

# ILO STANDARDS ON EMPLOYMENT INJURY BENEFIT

The right to protection against employment injury is enshrined in the Universal Declaration of Human Rights (UDHR), 1948, and the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966. The realization of this right requires the application of safe and healthy working conditions, the prevention, treatment and control of occupational diseases, and the provision of adequate benefits, in cash or in kind, that ensure access to adequate health care and income security to victims of employment injury and their dependent family members.<sup>1</sup>

Protection from employment injury has been the object of a number of Conventions and Recommendations adopted by the ILO from its early days. According to Convention No. 102 (Part VI), any condition that impacts negatively on health and which is due to a work accident or an occupational disease, and the incapacity to work and earn that results from it, whether temporary or permanent, total or partial, must be covered. The protection also includes, where a worker dies as a consequence of an employment injury or occupational disease, the loss of support suffered by her or his dependants. Accordingly, the provision must include medical and allied care, with a view to maintaining, restoring or improving the health of the injured person and her or his ability to work and attend to personal needs. A cash benefit must also be paid to the injured person or his/her dependants, as the case may be, at a guaranteed level and on a periodic basis, serving an income replacement or support function. Where the disability is slight, the benefit can, under certain conditions, be paid as a lump sum.

The Employment Injury Benefits Convention, 1964 (No. 121), and its accompanying Recommendation, No. 121, set higher standards, mainly in terms of population coverage and level of benefits to be provided. Convention No. 121 also recognizes the importance of an integrated approach for improving working conditions, limiting the impact of employment injuries and facilitating the reintegration of persons with disabilities in the labour market and in society; for such purposes this Convention requires the State to take measures to prevent employment injuries, provide rehabilitation services and ensure that displaced workers find suitable re-employment.

Since its establishment in 1919, the ILO has played a major role developing an internationally defined normative framework guiding the establishment, development and maintenance of social security systems across the world, and has become the world's leading point of reference for efforts to this end. Elaborated and adopted by the Organization's tripartite constituents, governments, employers' and workers' representatives of all ILO member States, and stemming from the Organization's mandate, the Conventions and Recommendations that compose this framework are unique: they establish standards that States set for themselves, building on good practices and innovative ways of providing enhanced and extended social protection in countries from all regions of the world. At the same time, they are built on the notion that there is no single perfect model for social security; on the contrary, it is for each society to develop the best means of guaranteeing the protection required. Accordingly, they offer a range of options and flexible routes for their application, which can be achieved through a combination of contributory and non-contributory benefits, general and occupational schemes, compulsory and voluntary insurance, and different methods for the administration of benefits, all directed at ensuring an overall level of protection which best responds to each country's needs.

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<sup>1</sup> UDHR, Article 25(1), ICESCR, Art. 7 (b), 12 (b) and (c). See also ICESCR, General Comment No. 19, "The right to social security" (Art. 9), paras 2 and 16(e).

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	<u>ILO C. 102</u>	<u>ILO C. 121</u>	<u>ILO R. 121</u>
<b>What should be covered</b>	<p>The following due to an accident or a prescribed disease resulting from employment:</p> <p>(a) a morbid condition;            (b) incapacity for work involving suspension of earnings;            (c) total loss of earning capacity or partial loss, likely to be permanent, or corresponding loss of faculty; and            (d) loss of support suffered by the widow or child as the result of the death of the breadwinner;</p>	<p><b>Art. 6:</b> The following due to an employment injury:</p> <p>(a) a morbid condition;            (b) incapacity for work resulting from that condition and involving suspension of earnings;            (c) total loss of earning capacity or partial loss thereof in excess of a prescribed degree, likely to be permanent, or corresponding loss of faculty; and            (d) loss of support suffered as the result of the death of the breadwinner by prescribed categories of beneficiaries;</p> <p><b>Art. 7:</b> State shall prescribe a definition of industrial accident.</p> <p><b>Art. 8:</b> State shall prescribe a list of diseases and include in its legislation a definition of occupational diseases.</p>	<p><b>Para. 5: Industrial accidents:</b></p> <ul style="list-style-type: none"> <li>- accidents, regardless of their cause, sustained during working hours at or near the place of work or at any place where the worker would not have been except for his employment;</li> <li>- accidents sustained within reasonable periods before and after working hours in connection with transporting, cleaning, preparing, securing, conserving, storing and packing work tools or clothes;</li> <li>- accidents sustained while on the direct way between the place of work and the employee's principal or secondary residence; or the place where the employee usually takes his meals; or the place where he usually receives his remuneration.</li> </ul> <p><b>Para. 6: Occupational diseases:</b> State should, under prescribed conditions, regard diseases known to arise out of the exposure to substances or dangerous conditions in processes, trades or occupations as occupational diseases. Unless proof to the contrary is brought, there should be a presumption of the occupational origin of such diseases where the employee was exposed for at least a specified period and has developed symptoms of the disease within a specified period following termination of the last employment involving exposure.</p>

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	<u>ILO C. 102</u>	<u>ILO C. 121</u>	<u>ILO R. 121</u>
<b>Who should be covered</b>	<p>- classes of employees, not less than 50 per cent. of all employees, and in case of death of the breadwinner, their wives and children</p>	<p><b>Art. 4:</b> All employees, including apprentices, in the public and private sectors, including co-operatives and, in respect of the death of the breadwinner, prescribed categories of beneficiaries.</p> <p>Exceptions permitted:</p> <p>(a) persons whose employment is of a casual nature and who are employed otherwise than for the purpose of the employer's trade or business;</p> <p>(b) out-workers;</p> <p>(c) members of the employer's family living in his house, in respect of their work for him;</p> <p>(d) other categories of employees, which shall not exceed in number 10 per cent. of all employees other than those excluded under clauses (a) to (c).</p> <p>State may exclude, by declaration:</p> <p>seafarers, including seafishermen and public servants.</p>	<p><b>Para. 3:</b> Members of co-operatives who are engaged in the production of goods or the provision of services; prescribed categories of self-employed persons, in particular persons owning and actively engaged in the operation of small-scale businesses or farms; certain categories of persons working without pay, which should include: persons in training, undergoing an occupational or trade test or otherwise preparing for their future employment, including pupils and students, members of volunteer bodies charged with combating natural disasters, with saving lives and property or with maintaining law and order, other categories of persons not otherwise covered who are active in the public interest or engaged in civic or benevolent pursuits, such as persons volunteering their services for public office, social service or hospitals, prisoners and other detained persons doing work which has been required or approved by the competent authorities. Special schemes applicable to seafarers, including seafishermen, and to public servants should provide benefits not less favourable than those provided for in C. 121.</p>
<b>Financing</b>	<p>Employees should not contribute more than 50% of the overall costs for social insurance.</p> <p>Convention also asks to avoid hardship situations on contributors.</p>	<p><b>Art. 11:</b> The rules on the delivery of medical care and allied benefits have to be designed to avoid hardship.</p>	

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<p><b>Amount of benefit</b></p>	<p><u>In case of a morbid condition:</u> adequate medical care benefits (Art. 34)</p> <p><u>In case of incapacity for work or invalidity:</u></p> <ul style="list-style-type: none"> <li>- Periodical payment/pension: Earnings-related benefit: at least <b>50%</b> of former earnings;</li> <li>- Flat-rate benefit: at least <b>50%</b> of wage of unskilled worker.</li> </ul> <p><u>In case of death of the breadwinner:</u></p> <p>Pension:</p> <p>At least <b>40%</b> of former earnings or of wage of unskilled worker.</p>	<p><b>Art. 9 &amp; 10:</b> <u>In case of a morbid condition:</u> adequate medical care and allied benefits which shall comprise: (a) general practitioner and specialist in-patient and out-patient care, including domiciliary visiting; (b) dental care; (c) nursing care at home or in hospital or other medical institutions; (d) maintenance in hospitals, convalescent homes, sanatoria or other medical institutions; (e) dental, pharmaceutical and other medical or surgical supplies, including prosthetic appliances kept in repair and renewed as necessary, and eyeglasses; (f) the care furnished by members of such other professions as may at any time be legally recognized as allied to the medical profession, under the supervision of a medical or dental practitioner; and (g) the following treatment at the place of work, wherever possible: (i) emergency treatment of persons sustaining a serious accident; (ii) follow-up treatment of those whose injury is slight and does not entail discontinuance of work.</p> <p><b>Art. 11:</b> The rules on the delivery of medical care and allied benefits have to be designed to avoid hardship.</p> <p><b>Art. 13 (art. 19 &amp; 20):</b> <u>In case of incapacity for work or invalidity:</u></p> <ul style="list-style-type: none"> <li>- Periodical payment/pension: Earnings-related benefit: at least <b>60%</b> of former earnings;</li> <li>- Flat-rate benefit: at least <b>60%</b> of wage of unskilled worker.</li> </ul> <p><u>In case of death of the breadwinner:</u></p>	<p><b>Para. 9:</b> <u>In case of incapacity for work or invalidity:</u></p> <ul style="list-style-type: none"> <li>- No less than two-thirds of the injured person's earnings;</li> <li>- Flat-rate benefit: No less than two-thirds of the average earnings of persons employed in the major group of economic activities with the largest number of economically active male persons.</li> </ul> <p><b>Para. 11:</b> Provision should be made to defray the reasonable cost of the constant help or attendance of another person in cases in which the injured person requires such services; alternatively, the periodical payment should be increased by either a prescribed percentage or a prescribed amount.</p> <p><b>Para. 12:</b> Where an employment injury entails unemployability or disfigurement and this is not taken fully into account in the evaluation of the loss sustained by the injured person, supplementary or special benefits should be provided.</p> <p><b>Para. 13:</b> <u>In case of death of the breadwinner:</u> Where the periodical payments made to the surviving spouse and children are less than the maximum amounts prescribed, a periodical payment should be made to the following categories of persons if they were dependent on the deceased for support: parents; brothers and sisters; grandchildren.</p>
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	<u>ILO C. 102</u>	<u>ILO C. 121</u>	<u>ILO R. 121</u>
		Pension: At least <b>50%</b> of former earnings of wage of unskilled worker.	
<b>Funeral benefit</b>		<b>Art. 18 (2):</b> State shall provide a funeral benefit not less than the normal cost of a funeral.	
<b>Duration of benefit</b>	Throughout the contingency	<b>Art. 9 (3):</b> Throughout the contingency	
<b>Entitlement conditions</b>	Prohibition to prescribe qualifying period. In case of a widow, the right to benefit may be made conditional on her being incapable of self-support. In case of temporary incapacity: possibility of establishing waiting period of maximum three days.	<b>Art. 9 (2):</b> Prohibition to prescribe a qualifying period but a period of exposure may be prescribed for occupational diseases.  <b>Art. 9 (3):</b> Possibility of establishing a waiting period of three days (if national legislation provides for it or declaration made)	<b>Para. 8:</b> Prohibition to prescribe a waiting period.

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	<u>ILO C. 102</u>	<u>ILO C. 121</u>	<u>ILO R. 121</u>
<b>Adjustment of benefit</b>	Rates of current periodical payments must be reviewed following substantial changes in the general level of earnings where these result from substantial changes in the cost of living.	<b>Art. 21:</b> Rates of current periodical payments must be reviewed following substantial changes in the general level of earnings where these result from substantial changes in the cost of living.	<b>Para. 15:</b> Rates of current periodical payments should be periodically adjusted, taking account of changes in the general level of earnings or the cost of living
<b>Suspension of benefit</b>	<p>Suspension is allowed as long as the beneficiary's absent from the territory; as the person is detained; when the person receives another social security benefit; in case of a fraudulent claim; when the contingency is caused by a criminal offence or by wilful misconduct; if pensioner is engaged in gainful activity or has earnings above prescribed amount.</p> <p>Negligence is not a cause of suspension: the accident has to be caused by an act or an omission involving a manifest risk of injury (CEACR).</p> <p>Permanent incapacity benefit can be replaced by old-age benefit only if the amount of the latter is at least equal to that of the former (CEACR).</p> <p>If the amount of the benefit exceeds the cost of public maintenance (in the case of imprisonment for example), the benefit in excess shall be granted to the dependants of the beneficiary (CEACR).</p>	<b>Art. 22:</b> Suspension is allowed as long as the beneficiary's absent from the territory; as long as the person concerned is maintained at public expense or at the expense of a social security institution or service; in case of a fraudulent claim; when the contingency is caused by a criminal offence; when the contingency is caused by voluntary intoxication or by serious and wilful misconduct; where the person, without good cause, neglects to make use of the medical care and allied benefits or the rehabilitation services placed at his disposal, or fails to comply with the rules prescribed for verifying the occurrence or continuance of the contingency or for the conduct of beneficiaries; as long as the surviving spouse is living with another person as spouse.	

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	<u>ILO C. 102</u>	<u>ILO C. 121</u>	<u>ILO R. 121</u>
<b>Administration and supervision</b>	By an institution regulated by the public authorities or to a Government department responsible to a legislature; if not the case, representatives of the persons protected must participate in the management, or be associated therewith in a consultative capacity; representatives of employers and of the public authorities may participate too, as prescribed..		
<b>Frequency of payment</b>	<p>The benefit should be a periodical payment. The frequency of payment is left to national legislation.</p> <p>Exception: Possibility of conversion in lump sum in case of partial incapacity at a slight degree (CEACR: &lt;25%)</p>	<p><b>Art. 14 (2):</b> The benefit should be a periodical payment.</p> <p><b>Art. 14 (4) &amp; 15:</b> Exception: Possibility of conversion in lump sum in case of partial loss of earning capacity not substantial but in excess of a prescribed degree with the agreement of the injured person..</p>	<p><b>Para. 10:</b> The cash benefit should be a periodical payment.</p> <p>Exception: Possibility of conversion in lump sum in case of earning capacity likely to be permanent, or corresponding loss of faculty, is less than 25 per cent.</p>
<b>Claim procedure</b>	Requires the proper administration of the social security scheme.		

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General responsibility	<u>ILO C. 102</u>	<u>ILO C. 121</u>	<u>ILO R. 121</u>
- For the overall functioning of the scheme	State must accept general responsibility of the due provision of the benefits, and take all measures required for this purpose.		
- Regarding deficits	State must take general responsibility for both the proper administration of the fund and the due provision of benefits.		
- Collection of contributions and payment of benefits	State must take general responsibility for both the proper administration of the fund and the provision of benefits, however, the leave the regulation of collection of contributions and payment of benefits up to national legislation.	<b>Art. 25:</b> State shall accept general responsibility for the due provision of the benefits provided in compliance with this Convention and shall take all measures required for this purpose.	
- Regarding administration	State must have the general responsibility for both the proper administration of the fund and the provision of benefits and take the measures required for this purpose.	<b>Art. 24 (2):</b> State shall accept general responsibility for the proper administration of the institutions or services concerned in the application of this Convention.	



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<p><b>- Right to complaint and appeal</b></p>	<p>Every claimant must have a right of appeal in case of refusal of the benefit or complaint as to its quality or quantity</p>	<p><b>Art. 23:</b> Every claimant shall have a right of appeal in the case of refusal of the benefit or complaint as to its quality or quantity.</p> <p>Where in the application of this Convention a government department responsible to a legislature is entrusted with the administration of medical care, the right of appeal provided for in paragraph 1 of this Article may be replaced by a right to have a complaint concerning the refusal of medical care or the quality of the care received investigated by the appropriate authority.</p> <p>Where a claim is settled by a special tribunal established to deal with employment injury benefit questions or with social security questions in general and on which the persons protected are represented, no right of appeal shall be required.</p>	
<p><b>- Equality of treatment</b></p>	<p>Non-national residents shall have the same rights as national residents: Provided that special rules concerning non-nationals and nationals born outside the territory of the Member may be prescribed in respect of benefits or portions of benefits which are payable wholly or mainly out of public funds and in respect of transitional schemes.</p> <p>Under contributory social security schemes which protect employees, the persons protected who are nationals of another Member which has accepted the obligations of Part 6 of this Convention shall have the same rights as nationals of the Member concerned: Provided that the application of this paragraph may be made subject to the existence of a bilateral or multilateral agreement providing for reciprocity.</p>	<p><b>Art. 27:</b> Each Member shall within its territory assure to non-nationals equality of treatment with its own nationals as regards employment injury benefits.</p>	

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<b>- Prevention and Rehabilitation</b>		<b>Art. 26:</b> State shall take measures to prevent industrial accidents and occupational diseases, provide rehabilitation services which are designed to prepare a disabled person wherever possible for the resumption of his previous activity, or, if this is not possible, the most suitable alternative gainful activity, having regard to his aptitudes and capacity; and take measures to further the placement of disabled persons in suitable employment.	
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