

Module 5: Legal framework

What will be the implications in terms of legal framework?

Objective of the module:

- To guide the draft of the legal framework regulating the unemployment benefits schemes and amendment to existing laws, in accordance with international labour standards (ILS) related to unemployment protection and employment promotion;
- To discuss different options for the legal architecture of the unemployment protection programme;
- To instruct participants relating to important definitions such as reasons for termination, just cause, suitable employment as well as scope of application, inspired from the ILS;
- To gain an understanding of the elements surrounding the enforcement of the unemployment protection programme.

Pre-requisites: Nil

Estimated duration of the module: 2 1/2 hours

Content:

It is essential that any scheme of social security, and specifically a rules-based scheme, should be founded upon a properly formulated legal basis. The aim of this module is to remind all essential components of the legal framework to be drafted in line with ILS, to address the legal changes entailed by the adoption of such a programme, to provide an overview of the main legislative options for enacting an unemployment protection programme.

This session will be organized in terms of the following headings and questions:

Session M5.1 (105 min): Drafting the legal framework

- M5.1.a. Presentation: Understanding the legal context: different levels of the legal framework; mapping the existing legal architecture; possible implications on other existing laws.
- M5.1.b. Practice Session: Preparing an outline of a draft law for (contributory and non-contributory) unemployment protection programmes in line with ILO Conventions.
- M5.1.c. Presentation: Determining the legislative options for the overall legislative structure of the unemployment protection programme.

Session M5.2: (105 Minutes) Exercise to identify targets, key performance and operational indicators

- M5.2. a. Presentation: Informing workers and employers (developing an information campaign);
- M5.2. b. Presentation: Compliance mechanisms: sanctions, incentives
- M5.2. c. Presentation: Appealing system

Checklist of questions that are answered through the module:

- ✓ What are the main legislative considerations when implementing an unemployment protection scheme, referring to relevant ILO Conventions?
- ✓ What are the main legal issues and recommendations for the overall legislative structure of the programme?
- ✓ How to check compatibility with the existing labour laws, social security laws, and employment acts?
- ✓ What would be the possible implications of introducing unemployment protection on other existing laws and policies, such as those regulating ALMP and other social security provisions?
- ✓ Which components of the system should be included in the draft law?
- ✓ Why is the issue of “just cause” essential to consider when establishing an effective unemployment protection programme?
- ✓ Is there an adequate definition for “suitable employment” available and how is it to be applied to those cases who refuse work, with reference to ILO definition?
- ✓ Why is it important to develop a full communication strategy prior to the implementation of the collection of contributions and the implementation of unemployment protection schemes?
- ✓ What methods are effective in educating employers on unemployment benefits issues?
- ✓ How do other countries deal with individuals who make fraudulent statements in order to collect (contributory and non-contributory) unemployment benefits payments?
- ✓ What types of penalties are adequate to protect the unemployment benefits fund from abuse and fraud?
- ✓ Why is it critical to have an effective appeal system within the unemployment benefits programme?
- ✓ To what extent can one offset the perception in some quarters of generous unemployment benefits by imposing restrictions on eligibility requirements?
- ✓ How severe is it necessary to impose restrictions on entitlement to protect the integrity of the unemployment benefits fund and prevent fraud?

Training methods: Group discussions and exercises based on the review of country's laws

Material to be distributed to participants (attached to the module): References to specific articles of relevant international labour standards, list of definitions, country fact sheets and reports, Comparative review of UI/EI systems in Asia and worldwide.

Physical media required: writing paper and pens, chart papers, coloured cards, coloured pens, board to pin up chart papers, white board, markers, laptops, LCD projector, and sound system.

Challenges faced:

Many of the decisions impacting on payment of UI benefits require a great deal of judgement due to the subjective nature of the terminology of UI. Elements such as voluntary versus involuntary termination of employment, “just cause”, refusal of work and suitable employment necessitate effective factfinding methods, good judgement and an ability to deal with conflicting information. It is important to have a clear and effective definition of these particular elements to ensure decisions made by the department are clear and transparent.

Communication issues are virtually identified in all evaluations that there is a serious need to provide ongoing advice and guidance to educate workers and employers on the qualifying conditions for receiving UI and other matters.

Another challenge for governments is to provide adequate but not overly generous UI benefits thereby increasing the perception of “moral hazard” and negatively affecting the intention of workers to return to work as soon as possible. Many countries have enacted conditions to offset generous benefits and the severity of these conditions need to be addressed by a county contemplating an implementation of a UI programme.

List of bibliography and references:

- “Comparative review of unemployment and employment insurance experiences in Asia and worldwide” by John Carter, Michel Bédard and Céline Peyron Bista, ASEAN-ILO/Japan Project Promoting Unemployment Insurance and Employment Services in ASEAN, Regional Office for Asia and the Pacific
- ILO, 2002: Standards for the XXI Century: Social Security
http://www.ilo.org/global/standards/information-resources-and-publications/publications/WCMS_088019/lang-en/index.htm
- ILO, 2011: Social security and the rule of law
http://www.ilo.org/secsoc/information-resources/publications-and-tools/conference-documents/WCMS_SECSOC_21980/lang-en/index.htm

- ILO Social Security (Minimum Standards) Convention, 1952 (No.102)
- ILO Protection against Unemployment and Employment Convention, 1988 (No.168)
- ILO Protection against Unemployment and Employment Recommendation, 1988 (No.176)
- ILO Social Protection Floors Recommendation, 2012 (No.202)
- OECDiLibrary: Eligibility Criteria for Unemployment Benefits. Danielle Venn (OECD France):
http://www.oecd-ilibrary.org/social-issues-migration-health/eligibility-criteria-for-unemployment-benefits_5k9h43kgkvr4-en
- Service Canada website:
http://www.servicecanada.gc.ca/eng/ei/information/voluntarily_leaving.shtml and *Digest of Benefit Entitlement Principles*:
http://www.servicecanada.gc.ca/eng/ei/digest/6_8_0.shtml.

Module 5: Legal framework

What will be the implications in terms of legal framework?

Session M5.1 (105 min): Drafting the legal framework

➤ **M5.1.a. Presentation: Understanding the legal context: different levels of the legal framework; possible implications on other existing laws.**

The different levels of the legal framework

Various elements are needed to operate an unemployment protection programme, and an important area of law drafting is to decide which legal form they should take: act or law of Parliament, regulation, executive order, administrative policy and manual, or institutional arrangement. Each country may adopt its own terminology to define its national legal structure.

An act or law is made by a legislative body. The act is adopted by the Parliament is a law made by a national or sub-national parliament. Acts or laws should establish the unemployment protection programme's purposes and its main elements. In addition, certain types of provisions are conventionally found in acts, including provisions establishing administrative bodies and conferring necessary powers, including the power to make regulations and orders, provisions governing the collection and use of public funds (type of benefits), as well as provisions concerning the appealing system and enforcement mechanisms.

Regulations are rules and administrative codes usually issued by politically accountable officials at the government level, such as ministers. The processes for making regulations and orders is generally less involved than parliamentary processes and, as forms of subsidiary legislation, for which amendments can usually be made more quickly. This is important for provisions that provide details, notably on parameters, since they are more likely to have to be altered to respond to changing conditions of the labour market following a economic crisis and/or natural catastrophe.

Last but not least, institutional arrangements incorporate the networks of entities and organizations involved in planning, supporting and implementing laws and regulations administrating the unemployment protection programme.

Compatibility with and possible implications on existing legal framework

Before drafting the law, it is essential to know definitions and concepts that already exist labour and social security laws, but also in the various existing programmes that provide benefits bearing some similarity to unemployment protection benefits. If a new unemployment protection system is to be introduced, some operational requirements may have implications on the

existing labour and social security laws and regulations. The legal structure will have to be harmonized and kept consistent.

Possible implications on provisions for termination benefits/severance payments

When introducing unemployment benefits also comes the linkage with termination benefits/ severance payments, when in place. Several alternatives can be discussed:

- Maintaining both termination benefits and unemployment benefits, the first being a recognition for the years of service, the second one as compensation for loss of earnings;
- Phasing out termination benefits to the benefit of introducing more effective unemployment protection;
- Keeping the recognition of tenure through collective agreements applied to all employees of a specific enterprise, and/or sector of the economy.

Phasing out retrenchment benefits while introducing unemployment benefits means that workers would remain entitled to the retrenchment benefits accrued up to the effective date of implementation of UI system, but no further retrenchment benefits would accrue for work commencing after the effective date of UI system. For example in Viet Nam, a “phasing out” clause has been adopted with the introduction of the UI system, employers had to provide severance payments for service up to 1 January 2009 (date of introduction of the UI system) but no longer need to do so for any employees that have come under the UI system since then.

Possible implications on provisions related to active labour market policies

ALMPs generally operate in close conjunction with unemployment protection systems, and for instance a successful UI/EI system will rely greatly on efficient and effective ALMPs. As a matter of fact, the facilitation of early return to work presents the double benefit of maintaining the country’s workforce active and productive (long period of unemployment tend to affect workers’ productivity when returning to work), and of limiting the expenditures of the unemployment benefits fund.

Therefore, an in-depth assessment of existing ALMPs is needed to identify performing programmes and institutions on which the EI system should be built. It is also important to consider whether any of the existing ALMPs needs to be adjusted to fit with a unemployment protection system. Coordination and integration between unemployment benefits and ALMPs may require to adjust the legal provisions regulating ALMPs in order to ensure that programmes are accessible and adapted to unemployed as well.

Maintaining social health insurance coverage.

As recommended by the ILO Conventions No.102 and 168, access to medical care should be guaranteed for beneficiaries of unemployment benefits programmes. In this case, some amendments to the social security laws or social health insurance laws may be required to reflect extension of the scope. Contributions

can be either financed by the unemployment benefits funds, subsidized by the government or provided by the social health insurance fund.

➤ **M5.1.b. Practice Session: Preparing an outline of a draft law for (contributory and non-contributory) unemployment protection programmes in line with ILO Conventions.**

Even when the ILO conventions and recommendations have not been ratified in the country adopting an unemployment protection programme, these instruments provides international standards and guidelines setting benchmarks for the design of the unemployment benefits programmes. The two flagships Conventions related to unemployment protection are Conventions No.102 and No.168, with its Recommendation No.176. The Social Protection Floors Recommendation, 2012, also provides guiding principles for the establishment of unemployment protection schemes.

The exercise aims at outlining the main components of an unemployment protection programme law. The key elements of the unemployment protection system to be taken into account can be classified within five categories: coverage and equality of treatment, insurable earnings and rates of contributions, benefits, decisions and appeals, and administrative provisions.

i. Definition of the contingency (risk) covered

The law should clearly mention all the contingencies covered and under which conditions, as the basic principle of insurance is that benefits are paid when the insured event or “contingency” occurs. The contingency covered by both Conventions No. 102 and No. 168 includes suspension or loss of earnings due to inability to obtain suitable employment in the case of a person protected who is capable of and available for work. The requirement to “be actually seeking for work” was added in Convention No. 168 to ensure quick return to work under suitable jobs for workers.

Then several details should be added, for example whether it is required or not for job seekers to register at the employment office upon termination and report monthly on their job search activities.

The way “employment” is defined in laws varies among countries. For example, in Bahrain, insurable employment is defined in terms of the scope of the Law on Social Insurance and the Law Governing Pensions and Retirement Benefits for Civil Servants.

ii. Coverage and equality of treatment

In line with the ILO’s Recommendations No.176 and 202, and international labour standards promulgating equality for treatment, the coverage should be to

all workers. If any restriction is applied, it is essential to state in the law which categories of contract are covered (short term, daily, part-time and seasonal contracts, apprenticeships, public employees, domestic workers, migrant workers) and which categories of workers will remain excluded from the scheme's coverage.

iii. Insurable earnings and rates of contributions

A strict definition of insurable earnings has to be included in the law, and should be in line with other references to wages, earnings, salaries included in other legal texts. Besides, a provision should be included to adjust the maximum insurable earnings to reflect increases in wages and prices.

Provisions should also be added for setting the rates of contributions based on actuarial studies. Because of the general volatility in the factors forming the basis for setting rates, they are often set by government regulation on a regular (usually annual) basis. Even jurisdictions where they are established in the principal legislative instrument (for example, Bahrain), power is delegated to the government to adjust them. It is recommended to allow a certain degree of flexibility in legislation as to allow adjustment of the contribution rate that will reflect economic conjuncture and/or responses to natural disasters. For instance, level of contributions (as well as benefits) could be fixed at the Decree level instead of Law level.

When contributors are comprised of employers and employees, Employees' contributions should not exceed 50% of the financial resources allocated (Convention No.102).

Legislation is also needed to require employers to pay their premiums and to deduct and remit employee contributions. Legislation should stipulate how contributions are to be paid and provide for the collection of unpaid or overdue contributions – including interest rates – as well as inspections to verify amounts owing. Provisions should also be included to correct overpayments and provide refunds. Provisions are generally included to facilitate the recovery of contributions through legal processes. It is recommended that non-payment of contributions by an employer should not be a basis for refusing to pay employee benefits and should thus be stated in the law. Finally, provisions should be included for applying sanctions on employer and employee in case of no payment of contribution (see section hereafter in the module).

iii. Benefits

The Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168), and Recommendation, 1988 (No. 176) envisage that the benefit must be a periodical and temporary payment; the amount of which, for a standard beneficiary (man with wife and two children), must attain 45 per cent of the reference wage (Convention No.102) and in the case of Convention No. 168, this rate is 50 per cent of the reference wage.

Recommendation No. 176 also contains detailed provisions in regards with partial unemployment, the protection of workers who are experiencing hardship during a waiting period, new applicants for employment and part-time workers.

Under Convention No. 102, the duration of the benefit may be limited to 13 weeks within a period of 12 months. However, where the protection covers all residents whose means during the contingency do not exceed prescribed limits, this duration may be limited to 26 weeks within a period of 12 months. In the case of Convention No. 168, the initial duration of payment of the benefit may be limited to 26 weeks in each spell of unemployment, or to 39 weeks over any period of 24 months.

iv. Qualifying conditions

Entitlement to unemployment benefit may be made subject to the completion of a qualifying period. Reason for termination of employment should be involuntarily, with exception when the person leaves for “just cause” (see definition hereafter).

The effect of voluntary leaving on entitlements to unemployment benefits varies from one country to another. In Thailand, it results in lower unemployment benefits (level and duration), in Viet Nam the reason for termination is not considered as a qualifying or disqualifying criteria.

However, such qualifying period must not exceed the duration considered necessary to preclude abuse. Furthermore, unemployment benefit need not be paid for a waiting period, the duration of which must not exceed seven days in each case of suspension of earnings. Moreover, both Convention No. 102 and Convention No. 168 provide, in the case of seasonal workers, that the waiting period may be adapted to their occupational circumstances. Similarly, special provisions might be envisaged for part-time workers and new entrants to ensure that they meet the qualifying conditions.

It should be noted that, where protected persons have received severance pay directly from their employer or from any other source, Convention No. 168 permits the suspension of the unemployment benefit to which they would be entitled or the reduction of the severance pay as a function of the total amount of the unemployment benefit.

Seeking suitable employment is often a qualifying condition for benefits and thus a definition of “suitable employment” in accordance with the ILO Convention 168 (art. 21) and the Recommendation No. 176, should be provided by the law. A refusal of suitable employment should correspondingly result in a disqualification. This does not concern claimants who are unable to work because of illness, disability or family responsibilities. Moreover, “Refusal” needs to be defined as well. Sometimes, even if the concepts of “refusal” and “suitable employment” are already stated in the legislation, they require to be further elaborated (see session hereafter).

v. Decisions and appeals

The legal principles of natural justice and fairness require administrative decisions to be made in a way that allows those affected by the decisions to have a say in them. An important adjunct to these principles is a right to appeal a decision and have it reviewed. Rights of appeal are generally subject to time limits within which requests for review must be made. Procedures for appeals may be set out in the legislation establishing the unemployment protection system or in other more general legislation dealing with administrative procedures. A specialized review tribunal may conduct appeals, which is itself reviewable by the courts. More details on appealing systems are included in Session 2 of this module.

v. Administrative provisions

The Conventions strongly recommend having representatives of the beneficiaries, employers and government part of the administration board. The law should also confer the authority to the administration board to carry out the administrative functions.

Provisions are also needed to establish accounts, administrative arrangements, and authority for receiving contributions and paying benefits for the program.

Administrative organizations are increasingly turning to electronic transactions as a way of introducing efficiencies into their operations. Legislative provisions are generally needed to authorize these sorts of transactions. Consideration should also be given to including provisions to authorize pilot projects. (more details are provided in Module 4).

vi. Enforcement provisions

Provisions for the enforcement of an unemployment protection system generally include the creation of offences and penalties for contravening program requirements and powers to conduct inspections to verify compliance and investigate the commission of offences (more details in Session 2 of this module).

vi. Monitoring and Evaluation

The law should require for periodical actuarial valuation, in any case, before any changes in law parameters.

➤ **M5.1.c. Presentation: Determining the legislative options for the overall legislative structure of the unemployment protection programme.**

i. Two main options for the overall legislative structure of an unemployment benefits programme

A new stand-alone UI law

The first possible option for the legislative structure is the creation a new Act for the unemployment protection system. This entails strong coordination and harmonization with existing laws affecting the implementation of the unemployment benefits, and prevention of duplication. It can be recommended to opt for this solution when the unemployment protection programme is quite distinct from any existing programs, although certain components of these other programmes might be required for the unemployment benefits. As a matter of fact, if the existing programs have quite different structures and purposes and if they are scattered across other legislation, it can be difficult to modify the legislation in place to make it apply to the new unemployment benefits. Besides, modifying them so that they apply to the new unemployment protection system would make understanding and applying the unemployment protection system far more difficult for employers, employees and administrative officials. The enactment as a new Act eliminates the complexity and risks involved.

Attaching unemployment benefits legislation to an existing Act/Law: supplementary unemployment benefits Chapter

The second option is to integrate the unemployment benefits system into the existing Social Security Act/Law. This would involve integrating an UB Chapter into the existing Act/Law and linking with other existing legislation and institutions related to ALMPs. The Social Security Act/Law generally provides for the funding and payment of a range of benefits relating to the contingencies covered by social security benefits. It contains common provisions required for an unemployment benefits system, notably provisions for defining key terms such as “employee”, the payment and collection of contributions, administration, finance and audits, adjudication of claims and appeals, periodical valuation and enforcement.

This would require including separate provisions as the level of contributions and payments, qualifying conditions, among other matters are different, while common principles related to social insurance based management will be similar to those applied to other benefits of the Social Security Act.

ii. Country Review – Unemployment Insurance’s Legal framework

A review of 14 UI/EI systems in Asia and worldwide shows that five countries have included UI benefits under their Social Security or Social Insurance Law; eight countries opted for a separate law (although some of the countries started first with including UI under their social security act); and one country has kept UI provisions within the Labour Law.

Country	Social Insurance Law	Separate Decree/Law (Employment/Unemployment Insurance Act)	Other scenario & other related laws
Argentina			<ul style="list-style-type: none"> ✓ 1991: National Employment Law (Law 24.013): provision for the protection of the unemployed under Title IV - 2001: Law No. 25.371 (Industria de la Construcción. Sistema Integrado de Prestaciones por Desempleo) extended access for workers employed in the national construction industry - 1999: Law 25.191: System Integral of Unemployment Benefits for Rural Workers - 1947: Law 13.047: regulates Unemployment Benefits employees of private teaching institutions - 1995: Law 24.521: for teachers in private universities
Bahrain	- Consolidated Act on Social Insurance of 1976	✓ 2005: Legislative Decree No. 78 of 2006 with respect to Insurance Against Unemployment	
Canada		✓ 1996: Employment Insurance Act and related Regulations, last amended in January 2011	
Chile		<ul style="list-style-type: none"> - 2001: Law 19.728 focused on permanent workers - 2009: Law 20.328: qualified jobseekers can receive two extra months of benefits in period of high unemployment, coverage extended to temporary workers 	
China	✓ Social Insurance Law , revised 2010	<ul style="list-style-type: none"> ✓ 2008: the Employment Promotion Law (EPL) - 1999: Regulations on Unemployment Insurance (State 	- Civil Servant Law: covering civil servants

		Council Ordinance # 258-99)	
Denmark		✓ Law LBK No 838 of 4 July 2011, plus any subsequent amendments	
France		✓ Convention d'assurance chômage du 6 mai 2011	- Labour Code (Articles L5422-20 to L5422-24)
Germany		✓ Employment Promotion Act , 1969	
Japan		✓ Employment Insurance Law (Law No. 116), December 1974 - Consecutive amendments to the legal framework of the EI system in 2001 (Law No.35) and in 2003 (Law No.31) (extending coverage, clarifying eligibility criteria, preventing misuse of the EI system)	- Law Concerning the Collection of Premiums on Labour Insurance (Law No. 84 of December 1969)
Republic of Korea		✓ Employment Insurance Act (Law No. 4644), December 1993	
Mongolia	✓ Law on Social Insurance which included provisions for Unemployment Insurance, 1984 - Revised in 2001	- Law of Mongolia on Employment Promotion, 2001	- Law on Payment of Unemployment Benefits from the Social Insurance Fund, December 1995
Thailand	✓ Social Security Act , B.E. 2533 (1990) - The Amended Social Security Act adopted on 26 August 2003 introduced the UI scheme		
United States	✓ The Social Security Act (SSA, Title III, Title IX, and Title XII) of 1935 and the Federal Unemployment Tax Act (FUTA)		
Viet Nam	✓ Law on Social Insurance , 2006 - The Decree 127 (Decree No. 127/2008/ND-CP) and the Circular 32/2010/TT-BLĐTBXH regulate the implementation of the UI scheme.		- Amendments to the Labour Code, which laid the groundwork for the introduction of unemployment insurance, April 2002
TOTAL	Total Social Insurance Law / Social Security Acts	Total separate Decree/Law (Employment/Unemployment) Insurance Act	Total Labor Code / Employment Law
	5	8	1

Session 5.2: (105 minutes)

M5.2. a. Presentation: Informing workers and employers (developing an information campaign).

One of the most important elements in the successful implementation of a new UI programme is the development of an effective communication strategy both internal and external. Communication is an ongoing issue that needs to be constantly reinforced before, during and after the implementation period.

Communication experts from the departments responsible for the UI programme (could be multi-departments) must be part of the design and implementation team assembled at the time the decision is made to proceed with a UI scheme. A full communication strategy must be in place in the pre-implementation, implementation and post-implementation periods. As evidenced by the 18 month evaluation of the Viet Nam UI programme, better communication efforts were identified as a crucial need to unremitting dissemination of information on a continuous basis to ensure employers and workers understand the UI programme and the rights of workers to collect UI benefits.

A unique feature in the development of implementation and communication plans for a UI programme is that there are two main implementation dates: 1) the effective date employers are required to pay contributions (for workers and employers) and 2) the effective date applications for UI benefit can be officially submitted for consideration of UI payments. The communication strategy should focus on the registration of employers and the collection of contributions for the first implementation date. The strategy for the second implementation focuses on workers and the details of the UI programme (how to apply, amount and duration of benefits etc) as well as requirements from employers concerning termination of employment and reason for separation and continued education on contribution collection.

In the 2011 eighteen month evaluation of the Viet Nam UI implementation, the following observations and recommendations were made:

“Concerning the communications strategy, while a great deal of information was initially disseminated at the time of implementation, most stakeholders agree that there needs to be an ongoing and sustained effort to improve the level of knowledge that employers and workers have about the UI scheme. Also, there (PLO)e is a need for a specialist at each office, some type of Public Liaison Officer, who would promote the understanding of the UI program full time prior to and during the implementation of UI. The officer could visit large employer premises to disseminate the UI

information along with a representative from VSS (relating to collection of premiums and payment of UI benefits). On a national basis, the officer could attend workshops and employer/worker meetings. The PLO could also assume responsibility for training staff.

Feedback from the worker survey indicates that the majority of workers receive their information on UI from their employer. Therefore, it is imperative to ensure the employer group are well versed on the UI program. BoE (department responsible for UI) could provide workshops to major employers as well as a presentation package for the Public Liaison Officer to utilize during the sessions (would include handouts and brochures for staff).. A review of mass media messages and strategy should be undertaken to see if there could be any improvements in this area. We also see the need for the development of a “best practices” list of activities from those employers who are performing an exemplary job of disseminating information to their workers.”

Discussion with Participants: When developing an internal communication plan for the implementation of UI, who should be included and what communication methods could be adopted?

Notate responses from participants on flip chart.

Answer:

INTERNAL:

Senior government officials – bi-weekly/monthly updates - dashboard

Minister of responsible department – weekly updates - dashboard

Department Staff – web site with up-to-date information including impact on staff

Other department staff (not UI) – overview in pre-implementation period

Collaborating departments – weekly/monthly updates – dashboard and departmental meetings

Other government departments – overview on web site (updated weekly)

EXTERNAL:

The public – strategy of mass media communications including television ads, radio announcements, newspaper articles and advertisements, publications and brochures on the imminent implementation of UI – all intensifying as the implementation data approaches and in the post-implementation period;

Employers - also a strategy of mass media communication including television ads, radio announcements, newspaper articles and advertisements, publications and brochures on the imminent collection of contributions as well as the

implementation of UI – all intensifying as the two implementation dates approach;

Also invite one or two representatives from employers (with skills in communication/training) to join a workshop concerning the collection of contributions and the implementation of UI; at the workshop these specialists will assume responsibility for being the focal point of information for the workers; a full aids package consisting of brochures, pamphlets, videos, application for benefit forms, powerpoint presentations and any other pertinent assistance to help each employer specialist provide the workers with important UI information.

Workers – Including the information provided by employer specialists who meet with workers, a call centre should be established in the pre-implementation period to provide critical information on UI especially the filing procedures and qualifying conditions;

Interest Groups – establish workshops to provide information to those who assist unemployed workers and special interest groups such as women, youth, disability and old age.

➤ **M5.2. b. Presentation: Important notions to improve compliance and possible mechanisms: sanctions, incentives**

Content:

Distribute handout 5-1 to participants and discuss chart highlighting the severity of eligibility requirements of different countries to counteract against “moral hazard” and perception of generous UI benefits.

Discuss the following unique definitions applied to the UI programme in terms of entitlement conditions and enforcement:

Definitions: Qualifying Conditions:

Entitlement to UI benefits is not automatic and the unemployed person has certain responsibilities in order to be entitled to these benefits. Upon termination, he/she must formally register for employment at a designated department usually responsible for employment activities. A formal application for benefits must be submitted to the department responsible for processing UI claims along with other pertinent information (e.g. termination notice from employer as well as insured contributions, reason for separations and monies paid on separation).

A “Rights and Obligations” form is usually provided to an unemployed worker at the time of filing for benefits which stresses the need for the unemployed person to be available and actively seeking employment in order to receive UI benefits. The application for UI benefits highlights a number of questions dealing with

availability for work including type of job, alternate jobs, geographic areas and wage requirements. Once the decision is made to allow UI payments, the unemployed worker must report to the employment office once a month to provide the department with their job search activities and intentions to accept work. If the unemployed worker doesn't meet any of the above conditions, benefits are refused.

Definitions: Distinction between “Quitters and Involuntary Job Loss”:

Another issue to investigate before paying UI benefits is the reason for the unemployed worker's separation from employment. Unemployment insurance benefits are primarily intended for workers who lose their jobs involuntarily, through no fault of their own. This is recognized in ILO Convention 168, which states in article 20 that benefits “may be refused, withdrawn, suspended or reduced... (b) when it has been determined by the competent authority that the person concerned had deliberately contributed to his or her own dismissal; (c) when it has been determined by the competent authority that the person concerned has left employment voluntarily without just cause (Convention 102 has similar provisions).” Such provisions do not require much explanation: no one should be allowed to collect insurance benefits if they burn down their own house.

Thus, under almost all UI schemes, workers who quit their jobs voluntarily are refused UI benefits, or the waiting period is extended or UI benefits are reduced. Canada and most of the United States are examples of refusing benefits, while most European countries and Japan impose a delay of paying benefits, often 1 to 3 months but sometimes longer, before they can receive benefits. In Thailand, reduced UI benefits are paid for 90 days, at 30 per cent of wages, to those who leave voluntarily, instead of 50 per cent of wages for up to 180 days, for regular job losers. In addition, UI benefits in Thailand are refused to those who were fired due to misconduct or illegal action. All of these provisions aim to avoid moral hazard and abuse as well as to control costs.

Vietnam has for now adopted a universal entitlement system under which anyone with sufficient insured work (at least 12 insured months in the last 24) can receive UI benefits without delay nor penalty, no matter why their job ended. This is so even if they are fired by an employer for misconduct (under article 85 of the Labour Code), for example for committing detrimental or criminal acts or for not reporting for work.

Over time, this could contribute to unsound labour practices and behaviour, misuse of the UI scheme and rising benefit costs. Equally important, it would hurt the credibility of the UI system, by showing it to be a source of easy money rather than a true insurance program.

Keep in mind, though, the provision includes the reference “without just cause” to refuse or reduce benefits to those who voluntarily quit. Alternatively, “**just cause**” for voluntarily leaving an employment or taking leave from an employment exists if the claimant had no reasonable alternative to leaving or taking leave, having regard to all the circumstances.

Group Discussion on “Just Cause”:

Have participants provide examples of what they would consider “just cause” for leaving employment and be entitled to UI benefits.

Notate the results on a flip chart.

Provide Handout #5-2 highlighting a number of examples of situations for “just cause” to be demonstrated by an unemployed worker.

Almost all countries will allow benefits to be paid if someone was forced to leave their employment due to, for example, unpaid wages, harassment, dangerous working conditions or illegal employer actions. In discussing UI sanctions and exclusions, the Organization for Economic Cooperation and Development (OECD) in 2000 observed that: “All countries recognise that serious misbehaviour by the employer can justify a quit.”

Other circumstances, though unrelated to one’s employment, are often also accepted, for example leaving one’s job to accompany a spouse to another residence or relocation in order to escape domestic violence, these reasons being accepted in France, Canada, most US States and probably in other countries as well.

The determination of employer misbehaviour or of other acceptable reasons for leaving a job will often require careful review and assessment. There may be a need to balance and evaluate conflicting statements made by the employer and former workers. The adjudication of “just cause” for quitting will thus require competent and well-trained staff along with clear guidance.

Definitions: Refusal of Suitable Employment:

The unemployed worker must also accept any suitable employment in order to receive UI benefits.

The expression “suitable employment” is not defined in the relevant ILO instruments. However, Article 21(2) of the Convention No. 168 provides that in assessing the suitability of employment account shall be taken, in particular, under prescribed conditions and to an appropriate extent, of the age of unemployed persons, their length of service in their former occupation, their acquired experience, the length of their period of unemployment, the labour market situation, the impact of the employment in question on their personal and family situation and whether the employment is vacant as a direct result of a stoppage of work due to an on-going labour dispute.

Furthermore, Paragraph 14 of the Recommendation No. 176 lists some circumstances that should not be included as suitable employment, namely:

- employment involving a change of occupation that does not take account of the abilities, qualifications, skills, work experience or the retraining potential of the person concerned;
- employment in which the conditions and remuneration are appreciably less favourable than those generally granted, at the relevant time, in the occupation and district in which the employment is offered;
- employment involving a change of residence to a place in which suitable accommodation is not available;
- employment vacant resulting of a stoppage due to an ongoing labour dispute; and
- employment such that, for a reason other than those covered in the preceding clauses, and with due regard to all attendant circumstances, including the family responsibilities of the person concerned, the refusal is not unreasonable.

Once it has been determined that the employment is suitable, the designated officer will consider whether the reason for refusal is considered “good cause”. Once again, factfinding by the department officer will be initiated to determine if the unemployed worker should be refused UI benefits or the benefits be reduced or the UI payments should continue after the determination.

Most countries will only suspend or reduce benefits after two or three refusals of suitable employment.

Incentives:

A number of countries allow UI beneficiaries to continue to receive partial or full unemployment benefits at the same time as they engage in part-time work. Normal rules still apply to these benefit beneficiaries, who, however, must continue to look for and accept suitable full-time work, as well as continue to follow any training or employment measures to which they are referred. If their

part-time earnings exceed certain limits, their unemployment benefits would then either be terminated or be reduced.

The purpose of these provisions is threefold: first, to encourage beneficiaries to remain engaged in the labour market and thus to maintain or improve their work experience, and maybe even use the part-time work as a stepping stone into full-time employment; second, to allow employers to find workers willing to complete relatively minor tasks; and third, to help workers maintain a reasonable standard of living between jobs.

A special feature entitled “Work-Sharing Programme” has been established in Germany, France, Denmark and Canada. In Germany, it’s called “Short-Time Allowance (STA)” and it’s been estimated that 500,000 workers benefitted from STA during the 2008 global financial crisis, avoiding 200,000 layoffs.

The Canadian Work Sharing Program is especially popular with employers in times of crisis. Service Canada describes it as follows: “Work sharing is an adjustment program designed to help employers and employees avoid temporary layoffs when there is a reduction in the normal level of business activity that is beyond the control of the employer. The provisions provide income support to employees eligible for Employment Insurance benefits who work a temporarily reduced work week while their employer recovers”.

In 2008, a record number of work sharing agreements were signed between employers and employees due to the global financial crisis. The program benefits employers as they are able to retain their workforce and avoid the costly process of hiring and training new employees when business returns to normal levels. It benefits workers who are not laid off as a result of a shortage of work retaining their skills and their wages are supplemented by Employment Insurance (EI) benefits for the hours they are not working.

Fraud/False Statements:

To protect the integrity of the UI fund, most countries establish legal provisions including the creation of offences and penalties for contravening program requirements and making false statements. Fraudulent claims for benefit, submitting false insurable employment, receiving benefits while outside the country and making misleading statements concerning qualifying conditions are some of the situations that require the imposition of sanctions.

Every country has various legal provisions establishing appropriate penalties such as:

- issuing warning for first offense where the false statement or fraud situation does not involve payment of benefit,
- administrative penalties (including repayment of the benefits to which the beneficiary was not entitled) and
- ultimately a jail sentence.

Administrative penalties are usually based on the number of times an individual has made a false representation. First time offenders with minor infractions could be given a warning letter or a penalty reflecting a percentage of the unemployed worker's benefit rate (e.g. 50%). A second offense could result in a penalty of 100% of the benefit period while subsequent penalties could rise to twice the benefits rate or a recommendation for jail sentence.

There should also be provisions to conduct inspections to verify compliance and investigate the commission of offences by investigation officers of the department responsible for the UI programme.

➤ **M5.2. c. Presentation: Appealing system**

The appeals process is intended to provide a general method of recourse for persons dissatisfied with the decisions on their entitlement to UI benefits by designated officers of the department responsible for the administration of the UI programme. Unemployed workers, who do not qualify to receive UI benefits, should receive a formal notice of Non-Qualification along with appeal rights. The right of an unemployed worker to appeal decisions made by department officers is the cornerstone of an objective and unbiased decision making process also recognized in the ILO Conventions related to UI and Social Security.

The appeal system should also be extended to employers who have a direct interest in the UI fund as a major contributor. Employers should receive a notice of "claim allowed" and appeal instructions in those instances where a previous employee has been approved for payment of UI benefits by department officers.

An effective appeal system focuses on the principles of natural justice and fairness where beneficiaries have a right to appeal a decision and have it reviewed. Rights of appeal are generally subject to time limits within which requests for review must be made.

Convention No.102 (Article 70) and Convention No. 168 (Article 27) provide that every claimant is to have a right of appeal in case of refusal of the benefit or complaint as to its quality or quantity. An appeal implies that the matter must be determined by an authority that is independent of the administrative authority

that made the first decision. The mere right to request re-examination of the matter by this authority is not sufficient to constitute an appeal. Convention No. 168 (Article 27) also provides that claimants are to be informed in writing of the procedures available, which shall be simple and rapid, and that the procedures shall enable the claimant, in accordance with national law and practice, to be represented or assisted by a qualified person of the claimant's choice or by a delegate of a representative workers' organization or by a delegate of an organization representative of protected persons.

The appeal system should be effective and easy to use by unemployed workers and that they are transparent and fair to ensure their rights are protected. In some cases, appeal tribunals are established as an independent and objective board of appeal. It can be tri-partite in nature (commissioner, worker representative, employer representative) or a single arbitrator. Some countries allow for multi-level appealing systems as according to the following:

- Beneficiary receives decision of non-entitlement to UI benefits or employer receives notice of “claim allowed” for a terminated employee;
- The department responsible for the UI programme receives formal appeal from beneficiary or employer and conduct a review of decision; if new facts are received, the decision could be reversed but if not, the appeal is processed and sent to the tribunal or arbitrator to hear the appeal;
- If the tribunal or arbitrator allows the appeal, the decision is sent to the beneficiary/employer; if the appeal is disallowed, the beneficiary/employer can apply for a second level appeal to a court of law; if rejected by the court of law, the final level of appeal would be the Supreme Court of a country.

It is important that department senior management continually monitor the progress of appeals such as: meeting the timelines for processing appeals, appeals allowed versus disallowed, proper initial decisions and high quality of appeal system. Some countries establish key performance indicators for appeals in terms of timeliness and quality. In the case of Viet Nam, during the 18 month evaluation, the department responsible for the UI delivery system reported that they had received “zero’ appeals since the implementation of UI in 2010. An effective appeal system is used frequently by employers and workers alike. It is a right of an insured person or employer to challenge the department decisions either denying or allowing a claim for benefit.

Handout #5-1 Severity Ratings of UI Eligibility Criteria for Selected OECD Countries

A further illustration of the detailed rules that UI schemes may consider is found in an assessment of the severity of the eligibility rules that exist within the UI schemes of 36 OECD and/or EU countries. That assessment was carried out in a study published in January 2012 by the OECD. Its ratings for the seven OECD countries included in the present study are reproduced in the table below, the last two lines being our own tentative (and) non-definitive) attempt at ranking these countries on a relative severity scale.

Eligibility Conditions	Countries and their Ratings (see notes below table)						
	Canada	Denmark	France	Germany	Japan	Republic of Korea	USA
Employment and contribution Requirements	2	3	2	3	2	2	2
Sanctions in case of resignation from Previous job	5	1	4	3	3	5	5
Availability for work during Participation in ALMPs	1	5	4	5	4	1	1
Demands on occupational mobility	4	5	3	5	5	1	3
Demands on geographical mobility	2	3.5	1.5	3	4	1	3
Other valid reasons for refusing job Offers	3	3	3	5	1	3	1
Proof of job-search activity	2	2	4	2	4	4	2
Sanctions for refusing job offers or ALMP participation	2	1	1	1	1	1	5
Sanctions for repeated refusal of job offers or ALMP participation	2	2	2	2.5	1	4	5
Severity Totals	23	25.5	24.5	29.5	25	22	27
Severity Ranking (most to least)	6	3	5	1	4	7	2

Source: Venn, D., Eligibility Criteria for Unemployment Benefits: Quantitative indicators for OECD and EU Countries, OECD Social, Employment and Migration Working Papers, No. 131, OECD Publishing, 2012: <http://dx.doi.org/10.1787/5k9h43kgkvr4-en> (accessed 11 October 2012)

Notes:

- Ratings go from 1 (least severe, easier to get benefits) to 5 (most severe, harder to get benefits).
- Severity totals and rankings are from our own calculations, not contained in the original paper.

Notable limitations (as indicated by the original author, D. Venn):

- “A key limitation of the indicator (and indeed of any indicator based on the strictness of legislation or regulations) is that it only reflects the strictness of rules as they are outlined in legislation or regulation, not how they operate on the ground.”
- “In countries with the strictest rules or toughest sanctions, the strictness may itself encourage counsellors to interpret the rules more generously to avoid imposing what they see as unreasonable requirements or hardships.”
- questions remain about the extent to which the items measured in the indicator are truly comparable across countries. Grubb (2001) and OECD (2000) discuss these issues in some detail. They highlight several difficulties in
- creating a reliable cross-country indicator of the strictness of eligibility for unemployment benefits.”

Handout #5-2: Just Cause for Quitting (Canada)

Under the *EI Act* in Canada, those who voluntarily leave their employment without just cause are denied EI benefits. But in some cases an employee who quits may prove “just cause” and be able to receive unreduced EI benefits. “Just cause” exists where, having regard to all the circumstances, the unemployed worker had, as specified in the Canadian *EI Act*, “no reasonable alternative” but to leave their employment, a situation that has to be proven on the balance of facts. In some cases, alternatives did exist but didn’t resolve the situation or all attempts were exhausted without success. There are some 40 circumstances where “just cause” might be proven in Canada, most of them listed below. More information is on Service Canada’s website (see bibliography references).

1. Armed Forces–Failure to Re-enlist for a Further Term	20. Disciplinary Action–Penalty Clearly Disproportionate
2. Discrimination on a Prohibited Ground	21. Duties–Intolerable Situation
3. Health Adversely Affected by Work or Working Environment	22. Health Adversely Affected–On Credible and Convincing Explanations from the Claimant
4. Health Adversely Affected–On Doctor's Advice	23. Illness in Immediate Family–Presence Required
5. Intolerable Situations–Living Accommodations, Food, Facilities, Employment Amenities	24. Moral Objections Based on Religious Beliefs
6. Moral Objections: Employer's Practices Contrary to Professional Ethics, Law	25. Moral Objections: Illegal Activities or Contrary to Fundamental Ethical Values
7. Moving Because of an Anticipated Marriage	26. Moving with Parents in the Case of a Minor
8. Obligation to Accompany a Spouse, Common-law Partner or Dependent Child to Another Residence	27. Obligation to Care for a Child or a Member of the Immediate Family
9. Overtime–Excessive Hours	28. Overtime–Failure to Pay
10. Pregnancy–Incapacity to Work and Leave Not Granted	29. Assurance of Another Employment in the Immediate Future
11. Relation with Authority–Hostile Atmosphere Created by Superiors	30. Relation with Co-workers–Abusive Treatment
12. Retirement–Undue Pressures from Employer	31. Sexual or Other Harassment
13. Transportation problems–serious, even insolvable	32. Union Relations–Employer's Abusive Treatment
14. Union Relations–No Longer Acting as Strike-breaker	33. Wages–Formal Promise of Increase Not Fulfilled
15. Wages–Hiring Conditions Not Honoured	34. Wages–Loss Due to Employer's Financial Difficulties
16. Wages–Unjustified Reduction	35. Wages or Salary Less than Provided by Legislation
17. Work Away from Family–Serious Illness in the Family	36. Work Away from Family–After a Reasonable Period of Absence
18. Working Conditions–Significant Unilateral Changes	37. Working Conditions–Unreasonable, Restrictive
19. Working Conditions that Constitute a Danger to Health or Safety	

Hand out for group exercise: Inventory of key elements in the proposed legal framework

PREAMBLE

PART 1 – Title and Commencement, Interpretation, Purpose and Application

1. Short Title and Commencement
2. Purpose
3. Definitions
4. Coverage

PART 2 – Establishment and Management of the Unemployment Protection Organisation

5. Establishment OR Link with existing organization and Purpose of the Unemployment Protection Organization
6. Administration of the Unemployment Protection Organization
7. Board of Directors
8. Frequency of meetings
9. Functions and duties of the Board of Directors
10. Director General
11. Audit

PART 3 – Establishment and Administration of the Unemployment Protection Programme and its Funds

12. Establishment and Administration
13. General Responsibility of the State

PART 4- Registration with the Unemployment Protection Organization and Notification of Termination of Employment

14. Registration of Employers and Beneficiaries
15. Information to be provided to Employers
16. Information to be provided to Beneficiaries

PART 5- Financing of the Unemployment Protection Fund

A. Contributory schemes

17. Rate of contributions by Employers and Employees
18. Responsibility for collecting contributions
19. Responsibility of Employers for deducting workers' contributions and for remitting them to the Unemployment Protection Organization
20. Time Period for remitting contributions by Employers

B. Non-Contributory schemes

17. Public budget allocation
18. Responsibility for monitoring the public budget transfer

PART 6- Payment of the Unemployment Benefits from the Unemployment Protection Funds

- 21. Qualifying conditions
- 22. Modalities for payment of Unemployment benefits
- 23. Provisions related to benefits (level, duration)
- 24. Establishment of payment facilities and mechanisms
- 25. Recovery of benefits paid in errors

PART 7- Revision and Appeals

- 26. Request for revision of initial decision of the Unemployment Protection Administration
- 27. Claim to the National Labour Commission
- 28. Appeal to the Appellate Court

PART 8- Penalties and enforcement

- 28. Penalty for non-payment or late payment of contributions
- 29. Penalty for Violation of provision on this Law
- 30. Enforcement mechanisms

PART 9- General and Final Provisions

- 31. Contributions and benefits not subject to taxation
- 32. Implementation plan
- 33. Regulation