



THE KEY TO A SUCCESSFUL EMPLOYMENT INJURY INSURANCE SYSTEM'

ITCILO E-CAMPUS / ONLINE KNOWLEDGE

Module 15
Extension of EIIIS Coverage to Migrant
Workers



International Labour Organization



International Training Centre

Overview

This module focuses on migrant workers, illustrating their characteristics and needs in terms of social security. It also explains how social security coverage can be extended to them.

Most of the content on social security coverage is drawn from HANDBOOK on the extension of social security coverage to migrant workers published by the ISSA in 2014.[1] This document identifies key barriers to expand and improve social security coverage to migrant workers, and presents practical measures to address them. Additionally, it covers social security globally.

The module also provides several examples of EI benefits for migrant workers.

Learning Outcomes

By the end of Module 15, participants will:

- Gain knowledge on migrant workers, their characteristics and needs in terms of social security;
- Understand how social security coverage can be extended to migrant workers;
- Learn different ways of structuring EI benefits for migrant workers.

Legend

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In order not to lose the current page, it can be useful to open a web page in a new tab. By default, the rule is that an external link (to another site) opens in a new tab, and an internal link (to another page on the site) opens in the same tab. But this is not always the case, and it is also sometimes useful to want to open several pages of the same site at the same time, in several tabs.

If you want to open a link in a new tab, **right click on the link and select “Open in new tab”**. You can also use the keyboard shortcut **“Ctrl”+left mouse click** on the link.

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What is the current status of migration in the world?

- Today's unprecedented level of human mobility has become a major political priority at national, regional and international levels.
- Of the world's 244 million international migrants, over 150 million are migrant workers. Migration today is strongly linked to the search for decent work opportunities. Even when employment is not the primary driver of the initial movement, it will eventually be part of the migration process at some point.
- Other drivers of migratory flows are diverse, including factors such as poverty, food insecurity, climate changes, persecution, armed conflicts, natural disasters, terrorism, human rights violations and abuses.

What is the current status of migration in the world?

- Migration holds major benefits for both origin and destination countries. Research consistently shows that the earnings of migrant workers constitute an important source of private capital and can contribute substantially to the development of the countries of origin. In 2015, migrants sent \$US 601 billion in remittances to their countries of origin, although the true value of remittances is likely to be much higher since only a portion of total remittances flow through official channels.
- The social and economic contributions of migrant workers, however, go well beyond remittances and can provide significant benefits to destination countries as well. The New York Declaration for Refugees and Migrants points out that migrants “can help to respond to demographic trends, labour shortages and other challenges in host societies, and add fresh skills and dynamism to the latter’s economies.”

A Global Snapshot on Human Mobility

- In 2015 there were 244 million international migrants representing 3.3 per cent of the global population – over 150 million of these are migrant workers;
- 72.7 per cent of all migrants are of working age (15 years or older);
- There are 67 million domestic workers worldwide. 11.5 million domestic workers are international migrants and over 70 per cent of these are women;
- Migrants sent \$US 601 billion in remittances in 2015 to their home countries;
- There are over 65 million people forcibly displaced by conflict, violence and human rights violations, of which 21.3 million are recognized as refugees and registered asylum seekers.

How family members in home country are affected by the migration?

- Many international migrant workers are separated from the rest of their family members, either by choice or because of residency restriction by the host country;
- Family members in the home country are often vulnerable or without social security coverage;
- Migrant workers may not rely on their family members during a period of disability in host country;
- The approaches implemented to address the challenge of the “split family” involve both policy and administration-driven measures such as:
 - Travel grant benefit provided by social security system;
 - Provision of two ID cards to enable claiming benefits (e.g. example of India); and
 - Collaboration with a range of stakeholders to ensure workers' awareness of rights to benefits.

Where migrant workers mostly work and how are their working conditions?

- The majority (71.1%) of migrant workers worldwide are engaged in the service industry, including domestic work, food services, and administrative or professional work;
- Other occupational sectors include industry (manufacturing and construction) and agricultural work;
- The ILO estimates that women make up 44.3% of all migrant workers. Women are six times more likely than men to be engaged in domestic work abroad;

Where migrant workers mostly work and how are their working conditions?

- Migrant workers are recognized to be among the most vulnerable members of society. They are often engaged in what are known as 3-D jobs—dirty, dangerous, and demanding (sometimes degrading or demeaning);
- They work for less pay, for longer hours and in worse conditions than non-migrants.
- Often subject to HR violations, abuse, human trafficking and violence;
- Most importantly, these precarious workers may take greater risks on the job, do work without adequate training or protective equipment, and do not complain about unsafe working conditions. Even more critical for those who are lacking work authorization;
- These conditions put migrant workers at increased risk for occupational fatalities and injuries when compared with native workers, even those doing the same job in the same industry.

Where migrant workers mostly work and how are their working conditions?

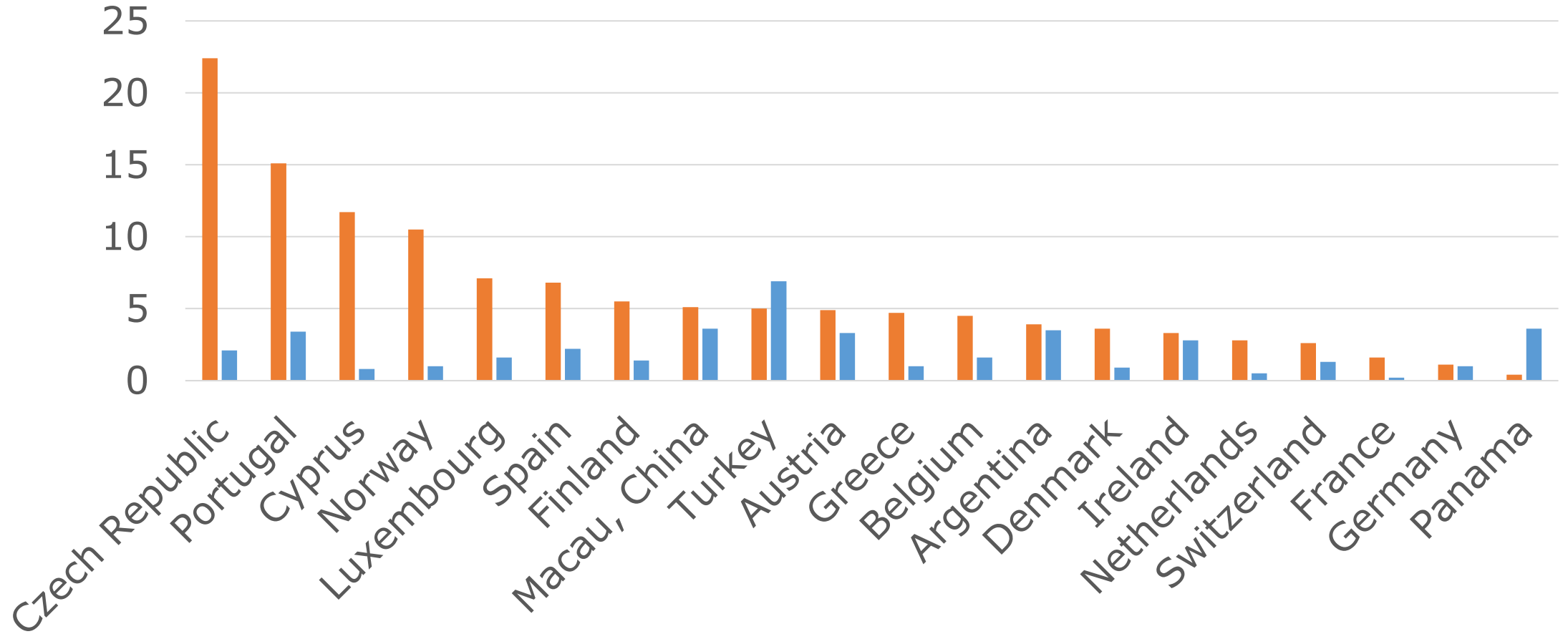
- They account for an important segment of the informal economy in all regions and are concentrated in low-skilled jobs, particularly in agriculture, construction, small manufacturing, domestic work and other services;
- These activities are often temporary, seasonal and casual work and subcontracting, 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, withholding of identity documents, employment below their qualifications or competencies, lack of collective agreements and underemployment;
- Regular migrant workers may be issued with contracts for fewer hours than they actually perform, or they may receive lower salaries than initially agreed.

Examples of health risks and higher vulnerabilities to which migrants are exposed

- Environmental exposures (temperature in construction, fisheries, agriculture, etc...), pesticides (agriculture), chemicals (leaning agents, nail salons, etc.);
- Working conditions (physical hazards leading to musculoskeletal injury), workplace demands (fear of losing their job), lack of safety standards, workplace abuse, trafficking and forced labour;
- Lack of access to health care owing to their precarious employment, poverty, lack of documentation, or limited knowledge of the health insurance system;
- Insurance coverage for medical expenses is one of the most significant barriers to accessing health care;
- Difficult access to clinics or medical providers, as workers may live in isolated, rural areas and lack reliable or safe transportation to medical appointment;
- Long working hours, including nights and weekends with no paid time-off, make it impossible for workers to access health clinics during standard operating hours.

Fatal occupational injuries per 100'000 workers

■ Migrants ■ Non migrants



Non fatal occupational injuries per 100'000 workers


■ Non Migrants ■ Migrants



International instruments calling on equal treatment between national and migrant workers for work-related injury



 [C019](#) - Equality of Treatment (Accident Compensation) Convention, 1925 (Entry into force: 08 Sep 1926)

- Ratifications: 121

 [C118](#) - Equality of Treatment (Social Security) Convention, 1962 (Entry into force: 25 Apr 1964)

- Ratifications: 38

Other International instruments

-  Art. 68, par. 1 of [C102](#) states that non-national residents shall have the same rights as national residents
-  Art. 27, of [C121](#) states that each member shall within its territory assure to non-nationals equality of treatment with its own nationals as regards employment injury benefits

See also

-  [Maintenance of Social Security Rights Recommendation, 1983 \(No. 167\)](#)
-  [Equality of Treatment \(Accident Compensation\) Recommendation, 1925 \(No, 25\)](#)

Understanding ILS protection for migrant workers for employment related injury



- The Equality of Treatment (Accident Compensation) Convention, No. 19 was adopted in 1925 and is amongst the most ratified Conventions of the ILO. The Convention contains four operational provisions detailing how the equality of treatment between national and foreign workers can be attained. Two of these provisions detail the obligations of the ratifying ILO Member.
- When becoming party to the Convention, the ratifying Member undertakes to grant to the nationals of any other ratifying Member, who have suffered a work-related injury, the same treatment in respect of work-related compensation as it grants to its own nationals.
 - ☞ This equality of treatment shall be granted to migrant workers and their dependants without condition of residence.
- Any blanket exclusion of certain categories of migrant workers, including ‘undocumented’ or ‘irregular’ foreign workers, would not be considered in line with the provisions of the Convention. On this issue, the CEACR* has repeatedly stated that the fact that a migrant worker is without a residence or work permit does not invalidate the employment contract with respect to his or her rights to compensation in case of occupational injury.

* Committee of Experts on the Application of Conventions and Recommendations

Understanding ILS protection for migrant workers for employment related injury

- Under ILS, equality of treatment must be ensured in respect of all benefits, in cash and in kind, that are granted, under the national legislation, to migrant workers and their dependants who suffer a loss of income due to a workplace injury. These benefits include cash payments for temporary incapacity, permanent disability and death (for dependants) as well as medical and allied care and constant attendance for the disabled;
- Under C. 19., if the ratifying Member does not have a system of compensation for work-related injury (whether by insurance or otherwise) yet, it undertakes, by ratifying the Convention, to institute such a system within a period of three years from the date of its ratification.

Understanding ILS protection for migrant workers for employment related injury



- The difficulty and administrative hurdles related to the disbursement of the compensation or the provision of medical care once the foreign workers have returned to their home country were foreseen in two provisions of the Convention No 19. In such case, ratifying Members undertake to afford each other mutual assistance with a view to facilitating the application of the Convention and the execution of their respective laws and regulations on work-related compensation. With regards to the payment which a Member or its nationals would have to make outside its territory, the Convention proposes that the measures to be adopted shall be regulated, if necessary, by special arrangements between the Members concerned.
- Article 5 of C118 also establishes the obligation to “*guarantee both to its own nationals and to the nationals of any other Member which has accepted the obligations of the Convention ..., when they are resident abroad, provision of ... employment injury pensions*”.  [Part IV \(Articles 9-11\) of C157](#) also establishes the obligation to transfer the pensions in respect of employment injuries and death grants abroad. Furthermore, the  [Maintenance of Social Security Rights Recommendation, 1983 \(No. 167\)](#) recommends that “*The transfer of these benefits and pensions should be made with the minimum delay, so that beneficiaries may have them at their disposal as quickly as possible.*”

 [Click here for more information on maintenance of rights](#)

Understanding ILS protection for migrant workers for employment related injury

- The CEACR has always brought particular attention to ensure that the equality of treatment be fully effective, including for the most vulnerable categories of migrant workers. On the one hand, it noted on a number of occasions that migrant workers were often discouraged from filing for claims for work-related injury and forced to sign waivers, or to pay for their medical expenses themselves or to renounce their benefits in exchange for the renewal of their contract of employment.
- On the other hand, the CEACR welcomed measures aiming at regularizing 'irregular' migrant workers as one way of giving effect to the provisions of the Convention. It encouraged the strengthening of labour inspections in the sector with the highest employment injury rate and the greatest number of migrant workers; the improvement of the industrial accidents reporting system and the introduction of a criminal offence in cases employers would intentionally cover up industrial accidents; as well as the inclusion of social partners in the implementation of the provisions of the Convention.

Understanding ILS protection for migrant workers for employment related injury

-  [Equality of Treatment \(Accident Compensation\) Recommendation, 1925 \(No. 25\)](#) provides that *“in case of dispute concerning the non-payment, cessation of payment, or reduction of the compensation due to a person residing elsewhere than in the territory of the Member where his claim to compensation originated, facilities be afforded for taking proceedings in the competent courts of law in such territory without requiring the attendance of the person concerned.”*
-  In the same vein, C157 in its [Articles 13-14](#) establishes the assistance provided to persons protected, *“particularly migrant workers, in their dealings with the authorities, institutions and jurisdictions, particularly with respect to the award and receipt of benefits to which they are entitled and the exercise of their right of appeal, as well as in order to promote their personal and family welfare.”*

The Equality of Treatment (Social Security) Convention, 1962, No. 118

- The Equality of Treatment (Social Security) Convention, 1962, No. 118 is part of the last generation



General challenges related to social protection and migrant workers

- Migration can improve the migrant workers' life and their family and be beneficial to the host and home countries. However, achieving such results requires overcoming 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 (use of ICT for customized approaches of affiliation and communication) and better coordination within and between national jurisdictions (e.g. through bilateral and multilateral agreements) are prerequisites.
- Migrant workers range from vulnerable and low paid to high-earning and highly educated. Covering them requires appropriate policy design and important organisational efforts. Migrant workers issue is often sensitive requiring effective communication by public authorities to the workers and to the wider population.
- Conventional approaches to design and deliver social security benefits for salaried workers are not always appropriate for migrant workers. A number of barriers and challenges related to the extension of social security coverage to migrant workers exist but measures to overcome them also exist. Barriers to social security coverage can be legal (migrant workers excluded from joining social security) or effective (practical, administrative and access barriers).

What are the challenges and implications of the extension of social security in general?

Host countries struggle with integration of immigrant workers, while home countries have to deal with “brain drain” and reintegration of returning migrant workers.

Economic downturns likely cause loss of jobs in host and home countries. Returning home migrant workers may experience extra difficulty in job search due to loss of contacts and information.

Extension of social security coverage needs to be consistent with wider policy objectives and aims regarding migrant workers.

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).

There is a cost to cover migrant workers under social security program (fully or partly financed by tax revenue), but in many cases migrant workers pay more than they receive (e.g. consumption taxes).

Administrative costs of covering migrant workers can be higher due to tailored made services and relatively low contribution amounts.

Public opinion in host country perceives migration negatively in economic downturns.

Downward pressures 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.

Migrant workers can be perceived as “taking advantage” of social security system and providing social protection can be argued as encouraging other illegal migrants.

What are the challenges and implications of the extension of social security in general?

Remittances sent to the family members often used for consumption or education costs.

There are some debates whether remittances actively contribute to the development of the country.

Remittances are normally exempt from social security contributions, but often subject to other taxes.

Self-employed cannot count on employer's support to overcome the numerous barriers to social security coverage.

Assessing salary for contribution and benefit purposes is a challenge. Notional salary (e.g. China) can be used to increase compliance and simplify administration procedures.

According to a 1996 EU Directive, posted workers must comply with labour law 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.

Difficulty of applying the conditions of existing schemes to migrant workers. For example, means-tested benefits are difficult to administer.

Reasons for providing social protection 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 and social conflict and tensions.
Facilitating economic development	Provision of income security (e.g. short-term illness coverage, temporary unemployment benefits); Access to insurance, savings vehicles and other services.
Equity and public support	Exemption from social security contributions for migrant workers may be seen as unfair for the general population.
Economies of scale	More cost efficient administration and more robust to shocks.
Employee mobility	Inclusion of migrant workers in social security system improves job supply and demand match (internal), and supports development of free trade areas (international).
Reduction in the workers exploitation	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 not 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. Threat of legal action against multinational employers.

How to improve protection of migrant workers for work-related injury?

GENERAL CONSIDERATIONS

- Effective data collection and analysis on migrant workers (documented and undocumented) to better assess what sectors of activities, gender, categories of workers are concerned
- Policy and legal frameworks applicable to migrant workers should be reviewed to ensure that migrant workers enjoy equal protection as regards work-related injury to that enjoyed by national workers.
- Work-related injury benefits for migrant workers need to be mainstreamed in the relevant legal and policy framework through a thorough review of such framework. All relevant ministries and public bodies competent in fields as diverse as health, justice, finance, immigration, education and labor should be associated to this exercise
- Reflect on possible ways of delinking work-related injury insurance to the worker's immigration status to ensure that the basic rights to protection and compensation for work-related injury are effectively guaranteed for all migrant workers.

How to improve protection of migrant workers for work-related injury?

GENERAL CONSIDERATIONS

- Ensure that the policy and legal framework for the protection of migrant workers in case of work-related injury translates into regular practice and action at the grassroots level complied with by all relevant stakeholders, notably: employers, workers, immigration officers, embassy officials, labour and health officials, etc.
- Authorities should have recourse to various educational tools to simplify the scheme's description and render it as accessible as possible to workers and employers from a wide range of horizons.
- Effective tripartite consultations
 - Employment-injury protection is a question that touches upon the social partners' direct interests and which cannot be effectively addressed without their full support. Authorities are encouraged to use or put into place tripartite participative processes to assess the state of progress in the extension's implementation, elaboration of work plans and effective follow-up.

How to improve protection of migrant workers for work-related injury?

SPECIFIC CONSIDERATIONS:

- There are numbers of ways to ensure extension of coverage:
 - Ensure universal access
 - Easing conditions (reducing minimum service period)
 - Moving from national-based to resident-based scheme
 - Easing residency-based requirement
 - Breaking the link between immigration status and eligibility for EII benefits
- Effectively respond to the priority needs of the migrant workers. More particularly, proceed to a policy review to ensure that the required medical care is provided to migrant workers injured in the course of their work for as long as needed, and that it is not impeded by the termination of their contract or the expiration of their work permit. To do so, authorities should ensure migrant workers friendly health services in public facilities to avoid, amongst others, that migrant workers, irrespective of their status, be deterred to seek necessary medical care

 Extension of social security coverage.

CASE STUDIES

Thailand - Supporting migrants to formalize their status and affiliate to social security

The Ministry of Labour and the Social Security Office (SSO) monitors 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; imposing sanctions against employers who fail to register.

Sri Lanka - Working with other stakeholders and employees' 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 labour rights internationally-recognized.

Case Study - Malaysia

- As of 1 January 2019, foreign workers' protection related to work-related injury moved from the scope of the Foreign Workers' Compensation Scheme under the Workmen's Compensation (Foreign Workers' Compensation Scheme) (Insurance) Order 2005 to the ESSS administered under the ESSA. Several notifications were issued to organise the transition period extending to 31 December 2019, also referred to as "cooling off period". Except for specific exclusions mentioned in its First Schedule, the ESSA does not make any difference between national and non-national workers as to their coverage and entitlement to work-related injury benefits.
- Relevant exclusions: employment of a casual nature and domestic workers.

Case Study - Malaysia

- For work-related injury under the ESSA, foreign workers are entitled to periodic payments for temporary and permanent disability as a result of an employment injury; medical treatment; and constant attendance care for the disabled. The dependants of an insured foreign worker who dies as a result of an employment-related injury are entitled to periodic payments for loss of support; and funeral benefits. The Social Security Organisation (hereinafter "SOCSO") may establish and maintain such hospitals, dispensaries and other medical and surgical services as it may think fit for the benefit of the insured persons. It may also enter into agreement with any Government, local authority, person, private or individual about the provision of medical treatment and attendance for insured persons, in any area and payment of its costs. SOCSO may also cooperate with existing institutions for the improvement of the health, occupational safety and welfare of insured persons and for the rehabilitation and re-employment of insured persons who were injured at work.

How to improve protection of migrant workers for work-related injury?

SPECIFIC CONSIDERATIONS:

- Language is often a serious impediment for workers to understand the extent of their rights and obligations as well as the need to make the procedure simpler and leaner.
- Awareness-raising, induction and training sessions should be organized for employers and workers, in a language they understand, to ensure that they understand the extent of their rights and obligations, including eligibility criteria and the very notion of compensation for work-related injury. Particular attention should be brought to small and medium enterprises and micro-enterprises, including in more remote geographical areas, which may need further assistance to fulfil their obligations.

How to improve protection of migrant workers for work-related injury?

SPECIAL CONSIDERATION

- The scheme's effectiveness and practical implementation depends on strong compliance and enforcement measures, in particular in terms of labour inspection with particular attention to small and medium enterprises. Indeed health and safety in the workplace is crucial to the sustainability of the scheme.
- Authorities should ensure the sustainability and good governance of the scheme in the long-run. They should carry out regular actuarial valuations with the view of assessing the financial sustainability of work-related injury benefits.

How to improve protection of migrant workers for work-related injury?

SPECIAL CONSIDERATIONS

- Special arrangement with sending states
 - Arrangements and other relevant documents (model contracts of engagement, standing operating procedures, etc.) should be transparent, respect international labor standards and specify – in a language that could be understood by the migrant workers - the process and conditions to be entitled to work-related injury benefits.
 - Authorities could use regional consensual frameworks to outreach to other sending authorities, such as the ASEAN Declaration on the Protection and Promotion of the Rights of Migrants Workers (2007) and the more recent ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers (2018).
 - Special arrangements should streamline and facilitate the recruitment, hiring, and other related procedures and reduce related costs for workers and employers.
 - Special arrangements should address the language barrier and ensure that relevant documents and information are available in a language that migrant workers understand.

EXAMPLES



Case Study - Canada

Temporary migrant workers in Canada - Work injury

Source: Association of Workers' Compensation Board of Canada (AWCBC)

Migrant workers are individuals whose permanent home is not Canada, but are brought into Canada by a Canadian employer to work for a defined and 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 Program 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 program, and gives administering agencies discretion in implementing the rules.
- The Canadian law treats non-citizen status as an issue for anti-discrimination law, giving migrants the same status as other expressly protected groups.



[To know more click here](#)

Case Study - Italy

Traditionally, Italy has been a significant user of seasonal migrant worker labor, commonly in the agricultural sector. Since 1998, several laws have been passed to protect such workers. A distinction is made between permanent and temporary migrant workers, but the latter do nonetheless have access to health care benefits, family allowances and sick leave.

All foreign workers insured as employee or self-employed worker are insured with INAIL against physical and economic damage resulting from accidents at work and occupational diseases. Since 2000, this insurance was 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 insurance cost).¹

 ¹[To know more click here](#)

Should migrant workers be covered under general schemes or dedicated plans for migrant workers?

Three possibilities can be considered with regards to migrant workers coverage:

- **Inclusion in the host country's main social security scheme**
 - This typically requires supporting administrative measures and different criteria (e.g. minimum waiting period to let short-term migrant workers covered by their home-country 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 (e.g. 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.

How to ensure portability of benefits?

- Migrant workers may build up rights in the host country social security system;
- Injured migrant workers often return home for three main reasons:
 - To get support from family;
 - Due to migration status; or
 - Because they may not be able to get adequate medical treatment or rehabilitation services
- Such entitlements may not be portable or transferrable in absence of bilateral or multilateral agreement;
- Two approaches can be envisaged in respect of EI benefits:
 - Bilateral or multilateral agreements, that can provide portability of pension 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 work incapacity.

How to ensure portability of benefits?

- The challenge is both due to benefit continuity issues and 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; and
 - 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 (e.g. Sweden and Switzerland).

CASE STUDY - 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 and 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;
- 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 the home country social security system. Aggregating of service for 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 the efforts to create “Pan European Pensions” (IORPs).

¹ Directorate General for Internal Policies, Policy Department A: Economic and Scientific Policy, Employment and Social Affairs,



What are the main effective barriers for the extension?


Eurasia

The 2005 Baku Declaration, signed by 22 ISSA members and 14 from the International Association of Pension and Social Funds, recognizes the need for greater coordination and data exchange between social security institutions, bilateral and multilateral agreements and the principles of the totalization for the determination of benefit entitlements.

A Framework Guidance Document defines seven principles related to providing adequate social security benefits to migrants:

- i) universality
- ii) equality
- iii) accessibility
- iv) portability
- v) comprehensiveness
- vi) credibility
- vii) sustainability

What are the main practices and challenges regarding bilateral and multilateral agreements?

 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 multilateral agreement.

What to include in bilateral agreements?

- **The Case of Ukraine:**

- As of 2012, bilateral social security agreements were concluded 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
 - Employment injury
- Agreements with Estonia, Latvia, Lithuania and Portugal also cover unemployment insurance.

What are the main practices and challenges regarding bilateral and multilateral agreements?

- Barriers to implementation of multilateral and bilateral agreements include:
 - Staff resources dealing with the implementation and administration of the agreement that can be insufficient or lack relevant skills (e.g. language or legal knowledge).
 - 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.
 - Significantly more immigrants than emigrants has asymmetric financial and administrative impact on social security institutions.
 - Differences in benefit structure and levels (e.g. provident fund system in one country and defined benefit social insurance system in another) that make cost neutral design of multilateral agreement very difficult.
- A key success factor in the operation of international agreements is an effective and reliable data exchange between participating organizations
 - 🌐 (See [ISSA Guidelines on contribution collection and compliance](#)).

What are the financial implications of agreements?

- Ensuring that the worker is no worse off than if he/she had not left his/her 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.
- Different financing methods of EI schemes can imply cross-subsidy between employers of 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 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.

Additional Resources

Additional readings

-  [International labour migration. A rights-based approach. Geneva, International Labour Office, 2010](#)
-  [Handbook on the extension of social security coverage to migrant workers. ISSA, 2014](#)
-  [Social security coordination for non-EU countries in South and Eastern Europe: a legal analysis](#) / International Labour Organization, Decent Work Technical Support Team and Country Office for Central and Eastern Europe. - Budapest: ILO, 2012.*
-  consult [NORMLEX](#) For more extensive research on case-law of CEACR
-  [ILO - International Labour Standards on Migrant Workers](#)
-  [ILO - Expanding Social Security to Migrant Domestic Workers](#)

* It is for South and Eastern Europe. However, its Chapter 4.2 provides for a short description of the ILO instruments, which can be useful.



THE KEY TO A SUCCESSFUL EMPLOYMENT INJURY INSURANCE SYSTEM

ITCILO E-CAMPUS / ONLINE KNOWLEDGE

Pop Ups - Module 15



International Labour Organization



International Training Centre



Understanding ILS protection for migrant workers for employment related injury



For example, with respect to the condition of residence,

 [Article 4\(1\) of C118](#) states that

“Equality of treatment as regards the grant of benefits shall be accorded without any condition of residence: Provided that equality of treatment in respect of the benefits of a specified branch of social security may be made conditional on residence in the case of nationals of any Member the legislation of which makes the grant of benefits under that branch conditional on residence on its territory.”

Certain possibilities for reciprocity by the way of international agreements is provided by

 [Article 68\(2\) of C102](#):

“Under contributory social security schemes which protect employees, the persons protected who are nationals of another Member which has accepted the obligations of the relevant Part of the Convention shall have, under that Part, the same rights as nationals of the Member concerned: Provided that the application of this paragraph may be made subject to the existence of a bilateral or multilateral agreement providing for reciprocity.”



Understanding ILS protection for migrant workers for employment related injury



[2/2]

On the contrary,

 [Article 27 of C121](#) which states that

“Each Member shall within its territory assure to non-nationals equality of treatment with its own nationals as regards employment injury benefits”

is more similar to C19.


It can be added that in accordance with

 [Article 10\(1\) of C118](#), the equality of treatment is extended

“to refugees and stateless persons without any condition of reciprocity”.



Understanding ILS protection for migrant workers for employment related injury

 Part III of C157 (Articles 6-8) provides for the requirement to endeavour to participate in schemes for the maintenance of rights which add together periods of insurance, employment, occupational activity or residence completed under the legislation of different Members for the purposes of acquisition, maintenance or recovery of rights and calculation of benefits. Of course, in many countries where there is not a qualifying period for the entitlement to EII there is no need to add together the period of insurance or employment.

However, C118 and C157 do not establish requirements on the absence of qualifying period so in certain cases the maintenance of rights can be relevant.



How to improve protection of migrant workers for work-related injury?

- Extension of social security coverage has three dimensions of increase:
 - The number of people covered by existing social security programs;
 - 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;
- Work injury and short-term risk benefits (e.g. cash death benefits and sickness benefits) may be easier to extend, as their eligibility typically depends on the current contributory status, than longer-term benefits (e.g. retirement benefits or end-of-service gratuities) whose contribution conditions are more difficult to fulfill



How to improve protection of migrant workers for work-related injury?

- **New Zealand:** seasonal worker scheme with the neighboring 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, social partners and migrant organizations.
- **Several EU Member States:** measures to simplify registration procedures for migrant workers, such as the use of service vouchers for domestic service providers.



Case Study - Canada

Immigrants and migrants in Canada – Profile

- Every year over 150,000 foreign workers enter in 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 Labor Market Opinion (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 labor market).
- Workers apply for a work permit.



Case Study - Canada

Programs

- 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



Case Study - Canada

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 new employer has completed a LMO before current work permit runs out.
 - Can support himself in Canada without aid of a social program.



Case Study - Canada

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 (like Canadians injured on the job).
- Provide translation services.
- Provide expedited standardized assessments and clinical services (like any other injured workers).
- Provide workers and employers with information on coverage, claims, risk, assessment and prevention.
- Provide eligible dependents of fatally injured workers with appropriate documentation and appropriate benefits (like other injured workers).
- Target communication strategy to sectors / employers hiring migrant workers.



Case Study - Canada

Best practice 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.



Case Study - Canada

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 he was hired to do ends or he is unable to continue working (including off work 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 health care outside of Canada.
- Cultural and language differences complicate managing out of country claims.
- It is difficult to pay ongoing wage loss or fatality benefits outside of Canada.
- Studies show temporary foreign workers tend not to report claims, seek medical attention and raise workplace safety concerns.
- Temporary foreign workers are employed, at times, in low paying, labor intensive, dangerous jobs.