

# ILO Standards and COVID-19 (coronavirus)

## FAQ

Key provisions of international labour standards relevant to the evolving COVID-19 outbreak

## NORMES

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This note provides a compilation of answers to most frequently asked questions related to international labour standards and COVID-19. 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 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 are a useful decent work compass in the context of the crisis response to the COVID-19 outbreak.

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

Secondly, 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, such as nursing personnel, domestic workers, migrant workers, seafarers or fishers, who we know are very vulnerable in the current context.

Respect for these standards further 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 and 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. 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. In 2019, the [Centenary Declaration for the Future of Work](#) reaffirmed that the setting, promotion, ratification and supervision of ILS is of fundamental importance to the ILO. All ILO legal instruments lay down the basic minimum social standards agreed upon by all the players in the global economy. Countries may implement higher levels of protection and enhanced measures so as to better mitigate the impact of the crisis.

This compilation 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. An initial version was web-published on 27 March 2020.

## 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 relevance to the evolving COVID-19 outbreak. One of the most recent ILS, the [Employment and Decent Work for Peace and Resilience Recommendation, 2017 \(No. 205\)](#) which was adopted by an overwhelming majority of all 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>1</sup> The Recommendation outlines a strategic approach to crisis response, including the adoption of a

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<sup>1</sup> Preamble and Paras. 7(b) and 43 of the [Employment and Decent Work for Peace and Resilience Recommendation, 2017 \(No. 205\)](#).

phased multi-track approach implementing coherent and 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>2</sup>
- Moreover, Governments should, as quickly as possible:
    - seek to ensure basic income security, in particular for persons whose jobs or livelihoods have been disrupted by the crisis;

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<sup>2</sup> Para. 8 of R.205. Para. 9 provides further guidance on immediate measures that should be taken.

- develop, restore or enhance comprehensive social security schemes and other social protection mechanisms, taking into account national legislation and international agreements; and
- seek to ensure effective access to essential health care and other basic social services, in particular for population groups and individuals who have been made particularly vulnerable by the crisis.<sup>3</sup>

## What is the role of social dialogue in addressing the COVID-19 pandemic?

- A climate of trust, built through social dialogue and tripartism, will be essential in the effective implementation of measures to address the COVID-19 outbreak and its impacts. 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. This is particularly key during times of heightened social tension. [The Employment and Decent Work for Peace and Resilience Recommendation, 2017 \(No. 205\)](#) emphasizes, in particular, the importance of social dialogue in responding to crisis situations and the vital role of employers' and workers' organizations in crisis response.<sup>4</sup> International labour standards offer comprehensive guidance relevant to addressing the impacts of the pandemic. In this context, 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, the Recommendation underlines the key role of consultation and encouraging active participation of employers' and workers' organizations in planning, implementing and monitoring measures for recovery and

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<sup>3</sup> Para. 21 of R.205.

<sup>4</sup> Paras. 7(k), 24 and 25 of R.205.

resilience.<sup>5</sup> It calls on member States to recognize the vital role of employers' and workers' organizations in crisis response, taking into account the [Freedom of Association and Protection of the Right to Organise Convention, 1948 \(No. 87\)](#), and the [Right to Organise and Collective Bargaining Convention, 1949 \(No. 98\)](#).<sup>6</sup>

- 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. It is especially critical at the level of the enterprise, as workers need to be kept informed, consulted and kept aware both as regards the impact on their own terms and conditions of employment and as to the steps they can take for their own protection and to contribute to containment.<sup>7</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>8</sup> Freedom of expression and the related fundamental rights may be the subject of restrictions or suspension during certain exceptional periods. Restrictions on those essential civil liberties should be

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<sup>5</sup> Para. 8(d) of R.205.

<sup>6</sup> Para. 25 of R.205.

<sup>7</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>8</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.



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>9</sup>

## Averting job losses and sustaining income levels

### What are the key measures for enabling recovery and promoting employment and decent work?

- The crisis is causing an unprecedented reduction in economic activities and working time with severe impact on incomes and jobs. It is leading to a significant rise in unemployment and underemployment.<sup>10</sup> Going forward, the promotion of full, productive and freely chosen employment (in accordance with the [Employment Policy Convention, 1964 \(No. 122\)](#))<sup>11</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>12</sup>

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<sup>9</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; and [General Survey on Freedom of Association and Collective Bargaining](#), ILO, 1994, para. 41.

<sup>10</sup> For regularly updated ILO estimates, see ILO Monitor: COVID-19 and the world of work. [The fourth edition](#) was released on 27 May 2020. It is available on the ILO's [COVID-19 and the world of work page](#)

<sup>11</sup> Art. 1 of the [Employment Policy Convention, 1964 \(No. 122\)](#).

<sup>12</sup> Para. 8 and the Annex of the [Employment Policy Recommendation, 1964 \(No. 122\)](#) and Paras. 1, 6 and 10 of the [Employment Policy \(Supplementary Provisions\) Recommendation, 1984 \(No. 169\)](#).

- A phased multi-track approach to enabling recovery should include immediate social protection and employment measures promoting, among others, local economic recovery.<sup>13</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>14</sup>
- The ILO's Policy Framework for responding to the COVID-19 crisis uses an integrated approach grounded in international labour standards and social dialogue aiming at mitigating the socio-economic implications of the pandemic and helping countries recover from it. This framework has four pillars and presents an integrated menu of interventions to be tailored to country-specific needs.<sup>15</sup>



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<sup>13</sup> Para. 8 of R.205.

<sup>14</sup> The [Minimum Wage Fixing Convention, 1970 \(No. 131\)](#) and [Recommendation \(No. 135\)](#) can provide guidance in this respect (see also [Recovering from the crisis: A Global Jobs Pact](#), adopted by the 98<sup>th</sup> Session of the International Labour Conference, Geneva, 19 June 2009, para. 23).

<sup>15</sup> For more details, see [ILO Policy Brief on COVID-19](#).

## 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>16</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>17</sup> Temporary absence from work due to illness or family responsibilities do not constitute valid reasons for termination.<sup>18</sup>
- With respect to collective dismissals, Convention No. 158 provides that an employer contemplating terminations for economic reasons shall provide 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>19</sup> The

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<sup>16</sup> Art. 12 of C.158.

<sup>17</sup> Art. 4 of C.158.

<sup>18</sup> The [1995 General Survey concerning Unjustified Dismissal](#), paras. 136-142 and Art. 8 of the [Workers with Family Responsibilities Convention, 1981 \(No. 156\)](#).

<sup>19</sup> Art. 13 of C.158.

Convention also provides for notifying the competent authority, as prescribed, when terminations are contemplated.<sup>20</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>21</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>22</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 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>23</sup>
- The [Employment Promotion and Protection against Unemployment Convention, 1988 \(No. 168\)](#) further calls on States to promote full, productive

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<sup>20</sup> Art. 14 of the [Termination of Employment Convention, 1982 \(No. 158\)](#).

<sup>21</sup> Para. 19 of R.166.

<sup>22</sup> Part IV of the [Social Security \(Minimum Standards\) Convention, 1952 \(No.102\)](#).

<sup>23</sup> Art. 10 of the [Employment Promotion and Promotion Against Unemployment Convention, 1988 \(No. 168\)](#).

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>24</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>25</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 settlement of all wages due shall be effected as prescribed, or if not specified, within a reasonable period of time.<sup>26</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

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<sup>24</sup> Arts. 7-9 of C.168. See also Para 2 of the [Employment Promotion and Protection against Unemployment Recommendation, 1988 \(No. 176\)](#).

<sup>25</sup> Art. 10 of C.168.

<sup>26</sup> Art. 12 of C.95.

privileged creditors for unpaid wages that are protected under the applicable national legislation.<sup>27</sup>

## Occupational safety and health

### 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>28</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>29</sup>
- Employers are responsible for providing adequate information and appropriate training on OSH<sup>30</sup>; consulting workers on OSH aspects associated with their work<sup>31</sup>; providing measures to deal with emergencies<sup>32</sup>; and notifying the labour inspectorate of cases of occupational diseases.<sup>33</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

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<sup>27</sup> Art. 11 of C.95.

<sup>28</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>29</sup> Arts. 16(3) and 21 of C.155.

<sup>30</sup> Art. 19(c) and (d) of C.155.

<sup>31</sup> Art. 19(e) of the C.155.

<sup>32</sup> Art. 18 of C.155.

<sup>33</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](#).

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>34</sup>

- OSH measures shall not involve any expenditure for workers.<sup>35</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>36</sup>
- Workers should be informed in an adequate and appropriate manner of the health hazards involved in their work.<sup>37</sup>

## 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>38</sup>

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

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<sup>34</sup> Art. 19 of C.155 and Para. 16 of the [Occupational Safety and Health Recommendation, 1981 \(No. 164\)](#).

<sup>35</sup> Art. 21 of C.155.

<sup>36</sup> Art. 19(f) of C.155.

<sup>37</sup> Para. 22 of the [Occupational Health Services Recommendation, 1985 \(No. 171\)](#).

<sup>38</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](#).

- 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.
- 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 \(No. 176\)](#)). 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>39</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>40</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>41</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>42</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 the duty to inform their supervisors immediately.<sup>43</sup> Where there is an imminent danger

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<sup>39</sup> Art. 13(1)(e) of C.176.

<sup>40</sup> Art. 14(b) of C.176.

<sup>41</sup> Art. 9(b) of C.176.

<sup>42</sup> Art. 7(i) of C.176.

<sup>43</sup> Art. 12(1) of C.167.



to the safety of workers the employer is likewise required to take immediate steps to stop the operation and evacuate workers, as appropriate.<sup>44</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>45</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, could be considered as a work or employment injury.<sup>46</sup> Such injuries, under the scope of the [Employment Injury Benefits Convention, 1964 \(No.121\)](#) and the [Social Security \(Minimum Standards\) Convention, 1952 \(No.102\)](#), include industrial accidents and occupational diseases.<sup>47</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

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<sup>44</sup> Art. 12(2) of C.167.

<sup>45</sup> Art. 28(1) of C.167.

<sup>46</sup> See Schedule I of [Employment Injury Benefits Convention, 1964 \(No. 121\)](#), Para. 29. The examination of the recent national practices reveals that, in some of the most affected countries, the authorities have considered infection by COVID-19 as a work-related accident to ensure easier and faster access to associated benefits. With the same objective, a number of other countries have expressly recognized that it could be considered as an occupational disease, and notably with respect to health workers and other workers particularly exposed. In other countries, the authorities have stated that infection by COVID-19 contracted at work would be treated as a work-related injury, without specifying in which category it would fall. As noted by the national authorities in many of the countries concerned at the time of announcing these measures, national practices are expected to develop further as the situation evolves. For more details and additional information, see the [ILO's collection of state practice to address infection by COVID-19 as a work-related injury](#).

<sup>47</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 \(No. 194\)](#).

in the Convention No. 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>48</sup> For more details on national practices and additional information, see the [ILO's collection of state practice to address infection by COVID-19 as a work-related injury](#).

## What about access to health care?

- Persons affected by COVID-19 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; hospitalisation where necessary; and medical rehabilitation.<sup>49</sup>

## 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>50</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.

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<sup>48</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 \(No. 194\)](#).

<sup>49</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>50</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 \(MLC, 2006\)](#).

- 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>51</sup>
- The *prevention* of diseases caused by most biological hazards<sup>52</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 minimising, so far as is reasonably practicable, the causes of hazards inherent in the working environment.<sup>53</sup>

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<sup>51</sup> [List of Occupational Diseases Recommendation, 2002 \(No. 194\)](#). See also C.121 and its Schedule I amended in 1980.

<sup>52</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>53</sup> Art. 4(2) of the C.155.

## 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>54</sup>

### What about discrimination, prejudice and xenophobia?

- Incidents of racism and xenophobia at the workplace were observed following the outbreak, in particular towards persons of certain ethnic backgrounds and persons from countries where the virus is more prevalent. However, 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>55</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>56</sup>

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<sup>54</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.

<sup>55</sup> [Discrimination \(Employment and Occupation\) Convention, 1958 \(No. 111\)](#) .

<sup>56</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>57</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>58</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>59</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). Finally, it is worth drawing attention to the gender impact of the measures taken to counter the pandemic, as the virus spreads globally. 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>60</sup> In the current context, it is anticipated that women will bear the brunt of the social and economic disruption, as, in practice, they still do more caregiving. So when the virus results in closure of schools, restricts travel, and

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<sup>57</sup> Under Art. 1(1)(b) of C.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>58</sup> Art. 5(2) of C.111.

<sup>59</sup> Art. 1(2) of C.111.

<sup>60</sup> Para. 8 of R.205.

puts elderly relatives at risk, women may have to bear the burden of even more responsibilities at home. The challenges arising out of this pandemic puts an additional strain on existing inequalities. If there is not an equal sharing of family responsibilities or housework already, it will be women who will be responsible for remote schooling, for ensuring that food and other supplies are available at home, and for coping in general with the effects of this crisis. Crisis response should include, as appropriate, a coordinated and inclusive needs assessment with a clear gender perspective.<sup>61</sup>

## What about violence and harassment in the world of work?

- [The Violence and Harassment Convention, 2019 \(No. 190\)](#)<sup>62</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>63</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>64</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

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<sup>61</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 C.156.

<sup>62</sup> Not yet in force. Further information on C.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>63</sup> Art. 3 of C.190

<sup>64</sup> Art. 9 of C.190.

as the health sector.<sup>65</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 arrangements in which exposure to violence and harassment may be more likely, including health, hospitality, social services and emergency services.<sup>66</sup>

- Economic and social stresses 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>67</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>68</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. 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>69</sup>

## Leave entitlements and special working arrangements

### Are workers entitled to paid sick leave?

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<sup>65</sup> Art. 8 of C.190.

<sup>66</sup> Para. 9 of R.206.

<sup>67</sup> UNWOMEN Brief, [COVID-19 and Ending Violence against Women and Girls](#), April 2020.

<sup>68</sup> Art. 10 of C190 and Para. 18 of R.206.

<sup>69</sup> In that regard, attention is drawn to Part IV (Protection and Prevention) of C.190.

- 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>70</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 (the [Medical Care and Sickness Benefits Recommendation, 1969 \(No. 134\)](#)).<sup>71</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>72</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>73</sup> Workers who have to care for sick family members should also be provided with help.<sup>74</sup>

## Can a worker be required to use holidays?

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<sup>70</sup> See, notably, Part III of C. 130 and Part III of C.102.

<sup>71</sup> Para. 8 of the [Medical Care and Sickness Benefits Recommendation, 1969 \(No. 134\)](#).

<sup>72</sup> Para. 23(1) and (2) of the [Workers with Family Responsibilities Recommendation, 1981 \(No. 165\)](#).

<sup>73</sup> Para. 19 of R.165.

<sup>74</sup> Para. 10 of the R.134.



- 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>75</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 Committee of Experts has dealt with telework in the framework of its [General Survey on Working Time](#)

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<sup>75</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).

[instruments](#)<sup>76</sup> as well as its most recent [General Survey on Employment and Decent Work in a Changing Landscape](#).<sup>77</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>78</sup>

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<sup>76</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 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>77</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>78</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

## 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 sectors<sup>79</sup> have drastically reduced recruitment of workers through PrEAs, due to the COVID-19 lockdown. In contrast, other sectors<sup>80</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 private employment agencies (PrEAs). The [Private Employment Agencies Convention, 1997 \(No. 181\)](#) and its [Recommendation No. 188](#) provide key guidance in this rapidly changing landscape.
- These instruments recognize the role that PrEAs<sup>81</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,

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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)

<sup>79</sup> These “hard-hit” sectors include manufacturing, tourism, hotels and restaurants, construction and non-food retail services.

<sup>80</sup> Sectors experiencing staff shortages include healthcare, transportation, logistics and food retail services.

<sup>81</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)).

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>82</sup>. While promoting cooperation 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 discrimination<sup>83</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>84</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>85</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.

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<sup>82</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 \(No. 88\)](#).

<sup>83</sup> Paras. 4-8 of R.188.

<sup>84</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>85</sup> Art. 5 of C.181.

## 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.

### 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 national emergency.<sup>86</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>87</sup>
- However, during these exceptional cases, compulsory labour cannot be exacted indistinctively and without the supervision of competent authorities.

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<sup>86</sup> Para. 14(b)(iii) to (vi) of the [Reduction of Hours of Work Recommendation, 1962 \(No. 116\)](#).

<sup>87</sup> Art. 2(2)(d) of the [Forced Labour Convention, 1930 \(No. 29\)](#).

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>88</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>89</sup> protects persons "holding or expressing political views or views ideologically opposed to the established 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>90</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

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<sup>88</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.

<sup>89</sup> Art. 1(a) of C.105.

<sup>90</sup> See paras. 302-304 of the 2012 [General Survey op. cit.](#).

them to the special nature of nursing work and of the environment in which it is carried out.<sup>91</sup>

- The [Nursing Personnel Recommendation, 1977 \(No. 157\)](#) addresses occupational health protection in the nursing sector and calls for all possible 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 minimise 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>92</sup> Further, 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>93</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>94</sup>

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<sup>91</sup> Art. 7 of the [Nursing Personnel Convention, 1977 \(No. 149\)](#).

<sup>92</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>93</sup> Para. 9 of R.206.

<sup>94</sup> Art. 13 of the [Domestic Workers Convention, 2011 \(No. 189\)](#).

- Members giving consideration to medical testing for domestic workers should consider, in accordance with the [Domestic Workers Recommendation, 2011 \(No. 201\)](#):
  - (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>95</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>96</sup>

## Maritime

The ILO published an [Information Note on maritime labour issues and COVID-19](#) which addresses several aspects of the implementation of the [Maritime Labour Convention, 2006, as amended](#) (MLC, 2006) in the context of the pandemic.

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<sup>95</sup> Para. 4 of the [Domestic Workers Recommendation, 2011 \(No. 201\)](#).

<sup>96</sup> Para. 3 of R.201. See also [ILO code of practice on the protection of workers' personal data, 1997](#).



### **What are seafarers' health and safety rights during the outbreak?**

The maritime sector has been severely affected by the measures adopted to contain the outbreak of COVID-19. In this context, the protection of seafarers must remain a priority. The MLC, 2006, states that every seafarer has the right to a safe and secure workplace that complies with safety standards and to health protection, medical care, welfare measures and other forms of social protection.<sup>97</sup>

### **What about the right to shore leave?**

Even in the context of the COVID-19 pandemic, seafarers shall be granted shore leave to benefit their health and well-being, and consistent with the operational requirements of their positions.<sup>98</sup>

### **Flag States' obligations:**

States must ensure that all seafarers on ships that fly its flag are covered by adequate measures for the protection of their health – including the provision of alcohol-based hand rub and facial protection – and that they have access to prompt and adequate medical care whilst working on board.<sup>99</sup>

### **Port States' obligations:**

States must ensure that seafarers on board ships in its territory who are in need of immediate medical care are given access to the Member's medical facilities on shore.<sup>100</sup>

### **Good practices:**

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<sup>97</sup> Article IV of the [Maritime Labour Convention, 2006 \(MLC, 2006\)](#), as amended (MLC, 2006), paras. 1 and 4.

<sup>98</sup> Regulation 2.4, Para. 2 of the MLC, 2006.

<sup>99</sup> Regulation 4.1, Para. 1 of the MLC, 2006.

<sup>100</sup> Regulation 4.1, Para. 3 of the MLC, 2006.

The ILO participated in a Circular Letter by the International Maritime Organisation (IMO) to the international community aimed at addressing the situation of seafarers in the context of the outbreak of the COVID-19. Attention was drawn to the relevant provisions of the MLC, 2006. The ILO also took part in a [joint statement](#) with the IMO and the World Health Organisation (WHO) to address the issue of seafarers' medical certificates.<sup>101</sup> The WHO published the [Operational considerations for managing COVID-19 cases/outbreak on board ships](#).

The International Chamber of Shipping published a Coronavirus (COVID-19) [Guidance for Ship Operators for the Protection of the Health of Seafarers](#). The International Transport Workers' Federation has also published [advice](#) to ships and seafarers on the COVID-19.

A Sectoral brief [on COVID-19 and maritime shipping and fishing](#) published by the ILO provides a comprehensive picture of the actions undertaken by governments, social partners and international organizations to face the current crisis.

## How should protection of migrant workers be ensured<sup>102</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 testing, for example for COVID-19, and for ensuring that migrant workers and their

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<sup>101</sup> Regulation 1.2 of the MLC, 2006.

<sup>102</sup> Recommendations for policy-makers and constituents can be found in the ILO's Policy Brief [Protecting migrant workers during the COVID-19 pandemic](#).

families enjoy adequate medical attention and good hygienic conditions at the time of departure, during the journey and upon arrival.<sup>103</sup>

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

- [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>104</sup>
- Governments shall maintain an adequate and free service to provide migrant workers with accurate information.<sup>105</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>106</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>107</sup>

### 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>108</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

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<sup>103</sup> Art. 5 of the [Migration for Employment Convention \(Revised\), 1949 \(No. 97\)](#).

<sup>104</sup> Para. 20 of [Migrant Workers Recommendation, 1975 \(No. 151\)](#).

<sup>105</sup> Art. 2 of C.97.

<sup>106</sup> Para. 5(2) of the [Migration for Employment Recommendation \(Revised\), 1949 \(No. 86\)](#).

<sup>107</sup> Para. 22 of the R.151.

<sup>108</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.

treatment in respect of rights arising out of past employment for which they have been affiliated to social security.<sup>109</sup>

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

- 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 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>110</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>111</sup> The loss of employment shall not in itself imply the withdrawal of the authorization of residence or work permit.<sup>112</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>113</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>114</sup>
- More generally, when a migrant worker has been regularly admitted, the Government should, as far as possible, refrain from removing such person or

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<sup>109</sup> Art 9 of C.143. See also the 2016 [General Survey on Promoting Fair Migration](#), para. 313.

<sup>110</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>111</sup> Art. 8(1) of the [Migrant Workers \(Supplementary Provisions\) Convention, 1975 \(No. 143\)](#).

<sup>112</sup> *Ibid.*

<sup>113</sup> Para. 31 of R.151.

<sup>114</sup> Art. 8(2) of C.143.

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>115</sup>

### 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>116</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>117</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>118</sup>
- [The Indigenous and Tribal Peoples Convention, 1989 \(No. 169\)](#) provides for specific measures to protect the individual and collective rights of indigenous and

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<sup>115</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>116</sup> Art. 9(3) of C.143.

<sup>117</sup> Art. 9 of Annex II of C.97.

<sup>118</sup> [Implementing the ILO Indigenous and Tribal Peoples Convention No. 169: Towards an inclusive, sustainable and just future, ILO, 2019.](#)

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>119</sup> Under the current exceptional circumstances, ensuring the enjoyment of these rights by indigenous and tribal peoples is key to prevent 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. In applying the Convention, Governments should ensure:

- Access to health care services and social protection measures<sup>120</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>121</sup>;
- Protection against discrimination<sup>122</sup>;
- Measures to mitigate the difficulties experienced by these peoples in facing new conditions of life and work during and after the outbreak<sup>123</sup>;
- Protection of indigenous and tribal peoples from working conditions that are hazardous to their health<sup>124</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 communications in a language indigenous peoples are able to understand<sup>125</sup>;
- Specific protection of indigenous and tribal peoples in voluntary isolation and nomadic peoples<sup>126</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>127</sup>.

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<sup>119</sup> Arts. 2, 7 and 33 of C.169.

<sup>120</sup> Arts. 24 and 25 of C.169.

<sup>121</sup> Art. 6 of C.169.

<sup>122</sup> Art. 3 of C.169.

<sup>123</sup> Art. 5 of C.169.

<sup>124</sup> Art. 20(3)(b) of C.169.

<sup>125</sup> Art. 30 of C.169.

<sup>126</sup> Arts. 14 and 18 of C.169.

<sup>127</sup> Arts. 4 and 5 of C.169.