



# THE KEY TO A SUCCESSFUL EMPLOYMENT INJURY INSURANCE SYSTEM

ITCILO E-CAMPUS / ONLINE KNOWLEDGE

Module 9

Main elements of an employment injury  
insurance legal framework



International Labour Organization



International Training Centre

# Overview

This module studies the importance of a proper legal framework as the statutory base of all future policies. The module lists the main elements that should be mentioned in an EIS law and how one should make it robust and coherent.

The module then discusses about the most appropriate forms of legal instruments to be used (laws, decrees, regulations, directives) depending on what EII related issues are being addressed.

## Learning Outcomes

By the end of Module 9, participants will:

- Have developed an awareness of the importance to establish an employment injury scheme through a solid normative framework
- Acquire a basic understanding of the main factors to take into account to get a robust employment injury normative framework.
- Be aware of the need to use the most pertinent legislative instruments depending on the EII related issues being addressed

# Legend

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# Why is it important to establish employment injury scheme through a solid legal framework?

- Establishes rights for entitlement to benefits and makes these rights predictable
- Prescribes the obligations to be fulfilled for the entitlement
- Guarantees the consistent application of the rules and coherence of the system
- Guarantees enforcement through appropriate enforcement legislation
- Ensures the continuity of the entitlements, despite political changes at national level
- Ensures workers' right to a safe workplace
- Greater transparency ensures greater confidence and trust in the system and its administration
- Acts as a safeguard against arbitrary governance
- Builds checks and balances and control mechanisms
- Helps to guarantee equality of treatment

# Why is it important to establish employment injury scheme through a solid legal framework?

- Establishes the responsibility and duty of governments to take action and the ability of national courts and tribunals to monitor government action
- 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
- Facilitates the development of overarching aims for the system as a whole and the identification of gaps in protection

# Why is it important to establish employment injury scheme through a solid legal framework?

- Contributes in making the system more consistent and coherent and thus less costly and more efficient
- Allows introducing coherence in the design and implementation of the social security strategy at large, in the security and in the monitoring of the system and of the different actors involved in order to achieve the highest possible level of protection and coverage
- Helps guaranteeing financial sustainability of schemes through adequate financing, reserve and investment rules, and political sustainability through provisions against abuse and corruption (good governance, see module 10)

# How to get to a robust employment injury legal framework

- The adoption of a robust legal framework is part of a long-term strategy
- It should be the result of well thought employment injury policies that are linked with active labour market policies
- Employment injury policies, laws and regulations should contribute removing some of the barriers that limit participation of injured workers in the labour market and thus improving injured workers' employability
- Inter-ministerial committees might be necessary to ensure effective linkage between employment injury policies, prevention, health related issues, rehabilitation and appropriate financing
- Tripartite committees should be privileged for the elaboration, implementation and monitoring of employment injury policies and laws

# What should be the form of an employment injury insurance law?

- A wide range of legislative instruments (laws, decrees, regulations, directives...) can come in the building of the legal framework;
- The choice of an instrument can depend of the nature of the provisions and the adoption process:
  - E.g. a provision that needs regular update would be prescribed by a decree or directive rather than by a law. On the contrary, the regime's fundamental elements, such as entitlement, qualifying conditions, level of benefits, right to complain and appeal, such benefit from legal certainty
- There is no 'one-size fits all' answer to the question of where should the relevant provisions on employment injury be included. It could be in:
  - A standalone legislation
  - The Labour Code
  - Social Security or Insurance legislation
- In countries where social security legislation provides for the establishment of a certain **number of social security schemes at the same time** (several contingencies/branches) → **establishment and functioning of their administration is usually governed by a single law.**



# What should be the form of an employment injury insurance law?

- In order to ensure the most effective and robust legal framework for employment injury, the following checklist should be verified:
  - Coherence of employment injury policy(ies) and legal framework with the broader social security system
  - Avoid piecemeal approach
  - Operational and effective linkage with health and safety framework and institutions
  - Operability and portability of data between relevant institutions
  - Practical linkages with who is providing the coverage

# Situation in four countries

Country	Type of program	Insurance provided by	Statutory basis
<b>Bangladesh</b>	Employer liability	Private insurance companies	Labor law
<b>Belgium</b>	Social insurance system	Accidents: <ul style="list-style-type: none"> <li>• Private insurance companies</li> </ul> Occupational diseases: <ul style="list-style-type: none"> <li>• Public Fund</li> </ul>	Accidents at work: Act 10 April 1971 on accidents at work  Occupational diseases: Laws on the prevention of occupational diseases and compensation for damages resulting thereof, coordinated on June 3, 1970
<b>Chile</b>	Social insurance system	Private sector: <ul style="list-style-type: none"> <li>• Employer's Mutuals</li> </ul> Public sector: <ul style="list-style-type: none"> <li>• Occupational Safety Institute</li> </ul>	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.
<b>Tanzania</b>	Social insurance system	Public Fund	Workers' Compensation Act



[For further information click here](#)

# What are the main elements of an EIS law?

## Insurability

Applicability of the scheme

Registration of industries and coverage of insured workers

## Contributions

Determination of amount

Employers' obligations to furnish and maintain information

Inspection (function, duties, powers)

Recovery of contributions (penalty and interest on contribution in arrears)

## Benefits

Entitlement to compensation for work-related injury

Covered contingencies: work-related accidents, occupational diseases, commuting accident (including training)

Determination of invalidity or disablement

Determination of earnings

Benefits: medical benefit, invalidity pension and grant, constant-attendance allowance, survivors' pension and grant, funeral benefit

# What are the main elements of an EIS law?

## Benefits (continued)

Duration

Suspension conditions

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

Claim procedure for benefits (including notice of injury)

Benefit for two or more successive accidents

Link to facilities for physical or vocational rehabilitation

Link to prevention activities

## Administration and Governance

Establishment of the Fund

Chief Executive Officer (Director General) and functions

Appointment of medical advisory panels

Establishment of the Board

Functions, powers and fiduciary duties of the Board

# What are the main elements of an EIS law?

## Obligations of employers

Obligation to register

Keep records

Give access to premises

Give access to medical care

## But

No fault should be specified, i.e. employers are free from individual compensation responsibilities and court cases related to work-related injuries or diseases. Workers abandon the right to sue their employer when such contingencies occur. Negligence cases are not covered.

# What are the main elements of an EIS law?

Finance and Audit	Investment of funds
	Investment panel
	Budget estimates
	Accounts
	Audit
	Annual report
	Valuation of assets and liabilities
Dispute	DG's power of review and Appeal procedure
	Institution of proceedings
	Equality of treatment for non-nationals