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How to strengthen the institutions of work

Main findings



Effective safety and health regulations should cover all branches of economic activity and all workers, with clear duties and rights specified.



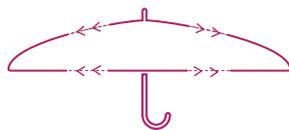
Equality of treatment of workers under different contractual arrangements limits discrimination based on occupational status and supports decent work and fair competition.



In countries with high collective bargaining coverage, the pay gap between key and other employees tends to be lower.



Ensuring that key workers receive the minimum wage can be an effective tool for increasing their earnings.



Extending social protection to all workers, including access to paid sick leave, will make workers and economies more resilient to future crises and pandemics.

Valuing key workers means ensuring that they receive adequate pay and work in conditions that correspond with decent work. While decent work is an objective for all work, it is particularly critical for key workers, who provide vital necessities and services in both good times and bad. Strengthening the institutions of work, along with investing in key sectors (see Chapter 6), is central for building a more resilient world of work.

This chapter draws on ILO standards as well as examples of good practice from regional and national legislation and collective bargaining agreements to provide guidance on how to improve working conditions and social protection for key workers. While many of the recommended regulations and policies apply to all workers, given the relative weaknesses in key work identified in earlier chapters such efforts are a necessary step forward in attaining decent work for key workers.

Comprehensive and robust institutions of work ensure that labour is not treated as a mere commodity. The institutions of work include the laws and collective bargaining agreements that regulate the labour market in areas such as OSH, employment contracts, working hours, wages, training and social security, as well as the institutions – workers’ and employers’ organizations, labour administration and inspection systems, and courts and tribunals – that design and institute workplace governance. Well-functioning labour institutions address the asymmetry between capital and labour and enhance labour market and economic performance.¹

Over the last hundred years, the employment relationship has been at the heart of labour market governance.² The definition of employment and the classification of a work relationship as an “employment relationship” is central to the provision of labour protection. Many aspects of labour protection – minimum wages, limits on working hours, protection against dismissal – apply to the employment relationship. Others, such as the right to freedom of association and collective bargaining, anti-discrimination, OSH and social protection, are recognized internationally as applying to all workers, though often still restricted at the national level.

The shortfalls in labour and social protection identified among key workers stem from: (1) the failure to provide coverage to workers because they fall outside the scope of the law, as is often the case in self-employment but also among subsets of workers, such as agricultural or domestic workers, or workers in small enterprises; (2) weak enforcement of the law, even for enterprises covered by it, and thus its non-application, as in the case of informally employed workers; or (3) the unequal treatment of employment contracts in the law, as is the case for some contractual arrangements, including certain temporary labour migration schemes.

Improving labour and social protection among key workers thus requires multifaceted actions, depending on the cause of the shortfall. For workers in a recognized employment relationship, this includes ensuring equal treatment among workers in diverse contractual arrangements, so that they can enjoy the full benefits of labour and social protection (section 5.2), as well as improving compliance in order to mitigate informality among employees (section 5.7). In some instances, workers should be recognized as being in an employment relationship but have been misclassified as self-employed (“bogus self-employment” or “disguised employment”). For these situations, the Employment Relationship Recommendation, 2006 (No. 198), contains a series of principles that can guide governments on devising policies to address employment misclassification.³

For workers who are currently out of the scope of the law, policies include broadening the definition of coverage to include those workers who are in historically excluded occupations, such as agricultural work or domestic work, or “dependent self-employed” workers, who are legally independent but depend economically on a few clients. Broadening the scope can also be a means to cover workers in new forms of work, such as app-based delivery workers. For genuinely independent

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self-employed workers, specific policies need to be tailored to provide protection, particularly with respect to social protection, OSH, anti-discrimination and the right to freedom of association and collective bargaining.

Another critical tool for strengthening the institutions of work is social dialogue. Freedom of association and collective bargaining are fundamental workers' rights that apply to all workers, regardless of their contractual and migrant status. In practice, however, many key workers are not able to exercise these rights, either for the reasons cited above or because of transformations in the world of work that have weakened employers' and workers' organizations.⁴ This, in turn, has weakened the potential of unionization and collective bargaining to improve protection through negotiated regulation, but also the important role that bipartite consultation and workplace representation, including joint health and safety committees, can have for ensuring compliance. Social dialogue has shown its value during the COVID-19 pandemic as a flexible tool to respond to a crisis;⁵ greater access to this tool strengthens the resilience of labour markets.

5.1. Safe and healthy workplaces for all

A safe and healthy workplace is an asset to workers, employers and society at large. For employers, a safe and healthy workplace not only protects workers from injury and illness, but it can also help prevent costly outlays from accidents, absenteeism or social security. For workers, a safe and healthy workplace means avoiding the detrimental consequences of workplace injury and illness, whether physical or mental. In addition to the pain and suffering that an accident or illness can cause, it can also have devastating effects on household finances and personal relationships, including by compromising workers' careers. For societies, workplace injury and illness can be costly to social security systems, as well as to social assistance programmes when families run into economic hardship.

As shown in the previous chapters, key workers had greater exposure to workplace hazards prior to the pandemic than non-key workers; and during the COVID-19 pandemic, physical and psychosocial risks were aggravated. The analysis showed that key workers had a higher incidence of morbidity during the pandemic. Health workers, who had the highest rates of exposure, were badly affected, but the evidence also suggests that, while there were country variations, retail, security and transport workers often fared worse. The analysis suggests that the institutional setting affected the probability of key workers becoming infected. Formal workers, especially in larger and unionized establishments, were engaged in work settings where more robust OSH systems were in place. As discussed in section 3.1, there are currently many gaps in coverage, as OSH systems are too often limited to workers in an employment relationship. Moreover, many such systems have not paid sufficient attention to psychosocial risks, especially violence and harassment.

The COVID-19 pandemic has provided an opportunity to improve OSH systems throughout the world. There are more than 40 ILO standards dealing with health and safety at work, of which 20 are up-to-date Conventions and Protocols. Most of them concern a specific danger (such as major industrial accidents, asbestos or chemicals) or a specific industry sector (such as mines, construction or agriculture). Nevertheless, four Conventions and one Protocol focus on system-wide issues, each with an accompanying Recommendation:

- ▶ the Occupational Safety and Health Convention, 1981 (No. 155);⁶
- ▶ the Protocol to the Occupational Safety and Health Convention, 2002 (No. 155);
- ▶ the Occupational Health Services Convention, 1985 (No. 161);⁷
- ▶ the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187);⁸
- ▶ the Violence and Harassment Convention, 2019 (No. 190).⁹

► **Figure 5.1. The five key dimensions of effective safety and health regulation**



On 10 June 2022, the International Labour Conference declared that Conventions Nos 155 and 187 would be considered as fundamental Conventions within the meaning of the ILO Declaration on Fundamental Principles and Rights at Work (1998), as amended in 2022.

These Conventions provide sound criteria for guiding OSH reforms. They do not construct a static, rigid scaffold for regulating workplace safety and health; rather, they map out a dynamic framework.¹⁰ The Conventions are concerned with designing policies, systems and programmes to improve safety and health in the world of work. They have been formulated in the light of the experience of Member States and are therefore grounded not only in the ILO's foundational values but also in practical knowledge. Synthesizing the four Conventions and, in particular, the two fundamental Conventions, there are five key dimensions of effective safety and health regulation (see figure 5.1). In addition to these five dimensions, there are two supporting pillars: (1) compliance (addressed in section 5.7); and (2) coordination with other regulatory systems pertaining to work, including labour and social security law and health regulation, so that objectives and methods are mutually reinforcing and supportive. This section addresses the five key dimensions with a view to providing policy guidance to ILO constituents on establishing more resilient institutions of work, for key and non-key workers alike.

Coherent national policies, systems and programmes

Coherent national policies, systems and programmes, as set out in Conventions Nos 155 and 187, underpin effective OSH regulation. A *coherent* overarching national framework whose constituent parts have been constructed in a methodical, mutually reinforcing way obviates a situation in which OSH measures are merely reactive, with governments responding to a specific salient crisis in a piecemeal, fragmented manner. The danger of such a reactive approach is that short-term fixes are adopted, leaving long-term and broad deficiencies in law and policy unaddressed. As explained in section 3.1, earlier forms of OSH regulation, which targeted specific dangers in specific industries, have become inadequate, obsolete or unwieldy. They have also created inequity because some workers were protected against hazards while workers in unregulated sectors were not.

This is not to say that emergency measures are never warranted. Sometimes an immediate, initial response is required in the face of an unanticipated disaster, as the COVID-19 pandemic made clear. But there is a need to move beyond the interim and make systemic adjustments so that future hazards are avoided or mitigated; hence the emphasis in the Conventions on formulating and regularly reviewing a coherent set of *policies, systems and programmes*. This is the starting point for effective OSH regulation.

How are national policies, systems and programmes distinguished from each other and why are all three necessary? A *national policy* here refers to a policy on “occupational safety, occupational health and the working environment”¹¹ whose aim is to: “prevent accidents and injury to health arising out of, linked with or occurring in the course of work, by minimizing, so far as is reasonably practicable, the causes of hazards inherent in the working environment”.¹²



The policy should promote *basic OSH principles*.¹³ It should also address the main “*spheres of action*”.¹⁴ This means taking account of “the material elements” of work (workplaces, machinery, biological substances and so on); the work processes which connect these material elements to workers; training; communication and cooperation; and the protection of workers and their representatives from retaliation.¹⁵ It should clarify the functions and responsibilities of the various stakeholders¹⁶ and be regularly

reviewed.¹⁷ Furthermore, the national policy should extend to the provision of *occupational health services*, which advise stakeholders on how to prevent injuries and diseases.¹⁸ The purpose of a national policy is thus to establish a solid foundation for all regulatory interventions relating to OSH, be they laws, strategies, educational measures or the creation of administrative and other OSH-related agencies.

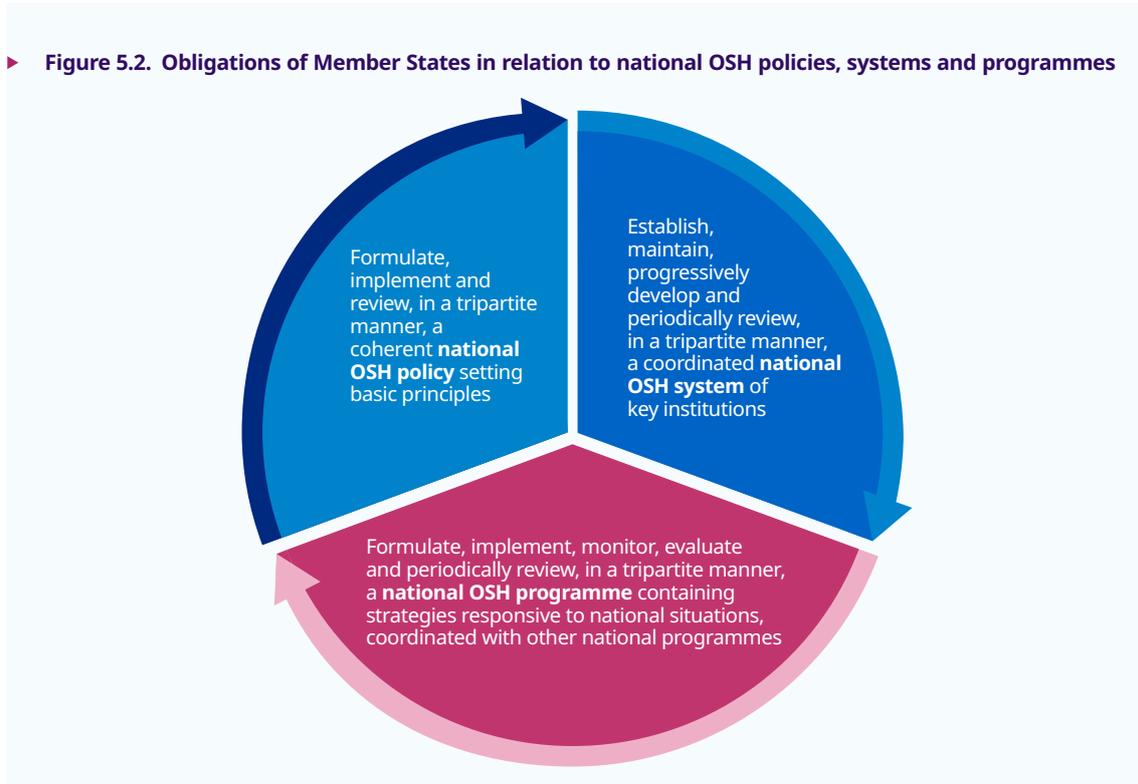
A *national system* refers to the “infrastructure ... for implementing the national policy and national programmes on occupational safety and health”.¹⁹ In order to give practical effect to the national policy, Member States need to develop appropriate institutions and to regularly review them through tripartite mechanisms.²⁰

Convention No. 187 refers to four essential elements of a national system:²¹ *laws and other regulatory instruments* (which may include collective agreements); *a regulatory authority or authorities*; *compliance mechanisms*; and *arrangements to promote labour-management cooperation*. The Convention also refers to eight additional mechanisms pertaining to work health and safety which can complement these: a national tripartite body or bodies; information and advisory services;²² training; health services (which are described in detail in Convention No. 161²³ and Recommendation No. 171); research; data collection and analysis;²⁴ collaboration with social security schemes; and support for micro, small and medium-sized enterprises and the informal economy.²⁵ The position of high-risk and vulnerable groups and the impact on workers of different genders should be taken into account in system design.²⁶ It is especially relevant to note that the national policy and system should address not only occupational accidents and diseases, but also the physical and mental well-being of workers.

A national system should be designed with regard to specific national circumstances,²⁷ so a wide range of institutional variation is to be expected. This variation will include in some jurisdictions – and especially those with federal constitutional structures – multiple laws and regulatory authorities. It will also include different administrative arrangements; for example, an OSH regulator may be located within a labour or health department or be a stand-alone statutory authority. Such multiplicity can be problematic if there is no underlying cohesion, especially if, as in the case of the COVID-19 pandemic, a crisis is experienced not merely at a subnational level but nationwide. At worst, OSH systems can be completely bypassed or relegated to an afterthought, as when temporary public health orders became the primary means of responding to the COVID-19 pandemic in the workplace. While this is understandable in an emergency situation, it undermines a long-term systemic response to what is an ongoing threat to workplace health. Thus, Convention No. 155 requires Member States, in consultation with the social partners and other appropriate actors, to “ensure the necessary coordination between various authorities and bodies” so as to ensure policy coherence.²⁸

A *national programme* refers to programmes which include “objectives to be achieved in a predetermined time frame, priorities and means of action formulated to improve occupational safety and health”, as well as methods of assessing progress”.²⁹ Again, these should be formulated, implemented and reviewed in a tripartite manner.³⁰ These programmes should be directed at promoting a culture

► **Figure 5.2. Obligations of Member States in relation to national OSH policies, systems and programmes**



of prevention and eliminating or minimizing risks.³¹ They should be based on a review of the national situation and include objectives, targets, progress indicators and priorities.³²

The purpose of a national programme is to ensure that the national system operates in a responsive and dynamic manner, promoting continuous improvement. The original intention was to promote the adoption of medium-term strategic plans, which provided a realistic time frame for significant improvements.³³ However, this approach to time frames was formulated prior to the pandemic, which initially necessitated a shorter horizon.

The interrelationship between national policies, systems and programmes is set out in figure 5.2. Once they are in place, they enable a Member State to approach OSH regulation in a methodical, rigorous way, reducing the potential for contradictory, chaotic, partial and ad hoc interventions. The substantive dimensions of this framework are explored in the following sections.

Some national systems explicitly enact this framework set out in ILO standards. In Japan, for example, the Industrial Safety and Health Act specifically mandates the formulation of a plan.³⁴ The most recent plan (13th Occupational Accident Prevention Plan), which commenced in 2018, has an increased focus on mental health and anti-harassment. It also promotes risk assessments, the appointment of industrial physicians as part of the in-house occupational health services and better health and safety management within firms.³⁵

In response to the COVID-19 pandemic, countries have begun to develop a coherent framework to consolidate the lessons learned from temporary measures. In late 2021, the Republic of Korea enacted the Act on Designation of Essential Work and Protection and Support for Essential Workers. The new law creates a permanent system for assisting essential workers in a time of crisis. It includes a general definition of essential work³⁶ and a committee for determining precise categories, for conducting empirical research and for recommending support plans (which include a labour representative).³⁷ On the basis of deliberations by the Committee, the relevant ministry (the Ministry of Employment and Labour) formulates and evaluates a support plan.³⁸

Comprehensive coverage

In many countries, the laws on health and safety at work are confined to employees only, and sometimes only to certain industries. But this is inconsistent with the goals of the OSH Conventions. The obligations in the key ILO Conventions apply to “all branches of economic activity”.³⁹ While Convention No. 155, adopted in 1981, permits Member States to exclude some branches of economic activity because of “special problems of a substantial nature”,⁴⁰ these exclusions are intended to be temporary and to require the provision of adequate protection for the relevant workers.⁴¹ They must also be transparent, tripartite and accountable (reported to the ILO).⁴²

The evolution of OSH understanding is apparent in Convention No. 190, in that no sector is excluded: it applies to “all sectors, whether private or public, both in the formal and informal economy, and whether in urban or rural areas”, with no possibility of excluding certain branches of activity.⁴³ The Convention clearly articulates a comprehensive approach to coverage. It refers to protecting “workers and other persons in the world of work” and makes clear that not only employees are covered, but so are “persons working irrespective of their contractual status”, persons in training, volunteers and so on, as well as “individuals exercising the authority, duties or responsibilities of an employer”.⁴⁴ The obligations in the Convention that apply to the “world of work” are also broadly defined to include activities outside of, but related to, work, such as work-related travel and social events, work in private locations and online, and commuting.⁴⁵ In view of the broad scope of the Convention, which applies beyond the traditional workplace, the level of responsibility of business entities is determined commensurate with their *degree of control*.⁴⁶

However, it does not follow from the requirement that all workers must be covered that stakeholders must be subject to identical detailed rules. As indicated in section 3.1, the Robens approach to regulation of safety and health at work distinguished between a statement of universally applicable *general principles, rights and obligations*, on the one hand, and *detailed rules* applicable to specific work contexts, on the other. Thus all workers, irrespective of their contractual status, should be covered by OSH policies, systems and programmes. For example, all entities should be required to ensure that, so far as is reasonably practicable, workplaces under their control are safe and without risk to health.⁴⁷ However, what this means in practical terms for transport workers will differ from what it means for health workers, and the responsibilities of direct sole employers may differ in degree from those who are one of a number of entities that can influence a worker’s safety and health.

As discussed in Chapter 3, OSH laws in many jurisdictions exclude certain classes of workers, so that coverage is only partial, with some workers participating in OSH mechanisms working alongside others who are excluded. The fissuring of the employment relationship through the use of contractually fragmented working arrangements (whether or not involving an employment relationship), including platform-based, home-based and virtual work, has prompted some countries to reconsider the basis on which their OSH laws have been constructed. If OSH laws are based on the employment relationship only, then non-employees – such as self-employed workers, volunteers and interns – are not covered. Even those workers who are in an employment relationship and are technically covered by the law, if they work under non-regular arrangements – such as through temporary agencies or casually – may find that in practical terms they have little or no effective coverage.

In order to address this issue, Australian OSH law (which is now called “work health and safety law” to highlight its comprehensiveness) has been recast so as to replace terms such as “employer” and “employee” with wider terms such as “person conducting a business” and “worker” (see figure 5.3).⁴⁸

In Italy, the term “worker” (*lavoratore*) is defined as “a person who, regardless of the type of the contract, carries out a work activity within the organization of a public or private employer, with or without pay, even for the sole purpose of training”⁴⁹ and “employer” (*datore di lavoro*) is given an extended meaning.⁵⁰

China also avoids use of employer and employee terminology in its Work Safety Law. It refers to “entities engaged in production operations”, *congshi shengchan jingying huodong de danwei* (从事生产经营活动的单位),⁵¹ and uses a broader term for worker, *congyerenyuan* (从业人员), instead of a less inclusive

► **Figure 5.3. Work Health and Safety Act 2011 (Australia)**

Section 19, Primary duty of care

(1) A person conducting a business or undertaking must ensure, so far as is reasonably practicable, the health and safety of:

- (a) workers engaged, or caused to be engaged by the person; and
- (b) workers whose activities in carrying out work are influenced or directed by the person;

while the workers are at work in the business or undertaking.

(2) A person conducting a business or undertaking must ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.

term found in other labour statutes.⁵² The Law specifically provides that a business entity is responsible for temporary agency workers⁵³ and platform workers,⁵⁴ and for entering into arrangements with subcontractors to protect the safety of workers who are contracted out.⁵⁵ However, this broad approach has not yet been adopted consistently across all health and safety legislation. The Law on Prevention and Control of Occupational Diseases continues to use the narrow “employment relationship” language of other labour statutes, so that the self-employed and subcontractors, for example, are excluded, although temporary agency workers are covered.⁵⁶

In the Republic of Korea, the Occupational Health and Safety Act (KOSHAct), which was originally confined to employees in parallel with general labour law, has recently been extended to cover various forms of subcontracting arrangements, which are regulated in detail in the legislation, with the responsibility of business owners at various points in the contracting chain clarified.⁵⁷ These include arrangements at construction sites, in certain hazardous forms of manufacturing, in the delivery industry, and for certain forms of temporary agency work and franchise relationships.⁵⁸ While Japanese OSH law appears to cover principally employees,⁵⁹ it does, as in the Republic of Korea, extend to a range of contracting arrangements (including construction sites).⁶⁰

Where, as in the examples cited above, laws are broadly drafted or specifically extended to non-employees, responsibilities are no longer tied to specific contractual classifications but rather to the capacity to influence safety and health in practice. Under this approach, a head contractor on a building site, for example, has obligations to all workers on that site, irrespective of whether they are direct employees, self-employed, or otherwise engaged through a succession of contracts. Further, representation rights may be extended to all workers, and workplaces are broadly defined to include any place where a worker is “at work”. This kind of regulatory architecture stands a better chance of underpinning a broad, coherent, OSH response to events such as the COVID-19 pandemic, whose impact on the world of work is not differentiated according to contractual forms.

There are examples of the pandemic leading to a broadening of legislation through judicial interpretation. In the United Kingdom, the pandemic acted as a catalyst for an expansion of the main OSH law; the UK High Court found in a COVID-19-related case in 2020 that existing UK law did not comply with retained EU directives⁶¹ and extended the right to remove oneself from work and to PPE to all dependent workers, not only employees.⁶²

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Culture of prevention

Convention No. 187 provides that the principle of *prevention* should be accorded the highest priority.⁶³ The Convention mandates the development of a national preventive safety and health culture so that “individual and group values, attitudes, perceptions, competencies and behaviours ... contribute to health and safety management, and its development” in a dynamic and progressive way.⁶⁴

In realizing the prevention principle, the concept and practical application of *risk assessments* is fundamental.⁶⁵ As explained in section 3.1, this involves a methodical process of identifying hazards at work, considering the risk of harm and then acting to eliminate or, if that is not reasonably practicable, minimize the risk. There are various formulations of how to conduct risk assessments developed by the ILO⁶⁶ and Member States.⁶⁷ They commonly involve evaluating and prioritizing risks by considering the likelihood of occurrence of a hazardous event, its potential severity and the available measures for eliminating or minimizing the risk.⁶⁸ They also involve specifying who is responsible for implementing the measures, the time frames and a review process.

One jurisdiction whose OSH arrangements foster a culture of prevention is Japan. Japan has a system of “industrial physicians” in enterprises and in the inspectorate.⁶⁹ These industrial physicians must be established in undertakings with more than 50 employees;⁷⁰ the physicians are members of health (or health and safety) committees⁷¹ and play a central role in regular physical and mental health check-ups of workers.⁷² During the COVID-19 pandemic, the industrial physicians provided preventive measures such as voluntary workplace vaccinations. They were also useful for providing a systematic response to the mental health challenges emanating from the pandemic.

Clear duties and rights

An effective culture of prevention requires assigning responsibilities to various actors in the workplace and also specifying rights.⁷³ Convention No. 155 requires employers to “ensure, so far as is reasonably practicable” that a range of matters “under their control” are “safe and without risk to health”.⁷⁴ Those matters are the workplace in general, machinery, equipment, processes, as well as substances and agents. Where they cannot eliminate risk or otherwise control the risk to an acceptable level, employers need to provide “adequate PPE”⁷⁵ without cost to the worker.⁷⁶ These duties should focus on the capacity to influence OSH in a comprehensive way (rather than being based on contractual status) as espoused in Convention No. 190 and implemented in laws such as the Australian Work Health and Safety Act (2011).

While an undertaking may not be able to prevent every safety and health incident from occurring, it must undertake risk assessments at regular intervals in order to implement feasible measures to eliminate, or if that is not possible, to minimize hazards. For example, Chinese law provides for very extensive duties for persons with primary responsibility for health and safety in a business entity, such as establishing, improving and implementing internal safety and health systems, including risk assessments and training.⁷⁷ These systems involve the specification of clear responsibility within an undertaking⁷⁸ and a clear budget.⁷⁹

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An additional point is that it is not only undertakings that have obligations in a well-designed OSH system. Workers and their representatives are required to cooperate with employers in relation to safety and health.⁸⁰ In order to do so, they need to be given appropriate information and training.⁸¹ Alongside the cooperation obligation, workers have the right to remove themselves from a work situation which they have “reasonable justification to believe presents an imminent and serious danger to [their] life or health” without being subject to reprisals.⁸² This means that if cooperation breaks down, such as where a manager refuses to acknowledge a serious danger that may lead to production being suspended, workers can nevertheless act to safeguard themselves. In

such cases, as well as situations where workers have complained in good faith about an undertaking's breach of its health and safety obligations, the law should protect them against reprisals.⁸³ Employees in Australia, China, the Republic of Korea, Spain and the United Kingdom, among others, have this right.

Tripartite collaboration

The ILO's OSH instruments, and in particular the fundamental Conventions Nos 155 and 187, provide that the national policies, systems and programmes referred to in those Conventions need to be formulated "in consultation with the most representative organizations of employers and workers".⁸⁴ Where appropriate, a standing national tripartite advisory body should be established to address OSH issues.⁸⁵ Many such bodies have been active in the formulation of national policies to address COVID-19.⁸⁶ To be sure, the tripartite nature of collaboration does not entail the exclusion of other interested parties (for example health professionals), who can also be involved in national consultations.⁸⁷

Convention No. 155 also requires such consultation arrangements at the level of the undertaking.⁸⁸ Cooperation between management and workers is mandated as "an essential element" of action at that level.⁸⁹ Cooperation arrangements should include,⁹⁰ where appropriate and necessary, the appointment of worker safety delegates, and worker and/or joint safety and health committees with at least equal representation between workers and management.⁹¹ Recommendation No. 164 sets out the functions, rights and protections of these representative bodies.⁹² Recommendation No. 197 includes under the national OSH system a provision for the promotion, at the level of the workplace, of the establishment of safety and health policies and joint safety and health committees, and the designation of workers' OSH representatives, in accordance with national law and practice. The ILO Committee of Experts has reiterated in the two most recent General Surveys on OSH that without such cooperative arrangements between employers and workers "no tangible progress [...] can be achieved".⁹³

One important reason for this at the level of the undertaking is compliance. As we will see in section 5.7, enforcement by an inspectorate is an important means of achieving compliance. But as the ILO's Committee of Experts explains:



*No government would ever have the resources needed to carry out the necessary inspections that were really required to ensure, as far as possible, that people worked in a safe and healthy environment; cooperation between employers and workers in this area [is] essential.*⁹⁴

There is compelling international evidence that the active involvement of worker representatives in the formulation and implementation of OSH measures generally leads to better health and safety outcomes,⁹⁵ a finding also observed during the pandemic. The presence of union representatives can encourage individuals or groups of workers to speak out when they encounter a breach of OSH rules.⁹⁶

The importance of worker involvement at the level of the undertaking extends beyond compliance with existing laws to the formulation of new OSH policies, the active identification of hazards and the adoption of new measures to eliminate or mitigate the risk. Extensive worker involvement promotes dialogue not only on existing problems but also planned changes. It creates opportunities to investigate problems and communicate with staff, and facilitates the provision of training and information.⁹⁷

Many jurisdictions provide extensively for consultation arrangements either in the main legislation or in delegated regulations.⁹⁸ At the national level, many jurisdictions have long-standing tripartite arrangements for OSH standard-setting. For example, the setting of regulatory norms in Brazil takes place with the involvement of the Permanent Tripartite Joint Committee.

At the workplace level, many countries require, depending on the size of the firm, the establishment of a labour-management committee whose remit is OSH;⁹⁹ they may coexist with other consultation

bodies relating to broader labour issues¹⁰⁰ and may also include representatives from several different legal entities operating in the one establishment. Several countries provide for elected health and safety representatives; in some jurisdictions, such as Australia and the United Kingdom, these have inspector-like powers to inspect the workplace and (in the case of Australia) to stop work or require improvements.¹⁰¹ Unions also have the right in many jurisdictions to monitor compliance; for example, in Brazil¹⁰² and in China (although this does not extend to mandatory powers).¹⁰³

China's Law on Work Safety also provides for a work safety technical management body or dedicated expert personnel in larger enterprises (and in all enterprises in certain dangerous industries); these are responsible for formulating workplace rules and systems, implementing them, and preventing and correcting acts in violation of the rules.¹⁰⁴ There is a parallel structure for occupational diseases.¹⁰⁵ However, these are management bodies rather than a labour-management committee. Japan has similar arrangements involving technical experts¹⁰⁶ but it also mandates the inclusion of union or worker representatives on the safety committees and on the health committees (which can be consolidated into one comprehensive committee).¹⁰⁷

Unfortunately, mechanisms for tripartite collaboration, especially at the workplace level, are not a universal feature of OSH systems. In some jurisdictions, there is no provision for labour-management consultation, let alone a compliance role for elected OSH worker representatives.

Even those systems with strong collaborative arrangements need to consider how they can be more inclusive of all categories of workers. The development of subcontracting and the use of temporary

work, together with the prevalence of informal employment in many countries, have made consultation and cooperation arrangements more difficult to achieve. Traditional representative bodies for workers are relatively uncommon in these settings. Representative structures are also difficult to establish in micro and small enterprises, although several countries have devised innovative means of representing workers in such cases.¹⁰⁸

The COVID-19 pandemic, by accelerating developments such as virtual work, has exacerbated these difficulties at a time when representation is sorely needed. Innovative methods of ensuring that all workers' voices are heard in the formulation and implementation of OSH measures require development and diffusion. Yet while tripartite collaborative arrangements were severely disrupted by the COVID-19 pandemic, they began to re-emerge after the initial urgent promulgation of emergency measures. In Italy, national "anti-contagion" protocols were concluded between employer and worker organizations and the government in early 2020.¹⁰⁹ In Rwanda, worker organizations representing transportation workers, farmers and teachers negotiated with the Government over the extent of COVID-19 measures.¹¹⁰ In the United Kingdom, the National Health Service Staff Council, which comprises both management and union representatives, issued extensive material on work relations during the pandemic, including on managing long COVID-19 with sick leave, flexible working hours, pay protection and progression, overtime payments and return to work.¹¹¹

Workplace consultation arrangements were also used to implement COVID-19 measures. In Rwanda, some OSH committees contributed to assessing COVID-19 risk in workplaces, educating workers about the virus, altering work organization to avoid overcrowding, and permitting working from home. The Chinese Ministry of Human Resources and Social Security encouraged an active role for unions at the enterprise level on issues such as employee return to work and extended hours.¹¹² In Australia, the national industrial tribunal enforced workplace consultation requirements over issues such as vaccine mandates.¹¹³

The International Labour Conference's declaration that a safe and healthy working environment is a fundamental principle and right at work should encourage Member States to engage in a methodical review of their regulatory frameworks.

The International Labour Conference's declaration that a safe and healthy working environment is a fundamental principle and right at work, and the inclusion of Conventions Nos 155 and 187 among the fundamental Conventions, should encourage Member States to engage in a methodical review of their regulatory frameworks. The lessons learned from the pandemic can inform such reviews, so that more robust policies, systems and programmes can be implemented. Not only will this help Member States to be better prepared for future infectious diseases, but it should also lead to better health and safety outcomes overall, underpinned by collaborative workplaces imbued with a culture of prevention.

5.2. Equality of treatment and other safeguards for all contractual arrangements

Non-standard forms of employment should meet the legitimate needs of workers and employers and should not be used to undermine labour rights and decent work.

*Conclusions of the ILO Meeting of Experts on Non-Standard Forms of Employment*¹¹⁴

Key workers are over-represented in part-time employment, temporary employment, agency work and other multi-party arrangements. While in principle such employment arrangements should not preclude access to decent work, there are significant insecurities in practice, as documented in Chapters 3 and 4. ILO constituents recognize the legitimate need of employers for temporary and part-time employment and outsourced workers, but also recognize that, unless workers under these contractual forms have the same rights and protections as those in "standard" employment, there will be deficits in decent work.¹¹⁵ Such deficits can, in turn, lead to staff shortages, which is not a viable situation for ensuring the provision of key services. Thus there is a need to ensure equality of treatment regardless of contractual arrangement, in addition to other safeguards, as a means to avoid discrimination based on occupational status as well as to support fair competition for employers.

The discussion that follows provides guidance, based on international labour standards and current practice at the regional and national levels, on how to mitigate decent work deficits in part-time employment, temporary employment, agency work and other multi-party arrangements. It provides empirical information on legal protections around the world with a view to indicating shortcomings in protection that need to be addressed. While the guidance applies to all workers, the over-representation of key workers in these non-standard arrangements means that such regulatory changes will benefit key workers, as well as ultimately support the provision of key services.

Part-time employment

Part-time work can help workers enter or remain in the labour market by allowing them to combine paid work with care responsibilities, education, training, volunteer work or other personal endeavour. To be beneficial, part-time work should be a voluntary choice, with shifts between part-time and full-time work supported by regulation. A critical attribute to making part-time work of good quality is equal treatment, as required by the Part-Time Work Convention, 1994 (No. 175).

Convention No. 175 provides that part-time workers must receive the same protection as that accorded to comparable full-time workers in respect of freedom of association and collective bargaining, OSH and

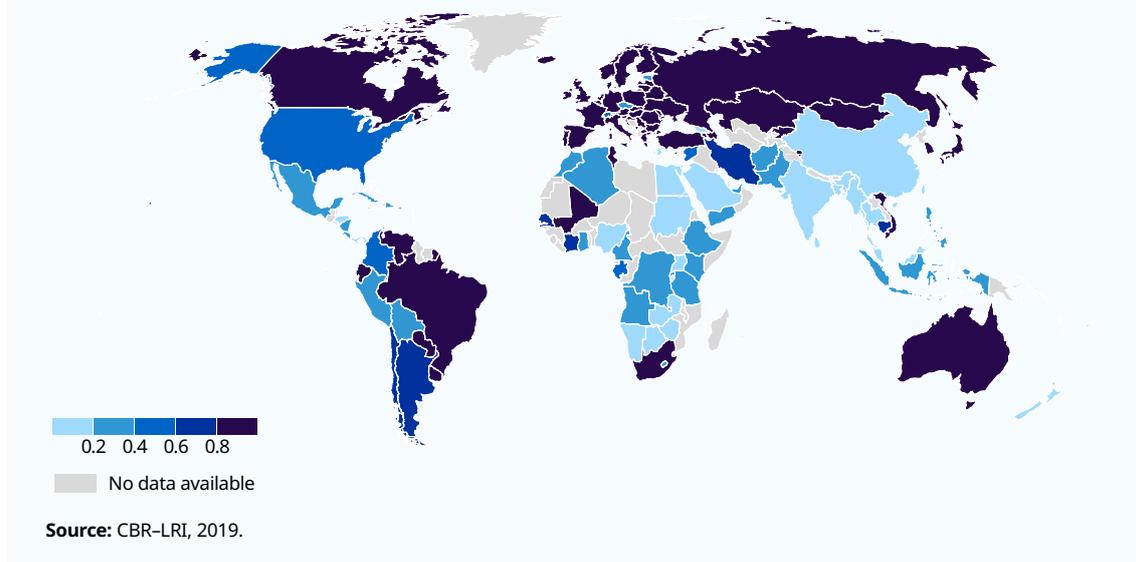
protection against discrimination in employment and occupation.¹¹⁶ In addition, their basic wage must not be proportionally lower solely because they work part-time.¹¹⁷ With regard to employment-based statutory social security schemes, maternity protection, termination of employment, paid annual leave and paid public holidays, and sick leave, part-time workers must enjoy conditions *equivalent* to those of comparable full-time workers. Pecuniary rights may be proportional to hours of work or earnings (the principle of *pro rata temporis*).¹¹⁸ Certain exceptions are allowed for part-time workers whose hours of work or earnings are below specified thresholds, provided such thresholds are sufficiently low as not to exclude an unduly large percentage of part-time workers and are periodically reviewed. This exception is, however, subject to regular reporting to the ILO and consultation with the most representative organizations of employers and workers.¹¹⁹

Figure 5.4 presents the equality of treatment between part-time and full-time workers based on a legal indicator developed by scholars at Cambridge University (Centre for Business Research Labour Regulation Index data set, CBR-LRI).¹²⁰ Countries are scored at the highest level only when the legal system recognizes an absolute right of equal treatment; a more limited right to equal treatment receives a lower score. As depicted in the map, this indicator varies significantly. While most high-income countries score highly, Switzerland and the United States score lower. Among upper-middle-income countries, Brazil, the Russian Federation, South Africa and Türkiye have high scores, whereas most lower-income countries have low scores, with a few exceptions in Asia and sub-Saharan Africa.

Another means of ensuring good quality part-time employment is to allow employees to switch between part-time and full-time work, and vice versa, according to their needs.

The Netherlands is an example of good practice in regard to part-time work. In 2019, 50 per cent of the employed population aged 15–64 worked part-time (75 per cent of women and 28 per cent of men).¹²¹ Most part-time employees are on permanent employment contracts, and the average hourly wage gap between full-timers and part-timers is negligible or non-existent.¹²² Under the Flexible Working Act of 2015, employees with at least six months of service with an employer that has at least ten employees are entitled to request a reduction (or an increase) of their working hours, with employers only allowed to refuse such requests on the grounds of substantial business reasons.¹²³ This policy has supported the diffusion of part-time work into higher occupational levels and organizational hierarchies and, most importantly, prevented part-time employment from becoming a trap for workers. As women are over-represented in part-time employment, this policy is instrumental for promoting gender equality.

► **Figure 5.4. Equality of treatment between part-time and full-time workers**



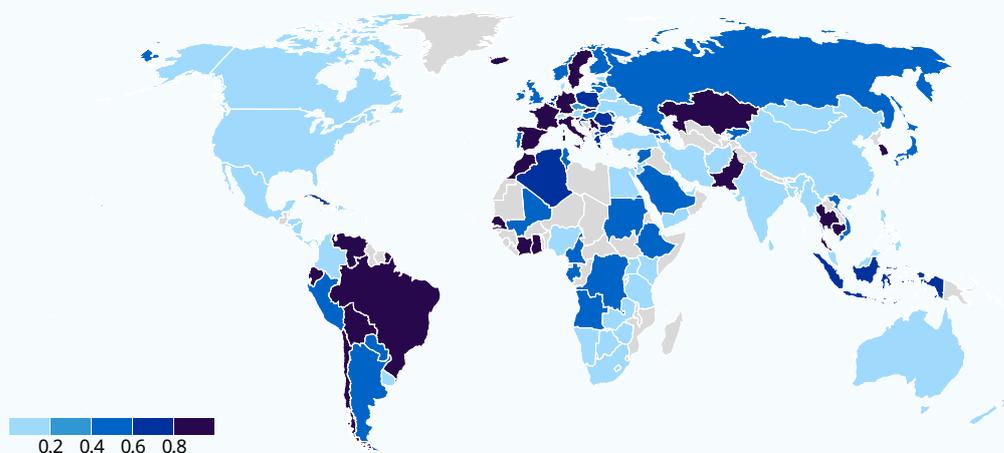
Temporary employment

Temporary employment is common in sectors providing essential goods and services, such as agriculture, retail and transport, due to seasonal fluctuations. Employers also use temporary employment to address specific short-term labour force needs, such as replacing an absent worker, meeting short-term spikes in demand or evaluating newly hired employees before offering them an open-ended contract. If properly managed, temporary employment can be a stepping stone into a more secure employment contract, or a means to engage in paid work while also meeting other personal commitments. However, when it is used solely as a means to reduce labour costs, it can contribute to labour market segmentation, whereby temporary workers cycle between temporary contracts and unemployment.¹²⁴ It can also lead to other deficiencies in working conditions as temporary workers are less likely to join a trade union out of fear of reprisal and have been shown to have greater OSH risks as a result of not receiving adequate training.¹²⁵

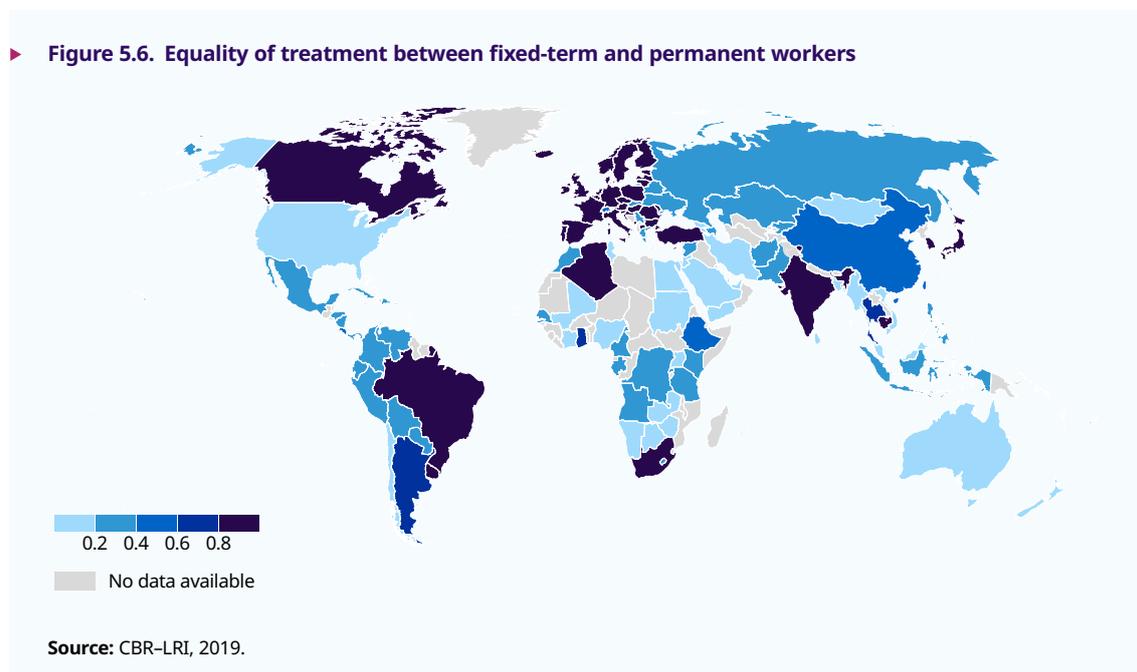
Although there is no existing international standard on temporary employment, the Termination of Employment Convention, 1982 (No. 158), requires the adoption of adequate safeguards against recourse to fixed-term contracts which aim to avoid the protection resulting from its provisions.¹²⁶ The Termination of Employment Recommendation, 1982 (No. 166), provides examples of such measures, such as limiting recourse to fixed-term contracts to situations in which open-ended contracts cannot be entered into – owing either to the nature of the work to be effected or to the circumstances under which it is to be effected or to the interests of the worker – and identifying cases where fixed-term contracts are deemed to be open-ended ones.¹²⁷ European Directive 1999/70/EC on fixed-term work recognizes that “employment contracts of an indefinite duration are the general form of employment relationships and contribute to the quality of life of the workers concerned and improve performance”; it requires the adoption of measures to prevent abuses arising from the successive use of fixed-term contracts. Around half of the countries for which information is available limit the maximum cumulative duration of temporary contracts to between two and five years.¹²⁸ This is illustrated in figure 5.5, which measures the maximum cumulative duration of fixed-term contracts permitted by law before the employment is deemed to be permanent, based on the CBR–LRI.¹²⁹ Countries scoring zero (lightest shade) either have no legal limit or have a legal limit of 10 years or more.¹³⁰

In addition to placing limits on its use, another critical supporting legislation for ensuring that recourse to temporary employment is not simply a means to reduce labour costs is the provision of equal treatment. Figure 5.6, based on the CBR–LRI data set, shows country variations on whether fixed-term workers have

► **Figure 5.5. Maximum duration of fixed-term contracts**



Source: CBR–LRI, 2019.

▶ **Figure 5.6. Equality of treatment between fixed-term and permanent workers**

the right to equal treatment with permanent workers, with a score of 1 indicating countries where the legal system recognizes an absolute right of equal treatment. A more limited right or a right against arbitrary treatment is scored lower. Western European countries and Canada, as well as Brazil, India, Japan, the Republic of Korea and South Africa all score high on this indicator. Low scores are reported from Australia, New Zealand and the United States, as well as from most of the Arab States and sub-Saharan Africa.

Reforming temporary labour migration schemes

As discussed in previous chapters, temporary labour migration schemes are used extensively in many parts of the world to attract migrant workers to particular sectors, particularly agriculture. Seasonal agriculture worker programmes are prevalent in North America, Western Europe and Israel. In regions such as the Arab States, temporary labour migration is the dominant form of migration, covering a wide array of sectors.¹³¹ In general, the programmes entail graduated status for different kinds of temporary migrants, with varying degrees of rights attached to particular visa systems.¹³² As a result, the workers are treated differently from native workers and there are important gaps in labour protection.

These gaps are most acute when the workers' visas are tied to a particular employer, which means that workers are unable to terminate employment, switch to a different employer, renew their work permit or leave the destination country without the approval of their employer.¹³³ The restrictions related to employer sponsorship should be abolished, as the freedom to choose one's employment is a basic tenet of national and international law. Yet in many countries, migrant workers under temporary visa arrangements can only work for the employer which has sponsored them. This is well documented in countries in Asia and in the Arab States,¹³⁴ but is also present in other parts of the world. However, internal labour market mobility can be achieved even in such cases. For example, during the COVID-19 pandemic, as an exceptional measure, the United States Department of Homeland Security allowed extensions to H-2A visas with new employers as part of the national emergency response, in order to secure a steady supply of agricultural workers and avoid disruptions in food supply chains.¹³⁵

Consideration should also be given to decoupling the seasonality associated with agricultural migrant schemes, given the well-documented administrative costs and the impacts on the workers.¹³⁶ Although there is seasonality in agricultural production, in practice, many workers continue to be engaged in the

agricultural production of various crops, resulting in year-round work but not necessarily under secure employment. In South Africa, for example, migrant workers in Citrusdal and Clanwilliam migrate between citrus, apple and table grape farms in the Western Cape.¹³⁷ In some instances, workers end up in irregular situations after the expiration of their permits but continue to be employed. These situations should be avoided, for instance by following the Employment Policy Recommendation, 1964 (No. 122), which calls for measures to even out seasonal fluctuations in employment, including the training of workers in seasonal occupations in complementary occupations. Decoupling seasonality would support the transition towards more inclusive societies while resolving the issue of restricted mobility.

Agency work and other multi-party arrangements

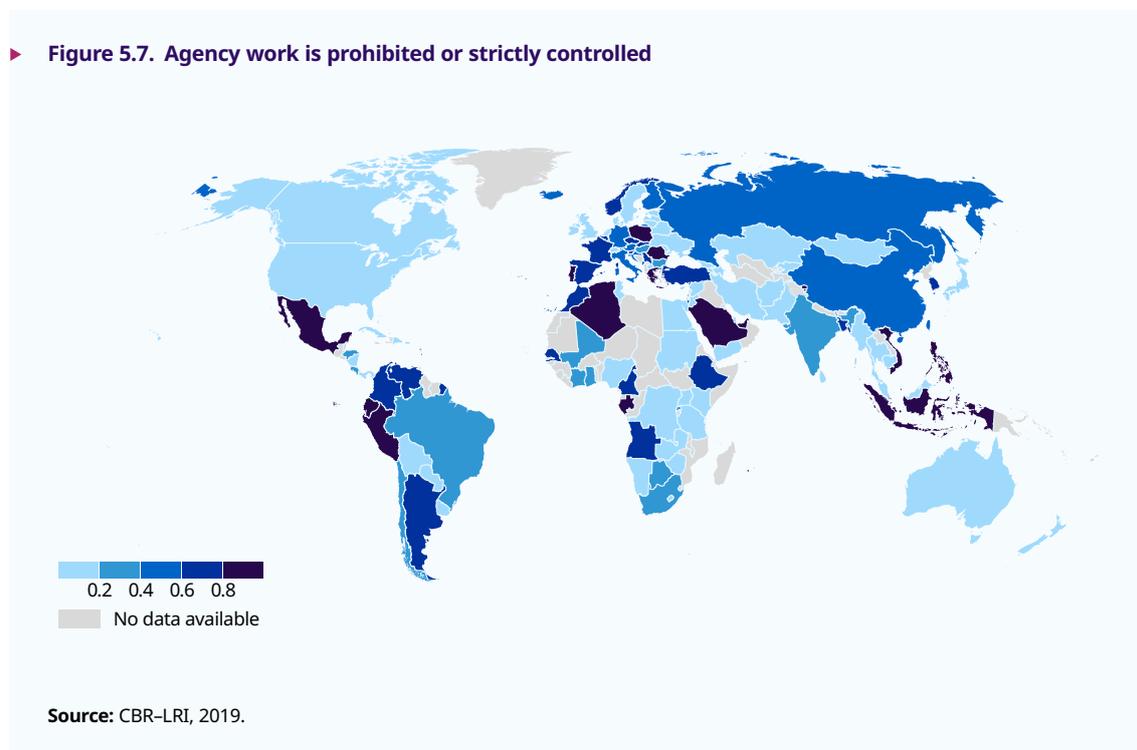
Under multi-party employment arrangements, work arrangements do not correspond to the traditional “bilateral” structure of the standard employment relationship, as the functions and managerial prerogatives traditionally concentrated with a single employer are distributed among several entities. This is true of both private employment agencies, whereby agency workers are employed and paid by the agency but their work is directed by the user firms, as well as subcontracting or franchising.¹³⁸ When more than one party has a role in determining working conditions, workers may find it difficult to identify the party responsible for their rights or they may have difficulty exercising their rights.¹³⁹ As mentioned in Chapter 3, subcontracting is common among key workers in cleaning and security, whereas agency work is widespread in manual work, especially warehouse work, and increasingly in healthcare.

The Private Employment Agencies Convention, 1997 (No. 181), and its accompanying Recommendation, 1997 (No. 188), include several provisions on ensuring the rights and protection of agency workers. To begin with, in order to prevent abuses, Convention No. 181 requires the supervision of agencies through a system of licensing or certification, except when they are otherwise regulated.¹⁴⁰ In addition, measures must be taken to ensure that agency workers are not denied the right to freedom of association or collective bargaining, and that agencies treat workers without discrimination on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, and without any other form of discrimination covered by national law and practice, such as that based on age or disability.¹⁴¹ It also prohibits deducting recruitment fees from the worker’s remuneration.

The Convention allows ratifying States, after consulting the most representative organizations of employers and workers concerned, to prohibit private employment agencies from operating in respect of certain categories of workers or branches of economic activity. In this vein, several countries limit or prohibit agency work in specific sectors and also limit its use in hazardous work, given the higher OSH risks. Following outbreaks in the meat packing industry in Germany during the COVID-19 pandemic, the government severely restricted the use of temporary agency workers and subcontracting in that sector.¹⁴²

In addition, the Private Employment Agencies Recommendation, 1997 (No. 188), provides that private employment agencies should not make workers available to a user enterprise to replace workers of that enterprise who are on strike.¹⁴³ Some national regulations also limit the use of agency work to cases where objective reasons exist for doing so, such as the need to replace an absent worker or to execute an activity that is not ordinarily carried out within the business. Agency work is also sometimes prohibited in the aftermath of dismissals for business reasons or collective dismissals, as a means to prevent standard jobs from being lost in favour of temporary agency work. Figure 5.7, based on the CBR–LRI, shows differences across countries in the restrictions on agency work, with 1 indicating that it is prohibited, 0.5 that there are substantive constraints on its use, and zero that there are no restrictions. As can be seen, there are fewer or no restrictions on agency work in North America, Eastern Europe, Australia and parts of South-east Asia and Africa.

The Private Employment Agencies Convention, 1997 (No. 181), and its accompanying Recommendation, 1997 (No. 188), include several provisions on ensuring the rights and protection of agency workers.

▶ **Figure 5.7. Agency work is prohibited or strictly controlled**

Source: CBR-LRI, 2019.

Subcontracting can be an effective strategy for allowing firms to concentrate on their core activities.¹⁴⁴ In some cases, however, subcontracting arrangements may be set up with the specific aim of shedding responsibilities and circumventing regulation. Many jurisdictions put in place remedies against these “sham” arrangements, where subcontractors not registered as private employment agencies merely hire out labour instead of providing a particular kind of work or service.¹⁴⁵ However, other specific measures are needed, as subcontracting can make it difficult for workers to identify the entity responsible for ensuring that their working conditions comply with the law, and to take action against subjects who are legally not their employers.¹⁴⁶

An important remedy is to establish shared liability in contractual arrangements involving multiple parties, as this gives principal firms the incentive to select reliable counterparts when entering into such arrangements. This is particularly critical with respect to OSH, as mentioned in section 5.1, and in accordance with the Occupational Safety and Health Convention, 1981 (No. 155). Convention No. 181 requires public authorities to allocate the respective responsibilities of private employment agencies and user firms in relation to OSH, but also to other areas, including collective bargaining, minimum wages, working time and other working conditions, statutory social security benefits, access to training, compensation in case of occupational accidents or diseases, compensation in case of insolvency and protection of workers’ claims, maternity protection and benefits, and parental protection and benefits.¹⁴⁷

Shared liability between the user firm and the private employment agency is stipulated in Argentina, Australia, France, India, Italy, Namibia, the Netherlands, Ontario (Canada) and South Africa.¹⁴⁸ Systems of shared liability can also work in tandem with incentives for principal firms to ensure that contractors comply with existing labour standards and thereby reduce their exposure to full joint and several liability. For instance, in Israel, the 2011 Act to Improve the Enforcement of Labor Laws helped to secure the rights of cleaning and security workers employed by contractors. The Act places “direct responsibility on the clients – not as employers but as guarantors – in cases of non-compliance by the contractor itself. So, for example, if the worker is not getting overtime payments required by law and a demand issued to the contractor did not yield results, the worker has an option to sue the client directly for the same amount”.¹⁴⁹

5.3. Safe and predictable working hours

The number of hours worked, the length and number of rest periods and how they are organized in a day, week or month have important consequences for the day-to-day lives of workers. With respect to working hours, Chapters 3 and 4 highlighted two main concerns among key workers: excessive working hours and unstable hours.

Excessive working hours (more than 48 hours per week) affect one out of every four key workers on average across countries, and are particularly prominent in security and transport as well as among the self-employed. As documented in the preceding chapters, working excessive hours negatively affects work-life balance and can also be detrimental to workers' health.

Since its foundation, working time has been at the heart of the ILO's mandate. The Preamble to the ILO Constitution calls for an improvement in working conditions by "the regulation of the hours of work, including the establishment of a maximum working day and week". Working hours were the subject of the first labour standard, the Hours of Work (Industry) Convention, 1919 (No. 1), which limits normal hours of work to eight hours per day and 48 hours per week in industry. Since then, there have been several Conventions and Recommendations, and one Protocol, addressing working hours and working time arrangements, including the adoption of the standard of the 40-hour week in the Forty-Hour Week Convention, 1935 (No. 47).¹⁵⁰ While the standards are foremost about total working hours, they also address other aspects of working time arrangements, including regulation on overtime (limits and compensation), maximum hours and rest periods.

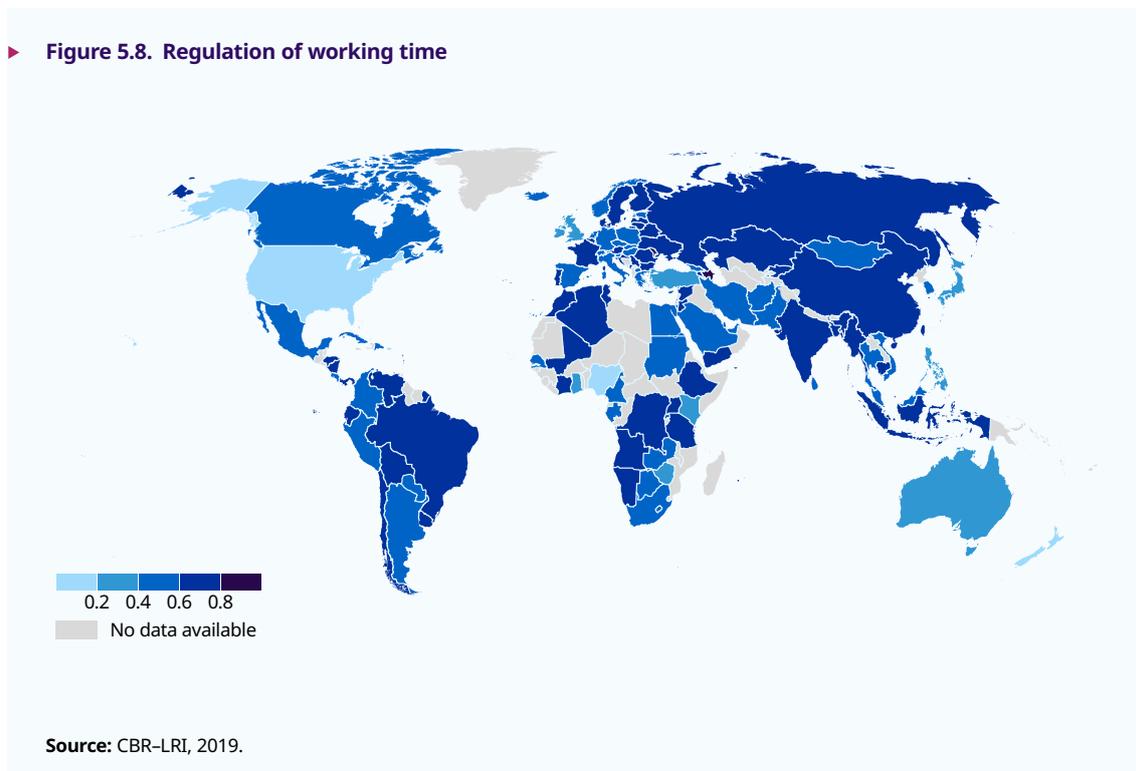
Figure 5.8 presents the CBR-LRI index of the regulation of working hours, which is a composite index of seven different indicators that assess how working hours are regulated in a particular legal system. The first two measures consider entitlements to annual leave and during public holidays. The next set of indicators look at whether the law mandates the payment of overtime premiums; one of these is focused on overtime during the working week and another on weekend working. The final three measures assess the legal limits placed on the total number of working hours. These include the maximum number of overtime hours permitted per week, the maximum duration of the normal working week exclusive of overtime, and the maximum number of permitted working hours in a day. As shown in the map, working time is a subject that is well regulated across most countries with scores largely falling in the 0.4–0.8 range. Nigeria and the United States are outliers in this area with exceptionally low levels of working time regulation. Australia, Japan, Kenya, the Philippines, Türkiye, the United Kingdom and Zimbabwe are also notable for their relatively low levels of regulation in this area.

Thus, a first step in addressing excessive working hours is to review existing national regulation on working time to ensure it is in line with ILO standards, including the Reduction of Hours of Work Recommendation, 1962 (No. 116). Recommendation No. 116 provides practical measures for the progressive reduction of hours of work, with a view to attaining the standard of the 40-hour week without any corresponding reduction in workers' wages. But while regulation is an important step in curtailing excessive hours, it would only apply to workers in an employment relationship. Self-employed workers are not covered by working time regulation laid down in labour laws and given the low incomes associated with much own-account work in the global South – particularly in agriculture or food vending – additional policy interventions are needed to address the low levels of productivity and low incomes that lead to lengthened working hours (see Chapter 6).

In other cases, however, it is not low productivity that is causing long working hours, but rather the shift to self-employment, some of which is bogus.

Excessive working hours affect one out of every four key workers on average across countries, and are particularly prominent in security and transport as well as among the self-employed.

▶ Figure 5.8. Regulation of working time



In Europe and the United States, misclassification in the long-haul trucking industry is a concern; re-classifying these workers as employees is thus a first step to addressing the long hours in this industry.¹⁵¹ Long working hours are also found in delivery work across the world, both traditional and app-based.¹⁵² Given the boom in e-commerce, this is an area that merits special attention. The long hours among key security and transport employees documented in Chapter 3 also point to problems with compliance that could be remedied with strategic compliance initiatives in these sectors (see section 5.7).

The other issue of concern with respect to working hours is unstable and unpredictable schedules, a practice that affects employees in some parts of the world, particularly in retail. As discussed in Chapter 3, when workers can be called at the employer's discretion and are not guaranteed a minimum number of hours or payment, their income security and work-life balance suffer. These problems are exacerbated if workers fear they may not to be offered more work if they turn down an offer for a particular shift or task, or if they are called and report for work but their shift is cancelled at the last minute.

A first step in addressing excessive working hours is to review existing national regulation on working time to ensure it is in line with ILO standards.

Measures to provide workers with a minimum number of guaranteed hours and to give them a say in their work schedules, including by limiting the variability of working hours, are therefore important protective tools. Only a few countries, however, have established a minimum of working hours for part-time employees to ensure them a minimum level of earnings.¹⁵³ In Germany, Ghana, the Netherlands, Papua New Guinea and the United States (limited to eight cities and two states), regulations require employers to pay their workers for a minimum number of hours when they report to work for a scheduled shift or are called in to work, even if the work is cancelled or reduced in length. Predictable scheduling is commonly addressed in collective bargaining agreements. Thus, an expansion of unionization and collective bargaining among retail workers would likely support the practice.

5.4. Wage policies to support valuation of key work

Section 3.5 demonstrated that, on average, key employees earn lower wages relative to other employees. While the difference in earnings between the two groups can be partly explained by differences in education and experience, one third of the gap in earnings remains unexplained. These results suggest that education and training policies aimed at upskilling key employees, while important, are insufficient and that measures more directly targeted at lifting the pay of key employees are needed. Collective bargaining offers a unique mechanism for regulating working conditions, including pay.¹⁵⁴ It provides a mechanism for workers who, on an individual basis, have less negotiating power to collectively negotiate with their employer or the representative employers' organization "new standards or implement, tailor and enhance minimum statutory standards".¹⁵⁵ Statutory minimum wages are another tool that can be used to protect key workers against unduly low pay.

The ILO Centenary Declaration for the Future of Work, which lays out a road map for a human-centred future, underscored the role of these wage-setting institutions by calling for "an adequate minimum wage", either statutory or negotiated. ILO Member States adopted several instruments that provide guidance to governments and the social partners on the establishment of adequate minimum wages, including the Minimum Wage Fixing Convention, 1970 (No. 131), and the Collective Bargaining Convention, 1984 (No. 154). Convention No. 131 sets out the framework for a broad scope of application of minimum wages, full consultation with the social partners, levels that take into account the needs of workers and their families and economic factors, adjustments from time to time, and measures to ensure effective application.¹⁵⁶ Convention No. 154 and the accompanying Collective Bargaining Recommendation, 1981 (No. 163), define the parties to collective bargaining and the purpose of the negotiations, and specify measures that might be taken to promote collective bargaining.¹⁵⁷

Wage-setting practices vary across countries, sectors and enterprises, depending on the level of economic development, the institutional setting and the relative negotiating position of the parties involved. Wages are the principal subject considered during collective bargaining, with a recent ILO global review finding that 95 per cent of collective agreements in the sample analysed included clauses on wages.¹⁵⁸ As collective bargaining agreements typically set the base wages for specific jobs or occupational categories, as well as wage differentials across groups of workers, collective bargaining is particularly appropriate for targeting wage inequities experienced by key employees in specific occupations. Beyond base wages, other components of remuneration can also be tackled by collective bargaining agreements, such as allowances and in-kind benefits, which constitute a significant share of the wage bill. Some collective agreements also include a variable component linked to productivity and performance.

In countries with higher collective bargaining coverage, key employees tend to receive similar wages to other employees. For a subsample of countries, for which both data on wages and collective bargaining coverage are available, the data show that the higher the coverage of collective bargaining in a country, the lower the average pay gap between key employees and other employees (figure 5.9).¹⁵⁹ This appears to be the case both for the average pay gap (figure 5.9, panel A) and its unexplained component, as defined in section 3.5. As such, it demonstrates the effectiveness of collective bargaining as an instrument for rectifying inequities in valuation of key work.

These results are in line with previous studies highlighting the link between collective bargaining and overall wage inequality. A recent assessment carried out by the ILO found that countries with higher bargaining coverage are also those with a lower ratio of the earnings at the top 10 per cent (ninth decile) to those at the bottom 10 per cent (first decile) of the earnings distribution.¹⁶⁰

In countries with high collective bargaining coverage, the pay gap between key and other employees tends to be lower.



These findings are also consistent with empirical studies suggesting that collective bargaining positively impacts labour income and the sharing of productivity gains. Specifically, the characteristics of collective bargaining systems influence labour market outcomes. A study based on a taxonomy of collective bargaining systems within OECD countries showed, for instance, that coordinated bargaining systems are associated with higher employment, better integration of vulnerable groups and lower wage inequality than fully decentralized systems.¹⁶¹

The scope of collective bargaining outcomes can be made more inclusive through the use of extension, which allows a broader population of employees to benefit from collective bargaining agreements. Extension permits a collective agreement's coverage to be administratively extended, under certain conditions, to all wage workers of a sector, branch, profession or geographical area. Recent studies have highlighted the use of extension to facilitate high collective bargaining coverage and incentivize membership of employers' organizations.¹⁶² Furthermore, collective bargaining outcomes may also have spillover effects in firms that are not legally covered by collective agreements. In South Africa, firms excluded from collective agreements tend to increase wages in line with those mandated by bargaining councils.¹⁶³

The negative relationship between the unexplained pay gap and collective bargaining coverage, presented in figure 5.9 (panel B) suggests that collective bargaining may help reduce inequalities in pay between key and other employees that are unrelated to skills. This is in line with studies highlighting that collective bargaining helps redress "structural" wage inequalities, such as those observed between male and female employees, that arise from a systematic undervaluation of women's work.¹⁶⁴ The effectiveness of collective bargaining in tackling structural wage inequalities partially stems from its effectiveness in reducing overall wage inequality. In addition, collective agreements can specifically reduce pay gaps observed between groups of workers through measures, such as recruitment practices and contractual arrangements, transparency of information or pay increases, that target certain categories of workers.¹⁶⁵

In particular, collective bargaining can help to close the wage gap between key and other employees when targeted at certain key occupations, such as feminized occupations. A case in point is the negotiations that resulted from a care worker's claim before the Employment Court of New Zealand on the motive that there was systemic undervaluation of care and support work because it was mainly performed by women. The government sought to resolve the case through out-of-court negotiations with trade unions, which resulted in a Care and Support Worker (Pay Equity) Settlement Act passed in June 2017. When the settlement was enacted on 1 July, workers received pay rises of between 15 and 50 per cent depending on their qualifications and experience.¹⁶⁶ Measures such as these are important for correcting the undervaluation of skills that is common in caring professions, but also other low-wage work (see box 5.1).

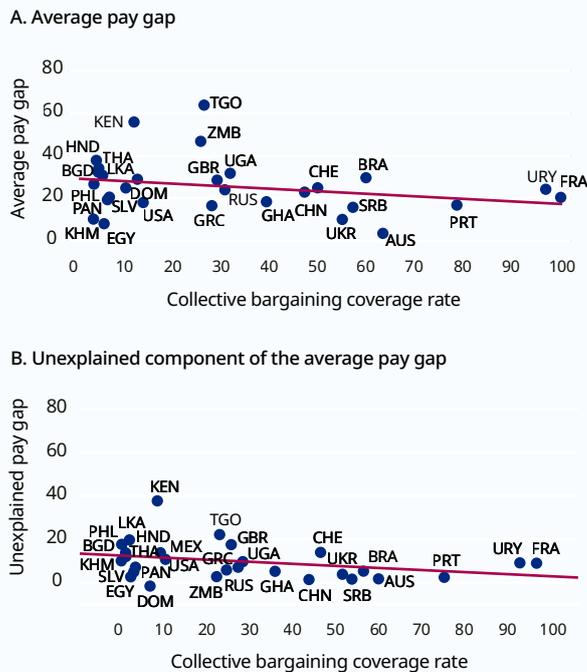
Box 5.1. Skill valuation: A contested terrain

Skills are commonly defined with reference to the acquisition of formal qualifications, leaving many informal skills necessary for accomplishing work in a particular occupation unrecognized and undervalued.¹ Such a framework contributes to the misconception that skill is objectively measurable.² A uniform and neutral skill scale does not exist; rather, the valuation of skills is contested, as it often reflects biases with regard to gender and ethnicity, with the valuation of skills evolving depending on who is doing what job.³ Much work involves “soft” skills, though these are often unrecognized despite their crucial role at work and in the quality of work delivered. Even at the peak of the COVID-19 pandemic, many key workers continued to provide services to customers and patients with patience, care and sympathy, while being under extreme strain.

Another anomaly is the discrepancy between existing skill indicators and income levels. For example, studies have found that skills such as critical thinking, problem solving and managerial competence are positively associated with wages, but the returns for such skills are less for workers in low-wage occupations even though many use these skills in their daily work.⁴ Moreover, at the bottom end of the wage distribution, social skills including coordination, negotiation, active listening, perceptiveness and social orientation are found to be negatively related to pay,⁵ despite the premium they command in professional and managerial occupations.⁶

In general, labour market transformations over recent decades, in particular the shift to services, have heightened the problem of skill valuation, as service sector jobs require social skills and deliver intangibles that are difficult to measure. The rising importance of “soft skills” has therefore accentuated the existing biases in skill recognition and introduced further ambiguity into skill definitions.⁷ The increasing appreciation of soft skills and emotional labour has not directly translated into valuation of these skills.

► **Figure 5.9. Average pay gap between key and other employees and its unexplained component, according to countries' collective bargaining coverage (percentage)**



Source: ILO estimates based on the list of surveys in the Appendix (table A5) and the ILO Industrial Relations database for the collective bargaining coverage rate (<https://ilostat.ilo.org/topics/collective-bargaining/>).

Box 5.1. (cont'd)

Skill invisibility and devaluation is a pressing issue for a number of key occupations. Care is typically associated with women's labour and treated as an innate female ability, and in the care sector deeply rooted gender inequalities are reflected in skill recognition and remuneration.⁸ Similarly, the inadequate recognition of migrants' qualifications feed into deskilling migrant workers' earnings, especially in agriculture but also in other sectors with a large presence of migrants, such as cleaning and sanitation.

¹ Payne, 2017.

² Osterman et al., 2022.

³ Payne, 2017; Rigby and Sanchis, 2006.

⁴ Pietrykowski, 2017.

⁵ Pietrykowski, 2017.

⁶ Deming, 2022.

⁷ Findlay, 2019.

⁸ ILO, 2018a.

Minimum wage policies can support key workers' wages

As key employees are more likely to be found at the lower end of the wage distribution, they are disproportionately affected by minimum wage policies. Indeed, across the countries that have established a minimum wage system for the private sector, the share of workers earning the minimum wage or less is estimated at 40 per cent on average for key employees, compared to 28 per cent for other employees (figure 5.10, panel A).¹⁶⁷ In these estimates, an employee who earns less than the minimum wage receives less than 95 per cent of the minimum wage value, while an employee paid at the minimum wage level earns between 95 and 105 per cent of the minimum wage value.¹⁶⁸ Among sampled countries, the proportion of key employees paid at or below the minimum wage is higher in middle- and low-income economies. On average, 42 per cent of key employees in middle-income countries (45 per cent in lower-middle-income countries and 39 per cent in upper-middle-income countries) and 53 per cent of key employees in low-income countries, earn the minimum wage or less. The exposure of key employees to minimum wages confirms that the minimum wage is an effective tool for raising the earnings of key workers.

At the same time, however, key employees disproportionately earn below the minimum wage level (figure 5.10, panel B). This may result from a lack of legal entitlements to the minimum wage or from higher rates of non-compliance with minimum wage regulations in regard to this population. Furthermore, the relative risk of exclusion from the scope of minimum wages for key employees is higher in countries with a lower level of development. The share of key employees paid below the existing minimum wage is indeed only 5 percentage points higher than for other employees in high-income countries, as against 11 and 28 percentage points differences in lower-middle-income and low-income countries, respectively (8 percentage points in upper-middle-income countries).

In middle- and lower-income countries, in particular, the higher shares of key employees paid below the minimum wage level may arise from their over-representation in industries or occupations that are legally excluded from these countries' minimum wages. For instance, along with domestic workers, agricultural workers are the group most frequently excluded from minimum wage systems.¹⁶⁹ On average across the sample used for analysis, food system workers account for 19 per cent of key employees, with many earning below the minimum wage. When covered by minimum wage systems, the rate for agricultural workers can be specific to the sector. This is the case, for instance, in Burkina Faso, Chad, Côte d'Ivoire, Madagascar, Mali, Morocco, Senegal and Togo, where the rate for agriculture (*salaire minimum agricole garanti*) is different from the rate in other sectors (*salaire minimum interprofessionnel garanti*). However, some of these countries, such as Morocco, have planned to reduce the gap between the two minimum wages.¹⁷⁰

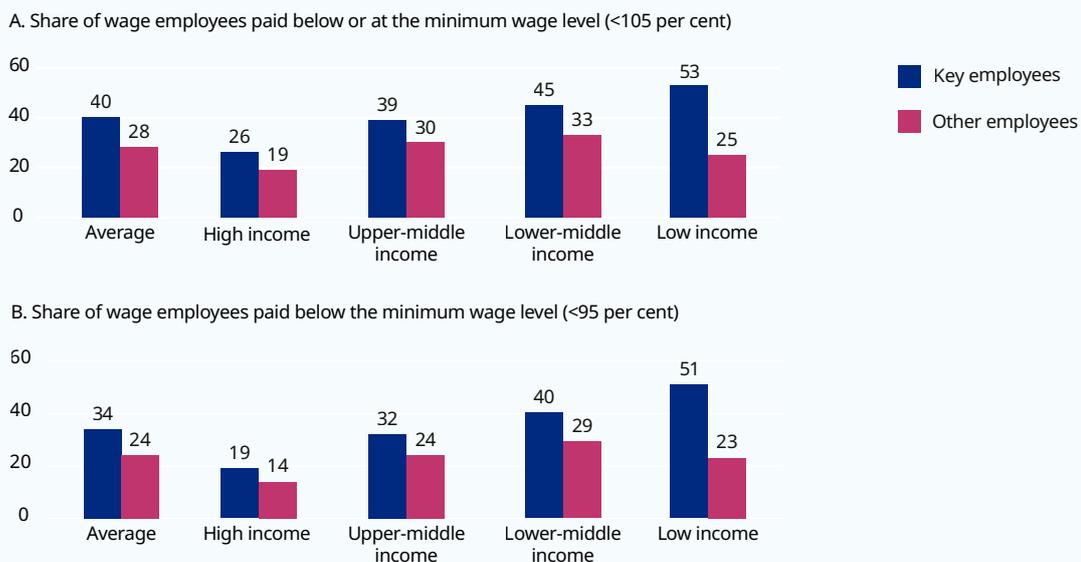
Even when key employees are covered by wage policies, high rates of non-compliance reduce the efficacy of minimum wages. Though all employees are covered by the law whether or not they have a formal employment contract, in practice oral contracts or non-registration of contracts – that is, not registering an employee in the social security system – are associated with non-compliance with labour protection, including the minimum wage. Working for an unregistered business also poses challenges for minimum wage enforcement.¹⁷¹ The guidelines set out in the ILO Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), on extending minimum wages to all workers in the informal economy can help to improve the earnings and working conditions of key workers.¹⁷²

Nevertheless, there is some indication that, even when not registered, some informal employees do receive the minimum wage, a practice observed in Latin America and referred to as the “lighthouse effect”.¹⁷³ The lighthouse effect is stronger when the minimum wage is set nationally for all sectors and occupations and there is a high degree of legal awareness among employers and workers.¹⁷⁴ In these circumstances, the minimum wage provides a benchmark for wage-setting in the informal economy. Through their impact at the bottom end of the wage distribution, minimum wages can also help reduce other earnings disparities. For instance, a recent analysis for Brazil shows that the increases in the minimum wage between 1999 and 2009 contributed to reductions in the racial earnings gap in Brazil.¹⁷⁵

The available evidence shows that key self-employed workers tend to receive lower monthly earnings than other self-employed workers (see box 3.4). While self-employed workers are not subject to minimum wage policies, there are policies that can support their earnings, either indirectly through sectoral investments in physical and social infrastructure (see Chapter 6), or through guidelines that set minimum payment levels for self-employed workers and improve pay transparency. For the road transport sector, which has a high share of dependent self-employed workers, the ILO has issued a document (“Guidelines on the promotion of decent work and road safety in the transport sector”) that calls for governments to establish mechanisms to improve the earnings of self-employed road transport drivers.

Even when key employees are covered by wage policies, high rates of non-compliance reduce the efficacy of minimum wages.

► **Figure 5.10. Share of wage employees paid below or at the minimum wage level (percentage)**



These include making provisions to support the following: recovery of fixed and variable costs (for example, fuel and tyres according to kilometres travelled); “payment for personal labour at the national minimum-wage rate or higher”; return on investment; and remuneration for both driving and subsidiary non-driving work activities.¹⁷⁶

Another important measure is to tackle “disguised employment”, given that the employment relationship is the entry point for labour protection, including minimum wage coverage. As mentioned earlier, the Employment Relationship Recommendation, 2006 (No. 198), provides guidance on devising policies to address employment misclassification.

5.5. Extending social protection for a resilient workforce

The experience of key workers during the COVID-19 pandemic underscored the importance of access to adequate social protection, especially paid sick leave and sickness benefits. Just over 40 per cent of key workers in low- and middle-income countries, are entitled to some form of social protection, pointing to important gaps in coverage (see section 3.6). In addition, certain subgroups of key workers, such as self-employed workers and those employed under non-standard work arrangements, are even more susceptible to partial or full exclusion from social protection. In the absence of broader social protection, extended to key workers, the labour market and society will be ill-equipped to manage future crises. In addition, social protection acts as an automatic stabilizer, cushioning the effects of downturns by providing replacement income, and thus limiting the aggregate effects of a crisis. Extending social protection is thus an investment in making workers and economies resilient to future challenges and crises. To this end, countries have introduced a range of strategies to expand social protection.

Extending scope of coverage. Several countries introduced changes to legal frameworks to include non-standard forms of employment, such as platform work, or self-employment. In India, the Code on Social

Security, adopted in 2020, amalgamated nine pre-existing social security legislations; changes to the Code represented the first step towards extending social protection to all workers, irrespective of their employment relationship.¹⁷⁷ Brazil and Indonesia extended mandatory social insurance coverage to self-employed workers.¹⁷⁸ The policy in Brazil increased the coverage of self-employed workers to 31 per cent, compared with 17 per cent in 2009. Mandatory employment injury insurance was also extended to workers in dependent employment relationships in Spain.¹⁷⁹

Tailoring and simplifying administrative access. Other countries introduced legislative changes and new policies tailored to the circumstances of self-employed workers and those in non-standard employment arrangements. For example, Brazil and China adapted payment schedules and better aligned contribution levels with the earnings patterns of self-employed workers. Brazil and the Republic of Korea introduced broad contribution categories to improve the eligibility of self-employed workers with fluctuating incomes. These two countries and Argentina also created policies subsidizing the contributions of low-income self-employed workers.¹⁸⁰ Finally, Uruguay simplified contributions to social security for self-employed workers and micro and small enterprises by requiring workers to pay one flat rate that includes tax and social security contributions, thereby entitling them to the same benefits as employees.¹⁸¹

The experience of key workers during the COVID-19 pandemic underscored the importance of access to adequate social protection, especially paid sick leave and sickness benefits.

Paid sick leave is essential for safe, healthy and productive workplaces

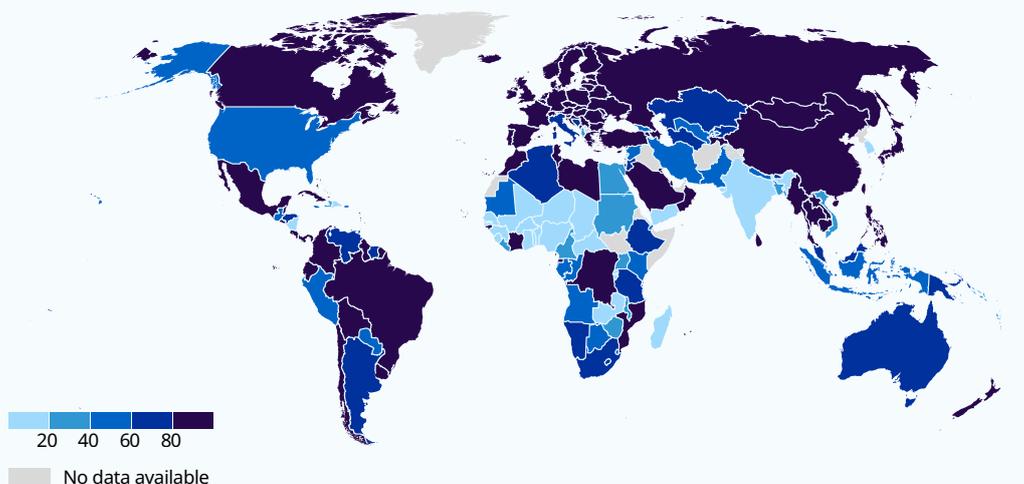
While access to comprehensive social protection is important, the pandemic highlighted the importance of paid sick leave and access to illness benefits for key workers.¹⁸² In particular, their experience demonstrated the adverse consequences of gaps in legislative coverage for both workers and businesses. In the absence of adequate income protection and paid sick leave, unwell workers went to work, jeopardizing their own health while also exposing others in the workplace to infection, hindering business production and economic recovery. Around the globe, 62 per cent of the labour force is legally protected in case of loss of income during sickness. This ranges from about 45 per cent in Africa to 91 per cent in Europe and Central Asia (see figure 5.11). Gaps in protection arise for several reasons.¹⁸³ In some cases, duration and eligibility criteria (that is, waiting periods) restrict access. In other cases, some workers are excluded (such as self-employed workers, casual workers or those paid hourly wages). General lack of awareness can also contribute to implementation gaps, even if workers are legally covered.

Several ILO standards provide policy guidance that can be used to eliminate the shortfall in legal coverage of paid sick leave and sickness benefits: the Income Security Recommendation, 1944 (No. 67); the Social Security (Minimum Standards) Convention, 1952 (No. 102); the Medical Care and Sickness Benefits Convention, 1969 (No. 130); and the Medical Care and Sickness Benefits Recommendation, 1969 (No. 134). Recommendation No. 67, in particular, states that “social insurance should afford protection, in the contingencies to which they are exposed, to all employed and self-employed persons, together with their dependants, in respect of whom it is practicable”.¹⁸⁴

In addition to (and aligned with) ILO standards, several lessons emerged from the pandemic, related to sickness leave and benefits, that will help ensure a resilient recovery in the areas described below.

- ▶ *Extending sick leave and illness benefits to uncovered groups.* Some countries legally extended sickness benefits to workers who would not have been eligible prior to the pandemic (Germany, Ireland, Portugal and the United Kingdom).¹⁸⁵ Given the importance of paid sick leave and sickness benefits as a preventive measure for the entire workforce, including excluded groups is critical for building a resilient workforce. Including the right to sick leave in legislation and universalizing access to sickness benefits will help achieve this goal.

▶ **Figure 5.11. Legal coverage of voluntary and mandatory sickness benefits, as a share of the labour force**



Source: ILO World Social Protection database.

- ▶ *Removing administrative barriers to reduce both legal and implementation gaps.* Several countries waived waiting periods (related to accessing earnings replacement) during the pandemic to expedite access (Australia, Canada, Denmark, Ireland and Sweden).¹⁸⁶ Eliminating or reducing waiting times in accordance with ILO standards (which specify that waiting periods for sickness benefits, where they exist, should not exceed three days¹⁸⁷) would eliminate coverage gaps due to delays in access. The use of online and mobile technology can also improve timely access to income support entitlements, including sickness benefits. Various countries (Colombia, Malawi, Morocco, Thailand and Togo) used mobile technology to deliver payments during the pandemic; these proved especially useful for reaching workers in the informal economy without bank accounts.
- ▶ *Recognizing care responsibilities.* Key workers have care responsibilities. In response, some countries, such as France, expanded the scope of sickness benefits to include workers in self-isolation or caring for children. The Medical Care and Sickness Benefits Recommendation, 1969 (No. 134), also recognizes that “appropriate provision should be made to help a person protected [by sickness benefits] who is economically active and has to care for a sick dependent”.¹⁸⁸
- ▶ *Sickness benefit extensions may require a rethink of adequate levels and financing.* Employer-financed provision of sickness benefits places an enormous burden on individual enterprises. Systems in which employers are solely responsible for the cost can incentivize firms, especially small firms with more limited financial resources, to avoid complying with paid sickness benefits for their employees. Moving forward, to extend coverage fully and adequately to excluded workers, additional resources may be necessary, alongside a rethink of how those resources are generated.¹⁸⁹ ILO standards suggest that collective financing is the most equitable and sustainable source, based on broad risk-pooling and solidarity. The Social Security Convention, 1952 (No. 102), specifies that payments should amount to at least 45 per cent of previous earnings, while the Medical Care and Sickness Benefits Convention, 1969 (No. 130), specifies at least 60 per cent.

5.6. Training for an adaptive and responsive key workforce

The empirical evidence discussed in the previous chapters has highlighted the importance of training opportunities for key workers (see, for example, section 3.7). On-the-job-training is a means to prepare workers for the tasks they perform, and ideally covers how to carry out their work safely. As such, it can be helpful for mitigating or responding to crises, as in the context of the OSH risks engendered by the COVID-19 pandemic. Technical and vocational education and training also enable key workers and their employers to adapt to longer-term fundamental changes in the labour market, and thus better prepare workers for a changing world of work, including changes induced by crises (for example, a shift towards the use of more environmentally friendly technologies within an occupation). Overall, training has the potential to improve both individuals' shorter-term working conditions and their longer-term access to quality employment.

The importance of training during crises is echoed in the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205).¹⁹⁰ Most relevant to the context of the COVID-19 pandemic and the experience of key workers, the Recommendation states that, during crisis situations, curricula

should be adapted, and teachers and instructors should be trained to promote “disaster risk education, reduction, awareness and management for recovery, reconstruction and resilience”. Similarly, “peaceful coexistence and reconciliation for peacebuilding and resilience” should be promoted through training, which may be more applicable in the context of other types of crises. In addition, individuals whose training was disrupted should be enabled to enter or resume and complete their education and training. Finally, during crises, training is recognized as relevant for addressing emerging skills needs in the labour market as well as the needs of those who lost their employment (Paragraph 19).

Four other ILO instruments are directly relevant when it comes to training:

- ▶ the Paid Educational Leave Convention (No. 140), and Recommendation (No. 148), 1974;
- ▶ the Human Resources Development Convention, 1975 (No. 142), and Recommendation, 2004 (No. 195).

The Human Resources Development Convention, 1975 (No. 142), requires “establish[ing] and develop[ing] open, flexible and complementary systems of general, technical and vocational education, educational and vocational guidance and vocational training, whether these activities take place within the system of formal education or outside it”.¹⁹¹ It encompasses a broadly defined range of education and training and calls for the extension of systems of information and guidance. The latter includes initiatives to make transparent to workers the training and education opportunities as well as the employment situations in different occupations, including “conditions of work, safety and hygiene at work” and “general aspects of collective agreements and of the rights and obligations of all concerned under labour law”.¹⁹² Thus, there is a direct link between the Convention and other aspects of working conditions that this report has emphasized as central for key workers.

Moreover, Convention No. 142 defines a multifaceted role of education and training. Not only shall such policies and programmes account for “employment needs, opportunities and problems”, but also “improve the ability of the individual to understand and, individually or collectively, to influence the working and social environment”.¹⁹³ Education and training are therefore placed in the context of economic and social development, and are seen as addressing employment needs, workers’ interests and broader societal needs.¹⁹⁴ This emphasis on societal needs may be relevant during crises.

Likewise, the Human Resources Development Recommendation, 2004 (No. 195), follows a broad understanding of education and training, linking it to lifelong learning. Lifelong learning pertains to the development of competencies and qualifications by individuals of all ages.¹⁹⁵ The Recommendation states that national frameworks should “promote the development, implementation and financing of a transparent mechanism for the assessment, certification and recognition of skills”, including those that were acquired in informal learning arrangements.¹⁹⁶ These measures would strengthen the labour market prospects of key workers by allowing for the portability of their skills across sectors, industries, enterprises and educational institutions.¹⁹⁷ This is especially relevant for migrant workers, whose skills are often not recognized or compensated accordingly.

Meanwhile, the Paid Educational Leave Convention (No. 140) and Recommendation (No. 148), 1974, focus on educational measures for individuals who have already entered the labour market. These instruments state that countries should promote the granting of paid education leave – “for a specific period during working hours, with adequate financial entitlements” – for training at any level; general, social and civic education; and trade union education. They thus underscore how training is relevant throughout one’s working life, and that work-based training should be institutionalized for older workers.

Most recently, renewed attention has been paid to apprenticeships. Again, these are regarded as a means to facilitate the entry of young workers into the labour market, but also to allow older workers to retrain and upskill in contemporary labour markets.¹⁹⁸ Apprenticeships take various forms and differ in importance across regions and countries with varying degrees of economic development.

The “gold standard” typically combines systematic on-the-job training with classroom-based instruction, and has a long tradition in countries such as Austria, Denmark, Germany and Switzerland.¹⁹⁹

A proposed instrument for quality apprenticeships is on the agenda of the 111th Session of the International Labour Conference in 2023.²⁰⁰ The proposed instrument, among other things, details a regulatory apprenticeship framework, which covers areas such as OSH, the recognition of prior (formal, non-formal or informal) learning, learning outcomes and curricula, the balance between off- and on-the-job training, procedures for assessing and certifying competencies, and acquired qualifications. The proposal is also concerned with working conditions for apprentices, including remuneration, working hours, entitlement to paid leave and social security, training in respect of OSH, discrimination, violence and harassment, and access to effective complaint and dispute resolution mechanisms. The proposed instrument regards apprenticeships as a means to improve longer-term transitions and employment prospects by upgrading skills, enhancing employability, and helping to facilitate the transition to formalization and more secure employment arrangements.²⁰¹

Against this background, it is disconcerting that many key workers lack access to training. As shown in section 3.7, this issue is most severe in low-income and lower-middle-income countries. Increasing key workers’ access to training – especially in poorer countries – would be one means to enhance their ability to cope with economic shocks and improve their working conditions and labour market prospects. Training cannot be the sole responsibility of the worker with the mere expectation that workers improve their skills to remain competitive in contemporary labour markets. Rather, as reflected in the other sections of this chapter, it must be one component of a broader policy mix that strengthens the rights and working conditions of key and other workers.

The active involvement of both workers’ and employers’ organizations, in addition to governments, is also important. Employers can benefit from this involvement, given the potential of training to enhance productivity and help ensure that firms’ skills demands are met.²⁰² South Africa is an interesting example, as its institutions demonstrate a commitment to tripartite dialogue and decision-making in skills development. At the sectoral level, unions, workers’ organizations and, where relevant, the government are represented on the boards of various Sector Education and Training Authorities (SETAs). SETAs develop skills plans, including for apprenticeships. They are responsible for creating learning programmes, registering training agreements and providing training grants. SETAs also play a role in placing learners in firms and are involved in assuring training quality.²⁰³

Several SETAs cover sectors that are particularly relevant for key workers, such as agriculture, health and welfare, safety and security, food and beverage, manufacturing and transport.²⁰⁴ For example, the Transport Education Training Authority (TETA) is concerned with various key occupations that faced challenges during the COVID-19 pandemic, including warehouse workers, seafarers and drivers of trucks, buses or taxis. To illustrate some of TETA’s activities, in the taxi subsector, 620 individuals were financially supported to participate in training courses during 2020/21. TETA’s longer-term goal for this subsector is to foster formalization and professionalization among taxi drivers in South Africa. One initiative, which targeted female taxi drivers, was concerned with training these drivers, preparation of business plans and registration of their businesses.²⁰⁵

5.7. Turning law into practice: Compliance and enforcement

Too often, ILO Member States have legislation in place that follows the normative guidance of ILO standards while in practice the labour protection that workers receive diverges tremendously from that guidance. The divide between law and practice hinges on compliance. Globally, 36 per cent of workers, or

approximately 550 million workers, are informally employed.²⁰⁶ Being in an informal employment relationship means that the employee is either not covered by the law (as is the case with some agricultural and domestic workers) or, more likely, that the employer is not in compliance with the regulation. While the causes of informality are multifaceted and require a wide range of policy interventions, including sectoral interventions (see Chapter 6), there is a need to address failures in compliance with labour regulation. Indeed, nearly 7 per cent of total informal employment (affecting approximately 140 million workers) is in registered production units (“the formal sector”) and yet the employees do not benefit from labour and social protection.

Compliance is the act of obeying a particular law or rule; enforcement is the process of making sure that a law or rule is obeyed.²⁰⁷ Compliance with the law can be through enforcement, but it also includes employers’ and workers’ voluntary actions, without the direct intervention of an inspector. Social norms, corporate social responsibility systems, incentive schemes and, most importantly, tripartite collaboration and stakeholder involvement, all support compliance with labour regulations.

Policies, systems and programmes designed to promote labour, OSH, and social security laws more generally, will be radically undermined if adequate enforcement systems are not in place.²⁰⁸ The establishment of labour inspection is a long-standing recommendation of the ILO, dating to its Constitution. Several ILO standards deal specifically with labour inspection, including two governance Conventions: the Labour Inspection Convention, 1947 (No. 81), and its Protocol of 1995, and the Labour Inspection (Agriculture) Convention, 1969 (No. 129). ILO instruments concerning working conditions also include provisions for labour inspection.²⁰⁹ Fundamental Convention No. 155 provides that a national system shall include an “adequate and

Policies, systems and programmes designed to promote labour, OSH, and social security laws more generally, will be radically undermined if adequate enforcement systems are not in place.

Box 5.2. The ILO approach to strategic compliance through labour inspection

The traditional model of enforcement is characterized as reactive (complaint-driven) and punitive. It is also not always effective, partly because of long-standing problems with resources, but also because enforcement on its own does not necessarily achieve compliance. Employers subject to enforcement actions may comply initially and then revert to non-compliance, or may persistently not comply despite repeated enforcement actions. In addition, changes in the world of work, such as the proliferation of global supply chains, the diffusion of non-standard employment and new technologies, make the traditional enforcement model – which was better suited to large industrial undertakings – less effective.

Strategic compliance methods use proactive, targeted and tailored strategies based on data-driven diagnoses of compliance influences, which more effectively target priority issues and employers, and engage stakeholders inside and outside governments. The approach combines deterrents, incentives, awareness-raising and guidance interventions to empower workers to exercise their rights and motivate employers to meet their duty to comply.

In 2021, nine countries and territories (Botswana, Colombia, Côte d’Ivoire, Eswatini, Indonesia, Madagascar, the Occupied Palestinian Territory, the United Republic of Tanzania and Zambia) worked in partnership with the ILO to implement strategic compliance plans across various economic sectors. As a result, labour law compliance increased by 39 per cent in the targeted sectors, improving the working conditions of an estimated 108,000 workers.

Source: ILO, 2017e.

appropriate system of inspection”²¹⁰ together with appropriate sanctions.²¹¹ States and regulators also have important informational responsibilities in relation to providing guidance to undertakings²¹² and, more broadly, in providing OSH content in education and training programmes.²¹³

Yet, despite the importance of inspection, inspectorates are under-resourced throughout the world, with many countries reporting a long-term decrease in the resources allocated to inspectorates. In the United States, for example, in fiscal year 2020 there were 774 federal and 1,024 state OSH inspectors to inspect 10.1 million workplaces, or one inspector for every 82,881 workers – the lowest ratio since the federal agency’s establishment.²¹⁴ In Rwanda, labour inspection is decentralized to the district level; yet there are no OSH specialists working in the districts. There is also no structured training in OSH for new inspection recruits.²¹⁵ There is thus a great need to increase staff and financial resources for labour inspection – including investments in digital tools that can support inspectorates²¹⁶ – for countries at all levels of income.

The adequacy of resources is not the only aspect of enforcement. *How resources are deployed* is also critical, an aspect which includes enforcement strategy, enforcement mandate and enforcement powers.

- ▶ *Enforcement strategy: mixing educative and punitive functions is best.*²¹⁷ When inspectorates limit their activities to enforcement, they miss opportunities for educating workplaces on how best to adapt their activities to comply with the law. Where they rely purely on education, they fail to respond to recalcitrant and cynical behaviour by managers who wilfully or recklessly disregard workplace safety and health. According to the ILO *Guidelines on General Principles of Labour Inspection*, “optimal results in terms of compliance can best be achieved by combining broad compliance promotion efforts, including provision of information and technical advice, with well-targeted controls, and the appropriate use of deterrent sanctions and injunctions”.²¹⁸ In addition, new approaches to inspection, such as the ILO’s strategic compliance methodology have proven to be effective for boosting compliance (see box 5.2).
- ▶ *Enforcement mandate: comprehensive coverage is needed.* Some labour inspection systems are limited in scope, excluding domestic workers²¹⁹ or independent contractors – or, in the case of the United States, small farms.²²⁰ A more extensive jurisdiction is needed to avoid neglecting non-employees, who are often the most vulnerable workers. Indeed, according to the ILO *Guidelines on General Principles of Labour Inspection*, the “mandate of labour inspection should apply equally to all workers and all workplaces in all sectors, whether private or public, in rural and urban areas, in the formal and the informal economy, in respect of which legal provisions relating to conditions of work and the protection of workers while engaged in their work are enforceable by labour inspectors”.²²¹
- ▶ *Enforcement power: broad powers are more effective.* The powers of inspectors vary. In Australia, Brazil, China, Italy and Japan, for instance, inspectors have wide evidence-gathering and enforcement powers, including to prohibit activities and to order improvements or, if necessary, the closure of facilities.²²² In contrast, inspectors of workplaces in general industry (as opposed to mining) in the United States have more limited powers; they must seek court orders to shut down any operations, although they may gather evidence and recommend penalties and required improvements.²²³ Broad enforcement powers can more effectively address OSH hazards or labour violations.

In addition to these broad recommendations, there is also a need for *tailored activities for specific groups such as migrant workers*. With respect to migrants who are part of temporary labour migration schemes, there is a need for clearly defined “firewalls” between labour standards enforcement agencies and immigration enforcement agencies. More worrisome is when labour inspectorates are used as a means of enforcing immigration law. In the General Survey of reports concerning Labour

Inspection Conventions and Recommendations (2006), the ILO Committee of Experts on the Application of Conventions and Recommendations recalled that:

 *[T]he primary duty of labour inspectors is to protect workers and not to enforce immigration law. In some cases the Committee has noted that a large proportion of inspection activities are spent on verifying the legality of the immigration status. Since the human and other resources available to labour inspectorates are not unlimited, this would appear to entail a proportionate decrease in inspection of conditions of work.²²⁴*

Moreover, labour inspectors need to be trained on issues specific to migrant workers, including fair recruitment, and inspections should be carried out on sites that are difficult to reach, such as farms and export processing zones.

Public procurement: An effective tool for boosting compliance

Another tool that can be used to support compliance with legal provisions on working conditions, to the benefit of key workers, is public procurement. The Labour Clauses (Public Contracts) Convention (No. 94) and Recommendation (No. 84), 1949, seek to remove labour costs as an element of competition among bidders for public contracts, thereby ensuring that public contracts do not induce a downward pressure on working conditions.²²⁵ The European Commission Directive on Public Procurement (2014/24/EU) offers an example of a public procurement measure in support of compliance with decent working conditions. The Directive defines a framework to embed labour rights requirements into public contracts tendered by EU Member State authorities, through the obligation of Member States to take measures to ensure compliance, including with respect to subcontractors.²²⁶

Notes

- 1 ILO, 2019b.
- 2 Deakin and Wilkinson, 2005.
- 3 See Casale, ed., 2011; ILO and European Labour Law Network, 2013; ILO, 2016c.
- 4 Hayter, 2015.
- 5 ILO, 2022g.
- 6 See also the Protocol of 2002 to the Occupational Safety and Health Convention, 1981, and the Occupational Safety and Health Recommendation, 1981 (No. 164).
- 7 See also the Occupational Health Services Recommendation, 1985 (No. 171).
- 8 See also the Promotional Framework for Occupational Safety and Health Recommendation, 2006 (No. 197).
- 9 See also the Violence and Harassment Recommendation, 2019 (No. 206).
- 10 For a comprehensive account, a key resource is ILO, 2022d. The two most recent General Surveys on work health and safety (2009 and 2017) are also key sources of information.
- 11 Occupational Safety and Health Convention, 1981 (No. 155), Art. 4(1) and C.187 Art. (1)(a).
- 12 C.155, Art. 4(2).
- 13 Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), Art. 3(3).
- 14 C.155, Art. 5.
- 15 C.155, Art. 5. See also C.187, Art. 3.
- 16 C.155, Art. 6.
- 17 C.155, Arts 4, 6 and 7; ILO, 2017d: para. 92.
- 18 Occupational Health Services Convention, 1985 (No. 161), Art. 2.
- 19 C.187, Art. 1(b).
- 20 C.187, Art. 4 (1).
- 21 C.187, Art. 4(2); ILO, 2017d, para. 123.
- 22 See also C.155, Art. 10.
- 23 See, in particular, C.161, Arts 3 and 5.
- 24 See also C.155, Art. 11(e).
- 25 C.187, Art. 4(3); ILO, 2017d, para. 124. See also R.197, Paras 2–5.
- 26 R.197, Paras 3 and 4.
- 27 ILO, 2017d, para. 124.
- 28 C.155, Art. 15. See also R.164, Para. 7; ILO, 2017d, para. 139.
- 29 C.187, Art. 1(c). Programmes should be formulated on the basis of a national profile, which sets out the key elements of a national OSH framework (R.197, Paras 13–14).
- 30 C.187, Art. 5(1).
- 31 C.187, Art. 5(2)(a) and (b).
- 32 C.187, Art. 5(2)(c) and (d); R.197, Para. 8.
- 33 For example, for five years: ILO, 2017d, para. 147.
- 34 Japan, [Industrial Safety and Health Law \(Law No. 57\)](#) of 8 June 1972 as amended, Chapter II.
- 35 In Rwanda, in addition to an overarching OSH plan, there is a National Occupational Safety and Health Strategy 2019–2024 formulated by the Ministry of Public Service and Labour. The plans in China and the Republic of Korea also have a five-year time frame.
- 36 Republic of Korea, [Act on Designation of Essential Work and Protection and Support for Essential Workers \(No. 18182\)](#) of 18 May 2021. Article 2 provides that “Essential work” means work necessary to protect people’s lives and bodies or to maintain social functions even in the event of a disaster”.
- 37 Republic of Korea, Act No. 18182, arts 6–8. Regional committees may also be established.
- 38 Republic of Korea, Act No. 18182, art. 11.
- 39 C.155, Art. 1(1). See also ILO, 2022d, Chapter 2.
- 40 C.155, Art. 1(2).
- 41 C.155, Art. 1(3); ILO, 2017d: para. 131; ILO, 2009, para. 46.
- 42 ILO, 2009, paras 17–26 and 46.
- 43 Violence and Harassment Convention, 2019 (No. 190), Art. 2(2).
- 44 C.190, Art. 2(1).
- 45 C.190, Art. 3.
- 46 C.190, Art. 9.
- 47 C.155, Art. 16(1).
- 48 Johnstone, 2019. Similar terminology is used in New Zealand. Compare also with Singapore, where the duties of employers have been complemented by parallel duties imposed on an “occupier”, which is very broadly defined. Likewise, the term “employee” is given a very expanded meaning, covering volunteers, agency workers and trainees (see Singapore, [Workplace Safety and Health Act](#) of 1 March 2006, Parts 4 and 11). Occupier includes “the person who has charge, management or control of those premises” irrespective of ownership.
- 49 Italy, Consolidated Law on Health and Safety Protection in the Workplace (Legislative Decree No. 81) of 9 April 2008, art. 2.
- 50 Italy, Legislative Decree No. 81, art. 2: “The holder of the labour relationship with the worker or, in any case, the subject who, according to the type and structure of the organization in which the worker is employed, has the responsibility of the organization itself or of the production unit, exercising decision-making and spending powers”.
- 51 China, [Law of the People’s Republic of China on Work Safety](#) of 29 June 2002, art. 2 (从事生产经营活动的单位).
- 52 See the [National People’s Congress interpretation of the law](#).
- 53 China, Law of the PRC on Work Safety, arts 28 and 61.
- 54 China, Law of the PRC on Work Safety, art. 4.
- 55 China, Law of the PRC on Work Safety, art. 49.
- 56 Chinese labour law is actually based around “labour relationships” which have some significant differences from “employment relationships” in other countries. See Cooney et al., forthcoming.
- 57 Republic of Korea, [Occupational Safety and Health Act \(No. 14788\)](#) of 18 April 2017 (KOSHAct), Chapter V.
- 58 This precise applicability is determined by Presidential Decree.
- 59 Japan, Law No. 57, art. 2(ii).
- 60 Japan, Law No. 57, arts 15, 29–32.
- 61 European Council, [Council Directive on the introduction of measures to encourage improvements in the safety and health of workers at work](#) (89/391/EEC) of 12 June 1989 (OSH

- "Framework Directive"; European Council, [Council Directive on the minimum health and safety requirements for the use by workers of personal protective equipment at the workplace](#) (89/656/EEC) of 30 November 1989.
- 62 United Kingdom, High Court of Justice, *R (on the application of the TWGB) v. Secretary of State for Work and Pensions and others*, Case No. CO/1887/2020, 13 November 2020.
- 63 C.187, Arts (1)(d) and 5(2)(a); ILO, 2017d, paras 23, 34 and 312.
- 64 C.187, Art. (1)(d); ILO, 2017d, 312–352.
- 65 C.187, Art. 3.
- 66 See C.187, Art. 3(3); ILO, 2014.
- 67 See, for example, European Council Directive 89/391/EEC, Art. 6. See also European Agency for Safety and Health at Work, n.d.(b).
- 68 See ILO, 2022d, 128.
- 69 Japan, Law No. 57, art. 13.
- 70 Japan, Law No. 57, arts 18 and 19.
- 71 Japanese law provides for both separate and consolidated health and safety committees.
- 72 Japan, Law No. 57, arts 66–66-9.
- 73 See also R.164, Paras 10, 14 and 15; ILO, 2009, paras 169–204.
- 74 C.155, Art. 16 (1) and (2).
- 75 C.155, Art. 16 (3). PPE should be used as either a last resort or to further enhance existing measures (see ILO, 2009: para. 170).
- 76 C.155, Art. 21; R.164, Para. 10(e).
- 77 China, Law of the PRC on Work Safety, art. 21; China, [Law of the People's Republic of China on the Prevention and Control of Occupational Diseases](#) of 1 May 2002, arts 20 and 34.
- 78 China, Law of the PRC on Work Safety, Art. 22; China, Law of the PRC on Prevention and Control of Occupational Diseases, art. 26.
- 79 China, Law of the PRC on Work Safety, art. 23; China, Law of the PRC on Prevention and Control of Occupational Diseases, art. 21.
- 80 C.155, Arts 19(a) and (b), and 20; R.164, Para. 16.
- 81 C.155, Art. 19 (c) and (d); R.164, Para. 14.
- 82 C.155, Art. 13. See also C.155, Arts 5(e) and 19(f).
- 83 R.164, Para. 17.
- 84 For example, C.155, Arts 4, 8, and 15; C.187, Arts 2, 3(3), 4 and 5; R.197, Para. 10.
- 85 Where appropriate. C.187, Art. 4(3)(a).
- 86 ILO, 2022b.
- 87 R.197, Paras 2(b) and 9.
- 88 C.155, Art. 19(e).
- 89 C.155, Art. 20.
- 90 "Where appropriate and necessary ... in accordance with national practice".
- 91 R.164, Para. 12(1). See also R.197, Para. 5(f).
- 92 R.164, Para. 12(2).
- 93 ILO, 2009, para. 205; ILO, 2017d, para. 195.
- 94 ILO, 2009, para. 205. Indeed, as discussed above, this insight was a key driver of the Robens reforms that led to our modern OSH frameworks.
- 95 See, for example, Weil, 1991; Walters, 2006; Gunningham, 2008. See also Harter et al., 2020.
- 96 On the need for workplace monitoring independent of employer control, see Estlund, 2010.
- 97 Walters, 2006, 94–95.
- 98 See for example, United Kingdom, [Safety Representatives and Safety Committees Regulations \(No. 500\)](#) of 1 October 1978; United Kingdom, [The Health and Safety \(Consultation with Employees\) Regulations \(No. 1513\)](#) of 1 October 1996; European Council, OSH "Framework Directive", Arts 10 and 11; Australia, [Work Health and Safety Act \(No. 137\)](#) of 29 November 2011, Part 5; Brazil, [Consolidation of Labour Law \(CLT\) No. 5.452](#) of 1 May 1943, arts 163–165; Brazil, [Regulatory Norm NR5 – Internal Commission for Accident Prevention \(CIPA\)](#) of 14 July 2011.
- 99 See, for example Republic of Korea, KOSHAct, art. 24; Rwanda, [Ministerial Order N°01/Mifotra/15 Determining Modalities of Establishing and Functioning of Occupational Health and Safety Committees](#) of 15 January 2015.
- 100 See for example, Brazil, [Federal Constitution](#), art. 11; and Brazil, CLT, art. 510-A et seq.
- 101 See, for example, Australia, Work Health and Safety Act, Part 5, Division 7; United Kingdom, The Safety Representatives and Safety Committees Regulations 1977.
- 102 Brazil, [Law No. 8.213](#) of 24 July 1991.
- 103 China, Law of the PRC on Work Safety, arts 7 and 60; China, Law of the PRC on Prevention and Control of Occupational Diseases, arts 4 and 40.
- 104 China, Law of the PRC on Work Safety, arts 25 and 26.
- 105 China, Law of the PRC on Prevention and Control of Occupational Diseases, art. 26.
- 106 Japan, Law No. 57, Chapter 3.
- 107 Japan, Law No. 57, arts 17–19.
- 108 See ILO, 2017d, para. 201.
- 109 For example, see the Protocol for the prevention and safety of workers in the health, social and welfare services in relation to the health emergency COVID-19, signed on 24 March 2020, and the shared Protocol for transport and logistics, signed on 20 March 2020. See also Benincasca and Tiraboschi, 2020.
- 110 Interviews by the author of the country study.
- 111 NHS Employers, n.d.
- 112 Chinese Ministry of Human Resources and Social Security, n.d. According to some reports, though, several local unions in China appeared to deny that COVID-19 was a work safety issue and did not want to get involved.
- 113 Australia, Fair Work Commission, [Construction, Forestry, Maritime, Mining and Energy Union, Mr Matthew Howard v Mt Arthur Coal Pty Ltd](#), Case No. C2021/7023, 3 December 2021.
- 114 See ILO, 2015c.
- 115 See ILO, 2015c.
- 116 Part-Time Work Convention, 1994 (No. 175), Art. 4.
- 117 C.175, Art. 5.
- 118 C.175, Arts 6–7.
- 119 C.175, Art. 8.
- 120 The CBR–LRI provides information on labour laws in 117 countries. The maps are prepared on the basis of scores assigned for the year 2020, which are the most recent data available in the CBR–LRI. The CBR–LRI quantifies legal rules according to a leximetric coding methodology that seeks to "measure cross-national and intertemporal variations in the content of legal rules". The term "leximetric" refers to the process of translating legal materials into a form suitable

- for statistical analysis. For more details on the CBR–LRI, see Adams et al., 2017.
- 121 European Commission, 2022.
- 122 For more details see ILO, 2016c, and Visser, 2022.
- 123 Employees can also request changes to their schedules and place of work.
- 124 ILO, 2016c.
- 125 Quinlan, 2015.
- 126 Termination of Employment Convention, 1982 (No. 158), Art. 3.
- 127 Termination of Employment Recommendation, 1982 (No. 166), Para. 3.
- 128 ILO, 2016c.
- 129 The score is normalized from 0 to 1, with higher values indicating a shorter permitted duration. The score equals 1 if the maximum limit is less than 1 year and 0 if it is 10 years or more, or if there is no legal limit.
- 130 Adams et al., 2017.
- 131 ILO, 2022f.
- 132 ILO, 2022f.
- 133 See ILO, 2017a.
- 134 See Kouba and Baruah, 2017; ILO, 2017a.
- 135 See United States Department of Homeland Security, [Temporary Changes to Requirements affecting H-2A Non-immigrants due to the COVID-19 National Emergency: Partial Extension of Certain Flexibilities](#), Federal Register 85 (162): 51304–51312.
- 136 ILO, 2022f.
- 137 M. Visser, 2023.
- 138 ILO, 2016c.
- 139 Weil, 2014; Prassl, 2016.
- 140 Private Employment Agencies Convention, 1997 (No. 181), Art. 3.
- 141 C.181, Arts 4 and 5.
- 142 Eurofound, n.d.
- 143 Private Employment Agencies Recommendation, 1997 (No. 188), Para. 6.
- 144 ILO, 2016c.
- 145 ILO, 2016c.
- 146 Weil, 2014; Prassl, 2016.
- 147 C.155, Art. 12.
- 148 ILO, 2016c.
- 149 Davidov, 2016.
- 150 ILO, 2018g.
- 151 Viscelli, 2022; Heyes and Hastings, 2017.
- 152 ILO, 2021s.
- 153 ILO, 2016c.
- 154 Collective bargaining is defined as a process of voluntary negotiation between one or more employers (or their organizations) and one or more workers' organizations.
- 155 ILO, 2022g, 14.
- 156 ILO, 2020i.
- 157 ILO, 2015b.
- 158 ILO, 2022g.
- 159 For more information about the calculation of collective bargaining coverage and other ILO indicators on industrial relations, see ILO, n.d.(b).
- 160 ILO, 2022g.
- 161 Garnero, 2021.
- 162 Hayter and Visser, 2018; Visser, 2013.
- 163 Bassier, 2021.
- 164 ILO, 2018e, 172.
- 165 Pilinger, Schmidt and Wintour, 2016.
- 166 New Zealand Ministry of Health, n.d.
- 167 In the studied sample (see Appendix for further information), Egypt, Maldives and Zambia did not have a minimum wage at the time of the survey and are therefore not included in the statistics shown.
- 168 Analysis based on the methodology used in ILO, 2020i.
- 169 ILO, 2020i.
- 170 Morocco, n.d.
- 171 Morocco, n.d.
- 172 In its Part V, ILO Recommendation No. 204 stipulates that “through the transition to the formal economy, Members should progressively extend, in law and practice, to all workers in the informal economy, social security, maternity protection, decent working conditions and a minimum wage that takes into account the needs of workers and considers relevant factors, including but not limited to the cost of living and the general level of wages in their country”.
- 173 Souza and Baltar, 1979; Maloney and Nuaez Mendez, 2003; Boeri, Garibaldi and Ribeiro, 2010.
- 174 Lee and McCann, 2011.
- 175 Derenoncourt et al., 2021.
- 176 ILO, 2020j.
- 177 ILO and ISSA, 2022.
- 178 ILO and ISSA, 2022.
- 179 ILO, 2021s.
- 180 ILO and OECD, 2020.
- 181 ILO, 2021s.
- 182 While paid sick leave is remunerated, it is usually limited in duration and provided by an employer. Sickness benefits guarantee an income when earnings, provided during sick leave, are suspended.
- 183 ILO, 2020o.
- 184 Income Security Recommendation, 1944 (No. 67), Para. 17.
- 185 ILO, 2021o.
- 186 ILO, 2020p.
- 187 Medical Care and Sickness Benefits Convention, 1969 (No. 130), Art. 26(3).
- 188 Medical Care and Sickness Benefits Recommendation, 1969 (No. 134), Para. 10.
- 189 ILO, 2020p.
- 190 See also ILO, 2021m.
- 191 Human Resources Development Convention, 1975 (No. 142), Art. 2.
- 192 C.142, Art. 3, paras 2 and 3.
- 193 C.142, Art. 1, paras 2, 4 and 5.
- 194 ILO, 1991.
- 195 See Human Resources Development Recommendation, 2004 (No. 195), Art. 2.
- 196 C.195, Art. 11(1).
- 197 See C.195, Art. 11(3).
- 198 ILO, 2017b; ILO, 2021a.

- 199 Eichhorst et al., 2015.
- 200 ILO, 2022c.
- 201 ILO, 2022c.
- 202 ILO, 2017b.
- 203 Marock, 2017; ILO, 2021a.
- 204 National Government of South Africa, n.d.
- 205 Transport Education Training Authority, 2021.
- 206 ILO, 2018h.
- 207 Cambridge University Press, n.d.(a); Cambridge University Press, n.d.(b).
- 208 See, for example, Dickens, ed., 2012; Gunningham and Johnstone, 1999; Weil, 2008.
- 209 ILO, 2006.
- 210 C.155, Art. 9 (1).
- 211 C.155, Art. 9(2).
- 212 C.155, Art. 10; R.164, Para. 4(d).
- 213 C.155, Art. 14.
- 214 Speiler, forthcoming.
- 215 Cooney et al., forthcoming.
- 216 See ILO, n.d.(g).
- 217 Pires, 2008; C.175, Art. 5; Etienne, 2015; Tombs and Whyte, 2013.
- 218 ILO, 2022f.
- 219 See, for example, Blackett and Koné-Silué, 2019.
- 220 Speiler, forthcoming.
- 221 ILO, 2022f.
- 222 Australia, Work Health and Safety Act (No. 137), Parts 9 and 10. See Brazil, [Regulatory Norm NR3 – Embargo and Prohibition](#) of 19 January 2011; China, Law of the PRC on Work Safety, arts 65 and 70; China, Law of the PRC on Prevention and Control of Occupational Diseases, arts 63, 64 and 77. In China, the powers of inspectors and the penalties were strengthened in 2021. Japan, Law No. 57, Chapter X.
- 223 United States Department of Labor, [OSH Act](#) of 29 December 1970, Section 13(a), 29 USC § 662(a). In the United States, when there is no specific standard, OSHA inspectors may seek enforcement under the employer's general duty, which appears to give the agency broad enforcement powers. However, in fact, proving this type of violation is onerous because judicial decisions now require that the agency provide expert evidence regarding risks and abatement.
- 224 ILO, 2006.
- 225 ILO, 2008b.
- 226 ILO, 2021f.