

# ILO Standards and COVID-19 (coronavirus)

## FAQ

Key provisions of international labour standards relevant to the COVID-19 pandemic and recovery, and guidance from the Committee of Experts on the Application of Conventions and Recommendations

**International Labour Standards Department, ILO**

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This note contains a compilation of answers to most frequently asked questions related to international labour standards and COVID-19. It has been updated in light of developments of relevance to the world of work that have taken place since its last publication in May 2020. It also highlights the latest guidance provided by the Committee of Experts on the Application of Conventions and Recommendations in the context of the pandemic and recovery. It does not provide a comprehensive review of possible legal and policy measures. For the ILO's assessment concerning the possible impacts of COVID-19 on the world of work and suggested range of policy options, see [COVID-19 and the world of work, which includes global impact and policy recommendations](#).



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**“International labour standards provide a tried-and-trusted foundation for policy responses that focus on a recovery that is sustainable and equitable.”**

***Guy Ryder, ILO’s Director-General***

The International Labour Organization (ILO) maintains a system of [international labour standards](#) (ILS) aimed at promoting opportunities for all to obtain decent and productive work, in conditions of freedom, equity, security and dignity.

International labour standards and social dialogue are at the core of the [ILO’s Policy Framework for responding to the COVID-19 crisis](#), which uses an integrated approach to mitigate the socio-economic implications of the pandemic and help countries recover from it.<sup>1</sup>

International labour standards are a useful decent work compass in the context of the crisis response to the COVID-19 outbreak. They also play a central role in the formulation of inclusive and sustainable recovery measures that leave no one behind. As a fundamental pillar of the human-centred approach called for by the [ILO Centenary Declaration for the Future of Work](#), ILS provide a comprehensive framework that enables societies to move forward in the implementation of the [2030 Agenda for Sustainable Development](#).<sup>2</sup>

In particular, respecting key provisions of ILS relating to occupational safety and health, working arrangements, protection of specific categories of workers, non-discrimination, social security or employment protection ensures that workers,

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<sup>1</sup> This framework presents a set of interventions to be tailored to country-specific needs, based on four pillars: (1) Stimulating the economy and employment; (2) Supporting enterprises, jobs and incomes; (3) Protecting workers in the workplace, and; (4) Relying on social dialogue for solutions. For more detailed information, see [ILO Policy Brief on COVID-19: A policy framework for responding to the COVID-19 crisis](#), ILO, 18 May 2020.

<sup>2</sup> As reaffirmed by the Committee of Experts on the Application of Conventions and Recommendation (CEACR) in its 2021 General Report: [General Report of the Committee of Experts on the Application of Conventions and Recommendations \(CEACR\), adopted at its 91st session \(Nov-Dec 2020\)](#), ILO, 2021, para. 48 (hereinafter CEACR, 2021 General Report).

employers and government can maintain decent work while adjusting to the socio-economic consequences of the COVID-19 pandemic.

Furthermore, a wide range of ILO labour standards on employment, social protection, wage protection, SMEs promotion or workplace cooperation contain specific guidance on policy measures that would encourage a human-centred approach to the crisis and to its recovery. Their guidance extends to the specific situation of certain categories of workers including frontline workers, such as nursing personnel, domestic workers, migrant workers, seafarers or fishers, and those in the informal economy, who are particularly vulnerable in the current context.

### **The role of ILS in times of crisis and recovery**

The setting of ILS is at the heart of the [ILO's mandate](#), and, together with their promotion, ratification and supervision, of fundamental importance to the Organization, as reaffirmed in the [ILO Centenary Declaration for the Future of Work](#). Developed, periodically reviewed and, where needed, revised over the past century, ILS respond to the changing patterns of the world of work, for the purpose of the protection of workers, and taking into account the needs of sustainable enterprises.

ILS lay down basic, minimum, social standards for decent work, agreed upon globally, by governments, workers and employers. They provide a solid foundation for the implementation of higher levels of protection, which, in the national context, may serve to better mitigate the socio-economic impact of the crisis and support recovery.

Respect for international labour standards contributes to a culture of social dialogue and workplace cooperation that is key to building the recovery and preventing a downward spiral in employment and labour conditions during and after the crisis. ILS establish a fair and equitable framework; they embody resilience in front of concrete situations in the world of work and are fundamental to any long-lasting and sustainable response to pandemics, including COVID-19, and to recovery.

This compilation<sup>3</sup> answers most frequently asked questions related to ILS and COVID-19 and aims at supporting governments', employers' and workers' adjustment and responses to the COVID-19 pandemic, in times of crisis and recovery. It has been updated and includes new topics, in light of developments of relevance to the world of work that have taken place since its last publication in May 2020. It also contains the latest guidance formulated by the [Committee of Experts on the Application of Conventions and Recommendations](#) (CEACR) on ILS related to the subject, at its [2020 session](#) (25 November to 12 December 2020).<sup>4</sup>

### **Guidance of the CEACR on ILS for crisis response and recovery**

The application of ILS in ILO member States is evaluated by the Committee of Experts on the Application of Conventions and Recommendations (CEACR). At its [2020 session](#), which took place against the backdrop of the COVID-19 pandemic, the CEACR recalled that the concrete commitments undertaken by member States to protect the dignity and freedom of people at work remained fully valid during the current pandemic and strengthened the resilience of societies building back better. Reaffirming the importance of ILS and effective and authoritative supervision in the pandemic context, the CEACR issued orientations for a human-centred recovery, in the full respect of rights at work.

This guidance is mainly found in the following parts of the [2021 CEACR General Report](#):

- [Application of International Labour Standards in times of crisis: the importance of international labour standards and effective and authoritative supervision in the context of the COVID-19 pandemic;](#)

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<sup>3</sup> Previous versions were web-published on 27 March and 25 May 2020.

<sup>4</sup> See, notably: Extracts of the General Report of the Committee of Experts on the Application of Conventions and Recommendations (CEACR), adopted at its 91st session (Nov-Dec 2020): [Application of International Labour Standards in times of crisis: the importance of international labour standards and effective and authoritative supervision in the context of the COVID-19 pandemic, ILO, 2021](#) (hereinafter CEACR, 2021 General Report); [General observation on matters arising from the application of the Maritime Labour Convention, 2006, as amended \(MLC, 2006\) during the COVID-19 pandemic](#), adopted by the CEACR at its 91st session (Nov-Dec 2020), ILO, 2020; [General Observation on the application of Convention No. 122](#), adopted by the CEACR at its 91st session (Nov-Dec 2020), ILO, 2021, and; [Addendum to the General Survey on Promoting employment and decent work in a changing environment, ILO, 2020](#), adopted by the CEACR at its 91st session (Nov-Dec 2020), ILO, 2021.



- [General observation on matters arising from the application of the Maritime Labour Convention, 2006, as amended \(MLC, 2006\) during the COVID-19 pandemic;](#)
- [General Observation on the application of the Employment Policy Convention, 1964 \(No. 122\),<sup>5</sup> and;](#)
- [Addendum to the General Survey on Promoting employment and decent work in a changing environment.<sup>6</sup>](#)

## What do international labour standards say about crisis response?

ILS contain specific guidance for safeguarding decent work in the context of crisis response, including guidance that can be of direct relevance to the evolving COVID-19 outbreak. One of the most recent ILS, the [Employment and Decent Work for Peace and Resilience Recommendation, 2017 \(No. 205\)](#), adopted by an overwhelming majority of ILO constituents, emphasizes that crisis responses need to ensure respect for all human rights and the rule of law, including respect for fundamental principles and rights at work and for ILS.<sup>7</sup>

The Recommendation outlines a strategic approach to crisis response, including the adoption of a phased multi-track approach implementing coherent and

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<sup>5</sup> In this General Observation, the CEACR highlights the importance of a number of related employment instruments relevant to the design, development and effective implementation of sustainable economic recovery, employment and job creation, including Recommendation No. 205.

<sup>6</sup> In early 2020, the CEACR published a comprehensive General Survey on Promoting employment and decent work in a changing environment examining 8 ILS whose application is directly relevant to the strategic objective of promoting full, productive and freely chosen employment and decent work in the context of rapid and profound changes in the world of work. The Addendum, adopted in November 2020, identifies good practices and provides guidance on the application of international labour standards on employment to assist ILO constituents in ensuring a rapid, sustainable recovery while building increased preparedness and resilience to help States face future crises.

<sup>7</sup> Preamble and Paras. 7(b) and 43 of the [Employment and Decent Work for Peace and Resilience Recommendation, 2017 \(No. 205\)](#).

comprehensive strategies for enabling recovery and building resilience that include:

- stabilizing livelihoods and income through immediate social protection and employment measures;
- promoting economic recovery for employment and decent work opportunities and socio-economic reintegration;
- promoting sustainable employment and decent work, social protection and social inclusion, sustainable development, the creation of sustainable enterprises, in particular small and medium-sized enterprises, the transition from the informal to the formal economy, a just transition towards an environmentally sustainable economy and access to public services;
- conducting employment impact assessments of national recovery programmes;
- providing guidance and support to employers to enable them to take effective measures to identify, prevent, mitigate and account for how they address the risks of adverse impacts on human and labour rights in their operations, or in products, services or operations to which they may be directly linked;
- promoting social dialogue and collective bargaining;
- building or restoring labour market institutions, including employment services, for stabilization and recovery;
- developing the capacity of governments, including regional and local authorities, and of employers' and workers' organizations; and
- taking measures, as appropriate, for the socio-economic reintegration of persons who have been affected by a crisis, including through training programmes that aim to improve their employability.<sup>8</sup>

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<sup>8</sup> Para. 8 of R.205. Para. 9 provides further guidance on immediate measures that should be taken. The specific guidance set out in R.205 and other ILO standards on the key areas of intervention that have emerged from the COVID-19 crisis is presented below, under the corresponding headings.

## How can social dialogue enable the formulation and implementation of an effective response to COVID-19 in times of crisis and recovery?

- In line with the [Employment and Decent Work for Peace and Resilience Recommendation, 2017 \(No. 205\)](#), social dialogue is of critical importance in all aspects of the development, implementation, monitoring and review of policy responses to crisis situations, such as the COVID-19 crisis, to ensure that these are grounded in respect for rights at work, tailored to national circumstances and benefiting from local ownership, while supporting sustainable enterprises to ensure business continuity.<sup>9</sup>
- A climate of trust, built through social dialogue and tripartism, is also essential for the effective implementation of measures taken in response to the pandemic and its consequences. Strengthened respect for, and reliance on, mechanisms of social dialogue create a strong basis for building resilience and the commitment of employers and workers to painful but necessary policy measures.<sup>10</sup>
- Accordingly, it is important to engage in processes and mechanisms to ensure efficient tripartite consultations as envisaged under numerous ILS to identify and reach consensus on effective solutions. Particularly, Recommendation No. 205 underlines the key role of consultation and encouraging active participation of employers' and workers' organizations in planning, implementing and monitoring measures for recovery and resilience.<sup>11</sup> It calls on member States to recognize the vital role of employers' and workers' organizations in crisis response, taking into account the Conventions concerning freedom of association and collective bargaining.<sup>12</sup>

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<sup>9</sup> Paras. 7(k), 11(d), 24 and 25 of R.205, para. 49.

<sup>10</sup> CEACR, 2021 General Report, para. 70.

<sup>11</sup> Para. 8(d), 24 and 25 of R.205 ; See also CEACR, Addendum to the 2020 General Survey on Promoting Employment and Decent Work in a Changing Landscape, para. 145.

<sup>12</sup> Para. 25 of R.205.

- Social dialogue should be carried out at all levels (national, sectoral and enterprise) and is a key policy tool for ensuring the adoption of policies and programmes that effectively deal with the crisis while mitigating their impact on employment and incomes.
- At enterprise level, it can be of particular importance for keeping workers informed, consulted and aware of the eventual impact of the measures foreseen on their own terms and conditions of employment and of the efforts taken to mitigate such impact, as well as for determining the steps that can be taken for their protection, and for the containment of the virus.<sup>13</sup> Actors at national and sectoral level play a critical role in the elaboration of policies and sustainable responses to the crisis that benefit from in-depth knowledge of the real economy and its challenges.

## What is the role of freedom of association and collective bargaining in the crisis?

- Recognition of the vital role of employers' and workers' organizations and promotion of collective bargaining, taking into account the ILO 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), in line with the guidance provided by the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), are important to provide fair and robust solutions to the current health, economic and social crisis and in ensuring, in this context, respect for all rights guaranteed by other ILO standards.<sup>14</sup>
- Under Convention No. 87, Governments should take all necessary and appropriate measures to ensure that workers and employers may exercise

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<sup>13</sup> See for example, the [Co-operation at the Level of the Undertaking Recommendation, 1952 \(No. 94\)](#), and the [Workers' Representatives Convention, 1971 \(No. 135\)](#), accompanied by the guidance provided in the [Workers' Representatives Recommendation, 1971 \(No. 143\)](#).

<sup>14</sup> See CEACR, 2021 General Report, paras 71-75.

freely the right to organise<sup>15</sup>; under Convention No. 98, they should also encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organizations, and workers' organizations.<sup>16</sup>

- In view of the constraints imposed by the pandemic, proactive measures have been taken to facilitate the continued exercise of collective rights, (for instance, in agreement with the social partners, the extension of the mandates of trade union representatives in cases where elections could not take place; the adjustment of collective bargaining deadlines when necessary; the increased use of videoconferencing to ensure the continuity of the activity of social dialogue and collective bargaining bodies; and the adaptation of the facilities granted to unions in their dealings with teleworkers).<sup>17</sup>
- In accordance with Convention No. 98, collective bargaining mechanisms should continue to be promoted at all the appropriate levels (national, sectoral, company) in order to identify balanced and sustainable responses to the different aspects of the crisis and the recovery process (see in this respect the cases of recent agreements reached on issues such as working time and the preservation of workers' incomes, health and safety at work, employment policies, cost reductions and prevention of staff cuts, the protection of small businesses, the transition to the formal economy, social protection, the reconciliation of work and family responsibilities).<sup>18</sup>
- When exceptional measures have led to temporary restrictions including the setting aside of collective bargaining mechanisms and the resulting agreements, these measures, that are only admissible in the event of an acute crisis must be: limited in time, strictly adapted and proportionate to the objective constraints they address, include guarantees for the workers most

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<sup>15</sup> See in particular art.11 of C.87.

<sup>16</sup> See in particular art. 4 of C.98 and art. 5 of the [Collective Bargaining Convention, 1982 \(No. 154\)](#).

<sup>17</sup> See CEACR, 2021 General Report, para. 71.

<sup>18</sup> See [Employers and workers negotiating measures to prevent the spread of COVID-19, protect livelihoods and support recovery: A review of practice](#), ILO Brief, July 2020.

affected and be consulted with the most representative organizations of employers and workers. These exceptional measures should thus give way as soon as possible to the full utilisation of and respect for collective bargaining machinery<sup>19</sup>.

## What about civil liberties in the context of the pandemic?

- Freedom of opinion and expression and, in particular, the right not to be penalized for one's opinions, are an essential corollary of freedom of association, and workers, employers and their organizations should enjoy freedom of opinion and expression in their meetings, publications and in the course of their activities.<sup>20</sup> Restrictions on those essential civil liberties should be restricted to circumstances of extreme gravity and on condition that any measures affecting the application of fundamental rights are limited, in scope and duration, to what is strictly necessary to deal with the situation in question.<sup>21</sup>

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<sup>19</sup> See CEACR, 2021 General Report, para. 72.

<sup>20</sup> The Resolution of [1970 concerning Trade Union Rights and Their Relation to Civil Liberties](#) places special emphasis on freedom of opinion and expression, which are essential for the normal exercise of trade union rights.

<sup>21</sup> [General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008](#), ILO, 2012, paras 59 and 140; [General Survey on Freedom of Association and Collective Bargaining](#), ILO, 1994, para. 41; Addendum to the 2020 General Survey on Promoting Employment and Decent Work in a changing Landscape, ILO, 2021, para.76, and; CEACR, 2021 General Report, para. 52.

## Averting job losses, protecting incomes and ensuring access to social protection

### How can employment measures and social protection contribute to mitigating the crisis and enabling recovery?

- The COVID-19 pandemic has placed a tremendous strain on national health systems due to the surge in demand for health care and services in all regions of the world.<sup>22</sup> Immediate containment measures taken by many countries to prevent the spread of the pandemic, including quarantines and lockdowns, have caused an unprecedented reduction in economic activities and working time, resulting in severe impacts on incomes, jobs and livelihoods. These factors have led to a significant rise in unemployment and underemployment.<sup>23</sup>
- The [Employment and Decent Work for Peace and Resilience Recommendation, 2017 \(No. 205\)](#) calls for a phased multi-track approach to enabling recovery which should include immediate social protection and employment measures promoting, among others, local economic recovery.<sup>24</sup>
- The Recommendation calls, in particular, on Member States to give effect to the principle of full, productive and freely chosen employment set out in the Employment Policy Convention, 1964 (No. 122), while seeking to ensure basic income security, in particular for persons whose jobs or livelihoods have been disrupted by the crisis, and effective access to essential health care and other

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<sup>22</sup> See, in particular, [Social protection responses to the COVID-19 crisis: Country responses and policy considerations, ILO, 2020](#) and various other publications on the [ILO Social Protection response to the COVID-19 crisis webpage](#).

<sup>23</sup> For regularly updated ILO estimates, see ILO Monitor: COVID-19 and the world of work. [The seventh edition](#) was released on 25 January 2021. It is available on the ILO's [COVID-19 and the world of work page](#).

<sup>24</sup> Para. 8 of R.205.

basic social services, in particular for population groups and individuals who have been made vulnerable by the crisis.<sup>25</sup>

- Employment support and promotion measures have played a key role at the national level in helping workers and employers cope with the crisis and in sustaining national economies. Going forward, the promotion of full, productive and freely chosen employment<sup>26</sup> will need to include selective measures to stabilize economies and address employment problems, including fiscal and monetary stimulus measures aimed at stabilizing livelihoods and income as well as safeguarding business continuity.<sup>27</sup>
- In this regard, the promotion of sustainable enterprises, including SMEs, through an enabling environment, business resilience, productivity enhancement and environmental sustainability, is of utmost importance to help enterprises retain workers and secure income for them.<sup>28</sup>
- In the same way, social protection has proven to be a fundamental component of the COVID-19 crisis response and an important means to mitigate its economic and social impact.<sup>29</sup>
- Post-pandemic recovery may require people to adjust to changes in the economy and in the labour market. In that context, policies aimed at sustainable long-term growth, including strengthening social security systems and social protection floors, should be prioritized: social security systems act as automatic social and economic stabilizers, help stimulate

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<sup>25</sup> See Part IV (Employment and income-generation opportunities) and VII (Social Protection) of R.205. See also CEACR, Addendum to the 2020 General Survey on Promoting Employment and Decent Work in a changing Landscape, para.37.

<sup>26</sup> Art. 1 of the [Employment Policy Convention, 1964 \(No. 122\)](#).

<sup>27</sup> Para. 8 b) and Annex of the [Employment Policy Recommendation, 1964 \(No. 122\)](#) and Paras. 1, 6 and 10 of the [Employment Policy \(Supplementary Provisions\) Recommendation, 1984 \(No. 169\)](#).

<sup>28</sup> Paras 8c), 11(d) and 43 of R. 205

<sup>29</sup> See notably, [Social protection responses to the COVID-19 crisis: Country responses and policy considerations, ILO, 2020](#) and various other publications on the [ILO Social Protection response to the COVID-19 crisis webpage](#). See also CEACR, 2021 General Report, para. 24.

aggregate demand in times of crisis and beyond, and help support a transition to a more sustainable economy.<sup>30</sup>

- Country responses should thus also include, to the extent possible, measures which, among other objectives: guarantee access to quality health care; enhance income security through cash transfers; adapt entitlement conditions, obligations and delivery mechanisms; protect workers in the informal economy; ensure the protection of incomes and jobs through unemployment protection schemes and other mechanisms to help enterprises retain workers and provide income support for unemployed workers or those whose incomes have been reduced due to the pandemic, as well as to adapt public employment schemes to the context of the pandemic.<sup>31</sup>
- Coping with the effects of the pandemic in the longer term may warrant extending or adjusting the scope of protection and duration of current measures or taking additional measures, as need be, to strengthen the social protection of all persons in need, in particular the most vulnerable, and enable societies to better cope with the impact of the crisis.<sup>32</sup>
- In this manner, both integrated and targeted measures are key in COVID-19 response and recovery. This approach involves targeted measures for groups in situations of vulnerability, as well as ensuring the inclusion of these groups in mainstream responses to the crisis, including access to financial support, care, benefits and services.<sup>33</sup>

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<sup>30</sup> Preamble, [Social Protection Floors Recommendation, 2012 \(No.202\)](#).

<sup>31</sup> The specific guidance set out in ILO standards in relation to income security (e.g. paid leave, sickness benefits, unemployment benefits, and employment injury benefits) and health care measures – general and in respect of specific groups or sectors – is detailed below. Addendum to the 2020 General Survey on Promoting employment and decent work in a changing landscape, para. 37; CEACR, 2021 General Report, paras. 62-68 and; Social protection responses to the COVID-19 crisis: Country responses and policy considerations, ILO, 2020.

<sup>32</sup> CEACR, 2021 General Report, para. 67.

<sup>33</sup> See Addendum to the 2020 General Survey on Promoting employment and decent work in a changing landscape, para. 300.

## What about access to health care?

- The COVID-19 pandemic has brought a surge in demand for health care and services and highlighted, as the crisis unfolded, the importance of preventive care (e.g. vaccination, testing) alongside curative care (e.g. treatment, medication, rehabilitation). Countries with robust and well-developed health care systems have been able to cope with the virus quickly and effectively by adopting specific measures to extend population coverage, expand the range of care and services available, and ensure effective access for those in need of health care.<sup>34</sup>
- The pandemic and the measures taken to contain the spread of the virus have also had a significant impact on the psychological well-being of the populations concerned, and have shed light on the importance of dedicated health care and services to prevent and address mental health issues.
- In line with ILS, persons affected by COVID-19 physically or psychologically should have access, for as long as required, to adequate health care and services of a preventive and curative nature, including general practitioner care, specialist care (at hospitals and outside); the necessary pharmaceutical supplies; hospitalization where necessary; and medical rehabilitation.<sup>35</sup> Essential health care should meet the criteria of availability, accessibility, acceptability and quality.<sup>36</sup>

## How to promote the transition to formality and avoid the risk of higher informality due to the crisis?

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<sup>34</sup> CEACR, 2021 General Report, para. 64. See also [Report of the CEACR concerning social security measures taken at national level in response to the COVID-19 pandemic, 2020](#), p.2, where, in the context of the application of the European Code of Social Security, the CEACR observed “the positive impact of removing barriers to effective access to health care, considering that gaps in the coverage of certain parts of the population posed a health risk for the population as a whole”.

<sup>35</sup> See notably the [Social Protection Floors Recommendation, 2012 \(No. 202\)](#) (Paras. 4, 5 and 8), Part II of the [Medical Care and Sickness Benefits Convention, 1969 \(No. 130\)](#) and Part II of C.102.

<sup>36</sup> [Social Protection Floors Recommendation, 2012 \(No.202\)](#), para. 5(a).

- Many response and recovery measures introduced by governments focus on the formal economy, even in countries where most economic activity is in fact informal. These measures may help to prevent informalization, but do not cover the needs of the informal workers and businesses that are essential to their national economies and employ large sectors of the population.<sup>37</sup>
- The [Transition from the Informal to the Formal Economy Recommendation, 2015 \(No. 204\)](#), provides comprehensive guidance on the elements to be taken into consideration in developing and implementing policy responses for the informal economy, including the promotion of strategies for sustainable development, poverty eradication and inclusive growth, and the generation of decent jobs in the formal economy, the promotion of a conducive business and investment environment, and the promotion of entrepreneurship, micro, small and medium-sized enterprises, and other forms of business models and economic units, such as cooperatives and other social and solidarity economy units.<sup>38</sup> Rapid assessments of the drivers of informality help to assess the impact on the economy and review existing policies, their objectives and impact in order to identify gaps.<sup>39</sup>

## How to ensure the protection of persons in alternative working arrangements?

- While the pandemic has significantly changed the nature and organization of work for millions of workers, it has also accentuated existing uncertainties for those workers in alternative working arrangements whose employment status may not be clear (such as workers on temporary, fixed-term, project or task-based contracts, as well as platform workers and workers in multi-party

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<sup>37</sup> CEACR, Addendum to the 2020 General Survey on Promoting Employment and Decent Work in a Changing Landscape, paras. 72 and 135.

<sup>38</sup> Para. 11(a), (c) and (g), of the Transition from the Informal to the Formal Economy Recommendation, (No 204), 2015; See also Addendum to the 2020 General Survey, paragraph 130.

<sup>39</sup> Para. 8, Recommendation No. 204; See also Addendum to the 2020 General Survey, Para. 132.

working arrangements). As it is primarily through the existence of an employment relationship that a worker may secure access to employment-related rights and benefits, determination of the existence of such a relationship is critical.<sup>40</sup> The [Employment Relationship Recommendation, 2006 \(No. 198\)](#) calls for measures to combat situations of disguised employment, providing that the determination of the existence of an employment relationship should be guided primarily by the facts relating to the performance of work and remuneration of the worker.<sup>41</sup>

## What should happen if employment is suspended or terminated?

- Workers whose employment is terminated due to the economic impact of COVID-19 or for health and safety reasons should be entitled to a severance allowance or other separation benefits, unemployment insurance benefits or assistance to compensate for the loss of earnings incurred as a consequence of the termination, in accordance with the [Termination of Employment Convention, 1982 \(No. 158\)](#).<sup>42</sup>
- As a basic principle, the employment of a worker shall not be terminated in the absence of a valid reason for such termination, connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking.<sup>43</sup> Temporary absence from work due to illness or family responsibilities do not constitute valid reasons for termination.<sup>44</sup>
- With respect to collective dismissals, Convention No. 158 provides that an employer contemplating terminations for economic reasons shall provide

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<sup>40</sup> Addendum to the 2020 General Survey, on Promoting Employment and Decent Work in a Changing Landscape, para. 70.

<sup>41</sup> Paragraphs 9-11 of R. 198. See also Addendum to the 2020 General Survey on Promoting Employment and Decent Work in a Changing Landscape, para. 86.

<sup>42</sup> Art. 12 of C.158.

<sup>43</sup> Art. 4 of C.158.

<sup>44</sup> The [1995 General Survey concerning Unjustified Dismissal](#), paras. 136-142 and Art. 8 of the [Workers with Family Responsibilities Convention, 1981 \(No. 156\)](#).

workers' representatives with relevant information (including the reasons for the terminations contemplated, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out) and give, in accordance with national law and practice, the workers' representatives concerned, as early as possible, an opportunity for consultation on measures to be taken to avert or to minimise the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned, such as finding alternative employment.<sup>45</sup> The Convention also provides for notifying the competent authority, as prescribed, when terminations are contemplated.<sup>46</sup>

- In this respect, the [Termination of Employment Recommendation, 1982 \(No. 166\)](#) highlights that all parties concerned should seek to avert or minimise, as far as possible, termination of employment for reasons of an economic, structural or similar nature, without prejudice to the efficient operation of the undertaking, establishment or service, and to mitigate the adverse effects of any termination of employment for these reasons on the worker or workers concerned. It also provides that, where appropriate, the competent authority should assist the parties in seeking solutions to the problems raised by the terminations contemplated.<sup>47</sup>
- Further, the [Social Security \(Minimum Standards\) Convention, 1952 \(No. 102\)](#) makes provision for unemployment benefits that workers whose earnings are suspended due to inability to obtain suitable employment should be entitled to, under certain conditions.<sup>48</sup> In addition, the [Employment Promotion and Promotion Against Unemployment Convention, 1988 \(No. 168\)](#) calls for the payment of unemployment benefits to: (1) workers whose earnings have been reduced due to a temporary reduction in their working hours (i.e. partial unemployment); and (2) workers who incur a suspension or a reduction of

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<sup>45</sup> Art. 13 of C.158.

<sup>46</sup> Art. 14 of the [Termination of Employment Convention, 1982 \(No. 158\)](#).

<sup>47</sup> Para. 19 of R.166.

<sup>48</sup> Part IV of the [Social Security \(Minimum Standards\) Convention, 1952 \(No.102\)](#).

earnings due to a temporary suspension of work, without any break in the employment relationship for reasons of, in particular, an economic, technological, structural or similar nature.<sup>49</sup>

- The [Employment Promotion and Protection against Unemployment Convention, 1988 \(No. 168\)](#) further calls on States to promote full, productive and freely chosen employment, and provides that workers who have lost their jobs should have access to employment promotion measures, including employment placement and related services, including vocational training and guidance, with a view to their reintegration into the labour market.<sup>50</sup>

## What about a temporary reduction in hours of work?

- Governments should take measures to extend unemployment benefits to workers facing a loss of earnings due to partial unemployment, particularly in cases of temporary reduction in normal or statutory hours of work, and the suspension or reduction of earnings due to a temporary suspension of work, particularly due to economic, technical, structural, or similar reasons.<sup>51</sup>

## What about the payment of wages?

- The [Protection of Wages Convention, 1949 \(No. 95\)](#) provides that wages shall be paid regularly. Upon the termination of a contract of employment, a final

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<sup>49</sup> Art. 10 of the [Employment Promotion and Promotion Against Unemployment Convention, 1988 \(No. 168\)](#). In its report on the application of the [European Code of Social Security](#), the CEACR observed that these measures had “resulted in extending and improving the income protection of workers whose employment was reduced, suspended or terminated, and have benefited the economy as a whole by allowing economic activity to continue”, [Report of the CEACR concerning social security measures taken at national level in response to the COVID-19 pandemic, 2020](#), p. 9.

<sup>50</sup> Arts. 7-9 of C.168 and Para 2 of the [Employment Promotion and Protection against Unemployment Recommendation, 1988 \(No. 176\)](#). See also [Report of the CEACR concerning social security measures taken at national level in response to the COVID-19 pandemic, 2020](#), p.9.

<sup>51</sup> Art. 10 of C.168.

settlement of all wages due shall be effected as prescribed, or if not specified, within a reasonable period of time.<sup>52</sup>

- In the context of an economic downturn, sustaining minimum wage levels is particularly relevant as, overall, minimum wages can protect workers in a vulnerable situation and reduce poverty, increase demand and contribute to economic stability.<sup>53</sup> The Minimum Wage Fixing Convention, 1970 (No. 131) provides important guidance for the establishment of minimum wage systems, including in its Article 3 on the criteria to be used for the determination of minimum wage levels. In its General Report, the CEACR made reference to the ILO Global Wage Report 2020-21 which indicated that, in planning for a new and better “normal” after the COVID-19 crisis, adequate minimum wages – statutory or negotiated – could help to ensure more social justice and less inequality.<sup>54</sup>

## What about wage protection in the event of bankruptcy?

- In the event of the bankruptcy or judicial liquidation of an undertaking (including resulting from the impact of COVID-19), the [Protection of Wages Convention, 1949 \(No. 95\)](#) provides that employed workers shall be treated as privileged creditors for unpaid wages that are protected under the applicable national legislation.<sup>55</sup> The Protection of Workers’ Claims (Employer’s Insolvency) Convention, 1992 (No. 173) provides further guidance on this matter.

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<sup>52</sup> Art. 12 of C.95.

<sup>53</sup> See also [Recovering from the crisis: A Global Jobs Pact](#), adopted by the 98th Session of the International Labour Conference, Geneva, 19 June 2009, para. 23.

<sup>54</sup> CEACR, 2021 General Report, para. 85.

<sup>55</sup> Art. 11 of C.95.

## Occupational safety and health and labour inspection

From the onset of the COVID-19 crisis, the principles contained in ILO occupational safety and health standards have shown to be more relevant than ever, as noted by the CEACR.<sup>56</sup> These include, notably, the protection of workers from risks to their health, according to the principle of prevention as the highest priority; the importance of taking technical and organizational OSH measures; the necessity of providing personal protective equipment at no expenditure to the worker; the indispensability of adequate training and information; and the fundamental importance of assessing occupational risks.

### What should employers do during the outbreak?

- Employers have the overall responsibility of ensuring that all practicable preventive and protective measures are taken to minimize occupational risks ([Occupational Safety and Health Convention, 1981 \(No. 155\)](#)).<sup>57</sup> Employers are responsible for providing, where necessary and so far as is reasonably practicable, adequate protective clothing and protective equipment, at no cost to the worker.<sup>58</sup>
- Employers are responsible for providing adequate information and appropriate training on OSH<sup>59</sup>; consulting workers on OSH aspects associated

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<sup>56</sup> CEACR, 2021 General Report, para. 58.

<sup>57</sup> Art. 16 of the [Occupational Safety and Health Convention, 1981 \(No. 155\)](#) provides that: “Employers shall be required to ensure that, so far as is reasonably practicable, the workplaces [...] under their control are safe and without risk to health.”

<sup>58</sup> Arts. 16(3) and 21 of C.155.

<sup>59</sup> Art. 19(c) and (d) of C.155.

with their work<sup>60</sup>; providing measures to deal with emergencies<sup>61</sup>; and notifying the labour inspectorate of cases of occupational diseases.<sup>62</sup>

## What are workers' rights and responsibilities during the outbreak?

- Workers are responsible for cooperating in the fulfilment by their employer of the OSH obligations placed on them, complying with the prescribed safety measures, taking reasonable care for the safety of others (including avoiding exposing others to health and safety risks), and use safety devices and protective equipment correctly.<sup>63</sup>
- OSH measures shall not involve any expenditure for workers.<sup>64</sup>
- Arrangements in workplaces shall mandate workers to report to their immediate supervisor any situation which they have reasonable justification to believe presents an imminent and serious danger to their life or health. Until the employer has taken remedial action, if necessary, the employer cannot require workers to return to a work situation where there is continuing imminent and serious danger to life or health.<sup>65</sup>
- Workers should be informed in an adequate and appropriate manner of the health hazards involved in their work.<sup>66</sup>

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<sup>60</sup> Art. 19(e) of the C.155.

<sup>61</sup> Art. 18 of C.155.

<sup>62</sup> Art. 14 of the [Labour Inspection Convention, 1947 \(No. 81\)](#) and Art. 4 of the [Protocol of 2002 to the Occupational Safety and Health Convention, 1981](#).

<sup>63</sup> Art. 19 of C.155 and Para. 16 of the [Occupational Safety and Health Recommendation, 1981 \(No. 164\)](#).

<sup>64</sup> Art. 21 of C.155.

<sup>65</sup> Art. 19(f) of C.155.

<sup>66</sup> Para. 22 of the [Occupational Health Services Recommendation, 1985 \(No. 171\)](#).

## What role can occupational health services play in relation to the pandemic?

- Occupational health services play a key role in the monitoring of workers' health and the provision of guidance for adapting workplace procedures and practices and developing safety protocols, as set out in the Occupational Health Services Convention, 1985 (No. 161).<sup>67</sup>

## What about the protection of mental health?

- ILO standards on occupational health and safety cover, in relation to work, both the physical and mental elements affecting health.<sup>68</sup> The considerable changes to working conditions and the modalities of work since the onset of the pandemic have introduced or intensified certain psychosocial risks. Accordingly, the CEACR has underlined the critical importance, when designing and implementing measures to emerge and recover from the crisis, of taking into account workers' mental health, their physical health and general well-being.<sup>69</sup>
- Likewise, the definition of health under ILO social security standards includes mental health.<sup>70</sup> Consequently, the medical care, allied care and rehabilitation to be provided in case of illness, disability or another condition involving the suspension of earnings, whether due to an employment injury or not, includes psychological care, treatment and support.<sup>71</sup>

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<sup>67</sup> As recalled by the CEACR in its 2021 General Report, para.59.

<sup>68</sup> Article 3(e) of C155.

<sup>69</sup> CEACR, 2021 General Report, para.61.

<sup>70</sup> Art. 8, Convention No. 102; Art. 6(a), Convention No. 121, and; Art. 9, Convention No. 130.

<sup>71</sup> See, notably, Art. 7 and 10, Convention No. 102; Art. 9 and 10, Convention No. 121, and; Art. 7, 8 and 13, Convention No. 130.

## Are workers allowed to remove themselves from work?

- Workers have the right to remove themselves from a work situation that they have reasonable justification to believe presents an imminent and serious danger to their life or health. When a staff member exercises this right, he or she shall be protected from any undue consequences.<sup>72</sup>

## What about the right to removal in specific sectors?

- Public health considerations have forced member States to shift to remote working arrangements, to reduce economic activity, and often to suspend it temporarily in many sectors or services. Certain sectors in which economic activities have been allowed to continue (with non-remote work) around the world regularly include construction and mining. Few construction workers are able to perform their work remotely, and may find themselves working in a continuously changing work environment with highly concentrated work spaces. Mining is another sector where in-person work has continued, and it often involves work or travel to the site in close proximity with other workers, as well as common accommodations with dense occupancy.
- Sector-specific ILS on occupational safety and health have been developed to address concerns in particularly hazardous branches of economic activities, including construction ([Safety and Health in Construction Convention, 1988 \(No. 167\)](#)) and mining (the [Safety and Health in Mines Convention, 1995](#))

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<sup>72</sup> Art. 13 of C.155 states that a worker who has removed himself from a work situation which he has reasonable justification to believe presents an imminent and serious danger to his life or health shall be protected from undue consequences in accordance with national conditions and practice. The CEACR has noted that in a number of countries, the nature of the work at issue may also have an influence on the exercise of the right to cease work. For example, in a number of countries, the right to removal cannot be exercised if the danger is a normal condition of employment (as, for example, for firefighters); in such cases, workers may only refuse such work if the understood risk of serious harm has materially increased in a given situation, that is, the risk of harm has become significantly more likely. See for example, para. 149 of the 2009 [General Survey on Occupational safety and health](#).

(No. 176)). These contain important protections for decent work in those sectors.

- **Mining** : In mining operations, workers have the right to remove themselves from any location at the mine when circumstances arise which appear, with reasonable justification, to pose a serious danger to their safety or health.<sup>73</sup> This right is the corollary of a number of duties. On the one hand, workers have a duty to take reasonable care for their own safety and health and that of other persons who may be affected by their acts or omissions at work.<sup>74</sup> On the other hand, employers have a duty to take appropriate measures to eliminate or minimize the risks resulting from exposure to physical, chemical or biological hazards,<sup>75</sup> and ensure that when there is serious danger to the safety and health of workers, operations are stopped and workers are evacuated to a safe location.<sup>76</sup>
- **Construction**: In construction, workers equally have a right to remove themselves from danger when they have good reason to believe that there is an imminent and serious danger to their safety or health, and a duty to inform their supervisors immediately.<sup>77</sup> Where there is an imminent danger to the safety of workers, the employer is likewise required to take immediate steps to stop the operation and evacuate workers, as appropriate.<sup>78</sup> In addition, where a worker is liable to be exposed to any biological hazard to such an extent as is liable to be dangerous to health, appropriate preventive measures must be taken against such exposure.<sup>79</sup>

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<sup>73</sup> Art. 13(1)(e) of C.176.

<sup>74</sup> Art. 14(b) of C.176.

<sup>75</sup> Art. 9(b) of C.176.

<sup>76</sup> Art. 7(i) of C.176.

<sup>77</sup> Art. 12(1) of C.167.

<sup>78</sup> Art. 12(2) of C.167.

<sup>79</sup> Art. 28(1) of C.167.

## What is the role of labour inspection?

- The impact of the pandemic on labour inspection has been substantial and there has been a sharp decrease in the number of inspections in many countries. Most labour inspectorates have scaled back on planned activities due to the need to protect the safety and health of inspectors but their advisory and enforcement role is needed more than ever.
- Labour inspectorates play an important role in national responses to COVID-19, by monitoring compliance with protective measures aimed at reducing transmission of the virus among employees; providing guidance to workers and employers; and creating hotlines for workers, trade unions, and the public to report concerns about workplace practices, as noted by the CEACR.
- Going forward, inspection systems may be adversely affected by budgetary reductions linked to a decrease in public spending. In this regard, the [Labour Inspection Convention, 1947 \(No. 81\)](#) and the [Labour Inspection \(Agriculture\) Convention, 1969 \(No. 129\)](#) provide a normative framework for ensuring that labour inspectorates have an adequate number of staff, with appropriate conditions for hiring, training and service, with the necessary resources to perform their functions.<sup>80</sup>

## Can infection by COVID-19 be considered as a work-related injury (i.e. occupational disease or work accident)?

- Infection by COVID-19, if contracted as a result of work, should be considered as a work or employment injury.<sup>81</sup> Such injuries, under the scope of the

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<sup>80</sup> Articles 6, 7, 10 and 11 of Convention No. 81 and Articles 8, 9, 14 and 15 of Convention No. 129. See also CEACR, 2021 General Report, para. 74.

<sup>81</sup> See Schedule I of the [Employment Injury Benefits Convention, 1964 \(No. 121\)](#), Para. 29. In its report on the application of the [European Code of Social Security](#), the CEACR has further considered that, in line with Part VI of the [Code](#) and international standards (namely C.102, Part VI, and C.121), infection by COVID-19, if the nature of work involves close regular contact with co-workers or the public, should be considered an employment injury ([Report of the CEACR concerning social security measures taken at national level in response to the COVID-19 pandemic, 2020](#), p.10).

[Employment Injury Benefits Convention, 1964 \(No.121\)](#) and the [Social Security \(Minimum Standards\) Convention, 1952 \(No.102\)](#), include industrial accidents and occupational diseases.<sup>82</sup> Workers who are infected by COVID-19 as a result of their work should be entitled to health care and, to the extent that they are incapacitated for work, to cash benefits or compensation, as set out in Conventions Nos. 102 and 121. The dependent family members (e.g. spouses and children) of those who die from COVID-19 contracted in the course of work-related activities should be entitled to cash benefits or compensation, as well as to a funeral grant or benefit.<sup>83</sup> For detailed information on national practices, see the [ILO's collection of state practice to address infection by COVID-19 as a work-related injury](#).

## Can workers be obliged to get vaccinated to access the workplace?

- International labour standards do not directly address the question of mandatory vaccinations as a condition for work. Thus, the legal basis for such a measure would largely depend on the national regulatory framework.
- However, a standards-based approach to the question should emphasize the principle of dialogue and consultations between employers and workers. For the area of occupational safety and health, which may also comprise protective measures such as vaccinations, [Convention No. 155](#) and [Convention No. 187](#) specifically require cooperation between management

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<sup>82</sup> Arts. 7 and 8 of C.121 and Art. 32 of the [Social Security \(Minimum Standards\) Convention, 1952 \(No.102\)](#). According to Para. 29 of Schedule I of the C.121, infectious or parasitic diseases contracted in an occupation where there is a particular risk of contamination can be considered an occupational disease for work involving exposure to risk, including health or laboratory work and other work carrying a particular risk of contamination. See also Paragraph 1.3.9 of the Annex of the [List of Occupational Diseases Recommendation, 2002 \(No. 194\)](#).

<sup>83</sup> See notably Arts. 6, 7, 8, 9, 10, 18 of C.121, the [Employment Injury Benefits Recommendation, 1964 \(No. 121\)](#) and Part VI of C.102, as well as Paras. 2.1.12 and 2.4.1 of the Annex to the [List of Occupational Diseases Recommendation, 2002 \(No. 194\)](#). In the context of the application of the European Code of Social Security, see also [Report of the CEACR concerning social security measures taken at national level in response to the COVID-19 pandemic, 2020](#), p.10.

and workers at the enterprise level. While employers have a general obligation to ensure that workplaces are safe, consultations with workers on all aspects of OSH are an essential element for decision-making, and their cooperation is key for the implementation of workplace-related prevention measures. Social dialogue and consultations would also appear to be the best means to establish if vaccination might indeed be required for designated jobs, based on objective criteria.

- Where standards do specifically touch on measures of immunization, they focus on the importance of protective measures in the workplace being accessible and available, rather than being obligatory. For example, the [Nursing Personnel Recommendation, 1977 \(No. 157\)](#), provides that immunization should be provided for in respect to nursing personnel regularly exposed to special risks; and the [Occupational Health Services Recommendation, 1985 \(No. 171\)](#), states that occupational health services might, where possible and appropriate, carry out immunizations in respect of biological hazards in the working environment.<sup>84</sup>
- If a decision on mandatory vaccination is made by an employer, it should be implemented in a non-discriminatory manner, in line with the requirements of [Convention No. 111](#), and with due regard for specific circumstances that may require exemptions and accommodations. Finally, any required OSH measures shall not involve any expenditure for the workers, as required by [Convention No. 155](#).

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<sup>84</sup> It should be noted that the [HIV and AIDS Recommendation, 2010 \(No. 200\), 2010](#), although adopted in a different context and dealing with testing rather than immunisation, emphasizes in its Para. 24 that tests should be genuinely voluntary and free of any coercion.

## Is there any normative guidance on protecting workers against biological hazards at work?

- General occupational safety and health Conventions occasionally call for preventive action in respect of biological hazards at work<sup>85</sup>, but at present, the body of ILS does not include comprehensive provisions specifically focused on protecting workers or the working environment against biological hazards.
- Biological hazards are organisms or organic products of these organisms harmful to human health. Common types of biological hazards include bacteria, viruses, toxins, and animals. They can cause a variety of health effects ranging from irritation and allergies to infections, cancer and other diseases. Workers in some sectors are more exposed to biological agents than in others, e.g. health-care services, agriculture, sanitation and waste management (including, for example, ship-breaking).
- Certain biological agents should be recognized as the cause of an occupational disease in the event of exposure arising from work activities. Where a direct link is established scientifically (or in accordance with other national methods) between the exposure to biological agents arising from work activities and a disease contracted by workers, it is recommended that such disease be recognized as an occupational disease for the purposes of prevention, recording, notification and compensation.<sup>86</sup>

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<sup>85</sup> For example, C.155 provides that the competent authorities shall ensure (taking into account national conditions and possibilities) the progressive introduction or extensions of systems to examine biological agents in respect of the risk to the health of workers (Art. 11(f)). See also Arts. 5(a) and 12(b) of C.155. Certain sectoral instruments also contain protections against biological hazards and/or infectious diseases: Para. 76 of the [Hygiene \(Commerce and Offices\) Recommendation, 1964 \(No. 120\)](#), Paras. 24 and 26 of the [Nursing Personnel Recommendation, 1977 \(No. 157\)](#), Art. 28 of C.167, Art. 9 of C.176, Art. 14 of the [Safety and Health in Agriculture Convention, 2001 \(No. 184\)](#), Para. 8 of the [Safety and Health in Agriculture Recommendation, 2001 \(No. 192\)](#) and Guideline B4.3.1 of the [Maritime Labour Convention, 2006 \(MLC, 2006\)](#).

<sup>86</sup> [List of Occupational Diseases Recommendation, 2002 \(No. 194\)](#). See also C.121 and its Schedule I amended in 1980.

- The *prevention* of diseases caused by most biological hazards<sup>87</sup> currently presents a regulatory gap. The ILO is considering proposals to set a new instrument addressing all biological hazards. The Office is also advancing the development of technical guidelines on biological hazards. The standard and the guidelines will support the central objective of occupational safety and health policy, i.e. the prevention of work-related accidents and injury to health by minimizing, so far as is reasonably practicable, the causes of hazards inherent in the working environment.<sup>88</sup>

## Prevention of and protection against discrimination, violence and harassment, and protection of privacy

### What about privacy issues?

- With respect to health surveillance, the [Occupational Health Services Recommendation, 1985 \(No. 171\)](#) indicates that provisions should be adopted to protect the privacy of the workers and to ensure that health surveillance is not used for discriminatory purposes or in any other manner prejudicial to their interests.<sup>89</sup>

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<sup>87</sup> Other than Anthrax, which is covered by the [Anthrax Recommendation, 1919 \(No. 3\)](#). That standard has been reviewed by the [Standards Review Mechanism Tripartite Working Group](#) and considered too narrow in scope both in terms of protection against anthrax in particular, and in terms of biological hazards in general. R. 3 is proposed to be revised through an instrument addressing all biological hazards.

<sup>88</sup> Art. 4(2) of the C.155.

<sup>89</sup> Para. 11(2) of R.171. R.171 contains further provisions on protection of personal data relating to health assessments done by occupational health services (Para. 14): “Personal data relating to health assessments may be communicated to others only with the informed consent of the worker concerned”. The [ILO Code of practice on the protection of workers’ personal data, 1997](#) contains further useful guidance.

## What about discrimination, prejudice and xenophobia?

- The crisis has exacerbated the plight of many persons belonging to groups which were already vulnerable to discrimination and marginalization and has led to an increase in extreme poverty, likely to reinforce disparities, magnify inequalities and spark stigma and discrimination.<sup>90</sup> In this context, the CEACR has drawn attention to the need to ensure that limitations on rights and freedoms respect certain parameters, and notably the principle of non-discrimination.<sup>91</sup>
- Incidents of racism and xenophobia at the workplace have been observed since the beginning of the crisis, in particular towards persons of certain ethnic backgrounds and persons from countries where the virus was more prevalent at the inception of the pandemic.<sup>92</sup> In this regard, it should be recalled that race is one of the grounds listed in the [Discrimination \(Employment and Occupation\) Convention, 1958 \(No. 111\)](#), which prohibits discrimination in all aspects of employment and occupation. This includes direct and indirect discrimination and discrimination-based harassment, and in particular racial harassment.<sup>93</sup> Racial harassment occurs where a person is subject to physical, verbal or non-verbal conduct or other conduct based on race which undermines their dignity or which creates an intimidating, hostile or humiliating working environment for the recipient.<sup>94</sup>

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<sup>90</sup> CEACR, 2021 General Report, para 47.

<sup>91</sup> CEACR, 2021 General Report, paras. 50-54; CEACR, Addendum to the 2020 General Survey: Promoting employment and decent work in a changing landscape, paras. 221-286. See also ILO policy briefs: “COVID-19 and the world of work: Ensuring no one is left behind in the response and recovery”, “COVID-19 and the world of work: A focus on people living with HIV”; “COVID-19 and the world of work: Ensuring the inclusion of persons with disabilities at all stages of the response”; and “COVID-19 and the world of work: A focus on indigenous and tribal peoples”.

<sup>92</sup> See also: CEACR, Addendum to the 2020 General Survey: Promoting employment and decent work in a changing landscape, para 227.

<sup>93</sup> [Discrimination \(Employment and Occupation\) Convention, 1958 \(No. 111\)](#) .

<sup>94</sup> [General observation of the ILO Committee of Experts on the Application of Conventions and Recommendations \(CEACR\) on Convention No. 111 \(2019\)](#).

- In many countries, discrimination based on health status is prohibited by law. Protection against discrimination in employment and occupation based on “health status” (including when affected by a viral infection), can be considered covered by the [Discrimination \(Employment and Occupation\) Convention, 1958 \(No. 111\)](#) if it is included in the national legal framework of ratifying Members as an additional prohibited ground of discrimination.<sup>95</sup> As a general principle, and where health status is covered, legal and practical measures should be taken to prevent, and protect workers against, discrimination on the basis of their health status.
- It is worth mentioning that the Convention does recognize that, after consultation with the social partners, special measures to meet the particular requirements of persons who are generally recognized to require special protection or assistance can be adopted, and not be deemed as discrimination.<sup>96</sup> In addition, Convention No. 111 also states that any distinction, exclusion or preference in respect of a particular job based on its inherent requirements shall not be deemed to be discrimination.<sup>97</sup> However, it is crucial to recall that this exception must be interpreted restrictively, so as to avoid undue limitation of the protection (a careful examination of each individual case is required).
- Going forward, it is crucial to take into account, in the development and implementation of crisis response and recovery measures, the need to combat discrimination, prejudice and hatred on the basis of race, colour, sex, religion, political opinion, national extraction, social origin, disability, age or sexual orientation, or any other grounds, following the guidance set out in the [Employment and Decent Work for Peace and Resilience Recommendation](#),

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<sup>95</sup> Under Art. 1(1)(b) of Convention No.111. The ILO CEACR has considered that when information received from governments and workers’ and employers’ organizations indicates that the legislation or policies concerning discrimination based on additional grounds have been adopted after consultation with the social partners, the Government has availed itself of the possibility envisaged under Article 1(1)(b).

<sup>96</sup> Art. 5(2) of Convention No.111.

<sup>97</sup> Art. 1(2) of Convention No.111.

[2017 \(No. 205\)](#).<sup>98</sup> It is imperative that progress is achieved in an inclusive manner, and that recovery efforts answer the call of the 2030 Development Agenda to leave no one behind.<sup>99</sup>

## How to address the disproportionate gender impact of the pandemic?

- Throughout the world, the pandemic and the measures taken to prevent its spread have disproportionately impacted women,<sup>100</sup> putting an additional strain on existing inequalities. In the current context, women bear the brunt of the social and economic disruption caused by the pandemic: they have suffered greater rates of job loss and face higher risk of business bankruptcy; they remain over-represented in occupations in the health and social sector which often show precarious conditions and poor remuneration but that still remain in the frontline of the COVID-19 response; and they continue to shoulder an unequal amount of care work.<sup>101</sup>
- The [Employment and Decent Work for Peace and Resilience Recommendation, 2017 \(No. 205\)](#) calls for applying a gender perspective in all crisis response design, implementation, monitoring and evaluation activities.<sup>102</sup> Crisis response should include, as appropriate, a coordinated and inclusive needs assessment with a clear gender perspective.<sup>103</sup> As regards women's loss of employment, a number of measures can help contain job losses and protect incomes, such as the increase of out-of-work benefits,

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<sup>98</sup> See, in particular, Paras. 15(d), (f), (g), (h) and (i) of R. 205. See also CEACR, Addendum to the 2020 General Survey: Promoting employment and decent work in a changing landscape, para 228.

<sup>99</sup> CEACR, 2021 General Report, paras. 48, 57, 67, 70, 80 and 81.

<sup>100</sup> See also ILO policy briefs: "[The COVID-19 response: Getting gender equality right for a better future for women at work](#)"; and "[A gender responsive employment recovery: Building back fairer](#)".

<sup>101</sup> CEACR, 2021 General Report, paras. 45, 79 and 80; CEACR, Addendum to the 2020 General Survey: Promoting employment and decent work in a changing landscape, paras. 231, 234.

<sup>102</sup> Paras. 8 and 15(d) of R.205.

<sup>103</sup> Para 9 of R.205. See also, for example, Arts. 1 and 2 of the [Equal Remuneration Convention, 1951 \(No. 100\)](#); Arts. 1 and 2 of C.111; and Arts. 1-6 of Convention No.156.

special programmes for self-employed, temporary workers and domestic workers, and one-off emergency cash payments.<sup>104</sup>

## How to address violence and harassment in the world of work in the COVID-19 context?

- [The Violence and Harassment Convention, 2019 \(No. 190\)](#)<sup>105</sup> and its accompanying [Recommendation \(No. 206\)](#), adopted on the ILO Centenary, contain guidance on the approach and measures to take to ensure appropriate prevention and elimination of violence and harassment against all workers, employers and other persons in the workplace – but also beyond.<sup>106</sup>
- During the COVID-19 crisis, workers may face additional stress, including those engaged in businesses considered essential who continue to report to work. ILO international labour standards require taking into account violence and harassment and associated psychosocial risks in the management of occupational safety and health.<sup>107</sup> In the current context, violence and harassment and the associated psychosocial factors at the workplace should be taken into consideration when assessing the current conditions of work and the safety of workers. Tailored measures should be adopted, in particular for sectors and occupations where this risk is generally more prevalent, such as the health sector.<sup>108</sup> With respect to front-line workers, the [Violence and Harassment Recommendation, 2019 \(No. 206\)](#) calls, specifically, for the adoption of appropriate measures for sectors or occupations and work

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<sup>104</sup> CEACR, Addendum to the 2020 General Survey: Promoting employment and decent work in a changing landscape, para 232.

<sup>105</sup> Convention No. 190 entered in force on 25 June 2020. Further information on Convention No.190 and COVID-19 can be found in the ILO brief, [Violence and Harassment Convention, 2019 \(No. 190\): 12 ways it can support the COVID-19 response and recovery](#).

<sup>106</sup> Art. 3 of Convention No.190.

<sup>107</sup> Art. 9 of Convention No.190.

<sup>108</sup> Art. 8 of Convention No.190.

arrangements in which exposure to violence and harassment may be more likely, including health, hospitality, social services and emergency services.<sup>109</sup>

- Economic and social stress brought on by the pandemic, as well as confinement measures have heightened tensions and intensified the risk of domestic violence. Increases in occurrences of domestic violence have been reported all over the world.<sup>110</sup> In this respect, the violence and harassment standards specifically call for appropriate measures to mitigate the impacts of domestic violence in the world of work.<sup>111</sup> As the home has become a workplace for a large number of workers, dealing with domestic violence and its impact on the world of work and recognizing its devastating effects, in particular on women, has become more and more necessary and urgent.
- In this context, specific attention should be paid by Constituents to ensure that prevention and redress of violence and harassment is a key part of their national response plans for COVID-19.<sup>112</sup> This requires mainstreaming measures to promote and ensure freedom from violence and harassment in the world of work in legal and policy responses to the COVID-19 pandemic, at all levels of the economy.<sup>113</sup>

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<sup>109</sup> Para. 9 of R.206.

<sup>110</sup> UNWOMEN Brief, [COVID-19 and Ending Violence against Women and Girls](#), April 2020.

<sup>111</sup> Art. 10 of C.190 and Para. 18 of R.206.

<sup>112</sup> In that regard, attention is drawn to Part IV (Protection and Prevention) of C.190.

<sup>113</sup> CEACR, 2021 General Report, para 82.

## Leave entitlements and special working arrangements

### Are workers entitled to paid sick leave?

- Workers who have contracted COVID-19 should be entitled to paid sick leave or sickness benefits as long as they are incapacitated to work, to compensate for the suspension of earnings they suffer as a consequence.<sup>114</sup>

### What about absences from work for quarantine?

- Workers who are absent from work for the purpose of quarantine or for undergoing preventive or curative medical care and whose salary is suspended should be granted a (sickness) cash benefit, according to the [Medical Care and Sickness Benefits Recommendation, 1969 \(No. 134\)](#).<sup>115</sup>

### What if a member of my family is sick?

- It should be possible for a worker with family responsibilities in relation to a dependent child – or another member of the worker's immediate family who needs that worker's care or support – to obtain leave of absence in the case of the family member's illness, as recommended in the [Workers with Family Responsibilities Recommendation, 1981 \(No. 165\)](#).<sup>116</sup>
- Whenever practicable and appropriate, the special needs of workers, including those arising from family responsibilities, should be taken into account in shift-work arrangements and assignments to night work.<sup>117</sup> Workers who have to care for sick family members should also be provided with help.<sup>118</sup>

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<sup>114</sup> See, notably, Part III of C. 130 and Part III of C.102.

<sup>115</sup> Para. 8 of the [Medical Care and Sickness Benefits Recommendation, 1969 \(No. 134\)](#).

<sup>116</sup> Para. 23(1) and (2) of the [Workers with Family Responsibilities Recommendation, 1981 \(No. 165\)](#).

<sup>117</sup> Para. 19 of R.165.

<sup>118</sup> Para. 10 of the R.134.

## Can a worker be required to use holidays?

- Employers should not *unilaterally* require workers to use their annual holiday in case of a decision that leave is necessary as a precautionary measure to avoid potential exposure: the [Holidays with Pay Convention \(Revised\), 1970 \(No. 132\)](#) provides that the timing of holidays is to be determined by employers *after consultation* with the worker. In fixing the time at which the holiday is to be taken, work requirements and the opportunities for rest and relaxation shall be taken into account.<sup>119</sup>

## Do international labour standards address telework/work from home arrangements?

- Temporary telework/work from home is being used as a means to avoid the spread of the virus in many enterprises and public institutions and a number of countries have adopted legislation on this issue. ILS do not specifically address the issue of telework. However, the CEACR has dealt with telework in the framework of its [General Survey on Working Time instruments](#)<sup>120</sup> as well

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<sup>119</sup> Art. 10 of the [Holidays with Pay Convention \(Revised\), 1970 \(No. 132\)](#). In this regard, in its 1984 General Survey, the CEACR emphasized that the purpose of holidays, which is to grant workers a minimum period of rest and leisure, is best attained when they are granted at a time which suits the worker (para. 275).

<sup>120</sup> In this General Survey, the CEACR noted that information and communication technologies were having an increasingly important impact on the organization of work, as well as on the length and arrangement of working time, contributing to the development of telework and the blurring of boundaries between working time and rest periods. While recognizing that these working arrangements may offer advantages for both workers and employers, the Committee observed that they are also associated with a number of disadvantages, including the encroachment of work on non-working time and rest periods, the unpredictability of working hours, income insecurity and the stress associated with the perceived need to be constantly connected to work. The Committee emphasized the importance of these issues being regulated by national legislation, taking into account both the needs of workers in relation to their physical and mental health and work–life balance and the flexibility requirements of enterprises. The Committee also recalled that efforts should be made to ensure the effective planning and recording of the working time of teleworkers so as to ensure that working time limits and rest periods are observed. It further considered that training and awareness initiatives for both employers and workers are necessary on this type of remote work to ensure that all the parties concerned are aware of the risks involved in these types of work arrangements. Finally, the Committee considered that efforts should be made, in consultation with the

as its most recent [General Survey on Promoting Employment and Decent Work in a Changing Landscape](#).<sup>121</sup>

## Do international labour standards cover ergonomics?

- For many workers, the shift to telework was abrupt and highlighted the importance of a safe and healthy teleworking environment, including the importance of a well-designed remote workstation. This rapid change has brought renewed attention to ergonomic considerations, as many new teleworkers find themselves working from home without an appropriate workstation.
- At present, the body of ILS does not include comprehensive provisions specifically focused on protecting workers against ergonomic hazards.<sup>122</sup>

## Do international labour standards regulate private employment agencies?

- During and in the aftermath of the pandemic, millions of workers have or will face the loss of their jobs and livelihoods. In many countries, hard-hit

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social partners, to find innovative solutions to ensure compliance with working time standards for this type of work (paras. 854 and 922 of the [General Survey on Working Time instruments](#)).

<sup>121</sup> See paras. 614-623 of the [General Survey on Employment and Decent Work in a Changing Landscape](#), which highlights both the advantages and disadvantages of telework arrangements.

<sup>122</sup> The subject of ergonomics is referenced in the [Occupational Health Services Convention, 1985 \(No. 161\)](#), where advice on ergonomics and collaboration in providing information, training and education in the field of ergonomics are listed among the functions of occupational health services (Art. 5 of C.161). Current standards also cover musculoskeletal disorders (Para. 2.3 of the Annex of the [List of Occupational Diseases Recommendation, 2002 \(No. 194\)](#)). ILO standards also cover manual handling (the [Maximum Weight Convention, 1967 \(No. 127\)](#) and the [Maximum Weight Recommendation, 1967 \(No. 128\)](#)), but those standards have been reviewed by the [Standards Review Mechanism Tripartite Working Group](#) and are considered to be limited in scope and not fully consistent with scientific developments in ergonomics. This regulatory gap could be addressed in the future by setting a new instrument or instruments on human factors and ergonomics (see [Agenda of the International Labour Conference](#), 2020 (GB.338/INS/2/1) paras. 41-44)

sectors<sup>123</sup> have drastically reduced recruitment of workers through private employment agencies (PrEAs), due to the COVID-19 lockdown. In contrast, other sectors<sup>124</sup> struggling to maintain their operations and urgently searching for staff are turning to temporary workers to meet their staffing needs, often recruiting these workers through PrEAs. The [Private Employment Agencies Convention, 1997 \(No. 181\)](#) and its accompanying [Recommendation \(No. 188\)](#) provide key guidance in this rapidly changing landscape.

- These instruments recognize the role that PrEAs<sup>125</sup> may play in a well-functioning labour market. Similarly, the [Employment Service Convention, 1948 \(No. 88\)](#) recalls the essential duty of a free public employment service to ensure the best possible organization of the labour market, including by ensuring efficient recruitment and placement, assisting in job-matching, providing vocational education and guidance and compiling information on the needs of the job market and cooperating in the administration of unemployment insurance and assistance for the benefit of unemployed persons<sup>126</sup>. While promoting cooperation<sup>126</sup> between PrEAs and the public employment service (PES), Convention No. 181 and Recommendation No. 188 also highlight the need to protect workers using the services of PrEAs from possible abuses, which may include misleading advertising or placing workers in hazardous work or in jobs where they may be subjected to abuse or

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<sup>123</sup> These “hard-hit” sectors include manufacturing, tourism, hotels and restaurants, construction and non-food retail services.

<sup>124</sup> Sectors experiencing staff shortages include healthcare, transportation, logistics and food retail services.

<sup>125</sup> See Preamble to the Convention. Article 1 of Convention No. 181 defines private employment agencies to include any individual or enterprise that provides services that match offers of and applications for employment, where the agency is not a party to any employment relationship that may arise as a result; services consisting of employing workers in order to make them available to a third party (either an individual or an enterprise, referred to as the “user enterprise”) which assigns the workers’ tasks and supervises their performance; and other jobseeking services, as defined by the national authorities, that could include the provision of information, training or other job-related services. This definition covers so-called triangular employment relationships, in which the PrEA employs workers with the aim of making them available to user enterprises, typically on a temporary or time-bound basis (Art. 1(b)).

<sup>126</sup> Art. 13 of C.181 and Paras. 16-17 of R.188. See also Arts. 1 (2), 6-7 and 11 of the [Employment Service Convention, 1948 \(No. 88\)](#).

discrimination<sup>127</sup>. The Convention calls for measures to be taken in consultation with employers' and workers' representatives to establish the conditions governing the operation of private employment agencies, in accordance with a system of licensing and regulation.

- The Convention makes clear that such agencies, as a rule, should not charge any fees or costs to workers, either directly or indirectly.<sup>128</sup> It also highlights the importance of ensuring equality of opportunity and treatment and contemplates the provision of special targeted services by PrEAs designed to assist the most disadvantaged jobseekers.<sup>129</sup> The Convention further provides that measures should be taken to ensure adequate protections for migrant workers placed by PrEAs. Workers outsourced by PrEAs to user enterprises should enjoy adequate protection of their labour rights, including freedom of association and collective bargaining, minimum wages, working time and other working conditions, whether the responsibility is borne by the PrEA or the user enterprise.

## Flexibility in international labour standards during emergencies

ILS are flexible and able to accommodate diverse situations. They provide flexibility in cases of “force majeure” or emergency situations, for example with respect to working time and compulsory labour.

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<sup>127</sup> Paras. 4-8 of R.188.

<sup>128</sup> Art. 7(1) of C.181 prohibits fee-charging. Subsections 2 and 3 of Article 7 outlines the circumstances under which exceptions may be authorized for certain categories of workers and certain types of services provided by PrEAs: (1) where these are in the interests of the workers concerned and (2) after consulting the most representative organizations of employers and workers. For additional guidance regarding recruitment fees and costs, see also [General principles and operational guidelines for fair recruitment and Definition of recruitment fees and related costs](#), ILO (2019).

<sup>129</sup> Art. 5 of C.181.

## What about exceptions to normal working hours during national emergencies?

- The [Reduction of Hours of Work Recommendation, 1962 \(No. 116\)](#) indicates that the competent authority or body in each country should determine the circumstances and limits in which exceptions to the normal hours of work may be permitted in case of force majeure; in case of abnormal pressure of work; or to make up time lost through collective stoppages of work due to calamities and in case of a national emergency.<sup>130</sup>

## Are there exceptions relating to compulsory work during an epidemic?

- Under ILO standards (notably the [Forced Labour Convention, 1930 \(No. 29\)](#)) the definition of compulsory labour does not include work or service in cases of emergency, including in the event of an epidemic that would endanger the existence or the well-being of the whole or part of the population.<sup>131</sup>
- However, during these exceptional cases, compulsory labour cannot be exacted indistinctively and without the supervision of competent authorities. The duration and extent of compulsory service, as well as the purpose for which it is used, should be limited to what is strictly required by the exigencies of the situation<sup>132</sup>.
- Restrictions on civil liberties may more broadly have an impact on the right of individuals to express political views or views opposed to the established order. In this regard, it may also be appropriate to recall that the [Abolition of Forced Labour Convention, 1957 \(No. 105\)](#)<sup>133</sup> protects persons “holding or expressing political views or views ideologically opposed to the established

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<sup>130</sup> Para. 14(b)(iii) to (vi) of the [Reduction of Hours of Work Recommendation, 1962 \(No. 116\)](#).

<sup>131</sup> Art. 2(2)(d) of the [Forced Labour Convention, 1930 \(No. 29\)](#).

<sup>132</sup> [General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization](#), ILO, 2012, para. 280. This has been reaffirmed by the CEACR in its 2021 General Report, para. 78.

<sup>133</sup> Art. 1(a) of C.105. See also CEACR, 2021 General Report, para. 78.

political, social or economic system" from sanctions involving compulsory labour, including compulsory prison labour. In examining how emergency measures are put into practice, the ILO has considered that such restrictions should only be implemented in circumstances of extreme gravity constituting an emergency in the strict sense of the term. Moreover, the measures taken should be limited in time and scope to what is strictly required to meet the specific emergency situation.<sup>134</sup>

- Furthermore, as emphasized by the CEACR, particular attention should be paid to people living in poverty, increasingly exposed to coercion and the risk of falling victim to forced labour including trafficking in persons, debt bondage, and other forms of forced labour, due to the pandemic. The vulnerability of people who were already in situations of, or at risk of, forced labour before the COVID-19 outbreak including people trapped in slavery-like situations, discrimination, marginalization and limited or no social and labour protection, is also amplified in the current context.<sup>135</sup>

## Specific categories of workers and sectors

### What about protection for health and care workers?

- Health workers are at particular risk of occupational exposure to transmissible diseases such as COVID-19. The [Nursing Personnel Convention, 1977 \(No. 149\)](#) calls for Governments to, if necessary, endeavour to improve existing laws and regulations on occupational health and safety by adapting them to the special nature of nursing work and of the environment in which it is carried out.<sup>136</sup>
- The [Nursing Personnel Recommendation, 1977 \(No. 157\)](#) addresses occupational health protection in the nursing sector and calls for all possible

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<sup>134</sup> See paras. 302-304 of the 2012 [General Survey op. cit.](#)

<sup>135</sup> CEACR, 2021 General Report, para. 77.

<sup>136</sup> Art. 7 of the [Nursing Personnel Convention, 1977 \(No. 149\)](#).

steps to be taken to ensure that nursing personnel are not exposed to special risks. Where such risks are unavoidable, the Recommendation calls for measures to be taken to minimize these risks, including the provision and use of protective clothing, shorter hours, more frequent rest breaks, temporary removal from the risk and financial compensation in the event of exposure.<sup>137</sup> Furthermore, the ILS on violence and harassment call for the adoption of measures for occupations and work arrangements in which exposure to violence and harassment may be more likely, including health and emergency services.<sup>138</sup>

## What are the rights of domestic workers?

- Domestic workers and caregivers may be particularly vulnerable to exposure to COVID-19 and often do not have adequate access to health services or social protection.
- The [Domestic Workers Convention, 2011 \(No. 189\)](#) states that every domestic worker has the right to a safe and healthy working environment and effective measures should be taken, with due regard for the specific characteristics of domestic work, to ensure the OSH of domestic workers.<sup>139</sup>
- Members giving consideration to medical testing for domestic workers should consider, in accordance with the [Domestic Workers Recommendation, 2011 \(No. 201\)](#):

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<sup>137</sup> Para. 49 of the [Nursing Personnel Recommendation, 1977 \(No. 157\)](#). The [ILO Guidelines on decent work in public emergency services](#), 2018, address the need to protect public emergency workers from exposure to communicable diseases, including emergency health workers, stating that “it is important to monitor and evaluate the progress of response management schemes, national policies on the safety and health of [public emergency services] workers, measures to prevent the transmission of communicable diseases (in particular to emergency health workers), investigation protocols on violence and harassment at work and the provision of [personal protective equipment].”

<sup>138</sup> Para. 9 of R.206.

<sup>139</sup> Art. 13 of the [Domestic Workers Convention, 2011 \(No. 189\)](#).

- (a) making public health information available to members of the households and domestic workers on the primary health and disease concerns that give rise to any needs for medical testing in each national context;
  - (b) making information available to members of the households and domestic workers on voluntary medical testing, medical treatment, and good health and hygiene practices, consistent with public health initiatives for the community generally; and
  - (c) distributing information on best practices for work-related medical testing, appropriately adapted to reflect the special nature of domestic work.<sup>140</sup>
- Members should, moreover, ensure that arrangements for work-related medical testing respect the principle of the confidentiality of personal data and are consistent with ILO standards and other relevant international data protection standards. They should prevent any discrimination related to such arrangements.<sup>141</sup>

## Maritime

It has been estimated that hundreds of thousands of seafarers presently require immediate repatriation as they are beyond their original tours of duty, in some cases for more than 17 consecutive months and often without access to shore-based leave and/or medical treatment, and that a similar number of seafarers urgently need to join ships to replace them. Seafarer fatigue represents an immense risk for the physical and mental health of individual seafarers and for the safety of navigation, security, and protection of the marine environment.<sup>142</sup>

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<sup>140</sup> Para. 4 of the [Domestic Workers Recommendation, 2011 \(No. 201\)](#).

<sup>141</sup> Para. 3 of R.201. See also [ILO code of practice on the protection of workers' personal data, 1997](#).

<sup>142</sup> General Observation on matters arising from the application of the MLC, 2006 during the COVID-19 pandemic, adopted by the CEACR at its 91st session (Nov-Dec 2020), ILO, 2020.

Resolutions adopted by the UN General Assembly,<sup>143</sup> the ILO Governing Body<sup>144</sup> and the IMO Maritime Safety Committee,<sup>145</sup> urged Member States to designate seafarers as key workers for the purpose of facilitation of safe and unhindered movement for embarking or disembarking a vessel, the facilitation of shore leave, and, when necessary, to shore-based medical treatment.

The ILO published an updated version of its [Information Note](#) on maritime labour issues and COVID-19<sup>146</sup> which addresses several aspects of the implementation of the [Maritime Labour Convention, 2006, as amended \(MLC, 2006\)](#) in the context of the pandemic. This document reflects the [General observation](#) of the CEACR<sup>147</sup> as well as the statements of the Officers of the Special Tripartite Committee of the MLC, 2006 (STC) published respectively on 31 March 2020<sup>148</sup>, 1 October 2020<sup>149</sup> and 15 December 2020<sup>150</sup> on COVID-19.

The Information Note provides guidance, in particular, on seafarers' health and safety rights during the outbreak; the right to shore leave; the conditions pertaining to the extension of seafarers' employment agreements; seafarers'

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<sup>143</sup> See United Nations General Assembly [Resolution A/RES/75/17](#) on International cooperation to address challenges faced by seafarers as a result of the COVID-19 pandemic to support global supply chains.

<sup>144</sup> See ILO Governing Body [Resolution](#) concerning maritime labour issues and the COVID-19 pandemic.

<sup>145</sup> See IMO Maritime Safety Committee [Resolution MSC.473 \(ES.2\)](#) on recommended action to facilitate ship crew change, access to medical care and seafarer travel during the COVID-19 pandemic.

<sup>146</sup> Information note on maritime labour issues and coronavirus (COVID-19) - Revised version 3.0 (3 February 2021).

<sup>147</sup> General Observation on matters arising from the application of the MLC, 2006 during the COVID-19 pandemic, adopted by the CEACR at its 91st session (Nov-Dec 2020), ILO, 2020. The General Observation took into account the observations received from ITF and ICS based on article 23 of the ILO Constitution as well as the replies from a number of governments. It addressed a number of concerns regarding the implementation of the MLC, 2006 during current crisis.

<sup>148</sup> [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/statement/wcms\\_740130.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/statement/wcms_740130.pdf)

<sup>149</sup> [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/statement/wcms\\_756782.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/statement/wcms_756782.pdf)

<sup>150</sup> [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/statement/wcms\\_764724.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/statement/wcms_764724.pdf)

right to repatriation, and; the respective obligations of Flag States, Port States and labour-supplying States.

Good practices in this regard can be found in the [ILO Brief on COVID-19 and maritime shipping and fishing](#) which provides a comprehensive picture of the actions undertaken by governments, social partners and international organizations to face the crisis.

## How should the protection of migrant workers be ensured<sup>151</sup>?

The CEACR has considered that the inclusion of migrant workers in crisis response and recovery measures is the most effective way of protecting their fundamental rights and those of their families, and of avoiding xenophobia and stigmatization which, by deterring migrants from seeking testing and treatment, impedes health response efforts.<sup>152</sup> The Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205) calls for specific measures to be taken by member States for the protection of migrants affected by crisis situations, and calls for the promotion of equality of opportunity and treatment for all migrant workers with regard to fundamental principles and rights at work.<sup>153</sup>

### Medical services and testing

- Pursuant to the [Migration for Employment Convention \(Revised\), 1949 \(No. 97\)](#), Governments shall maintain appropriate medical services for migrant workers. These services are responsible for conducting medical

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<sup>151</sup> Recommendations for policy-makers and constituents can be found in the ILO's Policy Brief [Protecting migrant workers during the COVID-19 pandemic](#).

<sup>152</sup> CEACR, Addendum to the 2020 General Survey: Promoting employment and decent work in a changing landscape, para 265. See also ILO policy briefs on protecting the rights of [migrant workers](#) and protecting the rights of [refugees and other forcibly displaced persons](#) during the COVID-19 pandemic.

<sup>153</sup> Paras. 26 and 27, R.205.

testing, for example for COVID-19, and for ensuring that migrant workers and their families enjoy adequate medical attention and good hygienic conditions at the time of departure, during the journey and upon arrival.<sup>154</sup>

### Information on health conditions and risks and protection of the health of migrant workers

- Migrant workers are frequently placed in collective accommodation or are concentrated in temporary migrant reception or training centres, communal living conditions or camps. These group settings make it difficult to observe health guidelines for COVID-19 prevention, such as social distancing.<sup>155</sup>
- [The Migrant Workers Recommendation, 1975 \(No. 151\)](#) provides that all appropriate measures should be taken to prevent any special health risks to which migrant workers may be exposed.<sup>156</sup>
- Governments shall maintain an adequate and free service to provide migrant workers with accurate information.<sup>157</sup> These services should advise migrant workers and their families (in a language which they can understand) on health conditions in the place of destination.<sup>158</sup>
- At work, employers should take measures so that migrant workers fully understand instructions, warning and symbols related to safety and health at work, including related to COVID-19.<sup>159</sup>

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<sup>154</sup> Art. 5 of the [Migration for Employment Convention \(Revised\), 1949 \(No. 97\)](#).

<sup>155</sup> CEACR, Addendum to the 2020 General Survey: Promoting employment and decent work in a changing landscape, para 258.

<sup>156</sup> Para. 20 of [Migrant Workers Recommendation, 1975 \(No. 151\)](#).

<sup>157</sup> Art. 2 of C.97.

<sup>158</sup> Para. 5(2) of the [Migration for Employment Recommendation \(Revised\), 1949 \(No. 86\)](#).

<sup>159</sup> Para. 22 of the R.151.

### **Social security coverage and access to cash and health care benefits**

- Migrant workers who are lawfully in a State's territory and their families should have the same rights as its nationals as regards social security coverage and access to benefits (in cash or in kind, including medical care).<sup>160</sup>
- Migrant workers who have been unlawfully employed or are not lawfully residing in the country, as well as their families, should also enjoy equal treatment in respect of rights arising out of past employment for which they have been affiliated to social security.<sup>161</sup>
- In this regard, a number of countries have included migrant workers in national responses or have adopted specific new schemes for migrant workers, including programmes for economic support and measures to promote the retention in employment of national and migrant workers.<sup>162</sup>

### **Right of residence in the event of incapacity to work and loss of employment**

- Migrant workers have been severely affected by measures restricting mobility among countries, which have been adopted in many instances in an effort to contain the spread of COVID-19. Many countries closed their borders and tightened border controls, which placed migrant workers in a challenging situation, and forced returns of migrant workers were reported.<sup>163</sup> Migrant workers admitted on a permanent basis and the members of their families shall not be returned because the migrant worker is unable to follow his or

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<sup>160</sup> Art 6(1)(b) of C.97 and Art. 10 of C.143. Under Art. 6(1) (b) (ii) of C.97 however, national legislation can prescribe special arrangements in respect of benefits or portions of benefits paid out of public funds. Art. 68 of C.102 also lays down the principle of equality of treatment between national and non-national residents in respect of social security, while R.202 does not distinguish between the two categories, and calls for the provision of basic income security and essential health care guarantees for all residents and all children (Paras. 4 and 5). See also the 2016 [General Survey on Promoting Fair Migration](#), para. 390.

<sup>161</sup> Art 9 of C.143. See also the 2016 [General Survey on Promoting Fair Migration](#), para. 313.

<sup>162</sup> CEACR Addendum to the 2020 General Survey: Promoting employment and decent work in a changing landscape, paras 260-262.

<sup>163</sup> CEACR, Addendum to the 2020 General Survey: Promoting employment and decent work in a changing landscape, para 258.

her occupation by reason of illness contracted subsequent to entry (including COVID-19), unless the person concerned so desires or an international agreement so provides.<sup>164</sup>

- In addition, migrant workers who have resided legally in the territory for the purpose of employment, shall not be regarded as being in irregular situation for the mere fact that they have lost their employment (for instance as a result of the economic impact of the COVID-19).<sup>165</sup> The loss of employment shall not in itself imply the withdrawal of the authorization of residence or work permit.<sup>166</sup> Migrant workers who have lost their employment should be allowed sufficient time to find alternative employment and the authorization of residence should be extended accordingly.<sup>167</sup>
- They shall enjoy equality of treatment with nationals in respect of guarantees of security of employment, the provision of alternative employment, relief work and retraining.<sup>168</sup>
- More generally, when a migrant worker has been regularly admitted, the Government should, as far as possible, refrain from removing such person or the members of his or her family from its territory on account of his or her lack of means or the state of the employment market.<sup>169</sup>
- In this regard, some countries have adopted practices such as extending work permits or granting amnesties to migrant workers.<sup>170</sup>

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<sup>164</sup> Art. 8 of C.97. The CEACR has stressed that security of residence for permanent migrants and members of their families in case of ill health or injury constitutes one of the most important provisions of Convention No. 97. See the 2016 [General Survey on Promoting Fair Migration](#), para. 455.

<sup>165</sup> Art. 8(1) of the [Migrant Workers \(Supplementary Provisions\) Convention, 1975 \(No. 143\)](#).

<sup>166</sup> *Ibid.*

<sup>167</sup> Para. 31 of R.151.

<sup>168</sup> Art. 8(2) of C.143.

<sup>169</sup> Unless an agreement to this effect has been concluded with the country of emigration. Para. 18(2) of R. 86 enumerates the specific provisions that should be included in such agreements between the country of emigration and the country of destination. See also Para. 30 of R.151.

<sup>170</sup> CEACR, Addendum to the 2020 General Survey: Promoting employment and decent work in a changing landscape, para 259.

### Cost of return

- In case of expulsion of migrant workers and their families, the [Migrant Workers \(Supplementary Provisions\) Convention, 1975 \(No. 143\)](#) states that the cost shall not be borne by them.<sup>171</sup> This also applies to migrant workers covered by government-sponsored arrangements who fail to secure the employment for which they had been recruited for a reason for which they are not responsible (for instance because they have contracted COVID-19).<sup>172</sup>

### What role can ILO standards play in protecting indigenous and tribal peoples during the pandemic?

- A number of factors render indigenous and tribal peoples particularly vulnerable to COVID-19 and its socio-economic repercussions. More than 86 per cent of the estimated 476.6 million indigenous and tribal peoples globally work in the informal economy – which is often associated with poor working conditions and lack of social protection – and they are almost three-times more likely to be in extreme poverty. With this, comes limited access to adequate health services and sanitation.<sup>173</sup> In the particular context of the COVID-19 pandemic, the CEACR has stressed that the vulnerable situation confronting indigenous peoples needs to be addressed as a matter of urgency. Furthermore, it has called on Governments to strive to ensure that indigenous peoples benefit from effective and culturally adequate protection against the COVID-19 pandemic and its consequences.<sup>174</sup>
- The CEACR has also emphasized that the full implementation of [The Indigenous and Tribal Peoples Convention, 1989 \(No. 169\)](#) should guide

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<sup>171</sup> Art. 9(3) of C.143.

<sup>172</sup> Art. 9 of Annex II of C.97.

<sup>173</sup> [Implementing the ILO Indigenous and Tribal Peoples Convention No. 169: Towards an inclusive, sustainable and just future, ILO, 2019.](#)

<sup>174</sup> CEACR, 2021 General Report, para. 90.

governmental action in its response to the crisis.<sup>175</sup> The Convention provides for specific measures to protect the individual and collective rights of indigenous and tribal peoples. It requires the establishment of institutions and mechanisms and the adoption of a coordinated and systematic action that ensure the participation of the peoples concerned on matters affecting the exercise of such rights.<sup>176</sup> Under the current exceptional circumstances, ensuring the enjoyment of these rights by indigenous and tribal peoples is key to preventing their further exclusion and discrimination in the formulation and implementation of COVID-19 responses. Inclusion of and dialogue with the indigenous peoples' own representative institutions is critical to address their specific needs in this particular context.<sup>177</sup> Indeed, Convention No. 169 provides the framework for the adoption of an inclusive approach that leaves no one behind.<sup>178</sup> In applying the Convention, Governments should ensure:

- Access to health care services and social protection measures<sup>179</sup>;
- Consultation and participation of indigenous peoples in relation to measures that may affect them directly, including measures that may have a specific or disproportionate impact on them<sup>180</sup>;
- Protection against discrimination<sup>181</sup>;
- Measures to mitigate the difficulties experienced by these peoples in facing new conditions of life and work during and after the outbreak<sup>182</sup>;

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<sup>175</sup> CEACR, 2021 General Report, para. 90.

<sup>176</sup> Arts. 2, 7 and 33 of C.169.

<sup>177</sup> See also Para. 15(g) of R. 205 which calls for the consultation and participation of indigenous and tribal peoples in this context.

<sup>178</sup> CEACR, 2021 General Report, para. 90.

<sup>179</sup> Arts. 24 and 25 of C.169.

<sup>180</sup> Art. 6 of C.169.

<sup>181</sup> Art. 3 of C.169.

<sup>182</sup> Art. 5 of C.169.



- Protection of indigenous and tribal peoples from working conditions that are hazardous to their health<sup>183</sup>;
- Access to information on the pandemic, its consequences and the measures to respond to the crisis through the use of adequate and effective means of communication in a language indigenous peoples are able to understand<sup>184</sup>;
- Specific protection of indigenous and tribal peoples in voluntary isolation and nomadic peoples<sup>185</sup>;
- Protection of the persons, institutions, property as well as the social, cultural, religious and spiritual values and practices of indigenous and tribal peoples<sup>186</sup>.

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<sup>183</sup> Art. 20(3)(b) of C.169.

<sup>184</sup> Art. 30 of C.169.

<sup>185</sup> Arts. 14 and 18 of C.169.

<sup>186</sup> Arts. 4 and 5 of C.169.