International Labour Organization

ILO Curriculum on Building Modern and Effective Labour Inspection Systems

Module 4

Labour inspection: designing strategies for promoting compliance

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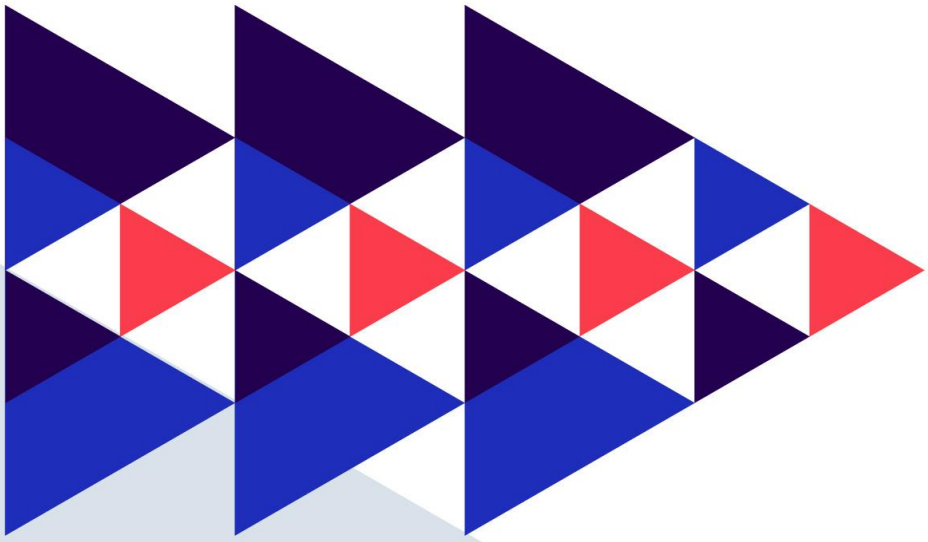

► What this module is about

Based on ILO guidance and tools, and selected best practices in different countries, this module deals with strategies to promote compliance, including the requirements and conditions for ensuring labour regulations of good quality, and alternative ways of organizing an adequate enforcement and sanctions system.

► Objectives

This module aims to provide participants with information on designing strategies, activities and approaches for promoting and enforcing compliance with labour regulations. At the end of this module, participants will be able to:

- understand the importance of the quality of legislation as a key factor in promoting compliance;
- use methodologies to assess legislation and strategies to maximize the effectiveness of compliance;
- describe strategies to improve the enforcement of labour legislation;
- identify the key elements of sanctions systems and some alternative ways of applying sanctions;
- describe the role of the social partners and other partner organizations in promoting compliance, especially among hard-to-reach groups of workers.

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1. Compliance with labour regulations

Compliance does not flow automatically from the mere existence of legislation, an inspection system and the threat of sanctions. Compliance with any particular legal requirement will be determined by a complex interplay of factors that are partly external to the government and partly dependent on the actions of regulatory authorities, as the text box below indicates.

The eight causes of non-compliance from the point of view of the targets	
Failure to understand the law	Deterrence failure
Collapse of belief in law	Incapacitation of those regulated
Procedural injustice	Failure of persuasion
Costs of regulatory compliance	Failure of civil society

The capacity of the labour administration to establish the necessary institutions and carry out the functions required for the delivery of regulatory programmes is fundamental.

The administration should be able to clearly define the roles and responsibilities of its different institutions and make sufficient financial and human resources available for them. This means employing staff with the necessary legal, technical and scientific skills, providing training and information for inspectors, and ensuring sufficient administrative, office and transport facilities for inspection and enforcement purposes. Finally, the whole administration should have an effective and modern institutional management system, covering human, financial and information matters, including the collection and analysis of relevant data and information.

Social dialogue is vital to achieve compliance with the law. Nationally, there needs to be dialogue and negotiation between representatives of governments, employers and workers, and other stakeholders, so as to reach agreement on how to improve compliance with labour issues, at the national, sectoral and enterprise levels. At the enterprise level, the same is necessary, though labour inspectors will not be involved in day-to-day dialogue between employers and their worker representatives. Nevertheless, the same model applies: all parties need to collaborate to ensure that minimum legal requirements are met and that, if possible, working conditions go beyond the law and provide decent work for all.

It is necessary to analyse economic and social environments, identify key stakeholders, assess the factors working for and against compliance, and define indicators to measure its effectiveness. A

strategy can then be proposed, describing specific activities that will be undertaken to promote, monitor and enforce compliance.

The OECD has produced a range of core principles on which effective and efficient regulatory enforcement and inspections should be based in pursuit of the best compliance outcomes and highest regulatory quality.[1]

The eleven principles addressing the design of policies, institutions and tools for promoting effective compliance and the process of reforming inspection services to achieve results (OECD).

- Evidence-based enforcement;
- Selectivity;
- Risk focus and proportionality;
- Responsive regulation;
- Long-term vision;
- Coordination and consolidation;
- Transparent governance;
- Information integration;
- Clear and fair process;
- Compliance promotion;
- Professionalism.

[1] OECD, 2014. Best Practice Principles for Regulatory Policy.

2. Factors influencing regulatory compliance

Three of the main factors determining regulatory compliance are related to the quality and dissemination of the legislation and strategies for promoting and ensuring compliance, and implementing sanction schemes.

2.1 Quality of legislation

Well-designed labour law lays an essential foundation for ensuring the protection of human rights in the world of work.[2] It assists duty-holders in their endeavours to cooperate with the law and provides a framework within which they can organize themselves to achieve the desired results. Labour legislation is also vital to the economy of any country and to the achievement of balanced socio-economic development and the well-being of the population as a whole — a delicate balance to achieve.

Enacting such legislation is often the result of much **consultation and negotiation**. Experience shows that proposals imposed from above are less effective in taking into account the complex web of interests and needs involved than solutions that have been tested and honed through the process of social dialogue, and which therefore enjoy broad support within society. When decision-making procedures are not well understood and the stakeholders do not participate in their elaboration, public support for regulation will be undermined.

Labour legislation should thus have a **coherent design** and aim to be comprehensive, so that all workers are afforded appropriate workplace protection in an equitable manner. In reality, however, legislation tends to be progressive and to develop over time, only gradually improving the level of technical quality and coverage of workers and topic areas. Strategies for implementing legislation for decent work may also change over the years.

Legislation must also be **easy to understand**, so that duty-holders have no difficulty in complying and it can be easily enforced. Conversely, legislation that is obscure and intelligible only to the legally trained is unlikely to be understood and applied by duty-holders, while its enforcement is likely to be difficult and inconsistent, leading to contempt for the legal system as a whole.

Enforcement systems will of course depend to a large extent on the overall legislative system, and vary from one country to another, but the important point is that inspectors have legal backing for their enforcement duties so that they are able to carry out the full range of their functions.

[2] Legislation is not the only means of promoting fundamental principles and rights at work, though it is, of course, necessary to establish basic legal rights and means of redress. In many countries certain labour matters, including some relating to fundamental rights, are regulated by collective agreements, usually supplementing a basic legislative enactment, but sometimes in its absence. In view of the need to guarantee these fundamental rights to all workers, and the limited scope of collective agreements in many countries, basic legislative protection would seem to be required in most cases.

Although there is no international standard for quality in drafting legislation, several countries have set their own standards for the quality of specific regulations.

There are also the ILO's Labour Legislation Guidelines,[3] based on the principle that labour laws should be easily accessible and understood by those to whom they are addressed. The purpose of the Guidelines is to assist those involved in reviewing and drafting labour legislation to improve their drafting techniques, and to strengthen social dialogue and make it more effective. The hope is that the legislation adopted will be better adapted to national conditions and circumstances, and will take more fully into account the fundamental work-related principles endorsed by the ILO. Other national initiatives that could be useful references here include the Guidelines for Drafting Local Laws adopted in Queensland, Australia.[4]

Sometimes, amendments to legislation make it harder to understand and the obligations involved more uncertain. Governments should spell out any changes that result from amendments, rather than make general statements that the amendments take precedence over existing requirements. This clarifies the intentions of the amendments and facilitates the codification of laws and rules. The Austrian Government's Guidelines for Drafting and Formulating Laws include detailed instructions on how to amend laws to avoid the creation of "separate norms" that must be read to understand the meaning of the original law.[5] Some countries have established central drafting offices or editorial review boards which may be more able than administrators to draft new laws consistently and to a high standard.

The work of assessing compliance will subsequently indicate how effectively the law has been drafted, highlighting any weaknesses that might hinder stakeholders from fulfilling their responsibilities, as well as the effectiveness of the labour inspection services. Future legislation can then be designed to be easier to comply with, and more appropriate, relevant and effective.

In summary, therefore, legislation should:

- be clearly expressed and unambiguous, to make it **understandable** by the target group and minimize the potential for differing interpretations;
- be **logically organized, coherent and consistent**, both in itself and in relation to other legal instruments;
- include sufficient and **suitable provisions for enforcement**, both in terms of powers for inspectors and the penalties that can be imposed;
- make available any **necessary information** as to how it can be implemented and compliance achieved.

2.2 Structure of the regulatory system

3 ILO Labour Legislation Guidelines.

4 Guidelines for Drafting Local Laws, 4 April 2016, Office of the Queensland Parliamentary Counsel.

5 *Improving the quality of Laws and regulations: economic, legal and managerial techniques*, Paris, OECD, 1994.

In many cases, different government departments are competent in different regulatory areas that are only vaguely distinct, such as occupational health. Different regulations can then overlap or even contradict one another. In other cases, extensions or amendments to regulations are made in response to the pressures arising at a given time, rather than in accordance with a well-designed plan to develop a full and hierarchical "regulatory corpus". This can give rise to regulatory gaps or the repetition in different texts of regulations that have the same aim but are not identical in form.

All this creates confusion for the parties concerned, sometimes causing a measure of legal uncertainty, and in any event making it harder to comply with obligations. To avoid this problem, there should be a **single basic regulatory framework administered at a high political level that can serve as a context for any new labour regulations**, setting down employers' general obligations and the rights and obligations of workers. To this can be added individual codes of regulations for specific risks or people groups and other non-mandatory codes of practice and guidance, as indicated above. In particular, technical standards are appropriate for inclusion in codes of practice or guidance, as these can be more easily changed and updated than can legislation, for instance when new technical data becomes available. Guides and handbooks also help duty-holders and inspectors to implement and apply the law in practice.

Acts, regulations and codes of practice

Acts are often couched in general, broad terms to describe what is required of the community. **Regulations** are laws written under the authority of an act, intended to give detailed effect to the act concerned. Rather than parliaments having to set out in detail how people should comply with the provisions of an act, they includes provisions that "authorize" their governments to write regulations at a later date. If a person does not comply with a regulation, they can be prosecuted.

A **code of practice** is written to give people practical guidance on how they can comply with a general duty under the act, or an obligation under the regulations, which is described in a general way. In most cases a code is written for the guidance of employers. The code should be followed unless it can be shown that the duty laid down in the act can be achieved in another way. A person cannot be prosecuted for not complying with a code of practice, but a code of practice can be used as evidence that a person did not fulfil their general duty under the act or their obligations under the regulations. A failure to do these things can lead to prosecution. To avoid prosecution, a person would have to prove they complied with the act or regulations in a way not described in the code of practice.

2.3 Dissemination of information

Drafting sound legislation is not enough on its own; a government must also be able to make it work in practice. This requires sound labour and socio-economic systems, which will work together for the practical application of the legislation and the promotion of labour rights. There are important implications here for the enforcing authorities, and also for less coercive tripartite, bipartite or independent organizations appointed to give advice and information, to help promote compliance with the law.

The wide dissemination of information about what the legislation actually requires, via **national gazettes, publications, websites and other means**, will be helpful to duty-holders and this will be an important element of the overall strategy to promote compliance. Effective dissemination is becoming easier as information technology develops and becomes more powerful, and is increasingly used by developing as well as by industrialized countries. More and more enterprises now have access to the internet, and even the more remote labour-inspectorate field offices are being equipped with modern IT systems. Nevertheless, more needs to be done in this area.

▶ Guide to the Occupational Health and Safety Act, Ontario, Canada[6]

This Guide explains what every worker, supervisor, employer, constructor and workplace owner needs to know about the OSH Act. It describes everyone's rights and responsibilities and answers, in plain language, the questions that are most commonly asked about the Act.

There are also many **information and advisory-service organizations** that have been set up to support labour inspectorates and provide good advice to employers, workers and other stakeholders as to how best to meet legal requirements and promote best practice (which often goes beyond what the law requires). Such services are increasingly available on-line. They vary in the kinds of advice they provide: some are private commercial organizations, while others are government agencies for the wider implementation of decent work.

National and regional **programmes, campaigns, conferences and seminars** are another increasingly popular means of promulgating information, and labour inspectors can play an active part in these initiatives, even if they are not the driving force behind them. Such activities may be multi-faceted, comprising publicity (about the law and what is required), conferences and seminars, regular meetings between key stakeholders, especially the government and its social partners, and — importantly in the present context — a targeted inspection programme that matches the overall aims and foci of the programmes and targets enforcement accordingly.

[6] https://www.ontario.ca/document/guide-occupational-health-and-safety-act.

The overall aim of such initiatives is not only to raise awareness of the law among the general working population, but also to change the attitudes of employers and workers and create more of a preventive culture. These initiatives are especially important for those enterprises that do not have in-house expertise on labour legislation, such as small and medium-sized enterprises (SMEs) and the self-employed. In addition, they may be effective in targeting those parts of the workforce that are hard to reach, such as migrant workers, temporary or seasonal agricultural workers, and informal economy workers, as well as influencing intermediary organizations, such as NGOs and community organizations, that are in touch with the hard-to-reach groups.

Information Campaign in Estonia: "Know Your Rights – Young Employee"[7]

In 2015, the Estonian Labour Inspectorate conducted a campaign entitled "Know your rights – Young employee". The aim was to increase awareness of issues relating to the work environment and work relations among young people (aged 18–25 years) about to start their first job. The campaign sought to increase awareness of risks related to the work environment, the responsibility of employers to provide a safe work environment, the importance of adequate personal protective equipment, and employment rights. The campaign's slogan was 'Work Smart' and it focused on issues such as training, occupational safety and health and written employment contracts.

Much has recently been written about information campaigns, such as those on safety and health,[8] all with the aim of helping duty-holders to understand what is legally required of them, where to find more information, and how best to comply. Some initiatives have especially targeted the self-employed and hard-to-reach groups using **TV and the media**. Nevertheless, there still remain significant differences between people groups and sectors in terms of their understanding of any given law and motivation to comply. Differences are especially noticeable between small and large enterprises, as the text box below shows.

[7] Source: Republic of Estonia Labour Inspectorate (2016), https://www.ti.ee/en/node/9858.

[8] European Agency for Safety and Health at Work, Health and Safety Campaigning –Experiences from across the European Union and tips on organizing your own campaign – Getting the message across, 2001.

Knowing about new legislation: the gap between large and small enterprises (OECD, 2000)

A study of occupational health and safety compliance in England and Wales found that large companies and companies with safety personnel had little difficulty in comprehending and using information about compliance requirements. These companies were much more likely to have effective systems for ensuring compliance than small companies without safety personnel where management usually lacked the time and resources to read and understand the large amount of literature on health and safety.

In 1991, new Norwegian regulations came into force that required all public and private employers to establish and maintain a control system for environmental, health and safety issues. In 1994, an evaluation study was undertaken of how well the regulations had been implemented. The study found a major difference between small and medium-sized enterprises (SMEs), which make up 90 per cent of Norwegian corporations, and large businesses, which make up the remaining 10 per cent. In SMEs, 43 per cent of managers had never heard of the regulations, while in large corporations, only six per cent had never heard of them. Overall only 31 per cent of top managers in SMEs were strongly engaged in implementing the system.

Such differences clearly have an important impact on overall levels of compliance and make for big differences between SMEs and large enterprises.

The issue of **language translation** is also one that needs to be considered where countries have several official and/or possibly many tribal or regional languages. In such cases, governments need to decide as a matter of policy to what extent they publish materials in different languages, balancing the cost of doing so against the perceived need. Especially in rural areas, where inspectors visit infrequently if at all, it is important that legal requirements are properly understood so that employers and workers can comply with them. This may well have considerable implications for translation and for other awareness-raising programmes and initiatives.

3. Enforcement strategies

Success and failure

"A key determinant of government effectiveness is how well regulatory systems achieve their policy objectives. Rapid increases in regulation and government formalities in most OECD countries since the 1970s have produced impressive gains in some areas of economic and social wellbeing, but too often the results of regulation have been disappointing. Dramatic regulatory failures tend to produce calls for more regulation, with little assessment of the underlying reasons for failure".[9]

As, in practice, some employers may be tempted to evade their statutory obligations to their workers, it is essential that governments establish:

- means by which checks on employers can be performed, in particular by labour inspectorates;
- means by which workers can report suspected infringements of their rights to the appropriate authority and seek advice (for example, telephone helplines);
- means by which workers can seek redress for alleged infringements of their rights (labour courts);
- a system of penalties for employers who are found to have failed in their legal obligations (for example, fines, imprisonment).

3.1 Guiding principles for enforcement

According to David Weil,[10] the central task faced by all inspectorates, regardless of the underlying regulatory model, is how to deploy their resources most effectively to achieve lasting improvements. Four central principles should guide enforcement policies:

- Prioritization;
- Deterrence;
- Sustainability;
- Systemic effects.

[9] OECD, "Reducing the risk of policy failure: Challenges for Regulatory Compliance", 2000, Paris.

[10] David Weil, "A strategic approach to labour inspection", *International Labour Review*, Vol. 127 No. 4 ILO, (2008).

Prioritization

This relates to the selection of enterprises to be inspected and concerns the extent to which inspectors manage to inspect those (potentially) violating the law more often than those abiding by it. Inspectorates prioritize enterprises mainly to help them make best use of scarce resources and target their efforts where they are most needed.[11] Prioritization should also enhance the rate of detection of the more serious forms of non-compliance, and the likelihood of them being remedied, with obvious implications for sanctions.

Many labour inspectorates rely on the occurrence of accidents or complaints as a trigger for enforcement action. Regulators would like to assume that employees working under lawful conditions are **not** complaining and that employees who are experiencing violations will complain. Indeed, research suggests that enterprises with lower complaint rates have relatively fewer problems and tend to have good underlying conditions. However, not all enterprises with poor underlying levels of compliance and actual violations present high complaint rates. In fact, those workers who are most vulnerable — such as migrant workers or those in the informal economy — often experience the worst working conditions, yet many will not complain for fear of losing their jobs.

The existence or non-existence of complaints therefore does not provide a clear picture of compliance. Factors other than those related to the real circumstances in an enterprise, such as the workers' employment relationship, their level of unionization, their knowledge of the law the attitude of enterprises to the unions could all be obstacles preventing complaints from being voiced: silence should not be confused with compliance.

▶ OSHA approach to prioritization based on complaints[12]

Prior to 1996, the US Occupational Safety and Health Administration (OSHA) responded to almost all complaints be performing workplace investigations. This required significant staff resources and led to long delays between the lodging of a complaint and its investigation. In 1996, with a growing backlog of cases, the OSHA began to evaluate whether or not each incoming complaint represented a serious violation or hazard. If a case was deemed serious, inspectors would conduct on-site investigations, focused on specific issues. If the complaint was not considered to be serious, OSHA would follow up with a phone or fax inquiry with the employer. The system thus shifted resources to the most pressing problems, while allowing quick resolution of other cases.

[11] Generally, duty-holders and inspectors accept targeting, but victims and workers are concerned that targeting of enforcement should not be at the expense of not protecting some groups of workers. Workers perceive a "universal right" to protection that should not be negated by a targeting policy.

[12] Extracted from Weil, D., "A strategic approach to labour inspection", *International Labour Review*, Vol. 147, No. 4, ILO, Geneva, 2008.

In order to increase the effectiveness of the inspection system, some inspectorates have developed a risk assessment methodology for more clearly targeted inspections. This methodology allows them to shift the emphasis from randomly selected inspections to risk-based selections. It requires access to data and information from different institutions (tax authorities, social security, employment and property registration agencies), the selection of a set of predictive indicators, and a monitoring and evaluation methodology for analysing the results.

Deterrence

Deterrence is related to duty-holders' perception that the likelihood of inspection and possible enforcement is high enough to make it worth their while to comply with the law voluntarily. Labour inspectorates' evaluations typically focus on the direct effects of workplace inspections, yet the greatest potential impact of their activities arises through deterrence: the threat of inspection spurring on change in the direction of better compliance.

There are many ways in which inspectorates attempt to boost deterrence. Well-publicised court cases can achieve this, as can articles in the trade press and other forms of publicity.

Sustainability

Past interventions and related enforcement should have the effect of sustaining compliance in the long run. Inspection and enforcement can be judged as having greater sustainability if they lead to lasting compliance and, more generally, to the adoption of measures consistent with the overall objectives of labour legislation.

▶ The Enforcement Concordat (United Kingdom)[13]

The Enforcement Concordat encourages partnership between enforcers and businesses, and sets out six principles of good enforcement to help enforcers achieve voluntary compliance.

1. Standards: Clear standards setting out the level of service and performance the public and business people can expect to receive;
2. Openness: Clear and open provision of information in plain language;
3. Helpfulness: Helping business by advising on and assisting with compliance;
4. Complaints: A clear and accessible complaints procedure;
5. Proportionality: Ensuring that enforcement action is proportionate to the risks involved, and does not cause unnecessary expense, especially to small businesses;
6. Consistency: Ensuring consistent enforcement practice.

[13] The Enforcement Concordat: Good practice guide for England and Wales.

Inspections often start as a reaction to unexpected demands for intervention from workers and their delegates, or from other branches of the administration, or for some other compulsory reason. These requests often affect activity planning and are sometimes seen as an intrusion, but in the broader national system for improving worker protection at work they are often a necessary trigger for intervention.

Complaint-based investigations can have only limited and transient effects (i.e. low sustainability) when they are used as a narrowly focused means to resolve specific problems. The inspector should judge and inquire whether a problem is truly contained or actually represents the tip of an iceberg.

Accidents and cases of disease, however, can often be used as a trigger for a broader investigation into poor safety and health management systems, poor maintenance, poor training and supervision and so on. In other words, if accidents are selected for investigation according to agreed criteria, such investigations can be a useful basis for broader intervention, often leading to enforcement action if injuries are serious. Indeed, after a very serious accident, such as a fatality, has occurred, there is often a public expectation that justice must be seen to be done, and a prosecution or other sanction is often justified.

Systemic effects

The focus of regulatory attention is often on the individual workplace and enforcement has little effect on enterprise behaviour more generally. However, well-chosen enforcement — such as a prosecution, with appropriate publicity — can have an impact way beyond the enterprise itself and affect attitudes and behaviour industry-wide, or even nationally. It thus helps to deter others from non-compliance, as mentioned above.

Enforcement appears to have a systemic effect on compliance in a number of ways:[14]

- It should have a direct effect on the enterprises being sanctioned, prompting them to improve working conditions generally.
- It may raise the awareness of other organizations concerning regulations and the standards expected of them, and prompt recognition that they do not meet these standards.
- It may amplify the deterrence effect of regulations by increasing organizations' perception of the possibility of detection and enforcement.

Labour inspectorates must find ways of influencing the behaviour of employers they might not directly inspect. Wider information on possible sanctions, publicity of serious incidents and prosecutions (as well as the offenders' names), can contribute to systemic change. The actual naming of those convicted of offences is sometimes called "naming and shaming". The level and

[14] *An evidence based evaluation of how best to secure compliance with health and safety law*, UK Health and Safety Executive (HSE) Research Report 334, 2005.

type of publicity is important, in particular making the information about the enforcement seem relevant to those whom the enforcing authority wishes to influence.

The pros and cons of publicity as an intervention strategy (M. Wright et al., 2005)

Pros (arguments in favour)	Cons (arguments against)
There is empirical evidence that adverse publicity is a strong motivator for many organizations and corporate executives.	The unpredictability of the public reaction to adverse publicity means that the "penalty" is uncertain and may not be in proportion to the offence.
It harnesses the reputational sensitivity of firms and individuals to societal shaming.	Adverse publicity may have limited impact on an organization that either lacks a brand value or has a monopoly in a certain business, e.g. the sole enterprise in a service sector.
Adverse publicity increases the internal costs of non-compliance and those of probable enforcement.	Premature publicity (before liability or fault is established) is unfair and undermines the legitimacy of the law.
It acts a general deterrent across organizations (not limited to the offender).	Deterrent effects may be limited to senior management.
It can be linked to restorative justice.	Publicity may be delayed until long after the offence due to the need to establish fault.

In addition of the systemic effects of publicizing offenders, there is another (and perhaps more) important effect, namely the need of many organizations to avoid adverse publicity and a negative corporate image. This is a key driver for those enterprises that are more conscious of their "brand name", as is the case with many national and multi-national enterprises. Thus inspectorates may be able to achieve a great deal by making head office visits, interviewing directors and other senior executives and putting pressure on them to promote high standards throughout their organization — and any subsidiaries. This can also save much inspector time. Instead of visiting many small workplaces and ensuring that each one complies, visiting a few of them and following it up with a visit to a single Head Office can have the desired effect, especially if supported by a few well-chosen examples of where the enterprise as a whole is failing.

3.2 Approaches to enforcement

There are broadly two types of approach to enforcement that countries have adopted in order to achieve the same overall objectives:

- The **sanctions approach** is a deterrence-based system that makes extensive use of prosecution and litigation in order to deter violations. This approach seeks to influence employers' perceptions (high probability of inspection and detection of violations, and significantly severe penalties) and so induce enterprises to comply with labour legislation. Critics of this approach say that it promotes adversarial relationships between regulators and the regulated, creates resentment and unwillingness in duty-holders to cooperate, and promotes a culture of defensiveness, driving enterprises to comply and curing the "symptoms" (violations) rather than of the underlying "disease" (weak or uncooperative management).
- The **compliance approach** is based on the theory that compliance is best secured by persuasion, rather than stringent enforcement. This approach to inspection is far more collaborative and allows inspectors to take a more flexible approach to compliance and help employers to redress compliance-related problems. However, for persuasive actions to be effective, they must be supported by a genuine threat of enforcement and sanctions.

Critics say that compliance approaches based on the belief that people are reasonable, act in good faith and are motivated to comply with the law, are bound to fail. It is argued that duty-holders are not usually motivated to comply with the law, and some will take advantage of the presumption that they will act in good faith. Approaches of this kind could create a *laissez-faire* culture: employers might prefer to await the inspection visit (which could be many years in coming), rather than being proactive in making improvements.

On the other hand, critics of the sanctions approach say that it emphasizes enforcement unnecessarily as many duty-holders are quite reasonable and just want good advice. They say the approach undermines the need for good relationships between labour inspectors and the social partners, which are vital for social dialogue. Instead, it creates a culture of distrust and fear, and employers will not readily divulge information or request help from inspectors, which is necessary for the prevention of accidents and protection of workers.

In practice, many inspectorates operate somewhere between the two approaches, trying to maintain good working relationships and social dialogue on one hand, but not neglecting to take enforcement action where they believe it to be justified.

3.3 Discretion and consistency in enforcement

No matter what the predominant approach in a country, discretion on the part of inspectors is an important factor in deciding the most appropriate response, case by case. For example:

- Key principles, such as protecting basic labour rights or protecting against serious health and safety risks, require strict regulation (often under criminal law) and a strong enforcement approach, with sanctions — often penal — in the event of non-compliance.
- Other requirements and less serious breaches of the law are dealt with by giving advice, with formal enforcement action taken only when non-compliance persists over prolonged periods.

An approach of this kind is supported by ILO Conventions, which state that:

> *Persons who violate or neglect to observe legal provisions enforceable by labour inspectors shall be liable to prompt legal or administrative proceedings without previous warning.... It shall be left to the discretion of labour inspectors to give warning and advice instead of instituting or recommending proceedings.*[15]

At national level, duty-holders rightly expect consistency in government enforcement: as regards the advice given, in the use of enforcement notices and, of course, in decisions on sanctions and prosecutions. The matter of consistency is one that needs to be taken increasingly seriously by inspectorates. An inspector's discretion is not a license for acting wilfully or out of personal vengeance, and inspectors need to be accountable for their individual decisions and actions within a broader policy on consistency in enforcement.

In practice, achieving consistency as to whether to give advice, impose sanctions or prosecute is not a simple matter, because inspectors are often faced with many variables: the level of hazard, the attitude and competence of management, and the history of incidents in a given enterprise. All of these will vary from one enterprise to another, even in circumstances that may appear to be similar.

Decisions on enforcement action are therefore a matter of judgment for individual inspectors. They can exercise discretion, but it must be within a wider national policy framework to ensure that there is consistency of approach. The establishment of criteria and guidelines on when and how to impose/propose sanctions guarantees consistency of decision-making among labour inspectors, and increases their perceived legitimacy and credibility. This is increasingly important as inspectorates are coming under closer public scrutiny and are called to be accountable for their decisions and actions.

There must therefore be a broad national enforcement policy and strategy, and inspectors must be fully trained in all relevant issues. This should enable them to exercise one of their key functions, which is to make sound judgements as to whether the law is being complied with, the competence of duty-holders to remedy any non-compliance and, finally, what action they (the inspectors) should take to bring about compliance. They must be able to distinguish between serious or repeated wilful non-compliance, or culpable negligence or flagrant ill will, which call for the imposition of a penalty, and involuntary or minor violations for which verbal advice and a warning may be given.

[15] Labour Inspection Convention, 1947 (No. 81), Article 17.

The enforcement strategy will to a large extent be determined by wider public policy in a particular country, and it should be monitored and evaluated from time to time so as to ensure that it contributes to the achievement of lasting improvements in the workplace.

Enforcement responses in the Labour Inspectorate of the Netherlands[16]

If during inspections an inspector notices violations of the Act, he or she will take measures or impose sanctions. The seriousness of the violation determines the measure or sanction imposed by the Labour Inspectorate. These may be:

- Making a comment about resolving the violation;
- Issuing a warning;
- Giving an order to shut down operations or halt the activities immediately;
- Issuing a demand for compliance with the Act;
- Announcing an administrative penalty;
- Announcing an official report (under criminal law);
- Announcing a penalty order (with regard to payment below the statutory minimum wage).

Except when comments have been made previously, the inspectorate will always confirm in writing the measure(s) to be taken by the employer and any sanction(s) imposed by the inspectorate.

3.4 Initiatives for promoting compliance

Workers' awareness and participation

Training and information on legal requirements should be available for workers, to increase their understanding and knowledge of the law and how to comply with it. Inspectors could participate in workers' training of the kind organized by trades unions, and also help them to understand the role of the inspectorate in promoting compliance with relevant legislation. The Labour Inspection Recommendation, 1947 (No. 81) also envisages such a role for inspectors.

In many countries, workers are proactively involved in prevention activities, as well as in reactive investigation of accidents or complaints. Such participation is particularly helpful in matters of wage negotiation and industrial relations, and when workers are represented on safety and health committees, which once again helps to promote compliance with legal requirements.

[16] Inspectie ZSW, Netherlands, *What does the Labour Inspectorate do?*

Labour inspectors will support such efforts where they can, attending committee meetings or at least engaging with worker representatives and discussing relevant matters with them.

Contractual requirements

Many public and private enterprises now include clauses in agreements with contractors or suppliers of services concerning the need to comply with relevant labour legislation and to maintain such compliance for the duration of the contract. Compliance with legal requirements is thus tied directly to a business deal, and this makes it all the more likely that legal requirements will actually be met. Agreements of this kind have the effect of promoting compliance and spreading good practice, with the result that the contractors or suppliers, who are often SMEs, are better informed about what the law requires and improve their working conditions.

Workplace audits

Workplace audits can be undertaken by an enterprise itself or by a private auditor. Audits can focus on the entire workplace, to ensure compliance with a particular national or international standard (like those in the SA 8000 series), or on particular processes. If it is to ensure compliance with a certain standard, the auditors will issue some kind of certificate of conformity. Audit organizations may be accredited by national authorities, as their task is often to certify compliance with OSH management standards. This is the case in many industrialized countries, for instance in Spain.[17] Labour inspectors may also check audit reports or certificates of conformity during their visits, recognizing that the existence of such certificates does not necessarily indicate ongoing compliance with legal requirements.

Audits are also becoming increasingly common within global supply chains. Clients — often multinational enterprises — demand that their suppliers in developing countries are subject to regular audits, to meet the requirements of national legislation and/or international labour standards. The reason for such demands is partly to ensure acceptable working conditions, which lead to higher productivity, but also to promote good company image and reputation with no taint of "sweat-shop" standards in the manufacture of goods destined for industrialized countries. Suppliers also receive helpful information and training in the course of the audits.

The overall effect of supplier audits has been to raise levels of compliance, at least within the supplier companies. Labour inspectors are increasingly involved in such audits, especially through such international collaborative programmes as the Better Factories and Better Work programmes in Cambodia, Jordan, Vietnam and Haiti.[18] This is helping to ensure that improvements in levels of compliance are better sustained.

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[17] Chapter 5 RD 39/97, Reglamento de los Servicios de Prevención (Spanish).

[18] See the Better Factories and Better Work project reports for Cambodia, Vietnam, Haiti and other countries.

Incentives

There are many examples of incentive schemes encouraging enterprises to improve compliance with the law. Some of the incentives are non-financial, including schemes and awards that grant positive recognition but do not have substantial direct financial implications. These can be very effective in enabling businesses to enhance their corporate image and reputation, gaining further business advantages by complying with the law. Labour inspectorates promote or are involved in most of these schemes.

There are also financial incentives (positive or negative) to encourage employers to improve provisions for workers' safety and health. The incentives may be insurance-related (e.g. reductions in accident insurance premiums, dependent on the accident record of the enterprise); granted to enterprises in recognition of preventive activities; or tax-based.

▶ Key features of economic incentives for the promotion of health and safety in the workplace

According the European Foundation for the Improvement of Living and Working Conditions,[19] the following four key features of economic incentives make them particularly suitable for the promotion of health and safety in the workplace:

1. Well-designed incentives can bring improvements in the working environment where both the magnitude of the incentive and the conditions of payment are closely linked to improved health and safety practice.
2. Incentives should take account of the effect of statistical fluctuations on small and medium-sized enterprises (SMEs).
3. Incentives based on historical performance alone will only have a limited impact on preventive work.
4. Incentives should point forward, promoting efforts not results.

Influencing the informal economy and other "hard-to-reach" groups

Hard-to-reach groups include the self-employed, workers in the informal economy, migrant workers, domestic workers and others who are less likely to be inspected — and who are also often more vulnerable to poor working conditions. The reason such worker groups are not inspected is either because the law and the inspection mandate do not cover them, or because inspectorate resources are insufficient to reach all workers. The informal economy deserves special attention. It is a growing area of concern, mainly because it involves so many of the world's workers. The Transition from the Informal to the Formal Economy Recommendation, 2015

[19] Economic Instruments for Sustainable Development, ECOTEC, 2012.

(No. 204),[20] establishes the importance of "an adequate and appropriate system of inspection [that extends] coverage of labour inspection to all workplaces in the informal economy in order to protect workers, and provide guidance for enforcement bodies, including on how to address working conditions in the informal economy".[21] To address the particular challenges posed by the informal economy, the ILO has developed and piloted a simple and effective process for addressing fundamental labour rights and OSH deficits through labour inspection.[22]

Many of the new initiatives are based on partnerships between the labour inspectorate and other stakeholders interested to achieve the same ends. Working in wider partnerships has meant that other channels of communication are now open to inspectors, who have been able to exploit these in their efforts to "reach the unreached". Efforts are focused on motivating enterprises to comply with the law, emphasizing the benefits of compliance, but with the threat that inspectors may hear about and inspect workplaces that consistently fail to meet legal requirements.

Other initiatives in some countries have included using TV and radio, with labour inspectors giving advice on content. Where audience surveys have been undertaken, well-designed programmes have had an evident impact and levels of awareness have been raised. The media reaches everyone, whatever their employment status, and can have a marked effect on attitudes among those who cannot be reached and influenced more directly through inspection visits, training and so on. Although there is no guarantee that these changes in attitude will translate into improved working conditions, the broadcast programmes at least raise levels of awareness of the need for good safety and health at work and of the importance of other basic human rights in the workplace.

Initiatives aimed at reaching a wider working population will increasingly include targeted approaches, with several partner organizations working together and labour inspectors acting as the enforcing authority if compliance is not achieved. Such initiatives require commitment on the part of all the partners, but have proved to be particularly effective where inspectors are involved and there is a real threat of inspection and enforcement.

[20] Available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R204.

[21] See Annex 2 for further information.

[22] *A Guide on Labour Inspection Intervention in the Informal Economy - A participatory method*, ILO, 2018.

4. The ILO's Strategic Compliance Model[23]

The ILO has developed a six-step exercise to help labour inspectorates pursue sustained compliance. The exercise "allows labour inspectorates to develop a short-term inspection strategy for a discreet compliance issue, or to come up with a comprehensive proactive compliance strategy targeting multiple compliance priorities for a long-term inspection plan; it also covers contingencies that fall between these two extremes". The six steps are as follows:

- Explore the labour inspectorate: mandate, resources, and enforcement and compliance data.
- Explore issues and targets: areas of greatest concern, identified on the basis of the labour inspectorate's mandate, and enforcement and compliance data.
- Explore influences: cause or causes of compliance and non-compliance.
- Explore stakeholders: any person, group, or entity that does or can influence compliance.
- Explore interventions: all activities, tasks, actions, campaigns, or tactics available to the labour inspectorate or stakeholders engaged by the labour inspectorate, to achieve effective and efficient enforcement and sustained compliance.
- Operationalize a strategic compliance plan: develop a tailor-made mix of interventions into an escalation timeline, draw up a budget for the plan and design indicators to assess performance.

[23] ILO Approach to Strategic Compliance Planning for Labour Inspectorates, ILO, 2017.

5. Sanctions schemes

5.1 Enforcement measures

There is a wide range of options available to inspectors and other enforcing authorities:

- Verbal or written warnings. The provision of information and a recommendation for the application of the regulations and/or the rectification of a situation.
- Administrative directives or orders. These are written orders with legal force to oblige duty-holders to take specific measures to rectify a situation of non-compliance or stop operations until a hazardous situation has been dealt with.
- Administratively imposed monetary penalties. These are financial penalties imposed by the enforcing authority itself without recourse to the courts, as happens in many countries (Germany, Sweden, the USA, the Netherlands).
- Penalty notices, on-the-spot fines and ticketing. Regulators in some provinces of Canada and Australia are authorized to impose small penalties on all workplace parties.
- Increased regulatory burden. For example, offenders might be requested to follow more stringent reporting requirements to the inspectorate, or undergo more intensive inspections or examinations of equipment or risk assessments.
- Negotiated solutions to non-compliance, enforceable by various methods, such as conditional cautioning, suspended penalties or an enforceable undertaking.[24]
- Probation for companies and directors. Companies and directors on conviction are placed on probation for offences committed, and any further offence within a set time would result in the original offence being punished.
- Adverse publicity, making known the failings of offenders. The labour Inspectorate of Brazil makes public the names of employers who are repeat offenders in the area of forced labour, enabling public institutions to restrict their access to credit, subsidies and social benefits.
- Contract listing. Offenders lose the right to apply for government contracts for a period of time. This measure promotes enterprises with good compliance records and neutralizes the competitive advantage that can occur when companies lower their compliance costs through non-compliance.

[24] In Australia, an "enforceable undertaking" is an agreement by the employer to perform certain actions to remedy a violation (for example, remedying an underpayment, apologizing or printing a public notice), which includes a commitment by the employer to future compliance measures.

- Disqualification of directors.[25]
- Variations of licences or conditions (e.g. closure or suspension of an enterprise's operations; suspension or revocation of the employer's operating licence).
- Civil and criminal prosecution (which may also result in criminal fines, imprisonment or an array of possible remedial orders). Some of the orders imposed by courts in Canada and the USA are training orders (requiring direct offenders and their employees to undertake health and safety training); organizational reform orders (requiring a company to change the way it is organized to avoid a repetition of the offence); publicity orders (ordering offenders to publicize the sentence against them); enforcement of costs orders (ordering offending companies to pay for the regulatory authority's investigation costs); orders of reparation and restoration, and so on.

Additional sanctions (Portugal)[26]

1. In cases of very serious violations, or the repetition of violations committed with deceit or serious recklessness, an additional sanction of **adverse publicity** will be applied.
2. Considering the harmful effects to the workers or the economic benefit got by the employer as a result of a violation, other additional sanctions can be applied:
   a) **Suspension of activity** in the establishment for a period up to two years;
   b) **Denial of the right to apply for public contracts** for a period up to two years.

In general, a sanction system is effective only if:

- the severity of the sanctions (their nature, their amount in the case of fines, or the effort needed to repair the damage done) is such as to have a real deterrent effect on potential non-compliers.[27] The severity and seriousness of the different types of sanction will not have the same impact on all offenders/target groups.
- the speed and certainty of sanctions increases their impact: immediate sanctioning ("tit-for-tat" policy) will have more effect than postponed sanctioning. The procedures for applying sanctions should be rapid, avoiding excessive delay as a result of constant appeals. Compliance will not be encouraged if the potential offenders know that legal proceedings are very laborious and time-consuming for the inspectorate, that law courts give low priority to labour offences, or that their resources are very overstretched.

[25] The Company Directors Disqualification Act 1986, section 2(1), empowers the court to disqualify an individual convicted of an offence in connection with the management of a company. This includes health and safety offences. This power is exercised at the discretion of the court; it requires no additional investigation or evidence. See HSE guidance.

[26] Art. 115 of Law 102/2009, juridical regime for the promotion of Safety and Health at Work (Portuguese).

[27] The sanctioning process may also have additional costs and disadvantages, such as bad publicity, loss of respect/reputation and payment of legal fees.

5.2 The purpose of sanctions

As mentioned in the last chapter, deterrence is the most important purpose of sanctions and a key to promoting compliance. In addition to deterrence, the other main purposes of sanctions are:

- **Punishment**: Sanctions also have value as a means of securing social justice. Someone has perhaps been killed at work; the relatives of the deceased want to see justice done and the guilty punished. The severity of a penalty should be reasonable and proportional to the severity of the infraction.
- **Rehabilitation**: Sanctions may be used to help educate offenders, albeit through coercive means, as to what the law requires and the need to comply with it.
- **Restoration**: Restorative justice gives victims the chance to inform offenders of the real impact of their crimes, get answers to their questions and receive an apology. It gives offenders the chance to understand the real impact of what they have done and do something to repair the harm (in this case, against workers or workers' families).

Some systems, as in the USA, apply a relatively rigid approach to sanctioning violations. Other countries have adopted a "hands-off" policy and rarely use formal sanctions, if at all. Most of their dealings with those to whom the law ascribes liability[28] are informal.

[28] The duty-holder may be the owner of the premises, the supplier of the equipment, or the designer or client of the project, rather than the employer of the workers.

Criteria that guide decision-making regarding enforcement (Australia)[29]

In deciding on the most appropriate action to take, the regulators are guided by the following considerations:

- the adverse effect, that is the extent of the risk, the seriousness of the breach and the actual or potential consequences;
- the culpability of the duty-holder, that is how far below acceptable standards the conduct falls and the extent to which the duty-holder contributed to the risk;
- the compliance history and attitude of the duty-holder;
- if it is a repeat offence or there is a likelihood of the offence being repeated;
- whether the duty-holder was authorized to undertake certain types of work;
- the impact of enforcement on encouragement or deterrence;
- any mitigating or aggravating circumstances, including efforts undertaken by duty-holder to control risks;
- whether the risk to health and safety is imminent or immediate; and
- whether the safety issue can be rectified in the presence of an inspector, or the inspector is satisfied with a plan to remedy the breach.

5.3 Determining the amount of fines

If penalties are to have a deterrent effect, the amount of fines should be regularly adjusted to take account of inflation. In some countries, the amount of penalties is therefore linked to the minimum wage. In Guatemala, for example, inspectors are empowered to impose penalties ranging from two to twelve times the minimum wage, depending on the gravity of the offence. In Croatia, the central inspection authority has proposed introducing a method of fixing fines based on confiscation of the profits derived from non-compliance.

When **determining the appropriate level of a sanction** for an identified violation, the following factors may be considered in a regulation or in official guidance:

- the seriousness of the violation;
- the employer's record of violations, including whether the employer has committed substantially similar violations repeatedly over a specific period of time; and

[29] Safework Australia, "National compliance and enforcement policy".

- the employer's level of intent, including whether the non-compliance at issue was wilful, reckless, knowing, indifferent or negligent;
- the turnover of the economic unit;
- the number of workers affected;
- the methods of protection afforded to workers by the employer;
- the employer's instructions or training for workers on OSH risk prevention;
- the dangers involved in the activities performed at the worksite, and whether the risks inherent in the activities are long-term or transitory;
- the seriousness of the damage caused, or that could have been caused, by the violation identified.

Penalties for obstructing inspectors in the performance of their duties, in most countries, take the form of fines. However, in Benin, Singapore and Poland, prison sentences are also prescribed for this offence.

5.4 Injunctions

Injunctions are acts of coercion, applied by the courts on application from the labour inspectorate or by the inspectorate directly, to ensure compliance with labour legislation. The duty-holder is thereby required to do, or refrain from doing, certain acts. Failing to obey the injunction gives rise to civil or criminal penalties and the employer concerned may have to pay damages or accept sanctions. In some cases, breaches of injunctions are considered serious criminal offences that merit arrest and a possible prison sentence. Due to the different nature of an injunction (a remedy consisting in compelling the employer to remove the cause of non-compliance) and a sanction (a punishment for non-compliance), both can be imposed concurrently.

The most frequently used kinds of injunction are:

- **Improvement notices**. These are issued where inspectors wish to see some specific non-compliance remedied quickly. Improvement notices are given in writing and oblige employers to take specific measures to remedy an instance of non-compliance, generally within a time limit set out in the notice. The time allowed in an improvement notice may be extended at the inspectors' discretion, if there is clear evidence of progress and good reasons why the deadline cannot be met.
- **Prohibition notices or cessation of work orders** are issued where there are risks of serious personal injury. They could relate to equipment, machinery, processes or even the whole works, and require employers to cease activities until the risks have been controlled or removed, as specified in the notice or order.

Injunctions are usually issued on official forms and are based on the inspector's own assessment and judgement. They carry the weight of a legal document and usually provide:

- descriptions of the shortcomings and the measures to be taken to remedy them;

- notification of the levels of compliance to be reached;
- references to standards justifying the injunctions in terms of the facts observed;
- the deadline by which times the terms of the injunction must have been met.

In some case, injunctions may require the employer to report back to the inspectorate on the measures taken to comply. Notices may also require employers to submit plans to the inspectorate, specifying how they will implement them.

Compliance with an improvement notice is checked by the inspector on expiry of the time limit or, in the case of a prohibition notice, within a certain time to check on progress. An employer who does not comply with the terms of any of these notices — for example, who uses a machine subject to a prohibition notice — automatically commits a criminal offence and gives the inspector grounds for initiating a prosecution

In deciding whether to prosecute, the inspectorate will take into account the seriousness of the offence and its consequences, whether or not the employer had prior knowledge of the likely consequences, and whether there have been repeated contraventions or orders previously ignored. Most inspectorate managers will consider prosecution, when appropriate, as a way of drawing general attention to the need for compliance with the law and the maintenance of legal standards.[30] Prosecution is especially appropriate in cases where:

- there is a standard expectation that punitive action will be taken; or
- the conviction of an offender may deter others from similar failures to comply with the law; or
- there is judged to have been the potential for considerable harm arising from a breach; or
- the gravity of the offence and the general record and approach of the offender warrants it, e.g. if there has been an apparent reckless disregard for standards, repeated breaches of the law or persistently poor working conditions.

All such forms of legal action will entail detailed reporting by the inspectors concerned, and in many cases will require authorization at a more senior level within the inspectorate.

The problem with prosecutions is that it may take years for cases to come to court, by which time general interest in the case has often waned (except for prosecutions following major incidents or those of major public concern).

In some countries, inspectors can also impose administrative penalties. The advantage of such penalties is that they are imposed almost immediately and do not take up a lot of lawyers' and courts' time. Countries which empower inspectors to issue such penalties should nevertheless have a system of controls to ensure that the fines issued are appropriate and equitable.

[30] In such cases, the individual offender is not the focus of the attempt at behavioral change, but rather is punished in public view in order to deter other potential offenders from committing violations in the future. These interventions are intended to produce systemic effects and changes in the behavior of employers on an industry-wide scale.

▶ Content of an infraction report (Acta de Infracción)[31]

The report of a violation drafted by the Inspectorate of Labour and Social Security of Spain must contain:

a) the full name or trade name, address, activity, national identity document, tax reference and social security account number or self-employed identification number of the presumed offender. If it is established that there is a subsidiary or jointly and severally liable person, this circumstance shall be stated, along with the factual and legal grounds for the alleged liability and the same information as required for the directly liable person;

b) the relevant facts as verified and stated by the inspector with the aim of standardizing the infringement, the means used for the verifying the facts on which the report is based, and the criteria on which the severity of the proposed sanction is founded; it must also be stated whether the report is the result of a visit, court case or administrative procedure;

c) the violation(s) alleged to have been committed, together with a statement of the rule(s) that have been broken;

d) the number of workers in the company and the number affected by the violation (when such information serves to modulate the sanction or, where appropriate, describe the infringement);

e) the proposed sanction, its severity and quantification, together with any proposed accessory sanctions associated with the main one;

f) the competent body for making decisions and the period for the submission of evidence to that body;

g) indication of the official who is making the report of the violation with his/her official stamp and signature;

h) the date of the report.

[31] Regulation on the procedures to impose sanctions. Inspectorate of Labour of Social Security of Spain. Real Decreto 928/1998, de 14 mayo. (Spanish).

5.5 Appeal procedures

Persons issued with improvement or prohibition notices and court orders, as well as administrative fines, have the right of appeal. Appeal procedures will vary from one country to another, but in most cases an inspector's decision can be reviewed on appeal to a higher public officer, a specialized labour body or a court. Separate administrative and appeal mechanisms may exist for different industries (e.g. mining).

Appeals must normally be submitted to the competent authority within a fixed deadline, frequently two weeks or one month from the date on which the injunction was issued. Launching an appeal usually has the effect of suspending the legal action, with the exception of prohibition orders, because of the imminent risk involved.

Summary

The ILO Conventions on labour inspection[32] state that the functions of labour inspection systems shall be, *inter alia*, "to supply technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions". Inspectors therefore spend a lot of time in giving technical and legal information and advice to employers and workers on the requirements of the law and how best to comply with it.

While such advice and information is both welcome and necessary, it must be accompanied by the real possibility that enforcement action will be taken and sanctions imposed in cases of non-compliance. The credibility of any inspectorate thus depends on both aspects: its ability to advise employers and workers on the most effective means of complying with the law, and the ability to impose realistic sanctions. The functions of advice-giving and enforcement are inseparable. This is an important point, for there are still many countries where labour inspectors rarely if ever take enforcement action and impose sanctions, with the result that the relevant laws (and labour inspectors) are largely ignored.

There are two key aspects of the legislative system that deserve mention in this context. Firstly, the quality of the legislation itself must be such that it is seen by the general public to be both fair and relevant. On one hand, it should not impose unnecessary burdens on business; on the other, it must be up-to-date and relevant. Much harm is done to the cause of social justice in the workplace when national labour legislation is not revised for long periods and becomes outdated and irrelevant to the modern world of work. ILO Conventions and Recommendations are designed to be helpful in this respect, and as many as possible should be ratified and introduced into national legislation. In addition, the legally prescribed penalties must be serious enough to act as a deterrent; national legislation needs to be up-to-date in this respect too.

Secondly, there must be a real threat that fines will be imposed in proportion to the seriousness of an offence. This has implications for inspectors: they need legal enforcement powers, credible enforcement mechanisms and an overall policy on enforcement that is both fair and transparent. But it also has implications for the law courts, judges, magistrates and administrators who actually impose the fines or other penalties: the penalties must have meaningful effect and be weighty enough to reflect the gravity of the offence. If the sanctions imposed are derisory, the punishment is meaningless and the deterrent effect minimal, the law is unlikely to be respected and compliance will be weak.

This module deals with the topics mentioned above and discusses different strategies for promoting compliance, with reference to ILO guidance and tools and selected best practices in different countries.

[32] Notably the Labour Inspection Convention 1947 (No. 81) and the Labour Inspection (Agriculture) Convention 1969 (No. 129).

Exercise 1

TITLE	***Deciding on appropriate enforcement action***
AIMS	✓ Identify what you consider to be the most appropriate forms of enforcement action to be taken in the two cases summarized below. ✓ Discuss the different approaches of the enforcement officers of different countries (or of the same country). ✓ Determine to what extent the discretion of the enforcement officers and consistency in the action of the inspection services could be reconciled in specific situations.
TASK	In your small working group: ✓ Elect a spokesperson to report back with your group's views. ✓ Discuss what enforcement option you would be required to adopt (by your legislation or internal labour inspection procedures) in the cases set out below. ✓ Discuss what enforcement option you would adopt in the cases set out below and justify your decision.
TIME	The groups have 30 minutes for their deliberations. After that, each spokesperson will have 5 minutes to report on the conclusions of their group.

Case 1

Your inspectorate has competence with regard to safety and health and employment conditions (working time, salaries, leave, child labour, etc.). You visit a garment factory because you have received a formal complaint that they are employing under-age girls. During your visit, you find three 13-year-old girls (legal minimum age is 14) working with sewing machines; they work there full time and have been there for a year.

The enterprise has 76 workers in total and has been operating for six years. The employer has received four previous inspection visits and has been given written and oral advice about not employing under-age workers. The company has never been prosecuted. The employer argues that he did not know that the girls were younger than 14.

Case 2

Labour inspectors visit a restaurant in response to a complaint about working time. There are 15 employees. The inspectors interview five employees in accordance with their operation manual, and find that the employer has not granted three of them any statutory holidays during the first three months of employment. This is not in compliance with the legal provisions that statutory holidays must be granted to employees. The employer says that it is not the restaurant's policy to grant statutory holidays to employees with less than three months' service. He says that employees are informed of this policy before signing their contract.

Exercise 2

TITLE	***The key dimensions of compliance***
AIMS	Taking into account Table 11 - Key dimensions of compliance, ✓ Identify the three most critical dimensions of compliance under the labour regulations of your country ✓ Identify the measures the public authorities should take to improve these three dimensions.
TASK	In your small working group: ✓ Elect a spokesperson to report back with your group's views. ✓ Read Annex 1 - "Table of eleven key dimensions of compliance". ✓ Discuss and agree what are the three most critical dimensions of compliance under the labour regulations of your country. ✓ Discuss and agree what measures the public authorities should take to improve these three dimensions.
TIME	The groups have 45 minutes for their deliberations. After that, each spokesperson will have 5 minutes to report back the conclusions of their group.

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