



International Labour Conference

Presentation of the Convention and two Recommendations adopted at the 95th Session of the International Labour Conference (2006) and the proposed action by Her Majesty's Government in the United Kingdom of Great Britain and Northern Ireland on the Convention and Recommendations

Presented by the Secretary of State for Work and Pensions by Command of Her Majesty

October 2007



International Labour Conference

Presentation and Proposed Action by Her Majesty's Government in the United Kingdom of Great Britain and Northern Ireland of:

Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)

Promotional Framework for Occupational Safety and Health Recommendation, 2006 (No. 197)

Employment Relationship Recommendation, 2006 (No. 198)

Presented by the Secretary of State for Work and Pensions by Command of Her Majesty

October 2007

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International Labour Conference 2006

At its 95th Session in June 2006 the International Labour Conference adopted a Convention and Recommendation on a Promotional Framework for Occupational Safety and Health and a Recommendation on the Employment Relationship. The full texts of the Convention and Recommendations are set out in the Annex to this White Paper.

The Government's conclusions on the Convention and Recommendation are as follows:

The Convention requires Member States that ratify it to promote continuous improvement of occupational safety and health to prevent occupational injuries, diseases and deaths. Member States are obliged, in consultation with the most representative organisations of employers and workers, to formulate a national policy; establish, maintain, progressively develop and periodically review a national system, and; formulate, implement, monitor and periodically review a national programme.

The term “national policy” refers to the national policy on occupational safety and health and the working environment developed in accordance with the principles of Article 4 of the Occupational Safety and Health Convention, 1981.

The term “national system” refers to the infrastructure which provides the main framework for implementing the national policy and national programmes on occupational safety and health.

The term “national programme” refers to any national programme that includes objectives to be achieved in a predetermined time frame, priorities and means of action formulated to improve occupational safety and health and means to assess progress. The national programme should promote the development of a national preventative safety and health culture.

The Convention requires Member States to take active steps towards achieving progressively a safe and healthy working environment through a national system and national programme by taking into account the principles set out in relevant instruments of the International Labour Organisation (ILO).

The Convention also calls for Member States to periodically review, in consultation with the most representative organisations of employers and workers, what measures could be taken to ratify other relevant ILO Conventions.

The Recommendation supplements the provisions of the Convention by listing suggested specific ILO instruments relevant to the promotional framework for occupational safety and health that Member States should take into account when formulating a national system and national programme.

The Recommendation also sets out means for Member States to promote a national preventative safety and health culture.

The Recommendation suggests that formulation of the national policy takes into account Part II of the Occupational Safety and Health Convention, 1981, as well as the relevant rights, duties and responsibilities of workers, employers and governments in that Convention.

The Recommendation also proposes that Member States should prepare and regularly update a national profile, which summarises the existing situation on occupational safety and health and the progress made towards achieving a safe and healthy working environment. The Recommendation suggests that the national profile is used to formulate and review the national programme, and lists elements to be included within it.

The Government fully supports the aims of the Convention and the Recommendation. The Government will ratify an ILO Convention only when domestic law and practice is fully in line with its requirements. The Health and Safety Commission and Health and Safety Executive Northern Ireland have reviewed the Convention and Recommendation and have advised Ministers that they support ratification as it has been determined that existing Great Britain and Northern Ireland legislation and policy fully complies with the requirements of the Convention. Therefore the Government is in a position to ratify this Convention.

Recommendation concerning the Employment Relationship

At its 95th Session in June 2006 the International Labour Conference adopted a Recommendation concerning the Employment Relationship. The full text is set out in the Annex to this White Paper.

The Government's conclusions on the Recommendation are as follows:

The Recommendation considered a variety of issues concerning the nature and extent of protection given to workers in what the Recommendation terms "an employment relationship", exploring such issues as disguised employment relationships.

The Recommendation sets out a broad framework of issues related to the protection of workers in an employment relationship. It says that the nature and extent of protection given to workers should be defined by national laws or practice or both, taking into account relevant international labour standards, and that national policy should include measures, for example, to provide guidance for the parties concerned and to combat disguised employment relationships. It also advocates that members should take special account in national policy to address the gender dimension and, in the context of transnational movement of workers, should consider adopting appropriate measures so as to provide effective protection and prevent abuses of migrant workers in its territory.

Unfortunately it was not possible to find an agreement in June 2006, despite considerable efforts, that was acceptable to all parties – employers, workers and governments. Throughout the discussions, it was stressed that the Recommendation was meant to be a flexible instrument, containing options for consideration by member states. Clearly national conditions and law and practice differ considerably amongst ILO members and therefore a “one size fits all” approach was never the intention. Given that all three parties were not able to agree the Recommendation the UK government abstained in the final vote on the Recommendation.

The UK Government values and supports the work of the ILO and when considering the Recommendation will take account of policy intentions as set out in the Department of Trade and Industry policy statement, *Success at Work: protecting vulnerable workers, supporting good employers*, which was published in March 2006.

Convention 187

CONVENTION CONCERNING THE PROMOTIONAL FRAMEWORK FOR OCCUPATIONAL SAFETY AND HEALTH

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Ninety-fifth Session on 31 May 2006,

Recognizing the global magnitude of occupational injuries, diseases and deaths, and the need for further action to reduce them, and

Recalling that the protection of workers against sickness, disease and injury arising out of employment is among the objectives of the International Labour Organization as set out in its Constitution, and

Recognizing that occupational injuries, diseases and deaths have a negative effect on productivity and on economic and social development, and

Noting paragraph III(g) of the Declaration of Philadelphia, which provides that the International Labour Organization has the solemn obligation to further among the nations of the world programmes which will achieve adequate protection for the life and health of workers in all occupations, and

Mindful of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up, 1998, and

Noting the Occupational Safety and Health Convention, 1981 (No. 155), the Occupational Safety and Health Recommendation, 1981 (No. 164), and other instruments of the International Labour Organization relevant to the promotional framework for occupational safety and health, and

Recalling that the promotion of occupational safety and health is part of the International Labour Organization's agenda of decent work for all, and

Recalling the Conclusions concerning ILO standards-related activities in the area of occupational safety and health – a global strategy, adopted by the International Labour Conference at its 91st Session (2003), in particular relating to ensuring that priority be given to occupational safety and health in national agendas, and

Stressing the importance of the continuous promotion of a national preventative safety and health culture, and

Having decided upon the adoption of certain proposals with regard to occupational safety and health, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention;

adopts this fifteenth day of June of the year two thousand and six the following Convention, which may be cited as the Promotional Framework for Occupational Safety and Health Convention, 2006.

I. DEFINITIONS

ARTICLE 1

For the purpose of this Convention:

- (a) the term “national policy” refers to the national policy on occupational safety and health and the working environment developed in accordance with the principles of Article 4 of the Occupational Safety and Health Convention, 1981 (No. 155);
- (b) the term “national system for occupational safety and health” or “national system” refers to the infrastructure which provides the main framework for implementing the national policy and national programmes on occupational safety and health;
- (c) the term “national programme on occupational safety and health” or “national programme” refers to any national programme that includes objectives to be achieved in a predetermined time frame, priorities and means of action formulated to improve occupational safety and health, and means to assess progress;
- (d) the term “a national preventative safety and health culture” refers to a culture in which the right to a safe and healthy working environment is respected at all levels, where government, employers and workers actively participate in securing a safe and healthy working environment through a system of defined rights, responsibilities and duties, and where the principle of prevention is accorded the highest priority.

II. OBJECTIVE

ARTICLE 2

1. Each Member which ratifies this Convention shall promote continuous improvement of occupational safety and health to prevent occupational injuries, diseases and deaths, by the development, in consultation with the most representative organizations of employers and workers, of a national policy, national system and national programme.

2. Each Member shall take active steps towards achieving progressively a safe and healthy working environment through a national system and national programmes on occupational safety and health by taking into account the principles set out in instruments of the International Labour Organization (ILO) relevant to the promotional framework for occupational safety and health.

3. Each Member, in consultation with the most representative organizations of employers and workers, shall periodically consider what measures could be taken to ratify relevant occupational safety and health Conventions of the ILO.

III. NATIONAL POLICY

ARTICLE 3

1. Each Member shall promote a safe and healthy working environment by formulating a national policy.

2. Each Member shall promote and advance, at all relevant levels, the right of workers to a safe and healthy working environment.

3. In formulating its national policy, each Member, in light of national conditions and practice and in consultation with the most representative organizations of employers and workers, shall promote basic principles such as assessing occupational risks or hazards; combating occupational risks or hazards at source; and developing a national preventative safety and health culture that includes information, consultation and training.

IV. NATIONAL SYSTEM

ARTICLE 4

1. Each Member shall establish, maintain, progressively develop and periodically review a national system for occupational safety and health, in consultation with the most representative organizations of employers and workers.

2. The national system for occupational safety and health shall include among others:

- (a) laws and regulations, collective agreements where appropriate, and any other relevant instruments on occupational safety and health;
- (b) an authority or body, or authorities or bodies, responsible for occupational safety and health, designated in accordance with national law and practice;
- (c) mechanisms for ensuring compliance with national laws and regulations, including systems of inspection; and

- (d) arrangements to promote, at the level of the undertaking, cooperation between management, workers and their representatives as an essential element of workplace-related prevention measures.

3. The national system for occupational safety and health shall include, where appropriate:

- (a) a national tripartite advisory body, or bodies, addressing occupational safety and health issues;
- (b) information and advisory services on occupational safety and health;
- (c) the provision of occupational safety and health training;
- (d) occupational health services in accordance with national law and practice;
- (e) research on occupational safety and health;
- (f) a mechanism for the collection and analysis of data on occupational injuries and diseases, taking into account relevant ILO instruments;
- (g) provisions for collaboration with relevant insurance or social security schemes covering occupational injuries and diseases; and
- (h) support mechanisms for a progressive improvement of occupational safety and health conditions in micro-enterprises, in small and medium-sized enterprises and in the informal economy.

V. NATIONAL PROGRAMME

ARTICLE 5

1. Each Member shall formulate, implement, monitor, evaluate and periodically review a national programme on occupational safety and health in consultation with the most representative organizations of employers and workers.

2. The national programme shall:

- (a) promote the development of a national preventative safety and health culture;
- (b) contribute to the protection of workers by eliminating or minimizing, so far as is reasonably practicable, work-related hazards and risks, in accordance with national law and practice, in order to prevent occupational injuries, diseases and deaths and promote safety and health in the workplace;
- (c) be formulated and reviewed on the basis of analysis of the national situation regarding occupational safety and health, including analysis of the national system for occupational safety and health;
- (d) include objectives, targets and indicators of progress; and
- (e) be supported, where possible, by other complementary national programmes and plans which will assist in achieving progressively a safe and healthy working environment.

3. The national programme shall be widely publicized and, to the extent possible, endorsed and launched by the highest national authorities.

VI. FINAL PROVISIONS

ARTICLE 6

This Convention does not revise any international labour Conventions or Recommendations.

ARTICLE 7

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

ARTICLE 8

1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification is registered.

ARTICLE 9

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention within the first year of each new period of ten years under the terms provided for in this Article.

ARTICLE 10

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and denunciations that have been communicated by the Members of the Organization.

2. When notifying the Members of the Organization of the registration of the second ratification that has been communicated, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention will come into force.

ARTICLE 11

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and denunciations that have been registered.

ARTICLE 12

At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision.

ARTICLE 13

1. Should the Conference adopt a new Convention revising this Convention, then, unless the new Convention otherwise provides:

- (a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 9 above, if and when the new revising Convention shall have come into force;
- (b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

ARTICLE 14

The English and French versions of the text of this Convention are equally authoritative.

Certified true and complete copy,

For the Director-General of the International Labour Office

Recommendation 197

RECOMMENDATION CONCERNING THE PROMOTIONAL FRAMEWORK FOR OCCUPATIONAL SAFETY AND HEALTH

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Ninety-fifth Session on 31 May 2006,

Having decided upon the adoption of certain proposals with regard to occupational safety and health, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Promotional Framework for Occupational Safety and Health Convention, 2006 (hereinafter referred to as “the Convention”);

adopts this fifteenth day of June of the year two thousand and six the following Recommendation, which may be cited as the Promotional Framework for Occupational Safety and Health Recommendation, 2006.

I. NATIONAL POLICY

1. The national policy formulated under Article 3 of the Convention should take into account Part II of the Occupational Safety and Health Convention, 1981 (No. 155), as well as the relevant rights, duties and responsibilities of workers, employers and governments in that Convention.

II. NATIONAL SYSTEM

2. In establishing, maintaining, progressively developing and periodically reviewing the national system for occupational safety and health defined in Article 1(b) of the Convention, Members:

- (a) should take into account the instruments of the International Labour Organization (ILO) relevant to the promotional framework for occupational safety and health listed in the Annex to this Recommendation, in particular the Occupational Safety and Health Convention, 1981 (No. 155), the Labour Inspection Convention, 1947 (No. 81) and the Labour Inspection (Agriculture) Convention, 1969 (No. 129); and
- (b) may extend the consultations provided for in Article 4(1) of the Convention to other interested parties.

3. With a view to preventing occupational injuries, diseases and deaths, the national system should provide appropriate measures for the protection of all workers, in particular, workers in high-risk sectors, and vulnerable workers such as those in the informal economy and migrant and young workers.

4. Members should take measures to protect the safety and health of workers of both genders, including the protection of their reproductive health.

5. In promoting a national preventative safety and health culture as defined in Article 1(d) of the Convention, Members should seek:

- (a) to raise workplace and public awareness on occupational safety and health through national campaigns linked with, where appropriate, workplace and international initiatives;
- (b) to promote mechanisms for delivery of occupational safety and health education and training, in particular for management, supervisors, workers and their representatives and government officials responsible for safety and health;
- (c) to introduce occupational safety and health concepts and, where appropriate, competencies, in educational and vocational training programmes;
- (d) to facilitate the exchange of occupational safety and health statistics and data among relevant authorities, employers, workers and their representatives;
- (e) to provide information and advice to employers and workers and their respective organizations and to promote or facilitate cooperation among them with a view to eliminating or minimizing, so far as is reasonably practicable, work-related hazards and risks;
- (f) to promote, at the level of the workplace, the establishment of safety and health policies and joint safety and health committees and the designation of workers' occupational safety and health representatives, in accordance with national law and practice; and
- (g) to address the constraints of micro-enterprises and small and medium-sized enterprises and contractors in the implementation of occupational safety and health policies and regulations, in accordance with national law and practice.

6. Members should promote a management systems approach to occupational safety and health, such as the approach set out in the Guidelines on occupational safety and health management systems (ILO-OSH 2001).

III. NATIONAL PROGRAMME

7. The national programme on occupational safety and health as defined in Article 1(c) of the Convention should be based on principles of assessment and management of hazards and risks, in particular at the workplace level.

8. The national programme should identify priorities for action, which should be periodically reviewed and updated.

9. In formulating and reviewing the national programme, Members may extend the consultations provided for in Article 5(1) of the Convention to other interested parties.

10. With a view to giving effect to the provisions of Article 5 of the Convention, the national programme should actively promote workplace prevention measures and activities that include the participation of employers, workers and their representatives.

11. The national programme on occupational safety and health should be coordinated, where appropriate, with other national programmes and plans, such as those relating to public health and economic development.

12. In formulating and reviewing the national programme, Members should take into account the instruments of the ILO relevant to the promotional framework for occupational safety and health, listed in the Annex to this Recommendation, without prejudice to their obligations under Conventions that they have ratified.

IV. NATIONAL PROFILE

13. Members should prepare and regularly update a national profile which summarizes the existing situation on occupational safety and health and the progress made towards achieving a safe and healthy working environment. The profile should be used as a basis for formulating and reviewing the national programme.

14. (1) The national profile on occupational safety and health should include information on the following elements, as applicable:

- (a) laws and regulations, collective agreements where appropriate, and any other relevant instruments on occupational safety and health;
- (b) the authority or body, or the authorities or bodies, responsible for occupational safety and health, designated in accordance with national law and practice;
- (c) the mechanisms for ensuring compliance with national laws and regulations, including the systems of inspection;
- (d) the arrangements to promote, at the level of the undertaking, cooperation between management, workers and their representatives as an essential element of workplace-related prevention measures;

- (e) the national tripartite advisory body, or bodies, addressing occupational safety and health issues;
 - (f) the information and advisory services on occupational safety and health;
 - (g) the provision of occupational safety and health training;
 - (h) the occupational health services in accordance with national law and practice;
 - (i) research on occupational safety and health;
 - (j) the mechanism for the collection and analysis of data on occupational injuries and diseases and their causes, taking into account relevant ILO instruments;
 - (k) the provisions for collaboration with relevant insurance or social security schemes covering occupational injuries and diseases; and
 - (l) the support mechanisms for a progressive improvement of occupational safety and health conditions in micro-enterprises, in small and medium-sized enterprises and in the informal economy.
- (2) In addition, the national profile on occupational safety and health should include information on the following elements, where appropriate:
- (a) coordination and collaboration mechanisms at national and enterprise levels, including national programme review mechanisms;
 - (b) technical standards, codes of practice and guidelines on occupational safety and health;
 - (c) educational and awareness-raising arrangements, including promotional initiatives;
 - (d) specialized technical, medical and scientific institutions with linkages to various aspects of occupational safety and health, including research institutes and laboratories concerned with occupational safety and health;
 - (e) personnel engaged in the area of occupational safety and health, such as inspectors, safety and health officers, and occupational physicians and hygienists;
 - (f) occupational injury and disease statistics;
 - (g) occupational safety and health policies and programmes of organizations of employers and workers;
 - (h) regular or ongoing activities related to occupational safety and health, including international collaboration;
 - (i) financial and budgetary resources with regard to occupational safety and health; and
 - (j) data addressing demography, literacy, economy and employment, as available, as well as any other relevant information.

V. INTERNATIONAL COOPERATION AND EXCHANGE OF INFORMATION

15. The International Labour Organization should:
- (a) facilitate international technical cooperation on occupational safety and health with a view to assisting countries, particularly developing countries, for the following purposes:
 - (i) to strengthen their capacity for the establishment and maintenance of a national preventative safety and health culture;
 - (ii) to promote a management systems approach to occupational safety and health; and
 - (iii) to promote the ratification, in the case of Conventions, and implementation of instruments of the ILO relevant to the promotional framework for occupational safety and health, listed in the Annex to this Recommendation;
 - (b) facilitate the exchange of information on national policies within the meaning of Article 1(a) of the Convention, on national systems and programmes on occupational safety and health, including on good practices and innovative approaches, and on the identification of new and emerging hazards and risks in the workplace; and
 - (c) provide information on progress made towards achieving a safe and healthy working environment.

VI. UPDATING OF THE ANNEX

16. The Annex to this Recommendation should be reviewed and updated by the Governing Body of the International Labour Office. Any revised annex so established shall be adopted by the Governing Body and shall replace the preceding annex after having been communicated to the Members of the International Labour Organization.

ANNEX

INSTRUMENTS OF THE INTERNATIONAL LABOUR ORGANIZATION RELEVANT TO THE PROMOTIONAL FRAMEWORK FOR OCCUPATIONAL SAFETY AND HEALTH

I. CONVENTIONS

- Labour Inspection Convention, 1947 (No. 81)
- Radiation Protection Convention, 1960 (No. 115)
- Hygiene (Commerce and Offices) Convention, 1964 (No. 120)
- Employment Injury Benefits Convention, 1964 (No. 121)
- Labour Inspection (Agriculture) Convention, 1969 (No. 129)
- Occupational Cancer Convention, 1974 (No. 139)
- Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148)
- Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152)
- Occupational Safety and Health Convention, 1981 (No. 155)
- Occupational Health Services Convention, 1985 (No. 161)
- Asbestos Convention, 1986 (No. 162)
- Safety and Health in Construction Convention, 1988 (No. 167)
- Chemicals Convention, 1990 (No. 170)
- Prevention of Major Industrial Accidents Convention, 1993 (No. 174)
- Safety and Health in Mines Convention, 1995 (No. 176)
- Protocol of 1995 to the Labour Inspection Convention, 1947 (No. 81)
- Safety and Health in Agriculture Convention, 2001 (No. 184)
- Protocol of 2002 to the Occupational Safety and Health Convention, 1981 (No. 155)

II. RECOMMENDATIONS

- Labour Inspection Recommendation, 1947 (No. 81)
- Labour Inspection (Mining and Transport) Recommendation, 1947 (No. 82)
- Protection of Workers' Health Recommendation, 1953 (No. 97)
- Welfare Facilities Recommendation, 1956 (No. 102)
- Radiation Protection Recommendation, 1960 (No. 114)
- Workers' Housing Recommendation, 1961 (No. 115)
- Hygiene (Commerce and Offices) Recommendation, 1964 (No. 120)
- Employment Injury Benefits Recommendation, 1964 (No. 121)
- Labour Inspection (Agriculture) Recommendation, 1969 (No. 133)
- Occupational Cancer Recommendation, 1974 (No. 147)
- Working Environment (Air Pollution, Noise and Vibration) Recommendation, 1977 (No. 156)
- Occupational Safety and Health (Dock Work) Recommendation, 1979 (No. 160)
- Occupational Safety and Health Recommendation, 1981 (No. 164)
- Occupational Health Services Recommendation, 1985 (No. 171)
- Asbestos Recommendation, 1986 (No. 172)
- Safety and Health in Construction Recommendation, 1988 (No. 175)
- Chemicals Recommendation, 1990 (No. 177)
- Prevention of Major Industrial Accidents Recommendation, 1993 (No. 181)
- Safety and Health in Mines Recommendation, 1995 (No. 183)
- Safety and Health in Agriculture Recommendation, 2001 (No. 192)
- List of Occupational Diseases Recommendation, 2002 (No. 194)

Recommendation 198

RECOMMENDATION CONCERNING THE EMPLOYMENT RELATIONSHIP

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Ninety-fifth Session on 31 May 2006, and

Considering that there is protection offered by national laws and regulations and collective agreements which are linked to the existence of an employment relationship between an employer and an employee, and

Considering that laws and regulations, and their interpretation, should be compatible with the objectives of decent work, and

Considering that employment or labour law seeks, among other things, to address what can be an unequal bargaining position between parties to an employment relationship, and

Considering that the protection of workers is at the heart of the mandate of the International Labour Organization, and in accordance with principles set out in the ILO Declaration on Fundamental Principles and Rights at Work, 1998, and the Decent Work Agenda, and

Considering the difficulties of establishing whether or not an employment relationship exists in situations where the respective rights and obligations of the parties concerned are not clear, where there has been an attempt to disguise the employment relationship, or where inadequacies or limitations exist in the legal framework, or in its interpretation or application, and

Noting that situations exist where contractual arrangements can have the effect of depriving workers of the protection they are due, and

Recognizing that there is a role for international guidance to Members in achieving this protection through national law and practice, and that such guidance should remain relevant over time, and

Further recognizing that such protection should be accessible to all, particularly vulnerable workers, and should be based on law that is efficient, effective and comprehensive, with expeditious outcomes, and that encourages voluntary compliance, and

Recognizing that national policy should be the result of consultation with the social partners and should provide guidance to the parties concerned in the workplace, and

Recognizing that national policy should promote economic growth, job creation and decent work, and

Considering that the globalized economy has increased the mobility of workers who are in need of protection, at least against circumvention of national protection by choice of law, and

Noting that, in the framework of transnational provision of services, it is important to establish who is considered a worker in an employment relationship, what rights the worker has, and who the employer is, and

Considering that the difficulties in establishing the existence of an employment relationship may create serious problems for those workers concerned, their communities, and society at large, and

Considering that the uncertainty as to the existence of an employment relationship needs to be addressed to guarantee fair competition and effective protection of workers in an employment relationship in a manner appropriate to national law or practice, and

Noting all relevant international labour standards, especially those addressing the particular situation of women, as well as those addressing the scope of the employment relationship, and

Having decided upon the adoption of certain proposals with regard to the employment relationship, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation;

adopts this fifteenth day of June of the year two thousand and six the following Recommendation, which may be cited as the Employment Relationship Recommendation, 2006.

I. NATIONAL POLICY OF PROTECTION FOR WORKERS IN AN EMPLOYMENT RELATIONSHIP

1. Members should formulate and apply a national policy for reviewing at appropriate intervals and, if necessary, clarifying and adapting the scope of relevant laws and regulations, in order to guarantee effective protection for workers who perform work in the context of an employment relationship.

2. The nature and extent of protection given to workers in an employment relationship should be defined by national law or practice, or both, taking into account relevant international labour standards. Such law or practice, including those elements pertaining to scope, coverage and responsibility for implementation, should be clear and adequate to ensure effective protection for workers in an employment relationship.

3. National policy should be formulated and implemented in accordance with national law and practice in consultation with the most representative organizations of employers and workers.

4. National policy should at least include measures to:

- (a) provide guidance for the parties concerned, in particular employers and workers, on effectively establishing the existence of an employment relationship and on the distinction between employed and self-employed workers;
- (b) combat disguised employment relationships in the context of, for example, other relationships that may include the use of other forms of contractual arrangements that hide the true legal status, noting that a disguised employment relationship occurs when the employer treats an individual as other than an employee in a manner that hides his or her true legal status as an employee, and that situations can arise where contractual arrangements have the effect of depriving workers of the protection they are due;
- (c) ensure standards applicable to all forms of contractual arrangements, including those involving multiple parties, so that employed workers have the protection they are due;
- (d) ensure that standards applicable to all forms of contractual arrangements establish who is responsible for the protection contained therein;
- (e) provide effective access of those concerned, in particular employers and workers, to appropriate, speedy, inexpensive, fair and efficient procedures and mechanisms for settling disputes regarding the existence and terms of an employment relationship;
- (f) ensure compliance with, and effective application of, laws and regulations concerning the employment relationship; and
- (g) provide for appropriate and adequate training in relevant international labour standards, comparative and case law for the judiciary, arbitrators, mediators, labour inspectors, and other persons responsible for dealing with the resolution of disputes and enforcement of national employment laws and standards.

5. Members should take particular account in national policy to ensure effective protection to workers especially affected by the uncertainty as to the existence of an employment relationship, including women workers, as well as the most vulnerable workers, young workers, older workers, workers in the informal economy, migrant workers and workers with disabilities.

6. Members should:
- (a) take special account in national policy to address the gender dimension in that women workers predominate in certain occupations and sectors where there is a high proportion of disguised employment relationships, or where there is a lack of clarity of an employment relationship; and
 - (b) have clear policies on gender equality and better enforcement of the relevant laws and agreements at national level so that the gender dimension can be effectively addressed.
7. In the context of the transnational movement of workers:
- (a) in framing national policy, a Member should, after consulting the most representative organizations of employers and workers, consider adopting appropriate measures within its jurisdiction, and where appropriate in collaboration with other Members, so as to provide effective protection to and prevent abuses of migrant workers in its territory who may be affected by uncertainty as to the existence of an employment relationship;
 - (b) where workers are recruited in one country for work in another, the Members concerned may consider concluding bilateral agreements to prevent abuses and fraudulent practices which have as their purpose the evasion of the existing arrangements for the protection of workers in the context of an employment relationship.
8. National policy for protection of workers in an employment relationship should not interfere with true civil and commercial relationships, while at the same time ensuring that individuals in an employment relationship have the protection they are due.

II. DETERMINATION OF THE EXISTENCE OF AN EMPLOYMENT RELATIONSHIP

9. For the purposes of the national policy of protection for workers in an employment relationship, the determination of the existence of such a relationship should be guided primarily by the facts relating to the performance of work and the remuneration of the worker, notwithstanding how the relationship is characterized in any contrary arrangement, contractual or otherwise, that may have been agreed between the parties.

10. Members should promote clear methods for guiding workers and employers as to the determination of the existence of an employment relationship.

11. For the purpose of facilitating the determination of the existence of an employment relationship, Members should, within the framework of the national policy referred to in this Recommendation, consider the possibility of the following:

- (a) allowing a broad range of means for determining the existence of an employment relationship;

- (b) providing for a legal presumption that an employment relationship exists where one or more relevant indicators is present; and
- (c) determining, following prior consultations with the most representative organizations of employers and workers, that workers with certain characteristics, in general or in a particular sector, must be deemed to be either employed or self-employed.

12. For the purposes of the national policy referred to in this Recommendation, Members may consider clearly defining the conditions applied for determining the existence of an employment relationship, for example, subordination or dependence.

13. Members should consider the possibility of defining in their laws and regulations, or by other means, specific indicators of the existence of an employment relationship. Those indicators might include:

- (a) the fact that the work: is carried out according to the instructions and under the control of another party; involves the integration of the worker in the organization of the enterprise; is performed solely or mainly for the benefit of another person; must be carried out personally by the worker; is carried out within specific working hours or at a workplace specified or agreed by the party requesting the work; is of a particular duration and has a certain continuity; requires the worker's availability; or involves the provision of tools, materials and machinery by the party requesting the work;
- (b) periodic payment of remuneration to the worker; the fact that such remuneration constitutes the worker's sole or principal source of income; provision of payment in kind, such as food, lodging or transport; recognition of entitlements such as weekly rest and annual holidays; payment by the party requesting the work for travel undertaken by the worker in order to carry out the work; or absence of financial risk for the worker.

14. The settlement of disputes concerning the existence and terms of an employment relationship should be a matter for industrial or other tribunals or arbitration authorities to which workers and employers have effective access in accordance with national law and practice.

15. The competent authority should adopt measures with a view to ensuring respect for and implementation of laws and regulations concerning the employment relationship with regard to the various aspects considered in this Recommendation, for example, through labour inspection services and their collaboration with the social security administration and the tax authorities.

16. In regard to the employment relationship, national labour administrations and their associated services should regularly monitor their enforcement programmes and processes. Special attention should be paid to occupations and sectors with a high proportion of women workers.

17. Members should develop, as part of the national policy referred to in this Recommendation, effective measures aimed at removing incentives to disguise an employment relationship.

18. As part of the national policy, Members should promote the role of collective bargaining and social dialogue as a means, among others, of finding solutions to questions related to the scope of the employment relationship at the national level.

III. MONITORING AND IMPLEMENTATION

19. Members should establish an appropriate mechanism, or make use of an existing one, for monitoring developments in the labour market and the organization of work, and for formulating advice on the adoption and implementation of measures concerning the employment relationship within the framework of the national policy.

20. The most representative organizations of employers and workers should be represented, on an equal footing, in the mechanism for monitoring developments in the labour market and the organization of work. In addition, these organizations should be consulted under the mechanism as often as necessary and, wherever possible and useful, on the basis of expert reports or technical studies.

21. Members should, to the extent possible, collect information and statistical data and undertake research on changes in the patterns and structure of work at the national and sectoral levels, taking into account the distribution of men and women and other relevant factors.

22. Members should establish specific national mechanisms in order to ensure that employment relationships can be effectively identified within the framework of the transnational provision of services. Consideration should be given to developing systematic contact and exchange of information on the subject with other States.

IV. FINAL PARAGRAPH

23. This Recommendation does not revise the Private Employment Agencies Recommendation, 1997 (No. 188), nor can it revise the Private Employment Agencies Convention, 1997 (No. 181).

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