribution
Papua New Guinea	Employer liability (involving insurance with a private carrier)	No contribution	Total cost (pays insurance premiums or provides benefits directly)	Not covered	No contribution	6.4	0.0
Samoa	Social insurance system	No contribution	1% of payroll	Not covered	No contribution	57.9	0.0
Solomon Islands	Employer liability (involving insurance with a private carrier)	No contribution	Total cost	Not covered	No contribution	14.5	0.0

Country/ territory	Type of programme ¹	Contribution rate (%) ²				Estimate of legal employment injury coverage as % of the labour force	
		Employee	Employer	Self-employed	Financing from government	Mandatory coverage	Voluntary coverage
Northern, Southern and Western Europe							
Albania	Social insurance	No contribution	0.3% of payroll	Not covered	No contribution	34.0	0.0
Austria	Social insurance	No contribution	1.3% of covered payroll	Special system	No contribution	94.3	0.0
Belgium	Social insurance	No contribution	0.32% of reference earnings for work injury + insurance premium that varies according assessed risk; 1% of reference earnings for occupational disease + 0.01% for asbestos-related illnesses	Not covered	No contribution	77.6	0.0
Croatia	Social insurance (temporary disability benefits); permanent benefits are covered under old age, disability and survivors	No contribution (temporary disability benefits)	0.5% of covered payroll (temporary disability benefits)	0.5% of income (temporary disability benefits)	No contribution	83.7	0.0
Denmark	Direct provision involving insurance with a private (accidents) or public (occupational diseases) carrier; universal (medical benefits)	No contribution	Total cost, under sickness and maternity	Voluntary basis	Global contribution, under sickness	78.5	8.1
Estonia	Social insurance; no specific programme for employment injury	No contribution	Global contribution under sickness (13% of payroll)	Global contribution under sickness (13% of declared earnings)	Any deficit (total cost for employees whose employer is insolvent)	93.9	0.0
Finland	Employer liability; mandatory private insurance	No contribution	0.1% to 7% of annual payroll, according to the profession's assessed risk	Annual premium according to assessed risk for the profession; voluntary basis	No contribution	77.7	12.9
France	Social insurance	No contribution; voluntarily insured persons pay variable contributions according to assessed risk	Total cost (varies according to assessed risk)	Special system	No contribution	89.6	0.0

Country/ territory	Type of programme ¹	Contribution rate (%) ²				Estimate of legal employment injury coverage as % of the labour force	
		Employee	Employer	Self-employed	Financing from government	Mandatory coverage	Voluntary coverage
Germany	Social insurance	No contribution	1.18% on average in 2016 (contributions vary according to assessed risk)	Not covered (with few exceptions)	Subsidy for agricultural accident insurance; contributions for specific groups (students, children in day-care institutions and specified voluntary activities)	89.2	0.0
Greece	Social insurance	Global contribution under sickness (0.4% of covered monthly earnings for cash benefits and 2.15% for medical benefits)	Global contribution under sickness (0.25% of covered monthly earnings for cash benefits and 4.3% for medical benefits) + 1% of payroll (depending on the reported accident rate)	Not covered	Guaranteed annual subsidy	48.9	0.0
Iceland	Social insurance; social assistance	No contribution	Global contribution under old age (7.35% of gross payroll for the universal pension)	Global contribution under old age (part of 7.35% of gross earnings for the universal pension)	Partially financed through general taxation	96.3	0.0
Ireland	Social insurance	Global contribution under old age (0% to 4% of covered weekly earnings depending on earnings)	Global contribution under old age (8.5% to 10.75% of gross wages according to weekly earnings)	Not covered	Any deficit (private-sector employees); total cost (public-sector employees)	75.0	0.0
Italy	Social insurance	No contribution	0.04% to 1.3% of payroll, depending on the assessed degree of risk (2.0% on average in 2017). Employers pay two-thirds of the contribution for contract workers.	Variable contribution according to assessed risk	No contribution	88.1	0.0
Latvia	Social insurance	No contribution	Global contribution under old age (23.59% of covered earnings)	Not covered	Cost of state-guaranteed health-care services (annual state budget)	78.8	0.0
Liechtenstein	Social insurance	No contribution	Variable contribution according to assessed risk	Variable contribution according to extent of coverage required and assessed risk; voluntary basis	No contribution
Lithuania	Social insurance	No contribution	0.18% to 1.8% of earnings, based on four employment categories	Not covered	No contribution	79.7	0.0

Country/ territory	Type of programme ¹	Contribution rate (%) ²				Estimate of legal employment injury coverage as % of the labour force	
		Employee	Employer	Self-employed	Financing from government	Mandatory coverage	Voluntary coverage
Luxem- bourg	Social insurance	No contribution	1% of covered payroll	1% of covered income	50% of the cost of administration	93.1	0.0
Malta	Social insurance	Global contribution under old age (10% of covered wages)	Global contribution under old age (10% of covered payroll)	Global contribution under old age; variable amount depending on net income	50% of the value of total contributions	95.0	0.0
Monaco	Mandatory private insurance	No contribution	Total cost (pays insurance premiums which vary according to the reported risk rate) ⁷	Not covered	No contribution
Netherlands	Social insurance; no specific programme for employment injury	Global contribution under sickness, old age, disability, survivors	Global contribution under sickness, old age, disability, survivors	Global contribution under sickness, old age, disability, survivors	Global contribution under sickness, old age, disability, survivors	93.1	0.0
Norway	Social insurance (cash benefits); universal (medical benefits) and employer liability (compulsory insurance with a private carrier to cover the loss of earnings and expenses not compensated by the National Insurance Scheme)	No contribution	Global contribution under old age (14.1% of gross payroll); total cost of premiums for compulsory private insurance	0.4% of taxable income;		88.9	6.7
Portugal	voluntary basis	Any deficit	88.9	6.7		87.6	0.0
San Marino	Social insurance (occupational diseases) and employer liability (work injury) system	No contribution (work injury); global contribution, under old age (occupational diseases)	Premiums vary according to assessed risk (work injury); global contribution under old age (23.75% of payroll) (occupational diseases)	Premiums through liability insurance (work injury); global contribution under old age (29.6% of reference income; 34.75% for special categories of self- employed persons) (occupational diseases)	No contribution	90.9	0.0
Serbia	Social insurance	Global contribution under old age (5.4% of gross earnings)	Global contribution under old age (16.10% of payroll)	Global contribution under old age (14.5% to 22% of gross income, according to the category of employment)	Global contribution under old age (5% of total contributions; higher contributions for agricultural workers) or up to 25% to cover any deficit	82.1	0.0
Slovenia	Social insurance; no specific programme for employment injury	Provided under old age, disability and survivors	Provided under old age, disability and survivors	Provided under old age, disability and survivors	Provided under old age, disability and survivors	91.0	0.0

Country/ territory	Type of programme ¹	Contribution rate (%) ²				Estimate of legal employment injury coverage as % of the labour force	
		Employee	Employer	Self-employed	Financing from government	Mandatory coverage	Voluntary coverage
Spain	Social insurance	No contribution	1.98% (0.90% to 7.15% of covered payroll according to assessed risk)	Contributions vary according to the level of coverage chosen	Any deficit caused by a decline in contribution rates for permanent disability benefits	64.4	13.5
Sweden	Voluntary basis	No contribution	0.2% of payroll	0.3% of declared earnings	No contribution	92.6	0.0
Switzerland	Social insurance and mandatory private insurance system	No contribution	Total cost of private insurance (insurance premiums vary according to assessed risk)	Voluntary basis	No contribution	81.9	13.6
United Kingdom	Social insurance; social assistance	Global contribution under old age (12% of weekly earnings) 8	Global contribution under old age (13.8% of employee's earnings)	Not covered	Global contribution under old age (total cost of meanstested allowances; pays a treasury grant to cover any deficit)	80.3	0.0
Eastern Europe							
Belarus	Social insurance	No contribution	0.3% to 0.9% of payroll according to assessed professional risk	Not covered	No contribution	96.3	0.0
Bulgaria	Social insurance	No contribution	0.4% to 1.1% of payroll according to assessed risk	0.4% to 1.1% of income according to assessed risk;	No contribution	79.9	10.9
Czech Republic	Social insurance; employer liability (private insurance finances the top-up amounts for the temporary disability benefit and permanent disability pension).	No contribution (temporary disability benefits); global contribution under old age (6.5% of monthly covered earnings) (permanent disability pension)	Global contributions under old age and sickness and maternity;	Not covered	Any deficit	78.5	0.0
Hungary	Social insurance; no specific programme for employment injury	Global contribution under old age and sickness (17% of covered monthly earnings)	Global contribution under old age (27% of monthly payroll)	Global contribution under old age (37% of declared monthly earnings)	Any deficit	93.2	0.0
Moldova, Republic of	Social insurance (cash benefits); universal (medical benefits)	No contribution	Global contribution under old age (22–23% of payroll depending on sector)	Flatrate contribution (MDL 6,372 per year; MDL 1,584 per year for agricultural landowners);	No contribution	62.2	32.9

Country/ territory	Type of programme ¹	Contribution rate (%) ²				Estimate of legal employment injury coverage as % of the labour force	
		Employee	Employer	Self-employed	Financing from government	Mandatory coverage	Voluntary coverage
Poland	voluntary basis	No contribution	From 0.4% to 3.6% of payroll, according to assessed risk and number of employees	1.8% of declared earnings	The cost of specialized procedures promoting good public health practices	100.0	0.0
Romania	Social insurance	No contribution; voluntarily insured pay 1% of average monthly income	From 0.15% to 0.85% of average gross monthly income according to assessed risk	1% of average monthly income		66.2	27.0
Russian Federation	Social insurance	No contribution	0.2% to 8.5% of payroll according to 32 classes of professional risk related to 22 industry categories	Not covered	No contribution	87.6	0.0
Slovakia	Social insurance	No contribution	0.8% of covered payroll	Not covered	Any deficit	75.1	0.0
Ukraine	Social insurance (cash benefits); universal (medical benefits)	No contribution	Global contribution under old age (22% of payroll)	Global contribution under old age (22% of the monthly minimum wage)	No contribution (cash benefits); total cost under sickness (medical benefits)	76.4	0.0
Central and Western Asia							
Armenia	Social insurance	A portion of personal income tax	No contribution	Not covered	Subsidies as needed	46.7	0.0
Azerbaijan	Employer liability (involving insurance with a private carrier)	No contribution	Total cost (private insurance rates vary according to industry risk)	Total cost (rates vary according to assessed industry risk)	Total cost of the funeral grant	30.6	64.5
Cyprus	Social insurance	Global contribution under old age (7.8% of covered earnings)	Global contribution under old age (7.8% of covered payroll)	Voluntary basis	Global contribution under old age (4.6% of covered payroll)	72.4	0.0
Georgia	Employer liability	No contribution	Total cost	Not covered	No contribution	37.2	0.0
Israel	Social insurance	No contribution	0.37% of earnings up to and 1.96% of earnings above 60% of the national average monthly wage	Not covered	0.03% of payroll or earnings (employed and self-employed); provides a global subsidy of 45.1% of total contributions	90.0	0.0
Kazakhstan	Employer liability (involving insurance with a private carrier); social assistance	No contribution	Total cost of insurance premiums (0.04% to 9.9% of payroll) or provides directly	0.39 to 0.68% of earnings above 60% of the national average wage	Cost of permanent disability and survivors' benefits	69.4	0.0

Country/ territory	Type of programme ¹	Contribution rate (%) ²				Estimate of legal employment injury coverage as % of the labour force	
		Employee	Employer	Self-employed	Financing from government	Mandatory coverage	Voluntary coverage
Kyrgyzstan	Social insurance (cash benefits); universal (medical benefits)	Global contribution under old age for cash benefits (10% of earnings); no contribution for medical benefits	Global contribution under old age (15.25% of payroll (cash benefits) and global contribution under sickness (2% of payroll for medical benefits)	Not covered	Total cost (permanent disability benefits); remainder of cost (medical benefits)	51.4	0.0
Turkey	Social insurance	No contribution (cash benefits); 5% of monthly earnings (medical benefits)	Global contribution under sickness (2% of monthly payroll); 7.5% of monthly payroll (medical benefits)	Not covered (cash benefits); no contribution for medical benefits	The cost of contributions for apprentices and students in technical schools	60.3	0.0
Turkmen- istan	Social insurance (cash benefits); universal (medical benefits)	No contribution	Cash benefits: global contribution under old age (20% of payroll + 3.5% for hazardous occupations); medical benefits: no contribution	Global contribution under sickness (2% of declared monthly earnings) (cash benefits); 12.5% of declared earnings (medical benefits)	Subsidies as needed (cash benefits); total cost (medical benefits)	52.6	0.0
Uzbekistan	Social insurance (cash benefits); universal (medical benefits)	No contribution	Global contribution under old age (25% of payroll; 15% for small and micro enterprises)	Not covered	Subsidies (cash benefits); total cost (medical benefits)	68.1	0.0

Notes:

1 Definitions regarding the type of programme are extracted from sources 1 and 2. Source 1 was used unless analysis of source (2) suggested to change.

2 Contribution rates: where there are several contribution rates, the average or most common rate is indicated or a reference to a specific note.

3 Ethiopia Labour Code prescribes benefits for medical and allied care and temporary incapacity which are paid by employers.

► Appendix 2

Compensation liability models

Ideally, the architecture of an EI system is adopted through social dialogue among stakeholders who base their proposals on actuarial assessment for financial sustainability. In practice, historical, political and cultural circumstances have given EI systems different shapes and structures.

EISS in the absence of a tort system

Most employment injury schemes are built on the no-fault social insurance principle. Where the EI legislation limits the total damage caused by occupational injury or disease to what is covered under the EISS scheme, there is no room for compensation under a tort system and employers have no other compensation liability than their contribution to the EISS scheme. Figure A2.1 illustrates the case where the damage equals the EISS cost.

► Figure A2.1 Damage and EISS cost in the absence of a tort system

$$\boxed{A} = \boxed{B}$$

Where,

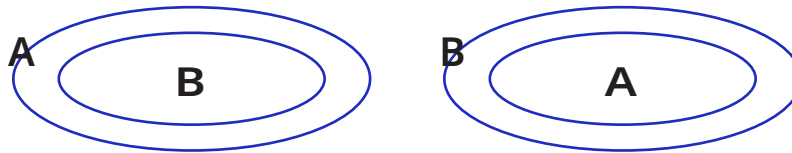
A = total damage caused by occupational injury or disease

B = total amount of compensation covered by EISS scheme
funded by employers' contributions

EISS in the presence of a tort system

In some countries, workers have access to the tort system for compensation in limited specific circumstances such as employers' negligence in the cause of an occupational injury or disease. This access may or may not exclude the worker's right to claim compensation from the EISS scheme.

Civil Courts generally establish the damage amount of compensation in relation to the worker's previous income, degree of loss of working capacity, expected working years further to injury occurrence, and degree of employer negligence. Compensation established by civil lawsuits often differs from amounts payable under an EISS scheme. Figure A2.2 illustrates situations where the damage differs from the EISS cost.

► **Figure A2.2 Damage and EISS cost in the presence of a tort system**

Where,

A = total damage caused by an occupational injury or disease established by civil lawsuit

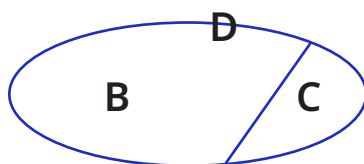
B = compensation amount under EISS scheme funded by employers' contributions

If A is greater than B (left-hand figure), in addition to the contribution obligation to the EISS scheme (B), employers assume liability (A-B) by direct payment or through private insurance purchase.

If A is less than B (right-hand figure), employers have no liability in addition to their contributions to the EISS scheme.

EISS coverage less than prescribed by workers' compensation legislation, but no access to tort system

In some countries, the EISS scheme does not cover the total compensation prescribed by national workers' compensation legislation. The EISS scheme may have a maximum limit on benefit levels, or exclude some benefits from its coverage. For example, temporary disability benefits may be covered under an employers' liability (EL) system (as in **Serbia**), or implementation of medical treatment and coverage for medicaments by the EISS scheme is postponed until there are better financial conditions. The cost of uncovered prescribed compensation may remain as an employer's liability. Figure A2.3 illustrates the case where the actual compensation covered under the EISS scheme is less than the prescribed compensation.

► **Figure A2.3 EISS scheme covering less than prescribed EI compensation**

Where,

B = compensation covered under EISS scheme funded by employers' contributions

C = compensation defined under national workers' compensation legislation but not covered under the EISS scheme

D = compensation defined under national workers' compensation legislation

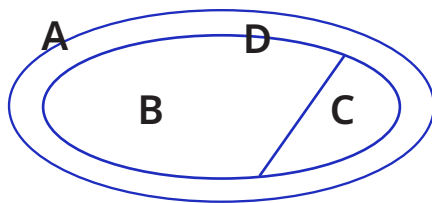
In addition to their contribution obligation to the EISS scheme (B), employers assume liability (C) by direct payment or through private insurance purchase.

EISS coverage less than prescribed by workers' compensation legislation, with access to a tort system

Pakistan provides an example of an incomplete existing EISS scheme where there is also a tort system. The reference wage used to calculate EI benefit provided by the EISS scheme is lower than the wage level prescribed by the Employees' Social Security Act, which in turn is lower than the wage level required by ILO Convention No. 121.

Figure A2.4 illustrates a case where the existing EISS scheme does not cover the total compensation prescribed by national workers' compensation legislation and workers are granted access to the tort system in case of employer negligence causing an industrial accident or disease.

► **Figure A2.4 Incomplete existing EISS scheme in the presence of a tort system**



Where,

A = total damage caused by occupational injury or disease established by civil lawsuit

B = compensation covered under the EISS scheme funded by employers' contributions

C = compensation defined under national workers' compensation legislation but not covered under the EISS scheme

D = compensation defined under national workers' compensation legislation

In such a case, the country concerned needs to gradually extend the EISS scheme coverage (B) to include all benefits prescribed (D).

Until then, in addition to their contribution obligation to the EISS scheme (B), employers assume liability as defined by (A–D) and (C) by direct payment or through private insurance purchase.

The country needs to gradually extend coverage of the EISS scheme (B) to include the total compensation prescribed by the national workers' compensation legislation (D). Important labour organizations through collective bargaining sometimes succeed in getting the compensation that is not covered under the EISS scheme (C) to be covered by another insurance mechanism such as group insurance.

Given the no-fault principle of EISS, employers would cover the liability that remains (A–D) under the tort system through a voluntary or mandatory private insurance system.

► Appendix 3

A brief history of workers' compensation*

The modern system of workers' compensation is so complex and arcane it produces considerable grief to those who must deal with it on a daily basis. Yet these often cumbersome regulations are so ultimately vital to society they appear, in one form or another, in all industrialized nations. A look at workers' law over the years demonstrates the failure of the historical alternatives to formal workers' compensation systems to meet either the goals of social justice or economic efficiency. While the orthopaedic surgeon may often lament the difficult compensation case appearing in clinic, it may add some perspective to review how and why this system became entrenched in the workplace.

Workers' compensation in antiquity

The history of compensation for bodily injury begins shortly after the advent of written history itself (Louis 1990). The Nippur Tablet No. 3191 from ancient Sumeria in the fertile crescent outlines the law of Ur-Nammu, king of the city-state of Ur. It dates to approximately 2050 B.C. (Kramer 1958). The law of Ur provided monetary compensation for specific injury to workers' body parts, including fractures. The code of Hammurabi from 1750 B.C. provided a similar set of rewards for specific injuries and their implied permanent impairments. Ancient Greek, Roman, Arab, and Chinese law provided sets of compensation schedules, with precise payments for the loss of a body part. For example, under ancient Arab law, loss of a joint of the thumb was worth one-half the value of a finger. The loss of a penis was compensated by the amount of length lost, and the value an ear was based on its surface area (Geerts, Kornblith and Urmson 1977). All the early compensation schemes consisted of "schedules" such as this; specific injuries determined specific rewards. The concept of an "impairment" (the loss of function of a body part) separate from a "disability" (the loss of the ability to perform specific tasks or jobs) had not yet arisen.

Yet the compensation schedules of antiquity were gradually replaced as feudalism of the Middle Ages gradually became the primary structure of government. The often arbitrary benevolence of the feudal lord determined what, if any, injuries garnered recompense. The concept of compensation for the worker was bound up in the doctrine of noblesse oblige; an honorable lord would care for his injured serf.

Common law and the early Industrial Revolution

The development of English common law in the late Middle Ages and Renaissance provided a legal framework that persisted into the early Industrial Revolution across Europe and America. Three critical principles gradually developed which determined what injuries were compensable. They were generally so restrictive they became known as the "unholy trinity of defenses" (Haller 1988).

Contributory negligence

If the worker was in any way responsible for his injury, the doctrine of contributory negligence held the employer was not at fault. Regardless of how hazardous the exposed machinery of the day was, any worker who slipped and lost an arm or leg was not entitled to any compensation. This was established in the United States through the case of *Martin v. the Wabash Railroad*, in which a freight conductor

* This appendix is quoted from Guyton 1999.

fell off his train. Although inspectors subsequently blamed a loose handrail, his injuries did not receive compensation because inspecting the train for faulty equipment was one of his job duties.

The “fellow servant” rule

Under the “fellow servant” rule, employers were not held liable if the worker’s injuries resulted in any part from the action or negligence of a fellow employee. This was established in Britain through the case of *Priestly v. Fowler* in 1837, a case of an injured butcher boy. In America, precedent was provided five years later by *Farnwell v. The Boston and Worcester Railroad Company*.

The “assumption of risk”

The doctrine of “assumption of risk” was exceptionally far-reaching. It held simply that employees know of the hazards of any particular job when they sign their contracts. Therefore, by agreeing to work in a position they assume any inherent risk it carries. Employers were required to provide such safety measures as were considered appropriate in the industry as a whole. In the nineteenth century, this often left a great deal to be desired. Assumption of risk was often formalized at the beginning of an employee’s tenure; many industries required contracts in which workers abdicated their right to sue for injury. These became known as the “worker’s right to die”, or “death contracts”.

While these common law principles were quite restrictive, it was their method of enforcement that proved most cumbersome. An injured worker’s only recourse was through the use of torts. In the nineteenth century as in our own, these were exceptionally expensive legal affairs. Most countries required considerable fees simply to file a personal injury lawsuit. These more often than not were beyond the limited means of the injured worker. It was so uncommon for a working man to win compensation for injury that private organizations such as the English “Friendly Societies” and German “Krankenkassen” were formed that offered more affluent laborers the option of buying various kinds of disability insurance (Hadler 1995). Nevertheless, the worker did occasionally prevail through tort legislation. As the century wore on, this began to happen frequently enough that employers too became uncomfortable with the capricious nature and high cost of battling civil suits.

A pragmatic champion

The watershed events in the development of modern workers’ compensation law occurred in the improbable setting of Prussia under the even more improbable leadership of its stern Chancellor, Otto von Bismarck (Haller 1988; Hadler 1995; Gerdes 1990). The Chancellor was certainly no great humanitarian, but he was the force behind *Realpolitik*, the school of political pragmatism. Germany at the time had a very active Marxist and socialist movement, and social protection for workers was at the top of their agenda. The active left was a considerable thorn in Bismarck’s side, particularly given his need for a stable home front while pursuing foreign empire-building. He resorted to straightforward political oppression, and in 1875, he outlawed the Social Democratic Party.

But Bismarck was shrewd. While suppressing the institutions of his socialist opponents, he maintained the loyalty of the common Prussian by co-opting key features of their agenda. The most important of these was a system of social insurance. His first foray into the field was through the *Employers’ Liability Law* of 1871, providing limited social protection to workers in certain factories, quarries, railroads, and mines. Later, and far more importantly, Bismarck pushed through *Workers’ Accident Insurance* in 1884 creating the first modern system of workers’ compensation. This was followed over the next few years by *Public Pension Insurance* providing a stipend for workers incapacitated due to non-job-related illnesses and *Public Aid* providing a safety net for those who were never able to work due to disability. The system as a whole valued the active worker; the greatest benefits were granted to job-related injuries and medical care and rehabilitation were covered. The state-administered Prussian system also

established an important precedent: it was regarded as an “exclusive remedy” to the problem of workers’ compensation, employers under the system could not be sued through the Civil Courts by employees.

The Prussian system has served as a basic model for the social insurance programs of a variety of countries including the United States. It is worth noting that the complex nature of modern workers’ compensation law has been present almost from the start. Indeed, the dark writings of Franz Kafka were partly inspired by his job as a minor functionary in the arcane machinery of the workers’ compensation board in (then Prussian) Prague just after the turn of the century.

Workers’ insurance spreads

Other western nations gradually began to accept the notion that modern industrial society required some form of mandated workers’ insurance. As early as 1880, the British Prime Minister William Gladstone pushed through the Employer’s Liability Act⁵. This abolished the old common-law defenses in theory, but it did not establish a “no-fault” system. A proof of negligence on the part of the employer was necessary for the employee to collect. Most importantly, “right to die” contracts in which workers renounce their right to sue for injury were still legal and widely used by English industry. Thus, the 1880 law had little effect.

The Worker’s Compensation Act was proposed in Parliament in 1893 and was largely equivalent to the 1884 Prussian law in establishing a “no-fault” doctrine of compensation. Unlike the German model, it did not fully rely on state administration. Instead the “Friendly Societies” which had organized various forms of private disability insurance for workers for many years were relied upon to provide the insurance itself. Nevertheless, the Act encountered staunch opposition from manufacturing interests in Parliament, and the House of Lords delayed its passage by attempts to add language which would have made “right to die” contracts a permissible means of circumventing the entire system. Finally, the Act was passed in 1897 after a four-year legislative struggle (Hadler 1995).

Workers’ compensation in the United States

[...] Congress passed the Employers’ Liability Acts of 1906 and 1908, softening the common-law doctrine of contributory negligence. Failed or limited efforts to pass comprehensive workers’ compensation acts were attempted in New York (1898), Maryland (1902), Massachusetts (1908), and Montana (1909). At the federal level, sentiment for modern workers’ compensation ranged a few years ahead of the state legislatures, but the matter was generally considered best left to the states. The federal government did regulate interstate commerce, however, and what is arguably the first compensation system in America was proposed by President Taft and put into law in 1908 to cover those workers involved in interstate trade (Haller 1988).

Unlike Europe, the decentralized nature of labor regulation in the United States provided a key additional obstacle delaying implementation of the laws. As in England, many manufacturers were ready for change provided it included tort relief, but they strongly objected to state-by-state regulation. It would, they appropriately argued, create an uneven playing field for unregulated competitors in neighboring jurisdictions. In the most telling example, phosphorus match manufacturers brazenly testified before Congress that, despite the widespread problem of “phossy jaw” poisoning in their workers, they were unwilling to invest in alternative compounds unless the law in all states mandated it. In 1910, this problem led to a special conference in Chicago attended by representatives of the industrial states to outline a uniform set of guidelines for compensation law (Haller 1988).

The first comprehensive workers’ compensation law was finally passed shortly thereafter in Wisconsin in 1911. Nine other states passed regulations that year, followed by thirty-six others before the decade was out. The final state to pass workers’ compensation legislation was Mississippi in 1948.

The response of the medical community was lukewarm at best, particularly from the young but subspecialty of orthopaedics. The noted shoulder specialist Codman decried workers' compensation statutes with their regulated physicians' fees as part of "the great effort which the majority is making to socialize the medical profession". To put his views in some perspective, he also objected to public parks, mass transit, municipal piers, regulation of interstate commerce, and even public hospitals (Haller 1988).

The attitudes of medical professionals changed dramatically in the 1930s, however, when Social Security Disability Insurance was created to insure those who could not work due to infirmities that were not work-related. This vast expansion of the need for physician involvement and evaluation proved very lucrative. The American Medical Association quickly published the popular *Guides to the Evaluation of Permanent Impairment*, which has been through multiple editions since. As managed care has come to play a greater role in the healthcare system, many physicians have come to realize that compensation evaluations represent a stable and high-paying source of income.

The structure of American workers' compensation systems

The various workers' compensation statutes in America are all modeled loosely after the original Prussian system (Gerdes 1990; Olson 1997). The central tenet is that of "no-fault" insurance; industrial accidents are accepted as a fact of life and the system exists to deal with their financial consequences in as expeditious a manner as possible. Employers participating in the system have the notable benefit of tort exemption for injuries covered by workers' compensation. Employees can sue third parties who may be responsible for their on-the-job injuries, but any proceeds from such suits must first go to reimburse their employer's compensation insurance carrier.

All American workers' compensation schemes are fully employer-funded either by the purchase of commercial insurance or setting up a self-insurance account. In their original form, however, most state compensation acts made employer participation "optional". Because they also often precluded the use of the common-law defenses if participation was declined, the vast majority of employers have historically participated, and approximately eighty per cent of the work force is currently covered under compensation schemes. Most states have exclusion criteria for small firms and, most significantly, for domestic and agricultural workers.

As a general rule, claims are handled by legislatively created state compensation boards, although decisions can be appealed to the state Court system. In five exceptions, Wyoming, Tennessee, New Mexico, Alabama, and Louisiana, claims are taken directly to the Courts, but special state agencies exist to assist the processing of claims. The definition of compensable injury has gradually evolved over the years. Although it was once interpreted to mean a sudden industrial accident, in recent years most states have added language to include occupational exposures and overuse syndromes. The Kentucky law currently defines "injury" as "any work-related harmful change in the human condition".

A distinction is made between "impairment", a medical definition of the degree of loss of anatomy or function of a body part or system, and "disability", a legal definition of the degree to which an employee's impairment limits his ability to perform work. Some states do continue to have "schedules" for certain injuries, however, which directly correlate the loss of certain anatomical parts to amounts of compensation. For instance, the loss of a thumb in South Dakota entitles the worker to fifty weeks of compensation regardless of his disability (Gerdes 1990).

In general, compensation is paid both in the form of wage-replacement (usually at about two-thirds salary) for the period of total disability and in the form of lump-sum payments for any residual permanent partial disability. Employers also must pay for the workers' medical and rehabilitation costs. Many employers quite aggressively pursue rehabilitation and pay for services such as work-hardening programs that are not required by the letter of the law. They have found these to be highly cost-effective given that the outcome if the worker fails to return to work could be permanent total disability payments for life.

One special case that most states have now come to recognize is that of the “second injury”. In Oklahoma in the 1920s, a one-eyed worker lost his remaining eye in an industrial accident. His employer was forced by the compensation board to pay not for the loss of a single eye, but for total permanent disability given the patient’s blindness. Immediately, virtually all the one-eyed, one-armed, and one-legged workers in the state were deemed by their employers to represent unnecessary risks and were fired. To solve this dilemma, most states have now created “second injury funds” run by the government which all the private insurers pay into. These are used to make up the difference when a second injury proves incapacitating only because of a prior injury to another body part. Although their cost is relatively minimal and they initially appear to be a minor detail, second injury funds are absolutely critical in maintaining the employability of amputees.

The changing face of American workers’ compensation

The basic structure of the American workers’ compensation system has remained unchanged throughout the century and is, overall, a success in the eyes of employers and employees alike. Only in the last five years have major changes in the landscape of workers’ compensation law begun to appear.

The primary instrument of change has been the Americans With Disabilities Act of 1990, one of the central pieces of legislation to emerge from the Bush Administration (Olson 1997). The ADA actually represents a dramatic expansion of a much earlier law, Section 504 of the Rehabilitation Act of 1973. Section 504 required government programs, contractors, and any entity receiving federal funding to make their facilities accessible to the handicapped. Its language was relatively restrictive, and the law applied only when persons were excluded from a program or employment “solely” because of their disability.

The ADA was the result of a massive campaign to improve the employability of the disabled in America. It met with resounding legislative success; there were only 6 no votes in the Senate and 28 in the House. Unlike Section 504, the ADA encompasses all of the American workplace, not just that fraction associated with the federal government. It also contains language that allows much broader judicial freedom in interpretation.

The ADA requires that employers make “reasonable accommodation” for workers with disabilities, but no legal standards for the definition of “reasonable” are provided. A precedent does exist for accommodating workers with special needs: a series of rulings has mandated that employers need accommodate employees religious wishes (Sabbath day off, wearing of religious clothing, etc.) only if the cost is minimal and the accommodation would not significantly disrupt the central business enterprise. Some state disability laws placed specific monetary caps on the amount employers could be required to spend to accommodate individual workers. By avoiding this kind of more specific language, many employers fear the ADA has created an environment in which the costs of employing disabled workers are highly unpredictable (Olson 1997).

The new law is fuzzy, too, in its definition of disability. Traditional government policy toward the disabled focused on three groups: the legally blind (numbering 400,000), the deaf (numbering 1.7 million), and the absolute wheelchair-bound (numbering 720,000). From these relatively small numbers, to reach the commonly cited figure that one-in-six Americans (approximately 43 million) are disabled requires the inclusion of a large number of less immobilizing physical impairments and mental disabilities. Indeed, mental illness alone creates significant confusion. The DSM as first published contained just over 100 disorders; it now contains three times that number.

For the employer, simply knowing whether or not a potential employee has a disability is often difficult. The ADA severely restricts employers’ access to prior medical records before an offer of employment is made. Incidentally, these provisions have been successfully used by physicians to prevent state medical boards and hospitals from obtaining records indicating prior drug or alcohol addiction.

These gray areas of the ADA have been used by entrepreneurial lawyers to apply the law to areas removed from its original intended scope. Relatively few suits under the ADA have related to hiring discrimination. A substantial number allege discrimination against those who are already employed, and many allege disabilities acquired on the job. Thus, by a subtle shift in wording and emphasis, the ADA is seen by some lawyers as an opportunity to circumvent or augment the settlements their clients would reach through traditional workers' compensation. The most commonly cited disability in employment-related suits filed under the ADA is back pain (19% of the total), followed by compressive neuropathy and similar neurologic disorders (12%), and mental illness (12%). Only 8% of complaints have come from the wheelchair-bound and 3% from the deaf or blind (Olson 1997).

In one celebrated Texas case, a worker for the Santa Fe Railroad was awarded a \$305,000 workers' compensation settlement for permanent total disability based on physicians' testimony that he would never be able to work again after his work-related back injury. Eight days after his settlement, he filed suit under the ADA claiming he was wrongfully terminated due to a disability and should be rehired with accommodation. Although the case was thrown out, this apparent legal double jeopardy highlights the legitimate fear of employers that the tort relief that is such a central feature of workers' compensation law is in danger of slowly being eroded.

Conclusion

Although excessively intricate and burdened by separate implementation schemes for each of the fifty states, workers' compensation law remains one of the relative success stories of American legislation. Its three critical benefits remain. First, the employer gets tort relief. Second the employee gets a relatively quick, equitable, and predictable no-fault compensation scheme. Finally, the system carries an intrinsic incentive toward rehabilitation of the injured worker. The subjective nature of defining impairment and disability themselves will almost certainly allow creative personal injury lawyers to find new ways to collect for their clients and themselves whether through the ADA or other legislation. The survival of a viable workers' compensation system will require continued vigilance by both federal and state governments.

► Appendix 4

Malaysia: Employees' Social Security Act 1969

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- 26. Dependants' benefit
- 28. Occupational diseases
- 29. Funeral benefit
- 30. Constant-attendance allowance
- 31. Liability of employer and his servant
- 32. Determination of question of invalidity or disablement
- 32A. Determination of occupational diseases
- 33. References to medical boards and appeals to appellate medical board
- 33A. Insured person dies before medical board examination
- 34. Review of decisions by medical board or appellate medical board
- 35. Review of invalidity pension
- 36. Review of dependants' benefit
- 37. Medical benefit
- 38. Scale of medical benefit
- 39. Establishment and maintenance of hospitals, *etc.*
- 40. Organization's power to co-operate with existing institutions or promote measures for health, welfare, *etc.*, of insured persons
- 41. Benefit not assignable or attachable
- 43. Persons not to commute cash benefits
- 44. Persons not entitled to receive benefits in certain cases
- 45. Claimant of disablement benefit or invalidity pension to observe conditions
- 46. Recipients of disablement benefit to observe conditions
- 48. Organization's right where a principal employer fails or neglects to pay any contribution
- 49. Suspension of invalidity pension
- 50. Repayment of benefit improperly received
- 51. Payment of amount of benefit outstanding at the time of the death of the insured person
- 52. Employer not to reduce wages, *etc.*
- 53. Employer not to dismiss or punish employee during period of temporary disablement
- 54. Claim for benefits
- 55. Reporting of change in condition, *etc.*
- 56. Discretion to compute the qualifying period and the rate of monthly invalidity pension
- 57. Facilities for physical or vocational rehabilitation
- 57A. Education benefit
- 57B. Organization to be responsible for the recovery and collection of repayments of educational loans
- 57C. Appointment of collection agents

PART IV - ADMINISTRATION, FINANCE AND AUDIT

- 58. Administration of the Social Security Scheme
- 59. Chief Executive Officer
- 59A. The Social Security Organization
- 59B. Establishment of the Board
- 59C. Minister shall appoint any person to act as Chairman

- 59D. Sixth Schedule to apply to Board
 - 59E. Cessation of membership of Board
 - 59F. Disqualification
 - 59G. Application of the Public Authorities Protection Act 1948
 - 59H. Public servants and public officers
 - 59I. Board to give effect to Minister's directions
 - 59J. Delegation of power
 - 59K. Administrative control of officers and servants by Director General
 - 59L. Appointment of officers and servants
 - 59M. Setting up divisions, regional offices, *etc.*
 - 59N. Power to dispose of staff questions
 - 59O. Power to make staff rules
 - 59P. Committees
 - 59Q. Disciplinary Committee
 - 59R. Discipline of officers
 - 59S. Establishment of Disciplinary Appeal Board
 - 59T. Power to make disciplinary rules
 - 59U. Imposition of surcharge
 - 59V. Establishment of Promotion Board
 - 59W. Establishment of Promotion Appeal Board
 - 64. Fees and allowances
 - 68. Social Security Fund
 - 69. Administration of the Fund
 - 70. Acceptance of grants, donations, *etc.*
 - 71. Purposes for which the Fund may be expended
 - 72. Expenditure on administration
 - 72A. Withdrawal from Fund for loans
 - 73. Administrative expenditure Government's responsibility
 - 74. Holding of property, *etc.*
 - 75. Investment of Funds
 - 75A. Investment Panel
 - 76. Raising of loans
 - 77. Budget estimates
 - 78. Accounts
 - 79. Audit
 - 80. Annual report
 - 81. Annual report and audited accounts
 - 82. Valuation of assets and liabilities
- PART V - ADJUDICATION OF DISPUTE AND CLAIMS**
- 83. Constitution of Social Security Appellate Board
 - 84. Matters to be decided by the Board
 - 85. Institution of proceedings, *etc.*
 - 86. Commencement of proceedings

- 87. Powers of Social Security Appellate Board
- 88. Appearance by legal practitioners, *etc.*
- 89. Benefit not admissible unless claimed in time
- 90. Reference to High Court
- 91. Appeal
- 92. Stay of payment pending appeal

PART VI - PENALTIES

- 93. Punishment for false information
- 94. Punishment for failure to pay contributions, *etc.*
- 94A. Court's order in respect of contributions due and payable to the Organization
- 94B. Trial for more than one offence
- 94C. Copy of entry to be *prima facie* evidence
- 95. Prosecution
- 95A. Compounding of offences

PART VII - MISCELLANEOUS

- 96. Insured person not entitled to more than one benefit
- 96A. Dependant not entitled to both survivors' pension and dependants' benefit for the same period
- 97. Exemption of industry or class of industries
- 98. Exemption of persons or class of persons
- 99. Organization to make representation
- 100. Exemption of industries belonging to Government or local authority
- 101. Exemption from one or more provisions of the Act
- 102. Contributions, *etc.*, due to Organization to have priority over other debts
- 103. Exercise of powers and functions of the Organization
- 103A. Disposal of documents after more than three years
- 105. Power of the Minister to make regulations
- 106. Duty of Board to review benefits
- 106A. Rates of benefit
- 107. Addition of benefits
- 108. Power to remove difficulties
- 108A. Joint and several liability of directors
- 109. Recovery of contribution, *etc.*
- 110. Powers of Director General
- 111. Organization to deal with authorized person
- 112. Benefit for two or more successive accidents

FIRST SCHEDULE (*Description of persons excluded from the scheme coverage*)

SECOND SCHEDULE *List of injuries deemed to result in permanent total disablement; List of injuries deemed to result in permanent partial disablement*

THIRD SCHEDULE - RATES OF CONTRIBUTION

FOURTH SCHEDULE - DISABLEMENT BENEFIT AND DEPENDANTS' BENEFIT

FIFTH SCHEDULE - OCCUPATIONAL DISEASES

SIXTH SCHEDULE (*Organization and functioning of the Board*)

SEVENTH SCHEDULE (*Provisions applicable to power to make staff rules*)

EIGHTH SCHEDULE - SURVIVORS' PENSION

NINTH SCHEDULE (*Provisions applicable to Investment Panel*)

TENTH SCHEDULE - MEMBERSHIP OF THE PROMOTION BOARDS AND APPEAL BOARDS

Source:

<http://www.ilo.org/dyn/travail/docs/1626/Employees%20Social%20Security%20Act%201969%20-%20www.agc.gov.my.pdf>.

▶ Appendix 5

Workers' compensation benefits and costs in the United States

In all workers' compensation systems, covered workers are entitled to medical care for their covered injuries or illnesses, as well as disability benefits to partially replace lost wages. In addition, the survivors of a worker who dies as a result of a covered injury or illness are provided benefits.

In general, any injury, illness, or death that arises out of a person's employment is covered. However, there are exceptions for cases in which the employee is intoxicated, or the injury occurs at a workplace but is wholly unrelated to the person's employment (such as a crime that began outside the workplace but continued into the workplace).

Workers' compensation systems generally have statutes of limitations on when claims must be filed after an injury, illness or death. These provisions may complicate benefit applications for many occupational illnesses due to their latent nature.

Medical benefits

Medical benefits under workers' compensation are provided without any cost sharing on the part of the workers. Medical benefits are provided only for covered injuries and illnesses and are not provided for general medical coverage.

Because workers do not pay any costs associated with their medical care under workers' compensation, controlling costs and ensuring that only medically necessary care is provided are long-standing challenges for employers and insurers. One strategy is to allow employers and insurers to exercise greater control over medical providers.

Workers' compensation systems differ in how medical care is provided to covered workers. In some systems, including the federal systems, workers have near-complete control over the choice of medical providers. In other systems, employers have a greater role in affecting the choice of medical providers (either through selecting providers for patients or limiting patients to selecting providers from an employer-approved list). In addition, many state workers' compensation systems permit pharmacy benefit managers (PBMs) to use formulas and utilization reviews to control prescription drug utilization, and economies of scale to control prescription drug purchasing costs.

Workers' compensation is intended to be the primary payer for medical costs associated with covered injuries or illnesses. Private health insurance, Medicaid, or Medicare are not authorized payers for work-related medical expenses. In the case of a workers' compensation compromise and release settlement, a portion of the settled amount attributable to future medical expenses may be required to be set aside to reimburse the Medicare program for these future medical expenses that the worker may bill to Medicare.

Factors that drive prescription drug utilization include physician dispensing of drugs, the repackaging of drugs, and the prevalence of opioid painkillers. States have begun controlling utilization costs by contracting with PBMs; placing regulations and limits on physician dispensing; using formularies that limit the specific drugs that will be covered; requiring preauthorization or step-therapies in which a less expensive drug must be tried before a more expensive alternative is authorized for certain drugs; and capping total prescriptions reimbursements.

Cash benefits

Cash benefits are only intended to replace a portion of the wages lost by the disabled or deceased worker two reasons. First, workers' compensation benefits are not considered income for the purposes of the federal income tax and are often exempt from state and local taxes. Second, partial replacement is intended to reduce the economic incentive of workers to replace work with the receipt of benefits. A waiting period of several days before cash benefits begin serves this same purpose as well as to keep the most minor injuries out of the workers' compensation system. Benefits for days during the waiting period are generally retroactively paid for a long-term or permanent disability.

Disability benefits

Disability benefits under workers' compensation are paid when a covered worker is unable to work at his or her full earning capacity, generally at his or her previous job or a suitable job offered by his or her employer, because of an employment-related injury or illness.

Disability benefits can be either for total or partial disability and can be either temporary or permanent. Total disability benefits are generally paid at a level of two-thirds of the employee's pre-disability wage. Benefits are subject to system-specific minimum and maximum levels usually based on average wages in the state. Partial disability benefits are paid as a percentage of the total disability rate that corresponds to the partial earning capacity of the worker. The assessment of a worker's capacity to work is commonly made using the American Medical Association (AMA) *Guides to the Evaluation of Permanent Impairment*. Permanent disability benefits are paid when the worker's medical condition is not going to improve sufficiently to return the worker to full earning capacity. In most cases, temporary disability benefits are first paid until a determination of the permanence of the condition is made.

Scheduled awards for permanent partial disabilities

In case of certain permanent partial disabilities, workers' compensation benefits are paid based on a schedule of benefits established by statute or regulation that sets the number of weeks that permanent disability benefits are to be paid for each disability. For example, under FECA, benefits for the loss of an arm are paid, by statute, for 312 weeks whereas benefits for the loss of a breast are paid, by regulation, for 52 weeks. Scheduled benefits for permanent partial disabilities are generally paid even if the beneficiary can work at full capacity.

In its 2015 report on workers' compensation, ProPublica calculated the maximum benefits under scheduled awards in each state and the FECA program and found considerable differences in how much a worker can receive for permanent partial disabilities based on where he or she lives or works. These differences are due to different schedules of benefit durations and different maximum levels of compensation among the states.

Coordination with Social Security

A worker may receive disability benefits under both workers' compensation and the Social Security Disability Insurance (SSDI) program. However, the combined amount of these benefits cannot exceed 80% of the worker's pre-disability wage in any month. Prior to 1981, states could elect whether to offset workers' compensation ("reverse offset") or SSDI benefits to get below the 80 per cent threshold. Since the Omnibus Budget Reconciliation Act of 1981, only those states with approved reverse offset plans in place as of 18 February 1981 may offset workers' compensation benefits to reach the 80 per cent threshold. In all other states and the federal programs, SSDI benefits are offset when total benefits exceed 80 per cent of the worker's pre-disability wage in month.

Benefit duration

Disability benefits can be paid for the duration of disability up to the life of the worker or benefits may be capped either by age, duration of receipt, or total amount of benefits received. Proponents of limiting the duration of benefits argue that once a person reaches a certain age, it is unlikely that he or she would be working and thus, there are no wages to be replaced. Others argue that workers sacrifice potentially larger tort awards that they could win in Civil Court and thus should not have their workers' compensation benefits arbitrarily limited. In addition, workers injured at young ages may not have enough pensions or savings to rely on when they get older.

Compromise and release settlements

Compromise and release settlements are a key feature of state workers' compensation systems but are not permitted under FECA. In a compromise and release settlement, the insurer agrees to provide the beneficiary with a lump-sum payment or structured series of payments in exchange for the worker forfeiting any future claims for medical or cash benefits against the insurer.

In some cases, settlements may be limited to cover only future cash benefits or to allow for some future claims, and in others, settlements may be permitted to be reopened if there are material changes in the beneficiary's condition. However, in most cases, once the settlement has been reached and approved, the worker is no longer entitled to any benefits, regardless of what happens to his or her employment or health condition in the future.

Compromise and release settlements can serve as a mechanism to remove disputed claims from the state's adjudication process or the Courts in much the same way that civil tort cases may be settled out of court. In addition, the insurer gets to clear the case off its books and remove the uncertainty associated with possible future benefits.

The beneficiary receives either a lump-sum payment or structure of payments, which can be used for injury-related expenses uncovered (such as assistance with cleaning the home or for unrelated expenses) and removes the uncertainty associated with claims being disputed by the insurer.

Because insurers will likely have more information on the claim's expected value, the insurer may be in an advantaged position over the worker when negotiating the settlement.

Because a compromise and release settlement generally releases the workers' compensation system from paying for any future medical expenses, a worker may improperly use Medicare to pay for these expenses. The Centers for Medicare and Medicaid Services (CMS) recommends that workers establish a Workers' Compensation Medicare Set-aside Arrangement (WCMSA) to dedicate a portion of the settlement to future medical costs so that Medicare is not improperly billed for these expenses.

Administrative difficulties can arise in compromise and release settlements when administering SSDI offsets and Medicare set-asides.

Survivors' benefits

These monthly benefits are generally equivalent to the monthly disability benefit the worker would have received. Generally, only the spouse and dependent children or other dependent family members are eligible for these benefits. Benefits generally stop when the spouse remarries or the dependent children reach adulthood. In general, workers' compensation systems also provide a separate burial benefit or allowance in the case of covered deaths.

Vocational rehabilitation and return to work

The goal of the employer and insurer in workers' compensation is to return the worker to employment thus removing the worker from the cash benefit rolls. Because workers only receive partial wage-replacement through workers' compensation and forfeit any possible career advancement, they also have an incentive to return to work.

To assist beneficiaries' return to work and departure from the workers' compensation rolls, vocational rehabilitation services are provided. Although participation in vocational rehabilitation is voluntary, returning to work, even at a reduced capacity, is generally required if it is determined that the worker's condition permits at least a partial return to work. If a worker can only partially return to work, partial disability benefits are provided in addition to the pay the worker receives from employment.

Employers are generally not required to hold a job open while a worker is receiving workers' compensation. However, the provisions of the Family and Medical Leave Act (FMLA) related to protected leave and the American with Disabilities Act (ADA) related to the prohibition of discrimination against persons with disabilities in hiring and employment may apply in workers' compensation cases.

Workers' compensation costs

The direct costs associated with workers' compensation benefits are generally the responsibility of the employers and not the workers or the general revenue stream of the government (except in the FECA, black lung, and EEOICPA programs). Employers may have deductibles that must be met before their insurer will pay benefits.

Workers never directly pay for their own benefits. They may pay implicitly for their benefits through lower wages as employers shift some of their costs to their workers. In addition, in cases in which the employer is clearly at fault, workers' implicitly pay some of the costs of workers' compensation by forgoing their rights to recover compensatory and punitive damages from their employers. Workers with long-term disabilities may pay costs in the form of lost opportunities for promotions or wage growth and lost opportunities to pay into the Social Security system, company pension plans, or certain tax advantaged investment accounts, such as 401(k) plans.

Table A5.1 compares workers' compensation benefits with employers' costs for 2016.

► **Table A5.1 Workers' compensation benefits and employer costs, United States, 2016**

	Total (US\$ billions)	Per US\$100 in covered payroll
Benefits paid	61.9	0.83
Medical benefit	31.1	0.42
Cash benefits	30.8	0.41
Employer costs	96.5	1.30

Notes: Benefits and costs are those paid in the calendar year, regardless of when the injury occurred. Costs include cost of insurance, benefits paid before meeting an insurance deductible, and administrative costs associated with self-insurance. Sums may not add due to rounding.

Source: McLaren, Baldwin, and Boden 2018.

► Appendix 6

ILO List of Occupational Diseases (revised 2010)

In the application of this list the degree and type of exposure and the work or occupation involving a particular risk of exposure should be taken into account when appropriate.

1. Occupational diseases caused by exposure to agents arising from work activities

1.1. Diseases caused by chemical agents

- 1.1.1. Diseases caused by beryllium or its compounds
- 1.1.2. Diseases caused by cadmium or its compounds
- 1.1.3. Diseases caused by phosphorus or its compounds
- 1.1.4. Diseases caused by chromium or its compounds
- 1.1.5. Diseases caused by manganese or its compounds
- 1.1.6. Diseases caused by arsenic or its compounds
- 1.1.7. Diseases caused by mercury or its compounds
- 1.1.8. Diseases caused by lead or its compounds
- 1.1.9. Diseases caused by fluorine or its compounds
- 1.1.10. Diseases caused by carbon disulfide
- 1.1.11. Diseases caused by halogen derivatives of aliphatic or aromatic hydrocarbons
- 1.1.12. Diseases caused by benzene or its homologues
- 1.1.13. Diseases caused by nitro- and amino-derivatives of benzene or its homologues
- 1.1.14. Diseases caused by nitroglycerine or other nitric acid esters
- 1.1.15. Diseases caused by alcohols, glycols or ketones
- 1.1.16. Diseases caused by asphyxiants like carbon monoxide, hydrogen sulfide, hydrogen cyanide or its derivatives
- 1.1.17. Diseases caused by acrylonitrile
- 1.1.18. Diseases caused by oxides of nitrogen
- 1.1.19. Diseases caused by vanadium or its compounds
- 1.1.20. Diseases caused by antimony or its compounds
- 1.1.21. Diseases caused by hexane
- 1.1.22. Diseases caused by mineral acids
- 1.1.23. Diseases caused by pharmaceutical agents
- 1.1.24. Diseases caused by nickel or its compounds
- 1.1.25. Diseases caused by thallium or its compounds
- 1.1.26. Diseases caused by osmium or its compounds
- 1.1.27. Diseases caused by selenium or its compounds
- 1.1.28. Diseases caused by copper or its compounds
- 1.1.29. Diseases caused by platinum or its compounds
- 1.1.30. Diseases caused by tin or its compounds
- 1.1.31. Diseases caused by zinc or its compounds
- 1.1.32. Diseases caused by phosgene

- 1.1.33. Diseases caused by corneal irritants like benzoquinone
- 1.1.34. Diseases caused by ammonia
- 1.1.35. Diseases caused by isocyanates
- 1.1.36. Diseases caused by pesticides
- 1.1.37. Diseases caused by sulphur oxides
- 1.1.38. Diseases caused by organic solvents
- 1.1.39. Diseases caused by latex or latex-containing products
- 1.1.40. Diseases caused by chlorine
- 1.1.41. Diseases caused by other chemical agents at work not mentioned in the preceding items where a direct link is established scientifically, or determined by methods appropriate to national conditions and practice, between the exposure to these chemical agents arising from work activities and the disease(s) contracted by the worker

1.2. Diseases caused by physical agents

- 1.2.1. Hearing impairment caused by noise
- 1.2.2. Diseases caused by vibration (disorders of muscles, tendons, bones, joints, peripheral blood vessels or peripheral nerves)
- 1.2.3. Diseases caused by compressed or decompressed air
- 1.2.4. Diseases caused by ionizing radiations
- 1.2.5. Diseases caused by optical (ultraviolet, visible light, infrared) radiations including laser
- 1.2.6. Diseases caused by exposure to extreme temperatures
- 1.2.7. Diseases caused by other physical agents at work not mentioned in the preceding items where a direct link is established scientifically, or determined by methods appropriate to national conditions and practice, between the exposure to these physical agents arising from work activities and the disease(s) contracted by the worker

1.3. Biological agents and infectious or parasitic diseases

- 1.3.1. Brucellosis
- 1.3.2. Hepatitis viruses
- 1.3.3. Human immunodeficiency virus (HIV)
- 1.3.4. Tetanus
- 1.3.5. Tuberculosis
- 1.3.6. Toxic or inflammatory syndromes associated with bacterial or fungal contaminants
- 1.3.7. Anthrax
- 1.3.8. Leptospirosis
- 1.3.9. Diseases caused by other biological agents at work not mentioned in the preceding items where a direct link is established scientifically, or determined by methods appropriate to national conditions and practice, between the exposure to these biological agents arising from work activities and the disease(s) contracted by the worker

2. Occupational diseases by target organ systems

2.1. Respiratory diseases

- 2.1.1. Pneumoconioses caused by fibrogenic mineral dust (silicosis, anthraco-silicosis, asbestosis)
- 2.1.2. Silicotuberculosis
- 2.1.3. Pneumoconioses caused by non-fibrogenic mineral dust
- 2.1.4. Siderosis
- 2.1.5. Bronchopulmonary diseases caused by hard-metal dust

- 2.1.6. Bronchopulmonary diseases caused by dust of cotton (byssinosis), flax, hemp, sisal or sugar cane (bagassosis)
- 2.1.7. Asthma caused by recognized sensitizing agents or irritants inherent to the work process
- 2.1.8. Extrinsic allergic alveolitis caused by the inhalation of organic dusts or microbially contaminated aerosols, arising from work activities
- 2.1.9. Chronic obstructive pulmonary diseases caused by inhalation of coal dust, dust from stone quarries, wood dust, dust from cereals and agricultural work, dust in animal stables, dust from textiles, and paper dust, arising from work activities
- 2.1.10. Diseases of the lung caused by aluminium
- 2.1.11. Upper airways disorders caused by recognized sensitizing agents or irritants inherent to the work process
- 2.1.12. Other respiratory diseases not mentioned in the preceding items where a direct link is established scientifically, or determined by methods appropriate to national conditions and practice, between the exposure to risk factors arising from work activities and the disease(s) contracted by the worker

2.2. Skin diseases

- 2.2.1. Allergic contact dermatoses and contact urticaria caused by other recognized allergy provoking agents arising from work activities not included in other items
- 2.2.2. Irritant contact dermatoses caused by other recognized irritant agents arising from work activities not included in other items
- 2.2.3. Vitiligo caused by other recognized agents arising from work activities not included in other items
- 2.2.4. Other skin diseases caused by physical, chemical or biological agents at work not included under other items where a direct link is established scientifically, or determined by methods appropriate to national conditions and practice, between the exposure to risk factors arising from work activities and the skin disease(s) contracted by the worker

2.3. Musculoskeletal disorders

- 2.3.1. Radial styloid tenosynovitis due to repetitive movements, forceful exertions and extreme postures of the wrist
- 2.3.2. Chronic tenosynovitis of hand and wrist due to repetitive movements, forceful exertions and extreme postures of the wrist
- 2.3.3. Olecranon bursitis due to prolonged pressure of the elbow region
- 2.3.4. Prepatellar bursitis due to prolonged stay in kneeling position
- 2.3.5. Epicondylitis due to repetitive forceful work
- 2.3.6. Meniscus lesions following extended periods of work in a kneeling or squatting position
- 2.3.7. Carpal tunnel syndrome due to extended periods of repetitive forceful work, work involving vibration, extreme postures of the wrist, or a combination of the three
- 2.3.8. Other musculoskeletal disorders not mentioned in the preceding items where a direct link is established scientifically, or determined by methods appropriate to national conditions and practice, between the exposure to risk factors arising from work activities and the musculoskeletal disorder(s) contracted by the worker

2.4. Mental and behavioural disorders

- 2.4.1. Post-traumatic stress disorder
- 2.4.2. Other mental or behavioural disorders not mentioned in the preceding item where a direct link is established scientifically, or determined by methods appropriate to national conditions and practice, between the exposure to risk factors arising from work activities and the mental and behavioural disorder(s) contracted by the worker

3. Occupational cancer

3.1. Cancer caused by the following agents

- 3.1.1. Asbestos
- 3.1.2. Benzidine and its salts
- 3.1.3. Bis-chloromethyl ether (BCME)
- 3.1.4. Chromium VI compounds
- 3.1.5. Coal tars, coal tar pitches or soots
- 3.1.6. Beta-naphthylamine
- 3.1.7. Vinyl chloride
- 3.1.8. Benzene
- 3.1.9. Toxic nitro- and amino-derivatives of benzene or its homologues
- 3.1.10. Ionizing radiations
- 3.1.11. Tar, pitch, bitumen, mineral oil, anthracene, or the compounds, products or residues of these substances
- 3.1.12. Coke oven emissions
- 3.1.13. Nickel compounds
- 3.1.14. Wood dust
- 3.1.15. Arsenic and its compounds
- 3.1.16. Beryllium and its compounds
- 3.1.17. Cadmium and its compounds
- 3.1.18. Erionite
- 3.1.19. Ethylene oxide
- 3.1.20. Hepatitis B virus (HBV) and hepatitis C virus (HCV)
- 3.1.21. Cancers caused by other agents at work not mentioned in the preceding items where a direct link is established scientifically, or determined by methods appropriate to national conditions and practice, between the exposure to these agents arising from work activities and the cancer(s) contracted by the worker.

4. Other diseases

- 4.1. Miners' nystagmus
- 4.2. Other specific diseases caused by occupations or processes not mentioned in this list where a direct link is established scientifically, or determined by methods appropriate to national conditions and practice, between the exposure arising from work activities and the disease(s) contracted by the worker.

Source:

http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safework/documents/publication/wcms_125137.pdf.

► Appendix 7

Examples of OSH and EISS linkage: Republic of Korea*

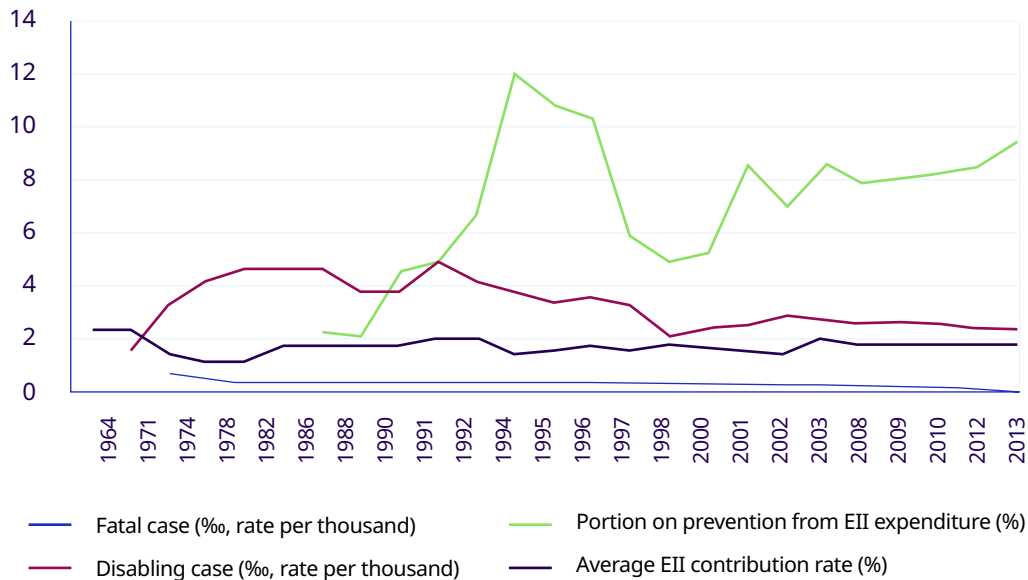
The Ministry of Employment and Labour supervises the EISS scheme and the Korea Workers' Compensation & Welfare Service (COMWEL) implements EI insurance, while the Korea Occupational Safety & Health Agency (KOSHA) administers prevention programmes excluding labour inspection.

There is clear evidence in the Republic of Korea of the advantages of a linkage between EISS and OHS, particularly in the 1990s before the 1998 economic downturn.

Before the OSH Act of December 1981 and the related decree and subdecree (1983) that defined the current OSH policy, the EI scheme had mainly focused on compensation. In the 1960s and 1970s, OSH policy was implemented mainly through labour inspection, with an economic incentive measure through the experience rating system introduced in 1969.

Since the 1980s, in order to maintain and improve workplace safety and health conditions, active OSH policies have implemented projects such as research and development, promotion of industrial accident prevention technologies, provision of technical assistance and training on occupational safety and health, and inspection on dangerous facilities and equipment. Their realization would not be possible without the allocation of some EI funds to OSH policy since 1987, the establishment of KOSHA in that year and the Occupational Safety Bureau within the Ministry of Employment and Labour in January 1989.

► Figure A7.1 EII indicators and prevention resources: Republic of Korea, 1964–2013



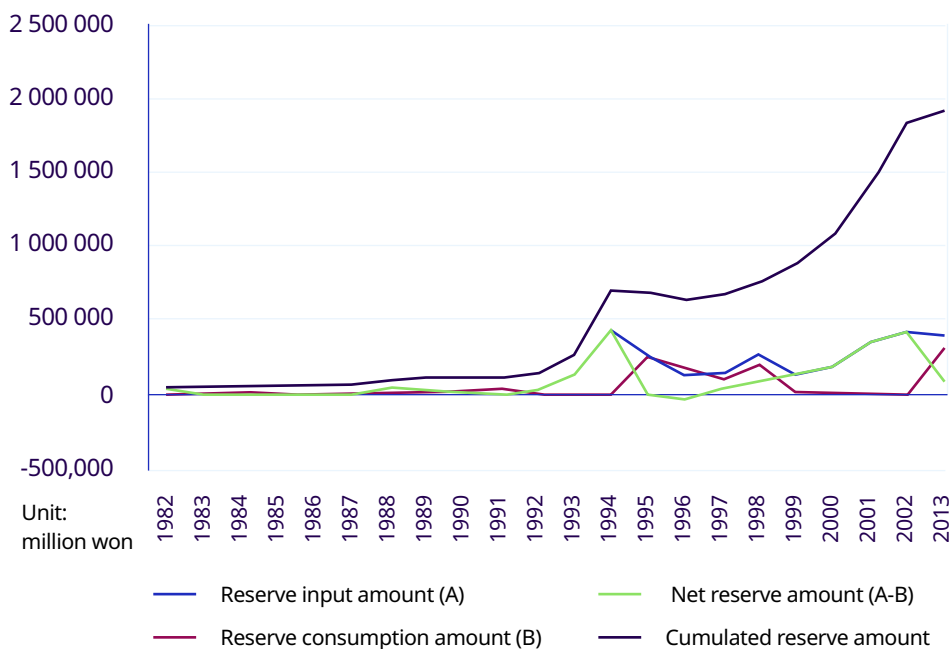
Source: Ministry of Employment and Labour.

* This appendix is quoted from Kim 2015.

Figure A7.1 compares the evolution of four indicators: fatal rate, injury rate, average contribution rate and prevention resources as a percentage of EII expenditure. The transfer from the EI fund to the KOSHA prevention budget represented 2.1–2.9 per cent of EI annual expenditure in 1988–90, rising to 11.9 per cent in 1995 before falling again to just under 10 per cent in 2013. More than 10 per cent of prevention resources in 1995–97 was allocated to the special prevention programme that focused on decreasing occupational accidents in SMEs. The figure shows that from 1992, after four years of investment in prevention, the injury rate began to decrease significantly, while the fatality rate remained under control without plummeting and the average contribution rate remained within the limited range.

Figure A7.2 shows the sharp increase in the EI fund reserve in the years after the active prevention policy started. The EII fund reserve plays a positive role in the scheme’s financial stability, as it prevents insolvency from paying benefits, especially in economic downturn. It also keeps the contribution rate under a certain level, which alleviates employers’ financial burden.

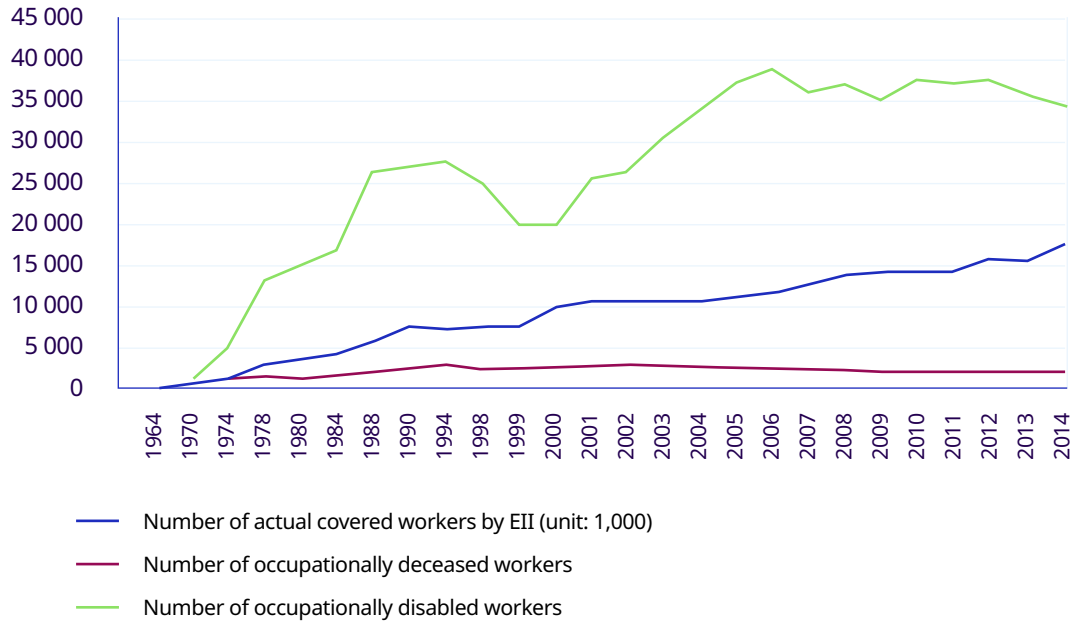
► **Figure A7.2 Evolution of EI fund reserve: Republic of Korea, 1982–2003**



Source: Ministry of Employment and Labour.

Figure A7.3 shows a sharp increase of the number of covered workers under the EII scheme and a steady increase in the number of occupational injuries or deaths. The decrease in the number of covered workers in 1999 may be due to the Korean economic downturn around the financial crisis in 1998.

► **Figure A7.3 Number of workers actually covered by EII, occupational injuries and deaths: Republic of Korea, 1964–2014**



Source: Ministry of Employment and Labour.

The investment of the EII fund into prevention enabled the implementation of active prevention programmes which contributed to the scheme’s financial stability through reducing injury rate, keeping EII contribution within certain level.

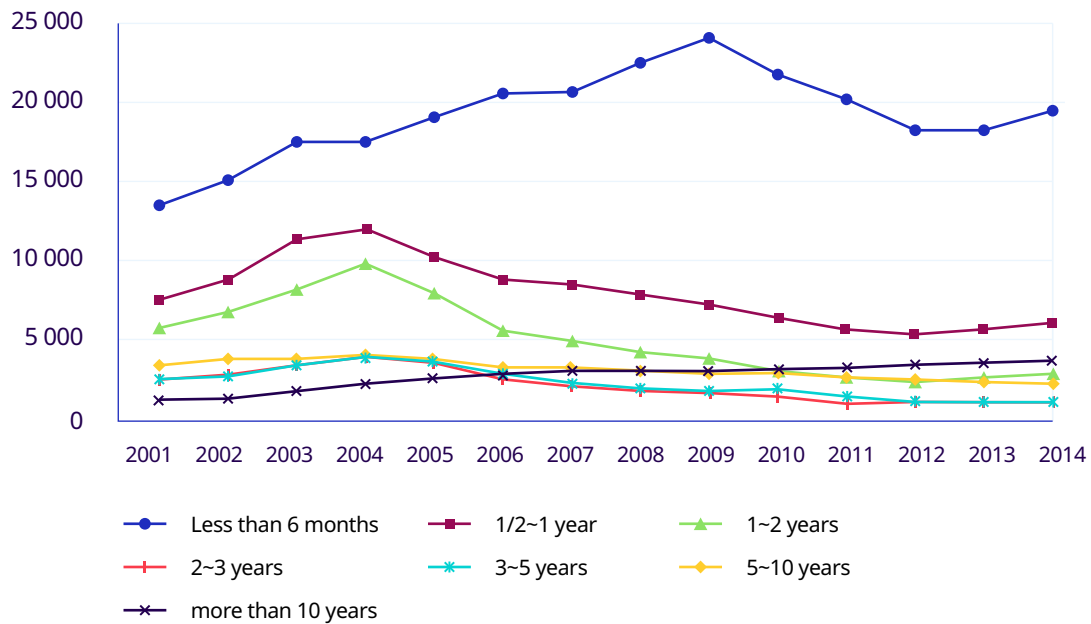
Evidence-based relation between EII financial stability and the return-to-work programme

A return-to-work programme should include intervention at the initial stage of medical treatment, which implies providing a related service from the starting point of rehabilitation, just after intensive treatment such as an operation. Better medical rehabilitation reduces the degree of invalidity and the period of medical treatment. Counselling and vocational rehabilitation raise the motivation of injured workers to return to work, either in the same job or a to different job at the same workplace or other workplaces.

All these efforts should lead to EII financial stability through reducing cash benefits for temporary and permanent disability, and in-kind benefits for medical treatment. The linkage analysis should examine the relationship between the average medical treatment period, the average number of days before return to work, the rate of return to work, the degree of subjective satisfaction of EII beneficiaries, and the financial balance between revenue and expenditure in EII.

Figure A7.4 shows a decrease in the number of patients with being medically treated from six months to 10 years since 2004. The number of patients with a medically treated period of less than six months continued to increase until 2010, which may be explained by the number of newly injured workers every year. Patients with medical treatment periods of more than 10 years are likely to need continuous intensive medical care, but the rate of increase is very low. The general decrease in the number of patients with medical treatment periods from six months to 10 years since 2004 is very noticeable and can be interpreted as an effect of the return-to-work programme implemented in 2001.

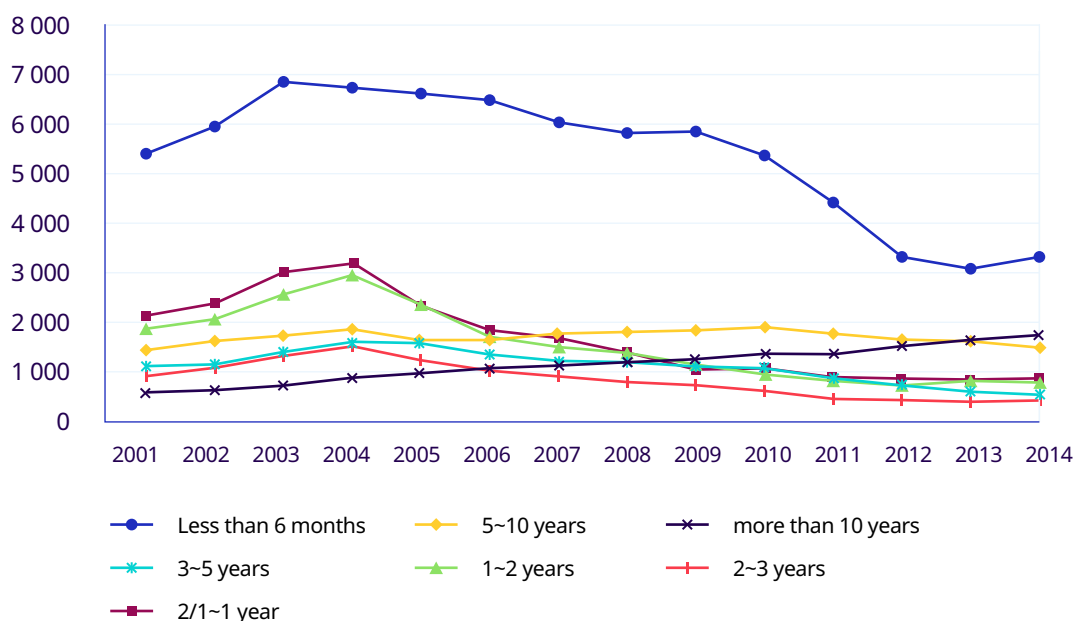
► Figure A7.4 Number of patients by duration of medical treatment: Republic of Korea, 2001–14



Source: Ministry of Employment and Labour.

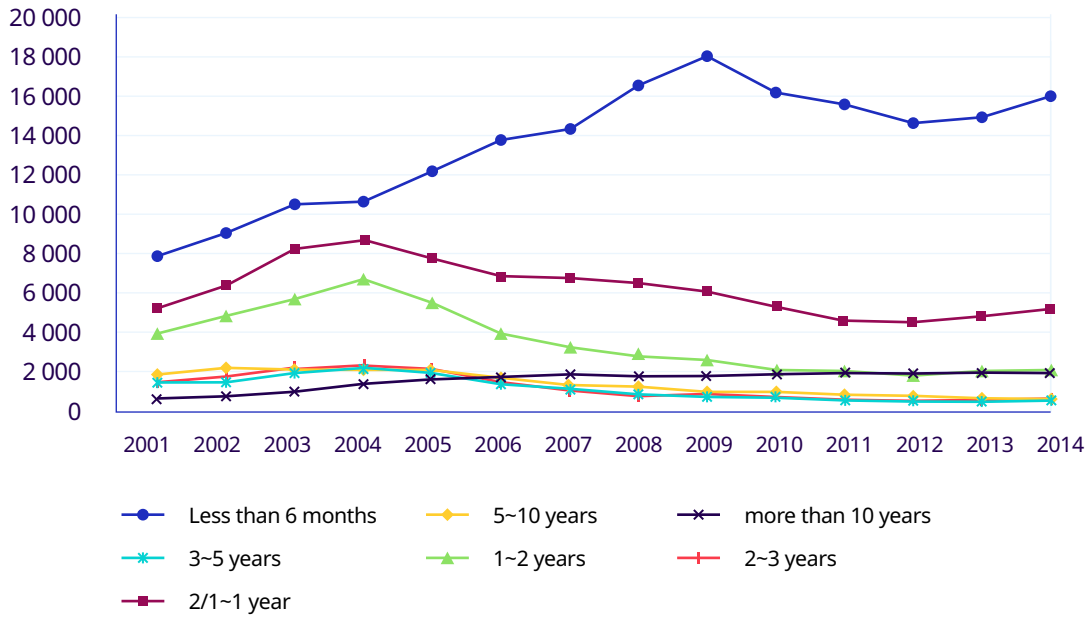
Figures A7.5 and A7.6 show that for medical treatment periods of less than six months, the number of inpatients has continuously decreased since 2003 while the number of outpatients has continued to increase. That suggests that the return-to-work programme might induce injured workers to shorten in-hospital treatment in order to restart work and carry out outpatient treatment while working. That can still contribute to reducing the total medical cost, as medical costs for inpatient are higher than for outpatients.

► Figure A7.5 Number of inpatients by duration of medical treatment: Republic of Korea, 2001–14



Source: Ministry of Employment and Labour.

▶ Figure A7.6 Number of outpatients by duration of medical treatment: Republic of Korea, 2001-14



Source: Ministry of Employment and Labour.

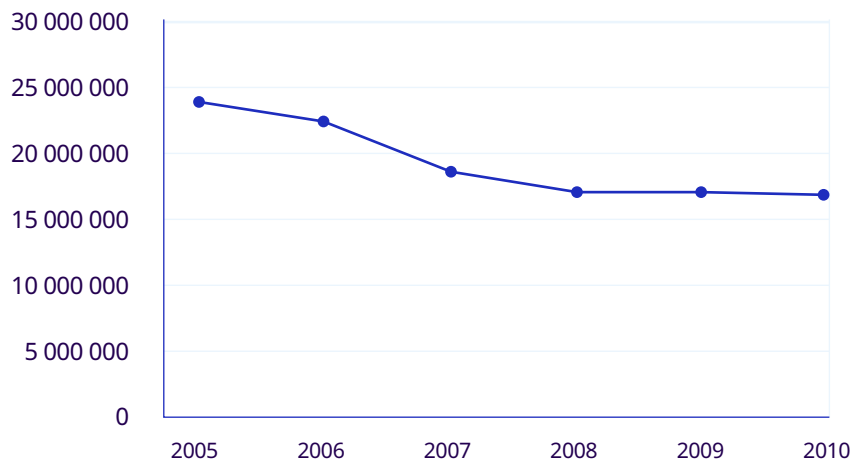
The number of patients terminating medical treatment continued to increase from 2005 to 2010 except in 2007 (figure A7.7). The total number of days of medical treatment declined from 2005 to 2010 (figure A7.8).When it comes to the average number of days before return to work, it continued to decrease during the same period (figure A7.9).

▶ Figure A7.7 Number of patients terminating medical treatment, Republic of Korea, 2005-10



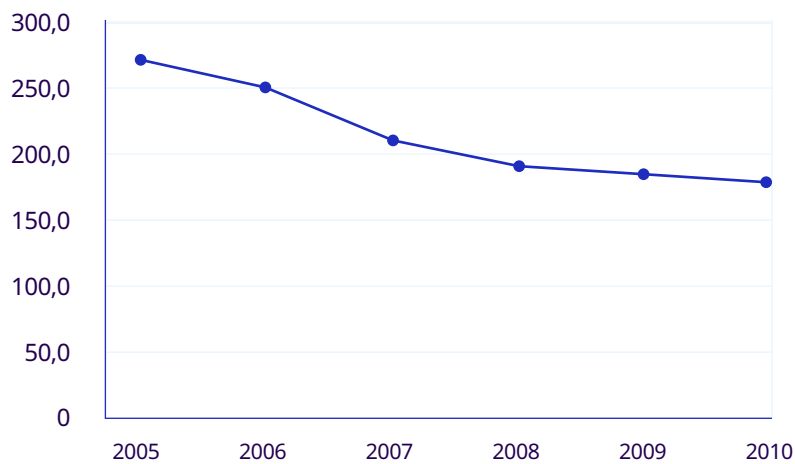
Source: Ministry of Employment and Labour.

► **Figure A7.8 Total number of days of medical treatment, Republic of Korea, 2005–10**



Source: Ministry of Employment and Labour.

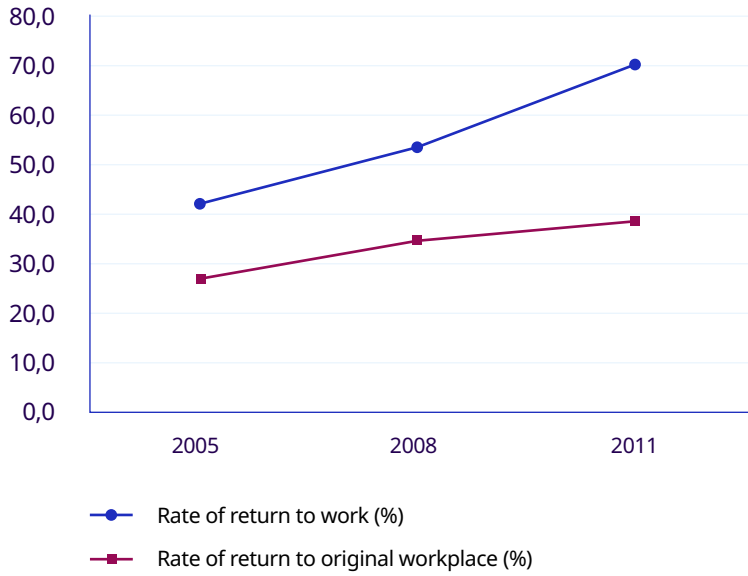
► **Figure A7.9 Average number of days before return to work: Republic of Korea, 2005–10**



Source: Ministry of Employment and Labour.

Figure A7.10 shows the return-to-work rate and the rate of return to the original workplace in 2005, 2008 and 2011, corresponding to the end of the three development plans in the Republic of Korea. The increasing trend indicates a positive contribution of the development plans in facilitating injured workers' return to work.

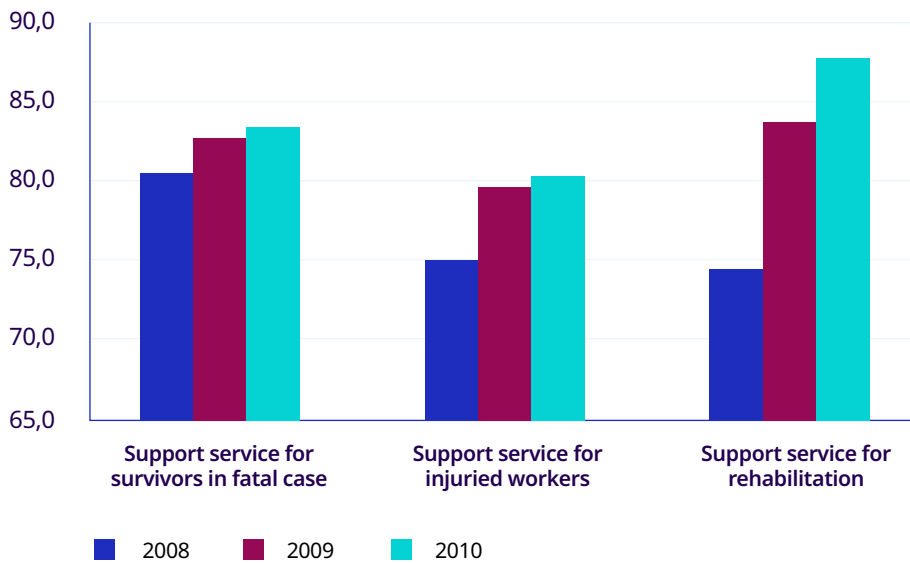
► **Figure A7.10 Rate of return to work and return to original workplace: Republic of Korea, 2005, 2008 and 2011**



Source: Ministry of Employment and Labour.

Figure A7.11 shows that the degree of satisfaction of the EII beneficiaries for the return-to-work service has increased more rapidly in comparison to the two other services.

► **Figure A7.11 Results of surveys on satisfaction of EII beneficiaries: Republic of Korea, 2008-10 (percentages)**



Source: Survey by government (PCSI).

The amount of payment for vocational rehabilitation benefits increased steadily between 2008 and 2010 (1,976,595,540 Won in 2009, 4,474,206,820 in 2010 and 14,926,091,210 in 2011). The return-to-work programme starting from 2001, along with the active prevention efforts starting from 1987, contributed to the financial stability of the Korean EII scheme by reducing the length of medical treatment periods and the average number of days before return to work.

► Appendix 8

Occupational safety and health (OSH)

Occupational accidents and diseases cause great human suffering and loss. The economic cost is high. Yet public awareness of occupational safety and health tends to be low. All too frequently it does not get the priority it merits. This must change and action needs to be stimulated and accelerated nationally and internationally.

Juan Somavia, ILO Director-General, speaking on the Global Strategy for Occupational Safety and Health at the 91st Session of the International Labour Conference 2003.

The ILO's *Global Strategy on Occupational Safety and Health* (ILO 2004) confirms the role of ILO instruments as a central pillar for the promotion of OSH and calls for integrated action that better connects the ILO standards with other means of action such as advocacy, awareness raising, knowledge development, management, information dissemination and technical cooperation to maximize impact. The fundamental pillars of a global OSH strategy include:

- the building and maintenance of a national preventative safety and health culture, where
 - the right to a safe and healthy working environment is respected at all levels;
 - governments, employers and workers actively participate in securing a safe and healthy working environment through a system of defined rights, responsibilities and duties,
 - principle of prevention is accorded the highest priority; and
 - all available means are put in use to increase general awareness, knowledge and understanding of the concepts of hazards and risks and how they may be prevented or controlled; and
- the introduction of a systems approach to OSH management at national level, based on the concept of the systems approach to OSH management at the enterprise level developed in the ILO *Guidelines on Occupational Safety and Health Management Systems* (ILO-OSH 2001) and related methodology.

Table A8.1 outlines the scope of ILO standards that set forth the fundamental principles of OSH.

► **Table A8.1 ILO standards setting down fundamental principles of OSH**

Convention No. 155	<p><u>Occupational Safety and Health Convention, 1981 (No. 155)</u></p> <p>It provides for the adoption of a coherent national OSH policy, as well as action to be taken by governments and within enterprises to promote OSH and to improve working conditions. This policy shall be developed by taking into consideration national conditions and practice.</p>
Protocol No. 155	<p><u>Protocol of 2002 to the Occupational Safety and Health Convention, 1981</u></p> <p>It calls for the establishment and the periodic review of requirements and procedures for the recording and notification of occupational accidents and diseases, and for the publication of related annual statistics.</p>
Convention No. 161	<p><u>Occupational Health Services Convention, 1985 (No. 161)</u></p> <p>It provides for the establishment of enterprise-level occupational health services which are entrusted with essentially preventative functions and which are responsible for advising the employer, the workers and their representatives in the enterprise on maintaining a safe and healthy working environment.</p>
Convention No. 187	<p><u>Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)</u></p> <p>It aims at promoting a preventative safety and health culture and progressively achieving a safe and healthy working environment.</p> <p>It requires ratifying States to develop, in consultation with the most representative organizations of employers and workers, a national policy, national system, and national programme on OSH. Their development shall take into account the principles set out in relevant ILO instruments (see Annex to Recommendation No. 197).</p> <p>National systems shall provide the infrastructure for implementing national policy and programmes on OSH, such as laws and regulations, authorities or bodies, compliance mechanisms including systems of inspection, and arrangements at the level of the undertaking.</p> <p>National programmes shall include time-bound measures to promote OSH, enabling a measuring of progress.</p>
Recommendation No. 197	<p><u>Promotional Framework for Occupational Safety and Health Recommendation, 2006 (No. 197)</u></p> <p>It supplements Convention No. 187.</p>

Convention No. 187 builds upon Convention No. 155 and Conventions Nos. 81 and 129 (inspection). Both Convention No.187 and Recommendation No.197 place OSH high on the national agenda to lower the toll of work-related injuries and diseases. Table A8.2 highlights the content of Convention No. 187 and Recommendation No. 197 that provide guidance for the development of an OSH national policy, system and programme.

► **Table A8.2 Promotional framework for OSH: ILO Convention No. 187 and Recommendation 197**

<p>Employers and workers, and other stakeholders, must be consulted during formulation, implementation and review of all policies, systems and programmes.</p> <p>A framework for the notification, analysis and production of statistics on occupational accidents and diseases shall be an integral part of any national policy and system for OSH.</p>	
National policy	<p>It shall be formulated to promote the right of workers to a safe and healthy working environment at all relevant levels. Basic principles to promote include:</p> <ul style="list-style-type: none"> - assessing occupational risks or hazards; - combatting occupational risks or hazards at source; and - developing a national preventative safety and health culture (information, consultation and training).
National system	<p>It refers to the infrastructure which provides the main framework for implementing the national policy and national programs on OSH.</p> <p>It shall be established, maintained, progressively developed and periodically reviewed. Its key elements include:</p> <ul style="list-style-type: none"> - laws, regulations, collective agreements where appropriate, and any other relevant instruments; - authority responsible for OSH; - mechanisms for ensuring compliance, including systems of inspection; - arrangements to promote, at the level of the undertaking, cooperation between management and workers for prevention measures; - national tripartite body on OSH; - information and advisory services on OSH; - provision of OSH training; - provision of occupational health services; - research on OSH; - mechanisms for the collection and analysis of data on occupational accidents and diseases; - provisions for collaboration with relevant insurance and compensation schemes; and - mechanisms for a progressive improvement of OSH conditions in micro-, small and medium-sized enterprises and in the informal economy. <p>A management systems approach to OSH is found in ILO-OSH 2001.</p>
National programme	<p>It includes objectives to be achieved in a predetermined time frame, priorities and means of action formulated to improve OSH, and means to assess progress. It shall:</p> <ul style="list-style-type: none"> - promote the development of a national preventative safety and health culture; - contribute to the protection of workers by eliminating or minimizing work-related hazards and risks in order to prevent occupational injuries, diseases and deaths and promote safety and health in the workplace; - be formulated and reviewed on the basis of analysis of the national situation regarding OSH; - include objectives, targets and indicators of progress; and - be supported by other complementary national programme and plans which will assist in achieving progressively a safe and healthy working environment. <p>It shall be widely publicized, endorsed and launched by the highest national authorities.</p>

National preventative safety and health culture	It refers to a culture: <ul style="list-style-type: none"> - in which the right to a safe and healthy working environment is respected at all levels; - where government, employers and workers actively participate in securing a safe and healthy working environment through a system of defined rights, responsibilities and duties; and - where the principle of prevention is accorded the highest priority.
National profile	It summarizes the existing situation on OSH. The progress made towards achieving a safe and healthy working environment should be prepared and regularly updated. It should be used as a basis for formulating and reviewing the national programme.

In addition to Conventions and Recommendations, ILO instruments also include codes of practice that set out practical guidelines for public authorities, employers, workers, enterprises, and specialized occupational safety and health protection bodies such as enterprise safety committees. They are not legally binding instruments and are not intended to replace the provisions of national laws or regulations, or accepted standards.

The ILO publication *Fundamental Principles of Occupational Health and Safety* (Alli 2008), provides more detail on topics essential to the promotion of OSH activities. The following outlines on fundamental principles of OSH are taken from that publication:

- All workers have **rights** to a safe and healthy working environment, work conditions consistent with their well-being and human dignity, and real possibilities for personal achievement, self-fulfilment and service to society.
- OSH **policies** must be established at both the national (governmental) and enterprise levels and effectively communicated to all parties concerned.
- A national **system** for OSH must be established and include all the mechanisms and elements necessary to build and maintain a preventative safety and health culture. It must be maintained, progressively developed and periodically reviewed.
- A national **programme** on OSH must be formulated, implemented, monitored, evaluated and periodically reviewed.
- OSH **programmes and policies** must aim at both prevention and protection, with focus on primary prevention at the workplace level. Workplaces and working environments should be planned and designed to be safe and healthy.
- Continuous **improvement** of OSH must be promoted to ensure that related laws, regulations and technical standards are adapted periodically to social, technical and scientific progress and other changes in the world of work. It is best done through a national policy, national system and national programme.
- **Information** is vital for the development and implementation of effective programmes and policies. The collection and dissemination of accurate information on hazards and hazardous materials, surveillance of workplaces, monitoring of compliance with policies and good practice, and other related activities are central to the establishment and enforcement of effective policies.
- **Health promotion is a central element of occupational health practice. Efforts must be made to enhance workers' physical, mental and social well-being.**
- **Occupational health services** should be established and made accessible to all workers in all categories of economic activity in order to protect and promote workers' health and improve working conditions.
- **Compensation, rehabilitation and curative services** must be made available to workers who suffer occupational injuries, accidents and work-related diseases. Action must be taken to minimize the consequences of occupational hazards.

- ▶ **Education and training** are vital components of safe and healthy working environments. Workers and employers must be made aware of the importance of establishing safe working procedures and of their application. Trainers must be trained in areas of special relevance to particular industries in order to address specific OSH concerns.
- ▶ Workers, employers and competent authorities have certain **responsibilities, duties and obligations**. For example, workers must follow established safety procedures; employers must provide safe workplaces and ensure access to first aid; and the competent authorities must devise, communicate and periodically review and update OSH policies.
- ▶ **Policies must be enforced**. A system of inspection must be in place to secure compliance with OSH measures and other labour legislation.

The ILO List of Occupational Diseases Recommendation, 2002 (No. 194) sets forth the vital role of recording and notification of occupational accidents and diseases. The absence of reliable information about the incidence of occupational accidents and disease is a major obstacle to curbing the toll of work-related deaths, injuries and diseases. Occupational accidents and diseases need to be identified, recorded and notified with a view to:

- ▶ identifying their causes;
- ▶ establishing preventative measures;
- ▶ harmonizing systems of recording and notification; and
- ▶ improving the compensation process.

Recommendation No. 194 refers to the 1996 *Code of Practice on the Recording and Notification of Occupational Accidents and Diseases*. The code was drawn up with the object of providing guidance to those engaged in the framing of provisions and the setting up of systems, procedures and arrangements for the recording and notification of occupational accidents and diseases, commuting accidents, dangerous occurrences and incidents, and their investigation and prevention. It is of particular relevance to competent authorities such as social security institutions, management, employers and workers, and their organizations.

► Appendix 9

Informal employment

A9.1. ILO instruments related to the informal economy

The ILO's eight fundamental Conventions clearly apply to the informal economy (see ILO 2013b, section 2.1). These Conventions are the:

- Forced Labour Convention, 1930 (No. 29)
- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
- Equal Remuneration Convention, 1951 (No. 100)
- Abolition of Forced Labour Convention, 1957 (No. 105)
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
- Minimum Age Convention, 1973 (No. 138)
- Worst Forms of Child Labour Convention, 1999 (No. 182)

There are other instruments that make explicit reference to the informal economy, or contain **implicit** provisions, or are particularly pertinent as they apply to specific categories of workers often present in the informal economy. ILO instruments often apply explicitly to “workers” rather than the legally narrower term “employees”, or rarely contain wording limiting their application to the formal economy.

Standards and fundamental principles and rights at work

Freedom of association and collective bargaining. The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) provide that all workers, without distinction whatsoever, enjoy the fundamental rights which flow from freedom of association. Informal economy workers therefore have the right to organize and to engage in collective bargaining, establish and join trade unions, and be represented in tripartite bodies and social dialogue structures.

Forced labour. Under Article 2(1) of the Forced Labour Convention, 1930 (No. 29), the term “forced labour” is defined as “all work or service which is exacted from any person”.

Poor coverage and enforcement of laws and regulations, especially in the informal economy, provide an environment in which forced labour practices can emerge and go undetected.

Victims of forced labour need assistance to enable them to assert their rights and denounce any abuses. They need supplementary measures of economic assistance and rehabilitation to integrate into the formal economy and not to fall back into forced labour.

Child labour. The Minimum Age Convention, 1973 (No. 138), with a view to achieving the total abolition of child labour, applies to all children employed in any occupation. The Worst Forms of Child Labour Convention, 1999 (No. 182), covers all children under the age of 18 years and its definition of the worst forms of child labour implicitly includes those occurring in the informal economy.

Examples:

- **Kenya** and **Zambia** have extended protection to children working in family enterprises and those engaged in unpaid work.
- **Kuwait** has adopted an order establishing the minimum age for domestic workers at 20 years of age.
- The **Philippines** has adopted measures to apply minimum age provisions to the domestic and household service sectors.
- In **Indonesia, Lesotho** and **Swaziland**, draft legislation under discussion would apply the minimum age provisions to domestic workers.

Discrimination. Equality and non-discrimination in employment and occupation is a fundamental principle and human right to which all men and women are entitled. No exclusions are allowed under the Equal Remuneration Convention, 1951 (No. 100) or the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), which apply to all sectors of activity, the public and private sectors, and implicitly to the formal and informal economies. However, their application in law and practice remains a challenge in the informal economy.

Convention No. 111 clearly covers non-wage work, including people who work on their own account, as employers or as unpaid family workers. The term “occupation” means the trade, profession or type of work performed, irrespective of the branch of economic activity or professional status. Traditional occupations, such as those pursued by indigenous peoples, including subsistence farming, handicraft production and hunting, are also “occupations” within the meaning of the Convention.

Employment

The Employment Policy Convention, 1964 (No. 122) calls for the adoption of policies designed to promote full, productive and freely chosen employment with the aim of ensuring “work for all who are available for and seeking work”.

The Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169) calls for measures to be taken for the progressive transfer of workers from the informal economy to the formal sector.

Other relevant standards include the:

- Human Resources Development Convention, 1975 (No. 142)
- Human Resources Development Recommendation, 2004 (No. 195)
- Employment Service Convention, 1948 (No. 88)
- Private Employment Agencies Convention, 1997 (No. 181)
- Employment Relationship Recommendation, 2006 (No. 198)
- Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189)
- Promotion of Cooperatives Recommendation, 2002 (No. 193)

Examples:

- In **Ecuador**, under Convention No. 88, the provision of incentives through social security and taxation is contributing to formalizing the status of workers, and the establishment of a centre to make the public employment service available to workers in the informal economy is planned.
- In applying Convention No. 181, a new approach was adopted in **Uruguay** by collective agreement: the parties declared the supply of workers through companies registered with the National Employment Directorate (DINAE).
- In applying Convention No. 122, measures have been taken in **Thailand** to revive the economy and to protect the poorest in the country.

Social protection

- **Social security.** The Social Protection Floors Recommendation, 2012 (No. 202) assists countries in extending social protection to all. It aims at the progressive extension of some basic health services and income security to those in need (the horizontal dimension of extension), most of them in the informal economy. The objective is, firstly, to lift them out of acute poverty, and then progressively to enable them to obtain access to more productive employment.
- A sustainable social security system is recognized as an important factor in a transition to formal employment. To contribute efficiently to this transition, basic social protection must be part of public policies that are overall, comprehensive and coherent. Such policies imply an efficient coordination between policy in many fields (education, health, social security, employment and labour, economic and taxation).

In the view of the ILO Committee of Experts on the Application of Conventions and Recommendations¹⁰:

- The informal nature of employment could not be invoked to refuse social security benefits to injured workers or to their dependants, for example, when examining the application of the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19).
- Countries with significant levels of social security fraud and evasion, and with large sections of the population engaged in informal employment, need to establish a comprehensive social security strategy aimed at extending protection to those categories of the population.
- The objective of ensuring that the greatest number of workers receive the benefits provided for in Convention No. 102 requires the introduction of more efficient programmes aimed at the informal economy and the most vulnerable categories of the population.
- The implementation of Convention No. 102 and Recommendation No. 202 should be carried out in parallel, and should identify and draw upon synergies and complementarities. Governments should therefore provide information specifying how the new social protection mechanisms are harmonized with the existing social security system.
- When examining the situation in **Haiti** regarding several Conventions on employment injury, the Committee has repeatedly called on the Government to envisage the priority of establishing mechanisms to provide the population, including informal workers and their families, with access to essential healthcare and minimum income security.¹¹

Occupational safety and health. The Occupational Safety and Health Convention, 1981 (No. 155) applies to all branches of economic activity and **all** workers in those branches. Similarly, the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) provides that the national system for OSH shall cover micro-enterprises, small and medium-sized enterprises (SMEs) and the informal economy (Article 4(3)(h)).

According to the Committee of Experts, although Convention No. 155 permits the exclusion of limited categories of workers from its provisions, the continued appropriateness of such exclusions should be reviewed.

¹⁰ The ILO Committee of Experts was set up in 1926 to examine the growing number of government reports on ratified Conventions. Today it is composed of 20 eminent jurists appointed by the Governing Body for three-year terms. The Experts come from different geographic regions, legal systems and cultures. The Committee's role is to provide an impartial and technical evaluation of the state of application of international labour standards. See <http://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/committee-of-experts-on-the-application-of-conventions-and-recommendations/lang--en/index.htm>.

¹¹ http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13101:0::NO::P13101_COMMENT_ID:3249286.

The Committee of Experts endeavours to ensure that OSH provisions are applied in practice in the informal economy:

- In relation to the Occupational Health Services Convention, 1985 (No. 161) it noted that **Burkina Faso's** action plan accompanying the national policy on occupational health services will also cover the informal economy and the agricultural sector.
- With reference to the Safety and Health in Construction Convention, 1988 (No. 167) it requested information from the **Dominican Republic** on how it will be guaranteed that the Convention is applied to all construction activities and to all the workers concerned (whether registered, unregistered or self-employed). It also requested information on construction workers who are not registered or who work in the informal economy.
- Also in relation to Convention No. 167, it highlighted the creation in 2011 in **Brazil** of an indicator of the “real unemployment rate”, which will take account in labour market statistics of workers in the informal economy and should contribute to the more accurate identification of unregistered workers in the construction sector and the application of the Convention to them.

A9.2 The role of integrated policy frameworks in transitioning to the formal economy¹²

Although formalization is desirable, views about what it is meant and how it can be achieved are very different. Formalization narrowly conceived in terms of registration and punitive sanctions for non-compliance is counter-productive. Many avenues towards formalization and many incentives for a genuine movement out of informality exist, but most informal economy actors still face limited choices. How far should reform go in rethinking or reinventing policy frameworks, instruments and the culture of outreach to suit the specific conditions of the informal economy?

Current policy initiatives around the world show no universal policy framework, but rather a set of multidimensional approaches that can be combined in integrated policy frameworks and adapted to each specific country context. They most often simultaneously target the following objectives:

- **promoting formal employment** through pro-employment macroeconomic and sectoral policies focusing on the development of sustainable MSMEs;
- **reducing informal employment** by:
 - lowering the cost of transitions to formality (creating a policy and regulatory environment that reduces barriers to formalization, while protecting workers' rights);
 - increasing the benefits of being formal (business development services for MSMEs, access to the market, productive resources, credit programmes, and training and promotional programmes to upgrade informal economy units); and
- **increasing decent work in the informal economy** by:
 - developing a national social protection floor for all;
 - implementing a minimum wage and health and safety incentives;
 - organizing workers from the informal economy; and
 - encouraging informal enterprises to join production conglomerates or cooperatives, as well as supporting the development of social economy enterprises and organizations.

¹² This section is adapted from ILO 2013b, Chapter 3.

The goal is to make informal activities part of a growing formal economy that offers decent jobs, productivity gains and economic growth. Policies aiming at facilitating transitions to formality should:

- recognize the importance of the informal economy;
- restrict and regulate it when necessary; and
- mostly seek to improve productivity and working conditions.

Country experience shows that approaches can make formalization a much more attractive option and have a more sustained impact if they are:

- anchored in social dialogue;
- based on capacity building and opening up access to a full range of resources; and
- tailoring taxation, financing and social security systems to the specific challenges faced by informal economy actors.

In the informal economy, working and living conditions are often intertwined. Issues such as wage regulation, working time, maternity protection and the work–family balance are also applicable.

Governments have a primary role to play in facilitating transitions to formality. Political will and commitment, and the structures and mechanisms for proper governance, are essential. Governments have a lead responsibility to provide an enabling environment for sustainable formal enterprises and to extend the coverage of social security.

Successful strategies for transitions to formality require strong social dialogue institutions with the participation of workers' and employers' organizations, alongside representative organizations from the informal economy. Successful transitions to formality require a "new pact" between the people, enterprises and governments based on capacity building, productivity gains, an enabling business environment, empowerment and entitlements to social and economic rights.

Table A9.1 lists some of the challenges in building an integrated policy framework. Each issue is further discussed below.

► **Table A9.1 Integrated policy framework: Some challenges**

Generation of quality employment	The root cause of the informal economy is the insufficient numbers of formal jobs.
Governance, sustainable enterprises and productivity	Informality is not only a legal question, but also an issue of governance, i.e. the capacity to implement existing laws.
Working conditions and labour inspection	Informal economy workers, and particularly women, often work in the most hazardous jobs, conditions and circumstances.
An enabling environment for sustainable enterprises	Most employment is provided by enterprises in the private sector, but in developing countries many of them are in the informal economy and are unable to access the support and services needed.
Access to finance	Formal providers of finance are reluctant to deal with home-based producers and micro-enterprises.
Skills development	Low levels of education and vocational skills of informal economy workers results in a vicious circle of low productivity, low income and low investment in skills.
Organization, representation and social dialogue	Organization and representation are crucial for workers to pursue their employment interests through collective bargaining, or to lobby policymakers on issues such as access to infrastructure, property rights, taxation and social security.
Local development strategies, cooperatives and the social economy	The local level is clearly crucial from a policy perspective.
Promoting equality and addressing discrimination	The preponderance of women in the informal economy can be partly explained by their unequal burden of unpaid family responsibilities.
Social security in the transition to formality and the importance of integrated strategies	Lack of access to social security is often a direct consequence of informality. Strategies to extend social security can facilitate the transitions to formality. A combination of income security measures and active labour market policies facilitates the progressive inclusion of workers in informal economy in the labour market.

Generation of quality employment through macroeconomic and sectoral policies

The root cause of the informal economy is the insufficient numbers of formal jobs to absorb new entrants to the labour market and provide job opportunities for those trapped in the informal economy.

Economic and social policies must make employment a central concern by:

- promoting employment-friendly macroeconomic frameworks; and
- supporting productive sectors that have a high impact on employment and decent work.

Macroeconomic policy managers must act as agents of development with multiple goals:

- maintain price stability and fiscal sustainability;
- raise productivity,
- facilitate economic transformation;
- increase the availability of decent jobs; and
- improve workers' ability.

A new generation of development strategies calls for the expansion of sectors that generate high levels of added value and employment, and have large multiplier effects and linkages to the domestic economy:

- Formalization support targets sectors with potential high levels of quality employment (such as ecotourism) or a very high level of informality (such as agriculture).
- Public works are among the sectoral policies that have been widely implemented to reduce unemployment (and underemployment) and improve prospects for disadvantaged workers (the poor, the unskilled and the long-term unemployed).
- The resulting infrastructure, assets and services promote social and economic development using local resources.
- Electrification, rural roads, health and education centres or local marketplaces have a significant impact on private productivity, the earnings of small-scale producers and the livelihoods of informal economy actors.

Macroeconomic and sectoral policies are results-oriented and performance-driven, which means:

- Employment and decent work are core variables to be monitored.
- Explicit and quantitative employment targets are established.
- Labour market information systems are able to track employment creation and assess the employment impact of the sectoral policies implemented.

Governance, sustainable enterprises and productivity

Informality is not only a legal question, but also an issue of governance – that is, the capacity to implement existing laws. Good laws and regulations are useless in the absence of strong and effective institutions for their implementation. It is crucial to clarify the current institutional setting and to identify why some workers are not covered by formal arrangements, and the changes that could reverse this situation.

Labour market institutions comprise:

- the set of labour laws and regulations;
- the mechanisms and procedures for labour market governance and for the setting of policy parameters (such as collective bargaining and wage councils); and
- other regulations and mechanisms that have a bearing on labour market outcomes (such as social protection and pension schemes).

Formal enterprises bear a series of labour regulation costs, such as the social costs that lay-offs impose on society for social protection measures and training through public services. Responsive labour legislation balances low costs with incentives for compliance. More effective innovative regulatory approaches have gone beyond a prescriptive approach (“command and control” regulation) to be inclusive and participatory in their design and implementation. The objective is to improve compliance (tax, registration or labour standards) through:

- incentives for registration for businesses (access to credit, public markets, development programmes, and so on) and for labour (such as health insurance benefits); and
- capacity of the public authorities to enforce regulations (inspection systems).

The causes of informality are manifold and are mostly unrelated to legality. It would therefore be ineffective to pursue formalization through legislative reform alone. Evasion of employment protection legislation is unlikely to be a major cause of informal employment. Moreover, formal arrangements are not regulated solely by labour legislation, but also by a range of civil, commercial, administrative, fiscal and social security rules.

Labour market regulation is generally not among the key constraints preventing the creation of formal jobs and formalization. Significant constraints on transitions to formality include:

- disincentive taxation, corruption, and lack of skills and access to markets, infrastructure and finance; and
- lack of a coherent legal, judicial and financial framework for securing property rights (assets cannot be turned into productive capital through their sale, lease or use as collateral). Reform of property rights should pay attention to gender inequality in the right to own and control property.

Working conditions and labour inspection

Informal economy workers, and particularly women, often work in the most hazardous jobs, conditions and circumstances. Prevention of work-related accidents and illnesses is an essential aspect in addressing working conditions in the informal economy. Required measures include:

- raising awareness of risks among informal economy workers and employers;
- knowledge dissemination on the positive correlation between OSH (and other good working conditions), quality production, productivity and competitiveness; and
- promoting an understanding that the necessary actions are not out of reach, either financially or technically.

Core labour rights and standards are non-negotiable minima, and non-compliance should be subject to non-discretionary punishment. However, a pragmatic approach can be adopted, as regulations are more likely to be effective when different options are available for their enforcement (such as innovations in workplace inspection, provision of advice, dispute settlement, promotion of collective organization and action, and training programmes targeting informal enterprises).

An important reason for the failure to enforce labour law in many countries is the weakness of labour administrations, and particularly labour inspection. Despite the increasing complexity of enterprises, production systems and employment relationships, the resources allocated for labour inspection are often insufficient even for the adequate and regular inspection of medium-sized and large enterprises. Countries are responding to these challenges in many ways:

- Some countries, such as **Chile**, have introduced variable penalties, with fines increasing the higher the number of workers affected.
- Others have increased the number of labour inspectors, with their numbers being doubled in **Guatemala** and **El Salvador**, and tripled in the **Dominican Republic** and **Honduras**.
- To reach the informal economy, some countries have developed partnerships, for example with ministries of health and agriculture, as well as mobilizing communities as monitoring partners, developing voluntary codes of conduct and establishing tripartite partnerships.

Rather than relying solely on sanctions, approaches that are educational, persuasive, transparent and participatory are particularly successful in reaching the informal economy:

- In **Finland**, France and the **Netherlands**, for example, labour inspection campaigns include education and awareness-raising activities for farmers, their employees and families, focusing on serious occupational hazards.
- In **Chile**, fines can be replaced by training for enterprises with fewer than nine workers.
- In **China**, under the grid-based management system, labour inspectors and assistants follow clear, traceable steps to promote awareness of laws, monitor compliance and carry out enforcement in specific areas.

Enabling environment for sustainable enterprises

Most employment is provided by enterprises in the private sector, but in developing countries many of them are in the informal economy and are unable to access the support and services needed. This limits their profitability, sustainability and quality of employment provided. Policies aimed at improving productivity should prioritize measures that provide access to finance, skills, infrastructure, markets and technology transfers (creating an enabling environment for sustainable enterprises).

Many people working in the informal economy have real business acumen, creativity, dynamism and innovation, and their potential could flourish if certain obstacles were removed. There are many successful experiences of upgrading MSMEs in the informal economy through the provision of training, business services and information, and the extension of hard and soft infrastructure, including shelters and drainage, as well as insurance, affordable credit and other financial services.

The ILO has developed a tool providing guidance on the improvement of the business environment (*Enabling Environment for Sustainable Enterprises –EESE*), as well as other tools designed to build the capacity of smaller enterprises. In Cambodia, they have helped MSEs increase productivity through healthier and safer workplaces. These tools are:

- Start and Improve Your Business (SIYB)
- Work Improvements in Small Enterprises (WISE),
- Improve Your Work Environment and Business (I-WEB)
- Work Improvement for Safe Home (WISH) for homeworkers and MSEs

Policies and the legal environment support entrepreneurship through lowering the costs of establishing and operating businesses, simplified registration and licensing procedures, appropriate rules and regulations, and reasonable and fair taxation. Such policies also discourage formal businesses from moving into the informal economy. Legal registration facilitates access to commercial buyers, more favourable credit terms, legal protection, contract enforcement, technology, subsidies, foreign exchange and local and international markets.

Access to finance

Formal providers of finance are reluctant to deal with home-based producers and micro-enterprises for the following reasons:

- very small scale of their operations;
- their absence of legal status;
- the high transaction costs;
- weak information on clients;
- the lack of a formal credit history; and
- the small scale of the financial services required.

In response, some countries have adopted financial inclusion regulations encouraging or requiring banks and insurers to serve the informal economy. For example:

- In **India**, financial institutions are required to have a portion of their portfolios in the rural and social sectors.
- **South Africa** adopted the voluntary approach, through which financial institutions were involved in setting targets under the Financial Sector Charter.

The ILO promotes a balanced approach for operators in the informal economy. For instance, its Microinsurance Innovation Facility encourages the provision of insurance products to low-income households, considering:

- productive needs (micro-enterprise loans to boost incomes and create jobs); and
- protective needs (savings, emergency loans and insurance).

A microfinance institution (MFI) is an innovative way to promote formalization:

- MFIs have loans, deposits and other service contracts as in the formal economy, without being as sophisticated as mainstream banking services.
- MFIs wish to grow and encourage their clients to expand from livelihood activities to genuine micro-enterprises, and then to SMEs.
- In **Burkina Faso** and **India**, the ILO has piloted initiatives to test the impact of formalization on the well-being of MFI clients and the role of MFIs in this regard.

Skills development

In many developing countries, the low level of education and vocational skills of informal economy workers results in a vicious circle of low productivity, low income and low investment in skills. Therefore, improving the skills of informal economy workers increases their ability to access gainful and productive jobs. At the national level, higher skills levels can:

- reduce labour shortages in high growth or priority sectors;
- encourage foreign direct investment;
- improve global competitiveness;
- stimulate innovation and economic growth; and
- facilitate productive transformation.

The mismatch between the output of educational and training institutions and the skills required on the labour market can lead to high levels of youth unemployment, informal employment and emigration. Formal training systems can lack the flexibility and accessibility for informal economy workers.

- In **India**, to meet demand for technical skills, certification measures are being developed and linkages established between training systems and industry, services and agriculture.
- In many developing countries, informal apprenticeship schemes have shown considerable potential to provide skills in the informal economy.
- Countries such as **Benin**, **Cameroon**, **Ghana**, **Kenya** and **Zimbabwe** are taking measures to upgrade the skills of both trainers and apprentices, and to standardize and recognize skills at the national level.

Portability of skills enhances the employability of workers and facilitates their access to more productive jobs. However, the skills gained through experience in the informal economy are not usually recognized in formal labour markets or by training institutions. It is therefore necessary to develop institutions and mechanisms that assess the skills and competencies acquired by workers so that they can be validated and recognized through certification.

- **Benin**, **Ghana**, **South Africa** and the **United Republic of Tanzania** offer interesting examples of the recognition of prior learning.
- In **Bangladesh**, the recognition of skills attained in a variety of ways, including work in the informal economy, is being promoted through the National Technical and Vocational Qualifications Framework.

Organization, representation and social dialogue

Organizing workers and entrepreneurs in the informal economy is the first step towards social dialogue and the development of tripartite solutions that take into account the informal economy's contextual factors and diversity. However, democratic and independent organizations of actors in the informal economy (wage workers, own-account workers, self-employed persons and employers) are sometimes not allowed under local or national legislation. They are often excluded from or under-represented in social dialogue institutions and policymaking processes. Without organization and representation, they are not able to pursue their employment interests through collective bargaining, or to lobby policymakers on issues such as access to infrastructure, property rights, taxation and social security.

In recent years, employers' and workers' organizations have been taking initiatives to engage informal economy workers and operators, either through existing organizational structures, or through the formation of informal economy associations:

- The SYNDICOOP programme – a joint International Co-operative Alliance (ICA), International Trade Union Confederation (ITUC) and ILO initiative in Africa (and particularly in **Kenya, Rwanda, South Africa, United Republic of Tanzania and Uganda**) – has shown that trade unions and cooperatives can have a positive impact in the informal economy when they join forces. They are natural partners in providing the services and support needed by workers in informal and unprotected situations.
- The Self-Employed Women's Association (SEWA) in **India** is one of the best-known examples of a successful initiative to organize and empower poor women in the informal economy. Adopting a multifaceted approach, as a union, cooperative and women's movement, SEWA provides a wide range of services, including training, assistance in establishing cooperatives, and financial, insurance and social security services. The SEWA model has inspired other initiatives, not only in Asia, but also in **South Africa and Turkey**.
- Several international networks have played an important role in improving the lives and promoting the rights of informal economy workers. The most notable are Women in Informal Employment: Globalizing and Organizing (WIEGO), Homenet, Streetnet, the Global Alliance of Waste Pickers and the International Domestic Workers' Network (IDWN).

Local development strategies, cooperatives and the social economy

The local level is clearly crucial from a policy perspective, but how can local development capacities be strengthened, and how can lessons be scaled up and transferred?

- The valorization of local or informal economy actors in development dynamics requires a redefinition of the role of the State, rather than its withdrawal.
- The action taken may need to go beyond the local level, but local actors need the means and skills to respond to the challenges that they are facing, which may include major global threats.

The measures that local authorities can take to support transitions include:

- supporting community-based management initiatives;
- strengthening social dialogue mechanisms;
- facilitating market access,;
- increasing inward investment and local procurement;
- upgrading value chains;
- promoting employment-intensive methodologies for infrastructure development;
- streamlining business registration and regulation;
- providing business support services; and
- strengthening public-private partnerships.

A local development approach was crucial in mitigating some of the impacts of the 2001 economic crisis in **Argentina**. With ILO support, local actors:

- designed local economic development strategies to strengthen public employment services;
- set up a labour market observatory;
- identified growth sectors; and
- enhanced access to training and capacity building for ministries and local authorities.

Other local initiatives include the following:

- ▶ In **Uganda**, the management of public markets has been transferred from municipalities to a joint management coalition consisting of several stakeholders.
- ▶ A number of Asian cities (such as **Bangkok (Thailand)**, **Chiang Mai (China)** and **Singapore**) have tapped into the productive potential of infrastructural support, space allocation and services for local entrepreneurs, resulting in thriving local markets and fewer informal operations.

The development of the social and solidarity economy is a promising path to facilitate transitions to formality at the local level. The cooperative approach to development offers a useful mechanism for linking local and national development needs and trajectories.

Promoting equality and addressing discrimination

The preponderance of women in the informal economy can be partly explained by their unequal burden of unpaid family responsibilities. Given the scale of the informal economy in developing countries, increasing the availability, affordability and quality of care services can provide women with opportunities for better paid and formal work. For example:

- ▶ In **Chile**, based on partnerships between local government and public and private actors, childcare centres have been set up for seasonal agricultural workers.
- ▶ In **India**, mobile pre-school services and cooperatives for social and childcare, including family cooperatives, have been developed to respond to the needs of working parents in the informal economy.

Many countries have established programmes to help women entrepreneurs move from marginal income generation to profitable businesses.

- ▶ At the micro level, training in basic business development and other soft skills (literacy, legal awareness raising, support for unpaid family responsibilities and access to information on markets and microfinance opportunities) is provided.
- ▶ At the meso level, business development services and financial providers must not exclude women, and must develop targeted approaches for them.

In South-East Asia, the ILO has implemented projects named Women's Entrepreneurship Development (WED) and Women's Entrepreneurship Development and Gender Equality (WEDGE), which adopt a tripartite approach to support the establishment and growth of enterprises by women.

- ▶ At the macro level, laws and policies to enhance women's access to productive resources, (including land, property, inheritance, technology, skills development and credit) are vital.
- ▶ The design of fiscal and trade policies must avoid distortions in favour of male producers and large-scale and foreign-owned businesses.
- ▶ Investments in infrastructure, roads, utilities, sanitation, health facilities, childcare and labour-saving technologies in the home can allow women to devote more time to income-generating activities.

Another group vulnerable to discrimination consists of internal and international migrant workers, who account for an important segment of the informal economy in all regions. [Module 9](#) and [Appendix 10](#) discuss this matter further.

Social security in the transition to formality and the importance of integrated strategies

Lack of access to social security is often a direct consequence of informality. Strategies to extend social security can facilitate transitions to formality, particularly for women. In the long term, the extension of social security coverage also helps to generate income and increase productivity and prosperity as the living conditions of the population including the most vulnerable are improved.

The formalities required for social security coverage (registration of households or individuals with the public authorities) can be a first step towards their formalization and the realization of their civil, economic and social rights (including the right to vote, to property and to education).

Extension strategies serve to include broader groups of workers in contributory social security schemes, such as the self-employed, domestic workers, workers in agriculture and workers in small and micro-enterprises.

- However, the heterogeneous nature of the circumstances of these groups needs to be taken into account to ensure that the means adopted are suited to their context.
- It is also essential to create incentives for the workers concerned to join formal schemes through flexible rules and procedures, and appropriate financing mechanisms.
- Undeclared work and evasion has to be addressed.

Extension of the coverage of contributory schemes needs to be accompanied by the establishment of non-contributory schemes providing the basic guarantees of national social protection floors, in line with Recommendation No. 202. Evidence from various countries has shown that cash transfers for the poorest households facilitate job search and result in higher labour force participation.

Non-contributory, mostly tax-financed, cash transfer schemes and programmes include:

- universal or means-tested social pensions for the elderly;
- cash transfers to families with children, accompanied by education or health conditions;
- benefits for specific groups, such as persons with disabilities and orphans; and
- targeted social assistance programmes.

Over 30 low- and middle-income countries have introduced or extended these in recent years.

Social pension schemes provide at least a minimum level of income security for older people and their families in a growing number of developing countries (**Bolivia, Cabo Verde, Lesotho, Namibia, Nepal and South Africa**).

Employment guarantee schemes and other public employment programmes (Ethiopia, India and South Africa) provide poor households in rural areas with a certain number of guaranteed days of employment.

The extension of social health protection to informal economy workers enhances the population's health and its ability to generate income. Financial protection against health-related impoverishment promotes the transition to formality and prevents people from being pushed into poverty in the event of ill health. Different financing mechanisms include (a combination is often found):

- tax-based national health systems (as in **Thailand**);
- social and national health insurance financed through contributions and/or premiums (as in **Colombia, Ghana, Philippines and Rwanda**);
- community-based health insurance; and
- private health insurance.

The main challenges for social health protection are to increase coverage and improve equitable access to healthcare in well-regulated pluralistic health systems.

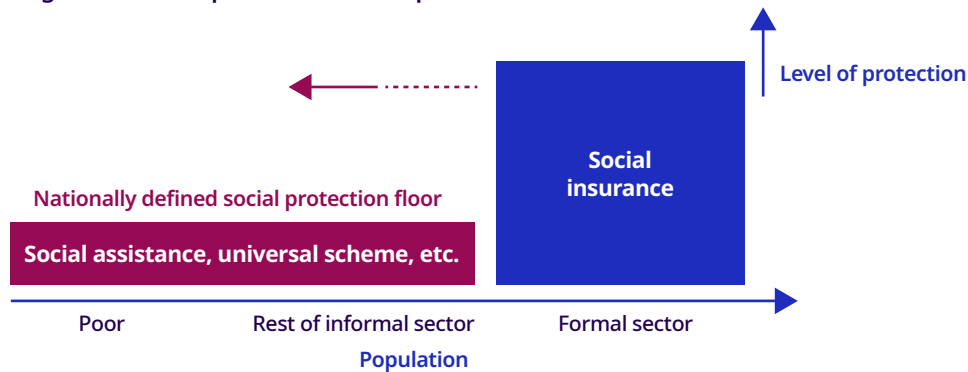
- In **Rwanda**, further to the adoption of compulsory health insurance for the entire population, the membership rate of mutual health organizations rose sharply (from 7 per cent of the population in 2003 to 85 per cent in 2008).
- The expansion of women's access to healthcare, and the reduction of the economic risks associated with maternity, benefit the women concerned and their families, as well as the whole society and the national economy.
- Maternity cash benefits provide income security during maternity leave and shift the cost of maternity from individual employers, thereby removing disincentives for the employment of young women.

Much evidence shows that the extension of social security into the informal economy is within the reach of countries at all levels of development, including low-income countries.

- Even where it is not feasible to implement all the components of a national social protection floor at once, a sequential approach can generate immediate benefits in terms of poverty reduction and transitions to formality.
- Social security extension strategies should be coordinated with fiscal, economic and employment policies in order to foster transitions to formality.
- The economic and social framework should be conducive to sustainable enterprise creation and the growth of decent and productive employment.
- It is essential to integrate the two dimensions of prevention and protection, including the prevention of occupational risks, the improvement of working conditions, income security and access to healthcare.
- The approaches adopted should link and combine social security measures with employment creation, the organization of workers and employers and the promotion of rights at work.

Social insurance protects people from falling into poverty, while social assistance protects people already in poverty. Social assistance programmes aim at providing beneficiaries with a minimum livelihood to help them rise above poverty line. Social insurance is based on contributions while social assistance is often financed from taxes. Figure A9.2 illustrates the attempt of a comprehensive social protection scheme to extend protection to all groups of population (horizontal dimension) and raise the protection level to cover their needs adequately (vertical dimension).

► **Figure A9.1 Comprehensive social protection**



► Appendix 10

Migrant workers

The contributions of migrant workers to the host country and the home country are subject to debate. Some of their general characteristics emerge as advantages, as outlined in table A10.1.

► Table A10.1 Contributions of migrant workers

For the host country	For the home country
Supply of skills in demand Entrepreneurship (new skills and businesses) Education and training completed Richer than the general population (financial means to migrate), except for informal-sector/illegal immigrants Hard-working, and higher educational achievement of second generation Sharing and exchange of different ideas (innovation) Younger than the general population: <ul style="list-style-type: none"> - Positive short-term impact on financing of social security systems and government finances - Simply a deferral of population ageing if all immigrants stay in the host country - Long-term financial impact on the social security system depending on benefits paid out 	Remittances have an indirect positive impact on the economy: <ul style="list-style-type: none"> - Lifting family members out of poverty - Reducing the need for and cost of government intervention - Supporting new businesses

Obtaining data on migrants and their work situation meets many obstacles but is crucial for policy elaboration. The United Nations Development Programme (UNDP) and national statistical organizations have taken up the challenge of producing estimates and projections. Table A10.2 outlines the factors affecting the flow and stock of migrant workers.

► **Table A10.2 Factors affecting the flow and stock of migrant workers**

Definition of internal migrants	<ul style="list-style-type: none"> - How far does a move within a country determine the status of internal migrant? - When does a temporary move become a permanent one? - Is that person no longer an internal migrant? <p>The focus will be on workers who are no longer subject to the same social security system.</p>
Supply and demand factors	<ul style="list-style-type: none"> - Level of economic development (e.g. employment opportunities) - Attitude toward migrant workers (e.g. requirement for employment permit) - Cultural and language factors - Transport, communication and historical links - Bilateral or multilateral agreements facilitating the movement of labour - One-off projects (e.g. large infrastructure projects, sporting events).
Economic downturns	<ul style="list-style-type: none"> - The 2008 crisis in several host countries resulted in tightened regulation or reduced quotas to decrease the number of migrant workers. - Despite these restrictions (some of which have been reversed), migrant worker numbers and remittance transfers have remained constant or increased.
Increasing trends	<ul style="list-style-type: none"> - Cheap travel and communication - Globalization - Flexible labour markets - Social security institutions facilitating labour movement (e.g. bilateral and multilateral agreements) - Estimating future levels of migration flows and their characteristics is even more difficult.
Dramatic impacts of climate change	<p>Most vulnerable populations particularly affected, but it is a real challenge to estimate and quantify them.</p> <p>Social security institutions need to be flexible, as crises can cause rapid change to immigration and emigration flows.</p>

Examples of OSH responses for migrant domestic workers are shown in box A10.1.

► **Box A10.1 Promoting OSH for migrant domestic workers**

According to the ILO Constitution, workers should be protected from sickness, disease and injury arising from their employment. Domestic workers are particularly vulnerable to certain OSH risks, including long hours, limited rest, exposure to chemicals, lifting heavy weights, specific psychosocial risks and violence – risks even higher in the case of migrant domestic workers due to lack of legal protection and linguistic, social and cultural barriers.

Numbers of domestic migrant workers, selected countries, 2010

France	More than 50 per cent of migrant women are in domestic work.
Italy	1.2 million domestic workers: - 600,000 registered (most are female non-EU nationals) - 600,000 undocumented
Middle East	2.1 million domestic workers; almost one-third of all female wage workers in this region
Saudi Arabia	1.5 million domestic workers (primarily migrant women).
Eastern Europe and CIS countries	Nearly 600,000 domestic workers

Source: ILO LABORSTA. Nearly 600,000 domestic workers

Key international legal provisions on OSH

The right to safety and health at work is enshrined in the United Nations Universal Declaration of Human Rights, 1948 (Article 23) and the International Covenant on Economic, Social and Cultural Rights, 1966 (Article 7).

The ILO policy on OSH is essentially contained in the following instruments:

- Occupational Safety and Health Convention, 1981 (No. 155), and Recommendation (No. 164)
- Occupational Health Services Convention (No. 161) and Recommendation (No. 171), 1985
- Promotional Framework for Occupational Safety and Health Convention (No. 187), and Recommendation (No. 197), 2006

Specific protection for domestic workers is contained in the ILO Decent Work for Domestic Workers Convention, 2011 (No. 189). Article 13(1) reaffirms the right of domestic workers to a safe and healthy working environment and governments’ obligation to ensure their occupational health and safety.

Recommendations

As the demand for domestic work continues to grow globally, so does the need for the implementation of mechanisms to effectively protect workers from sickness, disease and injury arising from their employment, including the following:

Advocacy and policy development	Promoting migrant-sensitive OSH policies that adhere to ILO key OSH Conventions, and equitable access to health protection and care for migrant domestic workers.
Assessment, research and information dissemination	Assessing the OSH of migrant domestic workers. Identifying and filling gaps in service delivery to meet their OSH needs. Documenting and disseminating best practices and lessons learnt.
Capacity building	Sensitizing and training relevant policymakers and stakeholders involved in migrants' OSH in countries of origin, transit and destination. Networks of collaborating centres, academic institutions and other key partners for furthering research and for enhancing capacity for technical cooperation. Educating household employers about domestic service conditions and strategies to improve them. Ensuring adequate training, outreach and information activities for migrant domestic workers, including health promotion and disease prevention initiatives.
Effective monitoring	Due to the isolated and private nature of domestic work, measures should be taken to identify and eliminate hazardous conditions likely to cause serious physical harm to workers, including sector monitoring and outreach to workers and employers.

Governments, policymakers, associations of workers and trade unions are actively engaged in producing OHS training materials for migrant domestic workers.

Source: ILO 2016, which lists other useful sources on the subject; see http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/briefingnote/wcms_467720.pdf.

► Appendix 11

The employment relationship

This appendix provides a summary of key elements discussed in the ILO report *The Employment Relationship* (ILO 2006).

A11.1 Worker protection: issues regarding the employment relationship

Reciprocal rights and obligations are created between the **employee** and the **employer** through the **employment relationship**. It is thus the main vehicle through which workers gain access to the rights and benefits associated with employment in the areas of labour law and social security, and the key point of reference for determining the employers' rights and obligations in relation to their workers. Flexibility for enterprises and security for workers need to be balanced in the changing labour market. The legal framework governing the employment relationship is an important component of national policy for managing labour market changes.

Between 1999 and 2001 the ILO conducted 39 national studies on worker protection. This section outlines the most pertinent issues raised in these studies.

Repercussions of the lack of protection

The global phenomenon of transformation in the nature of work had resulted in a tendency whereby workers, who should be protected by labour and employment law, were not receiving that protection in fact or in law. Lack of labour protection has adverse consequences for workers and their families, with women more affected than men. It undermines productivity and distorts competition between enterprises, at both national and sectoral as well as international levels, often to the detriment of those who comply with the law. The reality of work without any prospect of stability or promotion can ultimately make workers lose their commitment to the enterprise and contribute to an increasing and costly labour turnover.

Training can be neglected even where there are inherent risks. Untrained workers are more vulnerable to accidents in the workplace. Enterprises can be reluctant to invest in training short-term workers or workers supplied by another firm. A lack of investment in training can undermine the competitiveness of the enterprise and national competitiveness. Sectors with large numbers of unprotected workers (as in the construction industry) can have serious problems of recruitment and retention of workers due to their negative image.

The lack of labour protection can affect the health and safety of third parties and society in general (such as accidents caused by heavy vehicles or major accidents in industrial plants). The link between accident risks and lack of workers' protection has been observed where there is extensive use of subcontracting. The issue is not subcontracting itself but its improper use, which can create or aggravate risks.

Lack of protection also means considerable financial impact in terms of unpaid social security contributions and taxes.

Closing the gap

Measures need to be taken to close the gap between the law and the reality of the employment relationship. The objective should be to:

- Update and clarify the related legislation to facilitate recognition of the existence of an employment relationship and deter attempts to disguise it.
- Identify, with the involvement of the social partners, any deficits in the light of specific problems, and through reference to comparative law to determine the nature and extent of the measures needed.
- Enable the laws on the employment relationship to be regularly updated (an ongoing and dynamic process).

Employers are constantly faced with the challenge of survival in a competitive global environment and legitimately seek viable solutions among the range of options offered by different forms of employment. However, it is difficult for enterprises to improve their productivity with a poorly trained, demotivated and rapidly changing workforce. Balancing equity and adaptability is at the very heart of the ILOs Decent Work Agenda, which offers a framework for reconciling the different interests and reaching a consensus through social dialogue.

In addition to lack of clarity and inadequate scope of the law, failure to comply with the law accompanied by poor enforcement contributes to the problem of ambiguous, disguised or triangular employment relationships.

A11.2 General aspects of the employment relationship in different legislations

This section presents an overview of how general aspects of the employment relationship are regulated in different countries. It is based on a review of the relevant laws in more than 60 ILO Member States. Comparative law contains a wealth of notions and legal constructs defining the employment relationship and the factors and indicators used for recognizing it. It provides useful information on the kind of regulatory measures that might be considered in the design and implementation of a policy on the employment relationship.

Uncertainty regarding the law

Objectively ambiguous or **disguised** employment relationships create uncertainty as to the scope of the law and can nullify its protection.

Genuine doubt may occur as a result of a specific or complex form of the relationship, or an evolution of that relationship over time. A worker may have a wide margin of autonomy, which may give rise to doubt as to the employment status, or the main factors characterizing the employment relationship may not be apparent. A normally self-employed person (such as electricians, plumbers and computer programmers) can gradually enter into a permanent arrangement with a single client.

Work environments affected by major changes may require a range of flexible and dynamic employment arrangements which can be difficult to fit into the traditional framework of the employment relationship.

- A person may be recruited and work at a distance without fixed hours or days of work, with special payment arrangements and full autonomy as to how to organize the work.
- Some workers may never even have set foot in the enterprise (for example, they have been recruited and work via the Internet and are paid through a bank). However, if they use equipment supplied by the enterprise, follow its instructions and are subject to subtle but firm control, the enterprise may quite naturally consider them as employees.
- E-lancers (electronically connected freelancers) are another phenomenon which is challenging the traditional employment framework.

- Economically dependent workers who are formally self-employed but depend on one or a few clients for their income are midway between the employment relationship and self-employment.

The lack of legal certainty can result in judicial decisions reclassifying self-employed workers as employees, with considerable unforeseen economic consequences for enterprises.

Disguised employment relationship

A disguised employment relationship has an appearance different from the underlying reality, with the intention of nullifying or attenuating the worker's legal protection or evading tax and social security obligations.

The disguise of an employment relationship can be done through its **legal nature** (for example, a semblance of self-employment) or its **form** (for example, a contract for a fixed term or a specific task that is repeatedly renewed). It can also be through masking the **identity of the employer** (for example, an intermediary designated as employer with the intention of releasing the real employer from involvement in the employment relationship and responsibility to the workers).

Some laws define the **employment contract** as the framework for this relationship and provide a definition of an employee and an employer.

Legislation in many countries contains a **substantive definition** of the employment contract (what factors constitute such a contract are established), while in other countries, less detailed legislation (*descriptive definitions*) leaves the task of determining the existence of an employment contract to case law.

Substantive definitions. An employment contract is an agreement under which a person undertakes to carry out work for another person in exchange for remuneration, under specified conditions. Certain factors determine whether a contract is an employment contract. Their description varies in wording and level of detail from one country to another. The most commonly used are **dependency** and **subordination**, or work done under the direction, authority, supervision or control of the employer, or on the latter's orders or instructions or for the employer's account. Some legal systems use dependency and subordination as alternatives or together, with different meanings or as synonyms.

Descriptive definitions. In common-law countries, the employment contract is simply described, without referring to the factors characterizing it as an employment contract.

In the absence of a substantive definition of the employment relationship or contract, other provisions may exist to provide a clear idea of the work conditions. For example, provisions governing a worker's duties often include the obligation to respect the employer's orders and instructions, which is characteristic of wage employment and provides an important indicator for determining the existence of an employment contract.

Parties to the employment relationship

The term **worker** is often used to refer to a person who performs services in an employment relationship, although strictly speaking this generic term can also cover self-employed workers.

In countries where descriptive definitions are the rule, the legislation merely states that an **employee** is a person working for an employer. In this case, one definition refers to another, and neither of them defines the term precisely. Case law is used to establish the factors and indicators distinguishing an employment contract or relationship and identifying its parties. There is a surprising amount of convergence between the legal systems of different countries (even between countries with different legal traditions or those in different parts of the world) in how they deal with aspects of the employment relationship.

Irrespective of the definition used, the concept of a **worker in an employment relationship** must be seen in contrast to that of a **self-employed** or **non-dependent worker**.

Some laws merely define the **employer** as the person who employs the worker, or uses the latter's services, possibly under an employment contract.

Some definitions of employer refer to the person signing the contract with the worker, which may include a person representing the employer. Other laws draw a distinction between representatives of the employer and employers.

Determining the existence of an employment relationship

Even where the law contains clear provisions regulating the employment relationship, it may be difficult to determine whether there is in fact an employment relationship in a given case. In many cases, a worker will not refer the matter to the Courts if the employment contract is in force, for fear of losing his or her job; and once the contract expires it may be even more difficult to collect and present evidence.

The refocusing of legislation to facilitate the determination of the existence of an employment relationship is outlined below **under principle of the primacy of fact, determination by law**, and **easing the burden of proof**.

The principle of the primacy of fact. According to this principle, the determination of the existence of an employment relationship is guided by the facts (certain objective conditions being met), and not on how either or both of the parties describe the relationship. Its universal application is an important alternative intended to ease the burden of proof on the worker and facilitates the judge's task of determining the existence of an employment relationship

- **Factors** used to determine the existence of an employment relationship include the level of subordination to the employer, work for the benefit of another person, and work under instruction. The law can classify certain workers in ambiguous situation as employees or specify that certain contractual arrangements are not employment relationships.
- **Indicators** are relied on to identify the presence of relevant factors. They include the extent of integration in an organization, the controls of conditions of work, the provision of tools, materials or machinery, the provision of training and the frequency of remuneration and the socio-economic inequality between the parties.
- **Tests** (such as the tests of control, integration in the enterprise, economic reality, who bears the financial risk, and mutuality of obligation) are developed by case law in common-law countries. Judges rely on them for their rulings.

Some legal systems lay down provisions to combat concealment or fraud in order to ensure application of the principle of the primacy of fact in the interests of the worker and/or the tax or social security institutions.

Determination by law. Some legal systems describe certain potentially ambiguous or controversial situations as employment relationships, either in general or under certain conditions, or at least presume that they are employment relationships: for example, professional sports persons, performing artists, sales representatives and others. In **Spain**, professional sportspersons are deemed by law to have a special employment. In some cases, the legislation specifies whether a given type of work is excluded from its scope or whether it gives rise to a contract of employment, depending on the conditions under which it is performed. For example, home work is deemed to be employment if it is neither discontinuous nor sporadic.

Legislation may specify that certain forms of employment are not employment relationships, or exclude certain categories of workers from its scope. The most common is the total or partial exclusion of public servants and similar workers. Some laws also refer to compulsory labour or services, or work performed during imprisonment; ordinary non-vocational activities; domestic workers and persons regarded as such, and members of cooperatives.

Easing the burden of proof. In order to ease the burden of proof on workers seeking to prove the existence of an employment contract, the law may provide that such contracts are consensual (that is, formed by the consent of the parties without further formalities). It may require that the contract be in writing for various reasons relating to compliance or to evidence; or it may proceed from the assumption that the employment relationship exists because services are provided.

The employment relationship may be proved by any of the usual means, or by any means permitted by law.

The existence of an employment contract is easier to prove if the employer must inform employees of the conditions applicable to the contract in writing (a written contract, a letter of engagement or other document indicating the essential aspects of the employment contract or relationship).

Some laws provide for a presumption of the existence of an employment relationship or contract. An employment relationship or contract is presumed to exist between a person providing a personal service and the person who receives it; or if it is proven that the worker performed services for more than two consecutive days, or there is evidence of subordination. For example, in the **Netherlands**, any person who for the benefit of another person performs work for remuneration for three consecutive months on a weekly basis, or for no fewer than 20 hours per month, is presumed to perform such work under a contract of employment.

In addition to presuming the existence of an employment contract, the law may also provide for a presumption as to its terms (for example, despite a stipulated duration, a contract is deemed for an unspecified duration if the nature of the work assigned to the worker is permanent in the enterprise).

Clarifying the scope of the employment relationship

Parallel to the general refocusing of legislation in response to the lack of protection for workers who are in fact in an employment relationship which might be ambiguous or disguised, there has also been a continuing tendency in case law to apply the traditional approach on the employment relationship to new and complex situations.

Five approaches to clarifying the scope of the employment relationship are described in the following paragraphs and are illustrated by referring to relevant developments in case law.

Defining the scope of the employment relationship. For example, **New Zealand's** Employment Relations Act has a broad definition of covered workers and empowers independent bodies (the Employment Court or the Employment Relations Authority) to investigate the real nature of the link between the person doing the work and the entity commanding that work.

Employee means any person of any age employed by an employer to do any work for hire or reward under a contract of service (the Court or the authority must determine the real nature of the relationship between them). The definition includes a homemaker or a person intending to work but excludes a volunteer who does not expect to be rewarded for work to be performed as a volunteer and receives no reward for work performed as a volunteer.

Delineating the boundary between dependent and independent work. For example, **Germany** has a legal definition of employee for the purposes of social security.

A person who meets at least two of the following indicators is deemed to be an employee: the person does not have employees subject to social security obligations; usually works for one contractor; performs the same work as regular employees; has performed the same work as an employee before; and does not show signs of engaging in entrepreneurial activities.

The underlying idea is to achieve a sufficiently precise and practical definition to reduce the opportunity to disguise the employment relationship and to make it easier to deal with situations midway between a genuine and a disguised employment relationship.

The combined approach. The **South Africa** legislative reform was adopted in 2002 further to a process of intense, effective and constructive social dialogue with the participation of all stakeholders.

A broad presumption in favour of employee status was introduced: a person is deemed to be an employee if one or more of seven indicators set out in the Act exist (see box A11.1), which is reminiscent of the German approach and the Irish code of practice.

The presumption does not apply, however, in the case of workers with a certain level of income (89,445 Rand or US\$10,000 per year in 2002).

A code of good practice containing guidelines for determining whether persons, regardless of their level of income, are employees.

The minister is granted special power to deem any category of persons to be employees for the purposes of employment legislation.

► Box A11.1 Presumption of employee status: South Africa

A person is presumed to be an employee if one of the following indicators is present:

- the manner in which the person works is subject to the control or direction of another person;
- the person's hours of work are subject to the control or direction of another person;
- in the case of a person who works for an organization, the person is a part of that organization;
- the person has worked for that other person for an average of at least 40 hours per month over the last three months;
- the person is economically dependent on the other person for whom that person works or renders services;
- the person is provided with tools of trade or work equipment by the other person; or
- the person only works for or renders services to one person.

Source: S. 83A introduced in the Basic Conditions of Employment Act 1997 (BCEA) by the Basic Conditions of Employment Amendment Act 2002, s. 21.

Categorizing certain types of work. There are provisions specifically relating to certain workers or certain types of employment (home work, telework, private employment agency workers and workers' cooperatives) intended to determine the existence of an employment relationship.

Extending the scope of legislation to equivalent workers. The Labour Code of **Portugal** provides that contracts for the performance of work without legal subordination shall be subject to the principles laid down in the Code, especially as regards the rights of the person, equality, non-discrimination, and safety and health at work, without prejudice to any provisions in special legislation, provided that the worker is considered to be in a situation of economic dependence on the beneficiary of his or her activity.

Developments in case law

Courts and other judicial bodies play a crucial role in classifying the employment status of workers based on the facts. It is worth mentioning some decisions from different countries.

In the **Netherlands**, in 2004 the District Court of Apeldoorn, in line with the case law of the Supreme Court, decided that the existence of subordination does not require that the employer is actually giving instructions to the employee: it includes the authority to do so.

In line with former case law, the Court of Appeal of Middelburg ruled that the content of a written agreement is not conclusive as to the existence of an employment contract; the purpose of the contract and the way it is carried out should also be taken into consideration.

In the case of a medical advisor, the Court determined that there was an employment contract based on the following facts:

- (a) the employee did not work for principals other than the employer;
- (b) he had to adjust to the working method and organization of the employer;
- (c) he received instructions regarding the content of his work;
- (d) he worked at the office of the employer on fixed days and at fixed hours;
- (e) he could not take leave without the consent of the employer;
- (f) his salary was fixed on the basis of a directive of the Association of Doctors in Employment;
- (g) taxes and contributions were withheld by the employer; and
- (h) the employee had to perform the work personally.

In case law there is the problem of lengthy court proceedings, and even after such long delays often the outcome benefits only one or a few plaintiffs. In two of three cases before the French Courts relating to franchises, the proceedings lasted approximately four years, while the relationships of each of the parties lasted for just over three years. Proceedings against a United States electronics company lasted more than eight years and only ended with an out-of-court settlement between the parties. Even so, the impact of that case affected an initially undefined category of persons, which proved to consist of several thousand, while the French rulings only directly benefited the plaintiffs.

Regulation of triangular employment relationships

Triangular employment relationships occur when employees of a person (the **provider**) work for another person (the **user**).

The most common forms of triangular employment relationships are:

- the use of contractors and private employment agencies; and
- a franchising arrangement. An enterprise (**franchiser**) allows another enterprise or a person (**franchisee**) to use its trademark or product, in principle on an independent basis. The franchisee has financial obligations towards the franchiser. The franchiser normally exercises control over the franchised business, including its staff.

Normally, a civil or commercial contract is presupposed to exist between a user and a provider. However, such contract may not exist, and the provider is rather an **intermediary** of the supposed user and intends to conceal this latter as the real employer.

Changes in the legal status of workers are commonly observed in traditional sectors such as transport (truck drivers, taxi drivers), construction and clothing, as well as in new areas such as sales staff in department stores, or certain jobs in wholesale distribution or in private security agencies.

Workers can find benefits in triangular employment relationships (employment opportunities, experience and professional challenges) but they frequently face difficulties in establishing who their employer is, what their rights are and who is responsible for them. This can be overcome through clarification of the law in a balanced and constructive approach that consider the legal difficulties involved and the legitimate interests concerned.

Laws tend to focus on two main types of triangular relationship: the performance of work and services, and the supply of labour under commercial contracts. In both cases, the provisions of national legislation identify the employer, refer to working conditions and workers' rights, and lay down the obligations and liability of the provider and the user. The triangular relationship is regulated from three perspectives: the employer, the user and the worker.

Who is the employer (the provider)?

Contracting for work or services. Some laws classify as an employer a natural or legal person which, using its own equipment and personnel, undertakes to carry out work or perform a service for the benefit of a third party.

- The Workers Charter in **Spain** refers to the contractor, in a provision concerning user enterprises that contract with others for the performance of work or services relating to their own activity.

In other legislation, the term contractor is also used to refer to those who supply labour to a principal:

- In **Mauritius**, the term used is “job contractor”, while still other laws refer to contractors without defining the term, but may specify their obligations or liabilities, or both.
- Similarly, in some **African countries**, the law recognizes the “*tâcheron*” or “*maître ouvrier*”, an independent subcontractor who contracts with an enterprise or a project manager to perform work or services for an agreed price.
- The **Moroccan** Labour Code defines subcontracting as a written contract whereby an enterprise contracts with a subcontractor for the performance of a certain job or services.

A provider bears the usual obligations incumbent on any employer, but may have others in addition.

- In **Spain**, providers must inform both their workers and the social security institution in writing of the identity of the user enterprise to which they are providing services.

Supply of labour under commercial contracts. Contracts dealing with the supply of labour can only be carried out by certain enterprises under certain conditions. The supply of labour in conditions other than those provided for under the legislation may be expressly prohibited and even constitute an offence.

The ILO Private Employment Agencies Convention, 1997 (No. 181) attributes to the agency the function of employing workers with a view to making them available to a third party (referred to as the **user enterprise**). The workers have as interlocutors the agency that employs them and the clients of the agency to whom it provides services.

Problems concerning the protection of workers in these agencies tend to arise mainly in countries where there is no appropriate legislation, or where the law is not effectively applied.

While private employment agencies in many countries are normally the employer, this is not always the case (see box A11.2).

► **Box A11.2 Employment agencies and lack of protection for workers: United Kingdom**

In the **United Kingdom**, a person was registered with an employment agency under a temporary worker agreement, which made it clear that its provisions did not give rise to a contract of employment between the agency and the worker, or the worker and the client.

For several years, that person had been assigned by the agency to work as a cleaner exclusively at a council-run hostel for the long-term care of people with mental health problems. The council, through the hostel management, exercised day-to-day control over her and supplied her with cleaning materials, equipment and protective clothing. She worked prescribed hours five days a week. The agency paid her wages out of the price of its services to the council.

In April 2001, following an incident at the hostel, the council asked that she be withdrawn from the agreement and the agency informed her that it would no longer be finding work for her. The worker lodged a complaint for unfair dismissal. A first-instance decision found that, in the absence of a contract of employment, she had not been employed by the agency or by the council. On appeal, the Employment Appeal Tribunal held that she had been employed by the agency, because of its considerable control over her and the mutuality of obligation between the agency and the worker.

On hearing the further appeal of this case, the Court of Appeal decided that a contract of service could be implied between the council and the worker, as a necessary inference from the conduct of the parties and the work done, if the irreducible minimum of mutual obligation necessary for a contract of service existed. This contractual relationship can be implied regardless of whether there is an express contract of employment and, indeed, regardless of whether the contract between the worker and the agency, as here, expressly stipulates that there is no contract of employment with the end-user (or with the agency).

The Court of Appeal held that the Employment Tribunal had erred in holding that the applicant was not an employee of the council to which she had been assigned by the agency to work as cleaner for a number of years because there was no express contract between the applicant and the council. In reaching that decision, the Tribunal had failed to address the possibility that there was an implied contract of service between the applicant and the council.

Several countries have seen the emergence of worker cooperatives as a system for supplying labour.

- In **Colombia**, for example, workers join cooperatives to produce goods or perform work or services. The work should preferably be carried out by the worker members, who are not subject to the labour legislation applicable to dependent workers, unlike the workers employed by the cooperative, and may even contribute their work out of solidarity when the cooperative is in the start-up phase or at times of crisis, either free of charge or for an agreed remuneration.

However, this system has given rise to disguised and fraudulent employment relationships which have attracted penalties.

- In **Colombia**, news reports referred to an investigation involving 200 worker cooperatives, which found that some temporary work agencies were operating under the guise of cooperatives in order to evade tax and social security contributions.

A private employment agency that has concluded a contract with a user enterprise bears the normal obligations of any employer, but may have other obligations in addition. For example, it may have to inform the workers and their representatives of the identity of the user enterprise and the terms of the contract concluded, its purpose, duration, place of execution, number of workers involved, and measures to coordinate occupational risk prevention activities.

What is the position of the user?

Providers are normally employers. They are linked by a commercial contract with a user enterprise, to which they provide services. Some laws designate the user as the principal entrepreneur.

The legislation in some countries lays down the obligations and responsibilities of the user regarding the provider's workers. They may cover aspects such as:

- the selection and control of the provider (the provider is appropriately registered);
- notification of its own employees of the terms of the agreement reached with the provider;
- compliance with labour and social security provisions;
- the payment of minimum wages and other remuneration by the provider; and
- the inclusion of labour clauses in the contract concluded with the latter and keeping a copy of the agreements entered with the provider.

Where labour is supplied by an employment agency, the user enterprise is normally responsible for the statutory and agreed conditions of work (as regards hours of work, night work, weekly rest and holidays, health and safety, and employment of women, children and young persons), as well as the obligations pertaining to occupational health including providing personal protection equipment.

There are provisions in legislation making the user legally liable for the provider's non-compliance. The user may bear subsidiary liability for certain obligations in the event of such non-compliance, or joint liability concerning transfers and the contracting or subcontracting of work or services.

- In **Venezuela**, the law provides for such liability if the provider's activity is inherent to or related to that of the user.
- The Labour Code of **Panama** provides that the user shall be considered as the employer of all the provider's workers when the latter is exclusively or chiefly working for the user, but that both shall be jointly liable for all benefits and compensation due to the workers.

What are the workers' rights?

In principle, workers' rights are the minimum rights laid down by law and collective agreements, and those set out in the employment contract.

However, when the work is performed on behalf of a provider for the benefit of a third party who also has employees, there is often a demand to equalize conditions of employment. This urge may be more pressing if work takes place in the user's premises or worksites, alongside the user's employees, and if both perform work of equal value. This is what often happens when an agency employee is assigned to a team of employees in the user enterprise to carry out the same activity.

Furthermore, a breach of the law may arise where a provider enterprise is used to evade legal or contractual obligations.

Some legal systems provide for rights regarding collective bargaining, freedom of association and certain conditions of work vis-à-vis the user enterprise, or comparable rights to those recognized by the user for its own employees.

- In **Argentina**, a worker hired through a temporary work agency shall be covered by the collective agreement, be represented by the trade union, and benefit from the social institution for the activity or category in which the user enterprise actually operates.

Compliance and enforcement

The problem of non-compliance, present in industrialized countries, is particularly widespread in developing countries. Compliance and enforcement problems are particularly acute in the informal economy.

The enforcement of labour law by the administrative and judicial authorities is affected by financial constraints and the limit of their powers. Labour inspectorates frequently face considerable difficulties in carrying out their tasks (visiting an enterprise, detecting shortcomings, imposing corrective measures and enforcing them), particularly in remote places or in small and micro-enterprises.

In principle, all workers have access to the Courts; however, in practice, few workers can afford to enter long, costly and inevitably uncertain judicial proceedings.

Improving workers' protection requires mechanisms and institutions to enforce compliance effectively. The task of labour inspection should be streamlined and made more efficient, with advisory and enforcement powers appropriate to current circumstances.

The trend of voluntary compliance is reflected in several declarations, codes of practice and framework agreements between international employer and worker organizations to promote compliance. These initiatives are crucial in a globalized economy, where corporate behaviour is closely watched by shareholders, consumers, the media and worker organizations alike.

Some provisions and mechanisms have been specifically designed to prevent situations of uncertainty or fraud as to a worker's status, or to provide an effective remedy, although limitations on access to the Courts continue to be a major problem.

► In **Quebec, Canada**, legislation provides for a preventative mechanism, not just to determine whether a worker is an employee, but whether the employee will be converted into an independent worker as a result of changes introduced in the enterprise by the employer. The employer must notify the relevant employee association of the proposed changes. If the association does not agree with the employer's view, it may seek a determination by the *Commission des relations du travail*. If the association applies to the Commission, the employer may not implement the changes until the Commission has ruled or the two parties have reached an agreement.

The legislation of some countries also contains specific provisions aimed at enforcement of the rights of workers involved in triangular employment relationships. There are provisions requiring licensing or registration, in order to operate as a provider, an employment agency or to establish a worker cooperative. Guarantees may also be required in respect of solvency.

► Under the legislations of **Niger** and **Peru**, labour supply must be the sole activity of an enterprise. Under Peruvian law, provider enterprises and worker cooperatives are required to post a bond guaranteeing the discharge of their labour and social security obligations regarding the workers assigned to a user enterprise.

In conclusion, while some specific measures have been introduced in some jurisdictions to address problems of disguised employment relationships and difficulties surrounding triangular employment relationships, there is little evidence of a consistent and determined effort to resolve the problems of lack of compliance and poor enforcement.

A11.3. ILO instruments addressing the employment relationship

Employment Relationship Recommendation, 2006 (No. 198)

According to paragraph 4 of the Recommendation, national policy should at least include measures to:

- ▶ provide guidance on establishing the existence of an employment relationship and on the distinction between employed and self-employed workers;
- ▶ combat disguised employment relationships;
- ▶ ensure standards applicable to all forms of contractual arrangements, including those involving multiple parties;
- ▶ ensure that all forms of contractual arrangements establish who is responsible for the protection contained therein;
- ▶ provide effective access of those concerned to appropriate, speedy, inexpensive, fair and efficient procedures and mechanisms for settling disputes regarding the existence and terms of an employment relationship;
- ▶ ensure compliance with, and effective application of, laws and regulations concerning the employment relationship; and
- ▶ provide for appropriate and adequate training in relevant international labour standards, comparative and case law for all persons responsible for dealing with the resolution of disputes and enforcement of national employment laws and standards.

The Recommendation also states, in various other paragraphs, that national policy should:

- ▶ ensure effective protection to workers especially affected by the uncertainty as to the existence of an employment relationship (including women workers, most vulnerable workers, young workers, older workers, workers in the informal economy, migrant workers and workers with disabilities);
- ▶ address the gender dimension in that women workers predominate in certain occupations and sectors where there is a high proportion of disguised employment relationships or a lack of clarity of an employment relationship;
- ▶ adopt appropriate measures – in the context of the transnational movement of workers and after consulting the most representative organizations of employers and workers – to provide effective protection to and prevent abuses of migrant workers in its territory. Where workers are recruited in one country for work in another, bilateral agreements may be concluded to prevent abuses and fraudulent practices; and
- ▶ not interfere with true civil and commercial relationships.

Other ILO instruments addressing the employment relationship

The Labour Clauses (Public Contracts) Convention, 1949 (No. 94) establishes a number of guarantees for workers employed by contractors engaged by public authorities.

The Asbestos Convention, 1986 (No. 162) provides that where there is more than one employer in the same workplace, they shall cooperate to implement protective measures, without prejudice to the responsibility of each employer for the safety and health of the workers employed by them.

The Safety and Health in Construction Convention, 1988 (No. 167) establishes a similar obligation, assigns obligations and responsibilities among employers and defines the term **employer** (which includes the principal contractor, the contractor and the subcontractor).

There are similar provisions in the Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148), the Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152), the Occupational Safety and Health Convention, 1981 (No. 155), and the Safety and Health in Mines Convention, 1995 (No. 176).

Moreover, the Home Work Convention, 1996 (No. 177) refers to the respective obligations of employers and intermediaries, while the Private Employment Agencies Convention, 1997 (No. 181) deals with the responsibilities of these agencies and user enterprises in relation to agency workers.

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