

C168 - Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168)

Preamble

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Seventy-fifth Session on 1 June 1988, and

Emphasising the importance of work and productive employment in any society not only because of the resources which they create for the community, but also because of the income which they bring to workers, the social role which they confer and the feeling of self-esteem which workers derive from them, and

Recalling the existing international standards in the field of employment and unemployment protection (the Unemployment Provision Convention and Recommendation, 1934, the Unemployment (Young Persons) Recommendation, 1935, the Income Security Recommendation, 1944, the Social Security (Minimum Standards) Convention, 1952, the Employment Policy Convention and Recommendation, 1964, the Human Resources Development Convention and Recommendation, 1975, the Labour Administration Convention and Recommendation, 1978, and the Employment Policy (Supplementary Provisions) Recommendation, 1984), and

Considering the widespread unemployment and underemployment affecting various countries throughout the world at all stages of development and in particular the problems of young people, many of whom are seeking their first employment, and

Considering that, since the adoption of the international instruments concerning protection against unemployment referred to above, there have been important new developments in the law and practice of many Members necessitating the revision of existing standards, in particular the Unemployment Provision Convention, 1934, and the adoption of new international standards concerning the promotion of full, productive and freely chosen employment by all appropriate means, including social security, and

Noting that the provisions concerning unemployment benefit in the Social Security (Minimum Standards) Convention, 1952, lay down a level of protection that has now been surpassed by most of the existing compensation

schemes in the industrialised countries and, unlike standards concerning other benefits, have not been followed by higher standards, but that the standards in question can still constitute a target for developing countries that are in a position to set up an unemployment compensation scheme, and

Recognising that policies leading to stable, sustained, non-inflationary economic growth and a flexible response to change, as well as to creation and promotion of all forms of productive and freely chosen employment including small undertakings, co-operatives, self-employment and local initiatives for employment, even through the re-distribution of resources currently devoted to the financing of purely assistance-oriented activities towards activities which promote employment especially vocational guidance, training and rehabilitation, offer the best protection against the adverse effects of involuntary unemployment, but that involuntary unemployment nevertheless exists and that it is therefore important to ensure that social security systems should provide employment assistance and economic support to those who are involuntarily unemployed, and

Having decided upon the adoption of certain proposals with regard to employment promotion and social security which is the fifth item on the agenda of the session with a view, in particular, to revising the Unemployment Provision Convention, 1934, and

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

adopts this twenty-first day of June of the year one thousand nine hundred and eighty-eight the following Convention, which may be cited as the Employment Promotion and Protection against Unemployment Convention, 1988:

I. GENERAL PROVISIONS

Article 1

In this Convention:

- (a) the term **legislation** includes any social security rules as well as laws and regulations;
- (b) the term **prescribed** means determined by or in virtue of national legislation.

Article 2

Each Member shall take appropriate steps to co-ordinate its system of protection against unemployment and its employment policy. To this end, it shall seek to ensure that its system of protection against unemployment, and in particular the methods of providing unemployment benefit, contribute to the promotion of full, productive and freely

chosen employment, and are not such as to discourage employers from offering and workers from seeking productive employment.

Article 3

The provisions of this Convention shall be implemented in consultation and co-operation with the organisations of employers and workers, in accordance with national practice.

Article 4

1. Each Member which ratifies this Convention may, by a declaration accompanying its ratification, exclude the provisions of Part VII from the obligations accepted by ratification.
2. Each Member which has made a declaration under paragraph 1 above may withdraw it at any time by a subsequent declaration.

Article 5

1. Each Member may avail itself, by a declaration accompanying its ratification, of at most two of the temporary exceptions provided for in Article 10, paragraph 4, Article 11, paragraph 3, Article 15, paragraph 2, Article 18, paragraph 2, Article 19, paragraph 4, Article 23, paragraph 2, Article 24, paragraph 2, and Article 25, paragraph 2. Such a declaration shall state the reasons which justify these exceptions.
2. Notwithstanding the provisions of paragraph 1 above, a Member, where it is justified by the extent of protection of its social security system, may avail itself, by a declaration accompanying its ratification, of the temporary exceptions provided for in Article 10, paragraph 4, Article 11, paragraph 3, Article 15, paragraph 2, Article 18, paragraph 2, Article 19, paragraph 4, Article 23, paragraph 2, Article 24, paragraph 2 and Article 25, paragraph 2. Such a declaration shall state the reasons which justify these exceptions.
3. Each Member which has made a declaration under paragraph 1 or paragraph 2 shall include in its reports on the application of this Convention submitted under article 22 of the Constitution of the International Labour Organisation a statement in respect of each exception of which it avails itself-
 - (a) that its reason for doing so subsists; or
 - (b) that it renounces its right to avail itself of the exception in question as from a stated date.
4. Each Member which has made a declaration under paragraph 1 or paragraph 2 shall, as appropriate to the terms of such declaration and as circumstances permit-
 - (a) cover the contingency of partial unemployment;

- (b) increase the number of persons protected;
- (c) increase the amount of the benefits;
- (d) reduce the length of the waiting period;
- (e) extend the duration of payment of benefits;
- (f) adapt statutory social security schemes to the occupational circumstances of part-time workers;
- (g) endeavour to ensure the provision of medical care to persons in receipt of unemployment benefit and their dependants;
- (h) endeavour to guarantee that the periods during which such benefit is paid will be taken into account for the acquisition of the right to social security benefits and, where appropriate, the calculation of disability, old-age and survivors' benefit.

Article 6

1. Each Member shall ensure equality of treatment for all persons protected, without discrimination on the basis of race, colour, sex, religion, political opinion, national extraction, nationality, ethnic or social origin, disability or age.
2. The provisions of paragraph 1 shall not prevent the adoption of special measures which are justified by the circumstances of identified groups under the schemes referred to in Article 12, paragraph 2, or are designed to meet the specific needs of categories of persons who have particular problems in the labour market, in particular disadvantaged groups, or the conclusion between States of bilateral or multilateral agreements relating to unemployment benefits on the basis of reciprocity.

II. PROMOTION OF PRODUCTIVE EMPLOYMENT

Article 7

Each Member shall declare as a priority objective a policy designed to promote full, productive and freely chosen employment by all appropriate means, including social security. Such means should include, inter alia, employment services, vocational training and vocational guidance.

Article 8

1. Each Member shall endeavour to establish, subject to national law and practice, special programmes to promote additional job opportunities and employment assistance and to encourage freely chosen and productive employment for identified categories of disadvantaged persons having or liable to have difficulties in finding lasting employment

such as women, young workers, disabled persons, older workers, the long-term unemployed, migrant workers lawfully resident in the country and workers affected by structural change.

2. Each Member shall specify, in its reports under article 22 of the Constitution of the International Labour Organisation, the categories of persons for whom it undertakes to promote employment programmes.
3. Each Member shall endeavour to extend the promotion of productive employment progressively to a greater number of categories than the number initially covered.

Article 9

The measures envisaged in this Part shall be taken in the light of the Human Resources Development Convention and Recommendation, 1975, and the Employment Policy (supplementary Provisions) Recommendation, 1984.

III. CONTINGENCIES COVERED

Article 10

1. The contingencies covered shall include, under prescribed conditions, full unemployment defined as the loss of earnings due to inability to obtain suitable employment with due regard to the provisions of Article 21, paragraph 2, in the case of a person capable of working, available for work and actually seeking work.
2. Each Member shall endeavour to extend the protection of the Convention, under prescribed conditions, to the following contingencies -
 - (a) loss of earnings due to partial unemployment, defined as a temporary reduction in the normal or statutory hours of work; and
 - (b) suspension or reduction of earnings due to a temporary suspension of work, without any break in the employment relationship for reasons of, in particular, an economic, technological, structural or similar nature.
3. Each Member shall in addition endeavour to provide the payment of benefits to part-time workers who are actually seeking full-time work. The total of benefits and earnings from their part-time work may be such as to maintain incentives to take up full-time work.
4. Where a declaration made in virtue of Article 5 is in force, the implementation of paragraphs 2 and 3 above may be deferred.

IV. PERSONS PROTECTED

Article 11

1. The persons protected shall comprise prescribed classes of employees, constituting not less than 85 per cent of all employees, including public employees and apprentices.
2. Notwithstanding the provisions of paragraph 1 above, public employees whose employment up to normal retiring age is guaranteed by national laws or regulations may be excluded from protection.
3. Where a declaration made in virtue of Article 5 is in force, the persons protected shall comprise-
 - (a) prescribed classes of employees constituting not less than 50 per cent of all employees; or
 - (b) where specifically justified by the level of development, prescribed classes of employees constituting not less than 50 per cent of all employees in industrial workplaces employing 20 persons or more.

V. METHODS OF PROTECTION

Article 12

1. Unless it is otherwise provided in this Convention, each Member may determine the method or methods of protection by which it chooses to put into effect the provisions of the Convention, whether by a contributory or non-contributory system, or by a combination of such systems.
2. Nevertheless, if the legislation of a Member protects all residents whose resources, during the contingency, do not exceed prescribed limits, the protection afforded may be limited, in the light of the resources of the beneficiary and his or her family, in accordance with the provisions of Article 16.

VI. BENEFIT TO BE PROVIDED

Article 13

Benefits provided in the form of periodical payments to the unemployed may be related to the methods of protection.

Article 14

In cases of full unemployment, benefits shall be provided in the form of periodical payments calculated in such a way as to provide the beneficiary with partial and transitional wage replacement and, at the same time, to avoid creating disincentives either to work or to employment creation.

Article 15

1. In cases of full unemployment and suspension of earnings due to a temporary suspension of work without any break in the employment relationship, when this contingency is covered, benefits shall be provided in the form of periodical payments, calculated as follows:
 - (a) where these benefits are based on the contributions of or on behalf of the person protected or on previous earnings, they shall be fixed at not less than 50 per cent of previous earnings, it being permitted to fix a maximum for the amount of the benefit or for the earnings to be taken into account, which may be related, for example, to the wage of a skilled manual employee or to the average wage of workers in the region concerned;
 - (b) where such benefits are not based on contributions or previous earnings, they shall be fixed at not less than 50 per cent of the statutory minimum wage or of the wage of an ordinary labourer, or at a level which provides the minimum essential for basic living expenses, whichever is the highest;
2. Where a declaration made in virtue of Article 5 is in force, the amount of the benefits shall be equal-
 - (a) to not less than 45 per cent of the previous earnings; or
 - (b) to not less than 45 per cent of the statutory minimum wage or of the wage of an ordinary labourer but no less than a level which provides the minimum essential for basic living expenses.
3. If appropriate, the percentages specified in paragraphs 1 and 2 may be reached by comparing net periodical payments after tax and contributions with net earnings after tax and contributions.

Article 16

Notwithstanding the provisions of Article 15, the benefit provided beyond the initial period specified in Article 19, paragraph 2 (a), as well as benefits paid by a Member in accordance with Article 12, paragraph 2, may be fixed after taking account of other resources, beyond a prescribed limit, available to the beneficiary and his or her family, in accordance with a prescribed scale. In any case, these benefits, in combination with any other benefits to which they may be entitled, shall guarantee them healthy and reasonable living conditions in accordance with national standards.

Article 17

1. Where the legislation of a Member makes the right to unemployment benefit conditional upon the completion of a qualifying period, this period shall not exceed the length deemed necessary to prevent abuse.
2. Each Member shall endeavour to adapt the qualifying period to the occupational circumstances of seasonal workers.

Article 18

1. If the legislation of a Member provides that the payment of benefit in cases of full unemployment should begin only after the expiry of a waiting period, such period shall not exceed seven days.
2. Where a declaration made in virtue of Article 5 is in force, the length of the waiting period shall not exceed ten days.
3. In the case of seasonal workers the waiting period specified in paragraph 1 above may be adapted to their occupational circumstances.

Article 19

1. The benefits provided in cases of full unemployment and suspension of earnings due to a temporary suspension of work without any break in the employment relationship shall be paid throughout these contingencies.
2. Nevertheless, in the case of full unemployment-
 - (a) the initial duration of payment of the benefit provided for in Article 15 may be limited to 26 weeks in each spell of unemployment, or to 39 weeks over any period of 24 months;
 - (b) in the event of unemployment continuing beyond this initial period of benefit, the duration of payment of benefit, which may be calculated in the light of the resources of the beneficiary and his or her family in accordance with the provisions of Article 16, may be limited to a prescribed period.
3. If the legislation of a Member provides that the initial duration of payment of the benefit provided for in Article 15 shall vary with the length of the qualifying period, the average duration fixed for the payment of benefits shall be at least 26 weeks.
4. Where a declaration made in virtue of Article 5 is in force, the duration of payment of benefit may be limited to 13 weeks over any periods of 12 months or to an average of 13 weeks if the legislation provides that the initial duration of payment shall vary with the length of the qualifying period.
5. In the cases envisaged in paragraph 2 (b) above each Member shall endeavour to grant appropriate additional assistance to the persons concerned with a view to permitting them to find productive and freely chosen employment, having recourse in particular to the measures specified in Part II.
6. The duration of payment of benefit to seasonal workers may be adapted to their occupational circumstances, without prejudice to the provisions of paragraph 2 (b) above.

Article 20

The benefit to which a protected person would have been entitled in the cases of full or partial unemployment or suspension of earnings due to a temporary suspension of work without any break in the employment relationship may be refused, withdrawn, suspended or reduced to the extent prescribed-

- (a) for as long as the person concerned is absent from the territory of the Member;
- (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;
- (d) during the period of a labour dispute, when the person concerned has stopped work to take part in a labour dispute or when he or she is prevented from working as a direct result of a stoppage of work due to this labour dispute;
- (e) when the person concerned has attempted to obtain or has obtained benefits fraudulently;
- (f) when the person concerned has failed without just cause to use the facilities available for placement, vocational guidance, training, retraining or redeployment in suitable work;
- (g) as long as the person concerned is in receipt of another income maintenance benefit provided for in the legislation of the Member concerned, except a family benefit, provided that the part of the benefit which is suspended does not exceed that other benefit.

Article 21

1. The benefit to which a protected person would have been entitled in the case of full unemployment may be refused, withdrawn, suspended or reduced, to the extent prescribed, when the person concerned refuses to accept suitable employment.
2. 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.

Article 22

When protected persons have received directly from their employer or from any other source under national laws or regulations or collective agreements, severance pay, the principal purpose of which is to contribute towards compensating them for the loss of earnings suffered in the event of full unemployment-

- (a) the unemployment benefit to which the persons concerned would be entitled may be suspended for a period corresponding to that during which the severance pay compensates for the loss of earnings suffered; or
- (b) the severance pay may be reduced by an amount corresponding to the value converted into a lump sum of the unemployment benefit to which the persons concerned are entitled for a period corresponding to that during which the severance pay compensates for the loss of earnings suffered,

as each Member may decide.

Article 23

1. Each Member whose legislation provides for the right to medical care and makes it directly or indirectly conditional upon occupational activity shall endeavour to ensure, under prescribed conditions, the provision of medical care to persons in receipt of unemployment benefit and to their dependants.
2. Where a declaration made in virtue of Article 5 is in force, the implementation of paragraph 1 above may be deferred.

Article 24

1. Each Member shall endeavour to guarantee to persons in receipt of unemployment benefit, under prescribed conditions, that the periods during which benefits are paid will be taken into consideration-
 - (a) for acquisition of the right to and, where appropriate, calculation of disability, old-age and survivors' benefit, and
 - (b) for acquisition of the right to medical care and sickness, maternity and family benefit after the end of unemployment,when the legislation of the Member concerned provides for such benefits and makes them directly or indirectly conditional upon occupational activity.
2. Where a declaration made in virtue of Article 5 is in force, the implementation of paragraph 1 above may be deferred.

Article 25

1. Each Member shall ensure that statutory social security schemes which are based on occupational activity are adjusted to the occupational circumstances of part-time workers, unless their hours of work or earnings can be considered, under prescribed conditions, as negligible.
2. Where a declaration made in virtue of Article 5 is in force, the implementation of paragraph 1 above may be deferred.

VII. SPECIAL PROVISIONS FOR NEW APPLICANTS FOR EMPLOYMENT

Article 26

1. Members shall take account of the fact that there are many categories of persons seeking work who have never been, or have ceased to be, recognised as unemployed or have never been, or have ceased to be, covered by schemes for the protection of the unemployed. Consequently, at least three of the following ten categories of persons seeking work shall receive social benefits, in accordance with prescribed terms and conditions:
 - (a) young persons who have completed their vocational training;
 - (b) young persons who have completed their studies;
 - (c) young persons who have completed their compulsory military service;
 - (d) persons after a period devoted to bringing up a child or caring for someone who is sick, disabled or elderly;
 - (e) persons whose spouse had died, when they are not entitled to a survivor's benefit;
 - (f) divorced or separated persons;
 - (g) released prisoners;
 - (h) adults, including disabled persons, who have completed a period of training;
 - (i) migrant workers on return to their home country, except in so far as they have acquired rights under the legislation of the country where they last worked;
 - (j) previously self-employed persons.
2. Each Member shall specify, in its reports under article 22 of the Constitution of the International Labour Organisation, the categories of persons listed in paragraph 1 above which it undertakes to protect.
3. Each Member shall endeavour to extend protection progressively to a greater number of categories than the number initially protected.

VIII. LEGAL, ADMINISTRATIVE AND FINANCIAL GUARANTEES

Article 27

1. In the event of refusal, withdrawal, suspension or reduction of benefit or dispute as to its amount, claimants shall have the right to present a complaint to the body administering the benefit scheme and to appeal thereafter to an independent body. They shall be informed in writing of the procedures available, which shall be simple and rapid.
2. The appeal procedure 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' organisation or by a delegate of an organisation representative of protected persons.

Article 28

Each Member shall assume general responsibility for the sound administration of the institutions and services entrusted with the application of the Convention.

Article 29

1. When the administration is directly entrusted to a government department responsible to Parliament, representatives of the protected persons and of the employers shall be associated in the administration in an advisory capacity, under prescribed conditions.
2. When the administration is not entrusted to a government department responsible to Parliament-
 - (a) representatives of the protected persons shall participate in the administration or be associated therewith in an advisory capacity under prescribed conditions;
 - (b) national laws or regulations may also provide for the participation of employers' representatives;
 - (c) the laws or regulations may further provide for the participation of representatives of the public authorities.

Article 30

In cases where subsidies are granted by the State or the social security system in order to safeguard employment, Members shall take the necessary steps to ensure that the payments are expended only for the intended purpose and to prevent fraud or abuse by those who receive such payments.

Article 31

This Convention revises the Unemployment Provision Convention, 1934.

Article 32

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

Article 33

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.
2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 34

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 35

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.
2. When notifying the members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 36

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 37

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

Article 38

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides-
 - (a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 34 above, if and when the new revising Convention shall have come into force;
 - (b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.
2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 39

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