



International
Labour
Office

**PROMOTING THE
INTEGRATION OF**

**MIGRANT
DOMESTIC**

WORKERS

IN EUROPE



MODULE IV
Effective
Protection of Migrant
Domestic Workers
Labour Rights



International Training Centre

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Module IV – Effective Protection of Migrant Domestic Workers Labour Rights – OBJECTIVES



To be able to describe the required means and actions to achieve effective protection for migrant domestic workers in Europe

To be able to design and assess legislative measures to ensure protection of migrant domestic workers

To expand knowledge on labour protection/enforcement issues for (migrant) domestic workers

To get acquainted with the EU actions to ensure protection for workers and tackle undeclared work

To be familiarized with the European situation as well as its gaps and innovations to reach this goal



Module IV – Effective Protection of Migrant Domestic Workers Labour Rights – KEY MESSAGES

KEY MESSAGES



Promoting an effective protection for migrant domestic workers requires States' simultaneous actions on several fronts: extension of general labour law coverage and specific provisions, enforcement mechanisms and measures incentivising compliance (adherence from all relevant stakeholders).

In Europe, the EU level has already promoted labour policies and legal frameworks making reference to international labour standards and has called to set standards aligned with or surpassing those entailed by ILO C189. EU Member States have followed at a different path, some countries proposing more advanced protection and inclusive mechanisms for domestic workers.

However, migration policies for unskilled and low skills workers remain very restrictive at a EU level and even though some countries have adopted more progressive tools to evaluate the need for third country national workers, irregular migrant domestic workers still represent an important share of migrant domestic workers, women being an overwhelming majority.

Irregular migrant domestic workers are even more subject to exploitation and abuse and as workers their access to basic rights in the EU is very uneven depending on the Member State. Even when access to justice is made available, they are reluctant to seek redress and prefer to adopt a coping strategy by changing employer. The unfair and irregular employer remains unpunished and free to repeat the offence.

Beyond workers' rights, irregular domestic workers fuel undeclared work in Europe. As acknowledged by the Commission, "moonlighting", undeclared work or underground labour, concur to undermine EU potential for employment creation and social welfare. Hence, it is in the EU's and singular Member States' interest to promote an effective protection for migrant domestic workers in order to discourage undeclared work.



Module IV – Effective Protection of Migrant Domestic Workers Labour Rights – OVERVIEW OF THE ISSUE



A specific international legal standard, ILO Convention No. 189, and its accompanying Recommendation 201, protect domestic workers. The European Commission in a press release dated 21 March 2013 urges European member states to implement ILO Domestic Workers Convention as it reflects the EU approach to improve working conditions in domestic work¹.

Labour law coverage for domestic workers, a majority of whom are women, is recognized as indispensable for ensuring their human and labour rights. The ILO supervisory bodies see the inclusion of domestic workers under the scope of labour laws as essential for the implementation of several ILO Conventions, particularly those concerning fundamental principles and rights at work.

Extending the current coverage of general labour laws and setting labour standards governing domestic work is indispensable for achieving the goal of decent work for all, but measures and frameworks must allow and ensure that in practice, the rights set out in national legislation are allotted to and enjoyed by domestic workers, migrants being a group deserving special attention.

In Europe, the legislation and coverage for domestic work sector varies from country to country and enforcement means fluctuate. The main observed differences and gaps among European member States seem related to migration schemes and their impact on the access to justice and effective protection for irregular migrants.

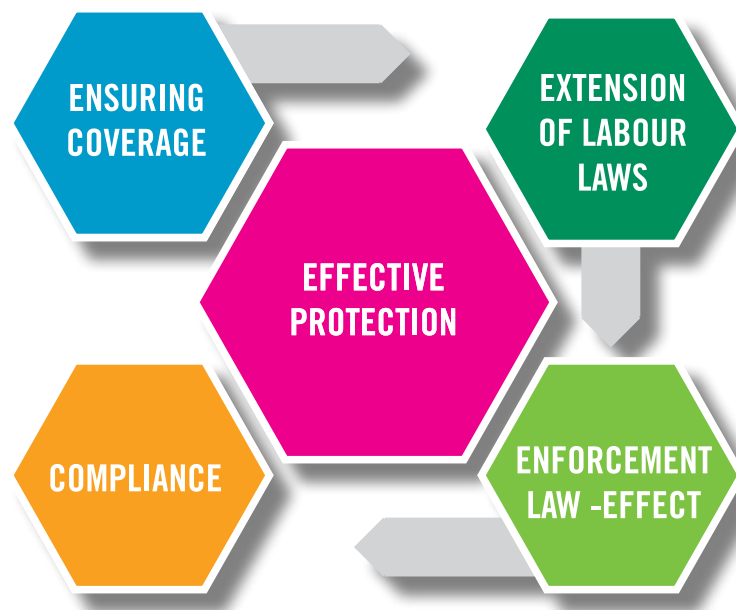
Reaching an increased compliance with the principles promoted by the Convention, and thus ensuring a more effective protection for migrant domestic workers, is in the interest of the EU that have already identified the cost of undeclared work. In addition to that, migration schemes and labour law legislation must ensure special attention to migrant domestic workers.

Ensuring effective protection for migrant domestic workers: a framework for action

Effective protection may be achieved through a comprehensive approach, by:

- Ensuring the coverage through the design and adoption of new legislative measures and the extension of the coverage of current labour laws to migrant domestic workers;
- Guaranteeing the practical enforcement and compliance with these laws.

1. http://europa.eu/rapid/press-release_IP-13-264_en.htm?locale=en



Bringing domestic workers, who are mostly migrants and women, under the ambit of labour law is an important means of also bringing them within the formal economy and of addressing the human rights and gender equality gap.

Legal provisions, however, are not sufficient: they need to be supported by a whole framework empowering workers to claim their rights and employers to be informed about them. A combination of deterrent measures and incentives can contribute to enforcement. Other means can complement this framework to engage all stakeholders and encourage them to behave in accordance with the norm.

What ILO Convention No 189 says about designing specific legislative provisions and extending the coverage of labour laws

- **Laws should not be less favourable than those available to workers in general**
- **Laws should take into account the peculiarities of domestic work**

In general, labour laws protect workers and clarify the duty and rights of each party in the employment relationship. Laws serve to define and articulate rights and they create a legal basis for workers to claim redress in case their rights are not being respected.

Labour laws must be extended to the domestic work sector. In doing so, domestic work is recognized as work and thus can benefit from the same set of labour standards. Extending labour legislation to cover domestic work in line with international standards addresses the long-standing unequal treatment of this group of workers. Given that domestic workers are predominately women, it is also a step towards gender equality in the world of work. Importantly, regulating and enforcing labour standards for domestic workers contributes to preventing human trafficking for labour exploitation.

The ILO has acknowledged that standards-setting on the unique conditions of domestic workers was necessary. This is also true at a national level.

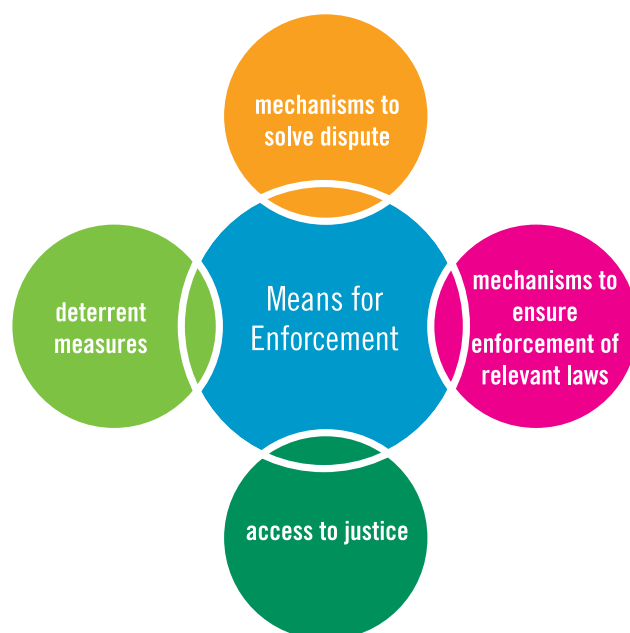
In the case of domestic workers, they are more than in other cases the weaker party in the employment relationship and specific laws must be developed to address the peculiarities of this atypical employment relationship. A number of specific issues arise in respect to live-in arrangements, including the need to ensure decent living conditions, transparent and fair working time arrangements, and freedom of movement and communication.

The physical proximity of domestic workers to household members poses a heightened risk of abuse and harassment. This risk is further heightened for live-in domestic workers, present in the household all the time, and for migrant domestic workers, whose legal status of residence is often inextricable from the employment relationship and who are therefore highly dependent on their employer.

Employers of domestic workers also benefit from specific regulation: it provides guidance for managing the employment relationship in a mutually satisfactory manner. Clear and transparent rules governing the domestic work-employment relationship can prevent misunderstandings and disputes.

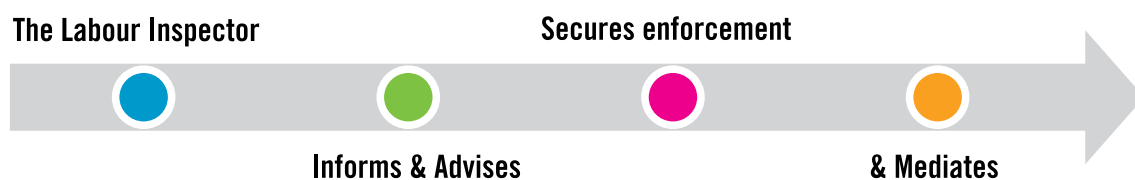
Regulations are essential but need to be complemented by mechanisms allowing their use and application in practice and processes allowing the creation of an “interior rule”: individual behaviour respecting the regulation.

What ILO Convention No 189 says about enforcement and compliance



The ILO considers labour inspection as the primary mechanism, alongside access to courts or special tribunals and public awareness campaigns, in promoting the enforcement and compliance of labour laws. This applies also to domestic workers. Labour inspectors play a cross-cutting role in the domestic workers' protection:

- they supply technical information and advice to ensure compliance while promoting preventive measures
- they secure enforcement of legal provisions (through visits among other means)
- they may be a mediator in a dispute



Effective mechanisms for solving employment disputes and the enforcement of relevant laws and regulations are essential to enhance the protection of migrant domestic workers.

In its Articles 16 and 17, the Convention requires Members to take measures to ensure that domestic workers have effective access to the court, tribunals and other dispute settlement mechanisms.

When establishing mechanisms, institutions and procedures for enforcement and dispute settlement, one needs to keep in mind that domestic workers, in particular migrant domestic workers, are in need of peculiar support and assistance to access and benefit these mechanisms. If foreign domestic workers are allowed to change employers it can be a powerful tool to achieve better compliance. Non-compliant employers take advantage of arrangements providing otherwise, being aware that workers are unlikely to complain.

Different types of mechanisms for dispute settlement, monitoring and enforcement exist. Conciliation and mediation represent a first opportunity to resolve the labour conflict without going to court. Labour inspection can also play a role at this stage.

As uncertainty or ignorance about the respective rights and obligations of the parties to the employment relationship are frequent in the context of domestic work, mechanisms providing information, advice and recommendations on how to address disagreements, accessible by both workers and employers, can help to settle disputes in a consensual manner and to preserve the employment relationship.

Then, if the previous stage was unsuccessful or not contemplated because of the seriousness of the workers' situation, complaints-based enforcement is required. Judicial and administrative complaints mechanisms should appear in last resort and serve to ensure the worker's right to access to justice and to obtain enforceable decisions. This poses particular challenges where the residency status of the migrant is linked to the existence of an employment relationship. It is necessary to provide foreign domestic workers with access to justice, even after the employment relationship has ended.

Developing and implementing deterrent measures: labour inspection, enforcement and penalties.

As stated by Jose Maria Ramirez Machado, "the main rationale of labour inspection is the defence of labour rights through the control of the effective application of legal labour standards. However, despite the particular difficulties faced by domestic workers in this connection, very few countries have enacted specific provisions concerning law enforcement: this by reason, among others, of the privatized and hidden nature of domestic work."²

Normally, labour inspection regulations of general application are, unless otherwise stated by the law, also applicable to domestic workers. However, this does not imply that the implementation of the law is carried out in the same way as for other categories of workers. In domestic work, the workplace and the employer's private home are one and the same. Thus, as Ramirez Machado points out, two fundamental rights may collide here: namely, the right and the duty of the State to protect the basic labour rights of domestic workers through the supervisory function of labour inspection, and the employers' basic right to the protection of their and that of their families' privacy.

Hence there is a need for on-going supervision respecting and taking into account this specific working reality. Labour administration authorities, including labour inspectorates, are responsible for supervising the application of labour laws. This role should also extend to laws and regulations applicable to domestic workers. The labour administration can rely on a range of different methods, such as requiring contract registration, asking employers to submit documentation (e.g. proof of salary payment, tax payment), requesting meetings with domestic workers and/or employers, and cooperation with unions and NGOs. Where inspection visits by labour inspectors in homes are envisaged, an appropriate legal framework needs to be put in place to ensure respect for the inviolability of the home (e.g. through a requirement to seek consent of the household, or judicial authorization).

2. Domestic work, conditions of work and employment: A legal perspective, Conditions of Work and Employment Series No. 7, ILO, Geneva, 2003.

In Europe, the EU level has already integrated most of the ILO Convention No.189 provisions in its legal framework but one aspect remains problematic; the issue of migration regimes remains uneasy to deal with. As most domestic workers are migrants, their access to a regular status and the effective response to a growing demand for domestic workers would be essential to grant migrant domestic workers with clear and equal rights, and thus avoid undeclared and irregular work.

Protection of migrant domestic workers in Europe: a disparate and incomplete safety net

Progress & basis for improvement

Positive aspects at the European level, on the coverage side and the enforcement measures:

The fundamental rights charter (FR Charter) that is now part of the constitutive treaty of the European Union includes some articles providing for the protection of workers:

- FR Charter: Art. 35 provides for the access to preventive health care and the right to benefit from medical treatment under the conditions established by national law.
- FR Charter: Art. 31 (2) provides for maximum threshold of working hours, daily and weekly rest periods and annual paid leave.

Directive 2009/52/EC (2009) of the European Parliament and of the Council on providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, OJ L 168/24, (2009).

The “Employers Sanctions Directive” explicitly provides for the rights of migrant workers in an irregular situation to claim outstanding remuneration resulting from illegal employment or to lodge complaints against employers. EU Member States not recognizing the right to compensation for withheld wages will have to change their legislation with the transposition of the Employers Sanctions Directive (transposition deadline for the Employers Sanctions Directive expired on 20 July 2011.) Practical obstacles such as proving a work relationship, its duration or the identity of the employer, make difficult to realise these rights.

At the European Union level, the Employers Sanctions Directive contains provisions which are intended to facilitate access to justice by victims of abusive or exploitative labour conditions. In the context of the obligation for Member States to provide for effective mechanisms through which irregular third-country workers can lodge complaints against their employers, the directive obliges Member States to ensure grounds for third parties, such as trade unions or NGOs, to assist migrants in an irregular situation in complaints procedures (Article 13). Insecurity of residence of victims or witnesses during the legal proceedings is an important factor discouraging recourse to courts. The Employers Sanctions Directive might partly address this issue as it obliges Member States to define in national law the conditions under which they may grant permits of limited duration to third-country nationals who are victims of particularly exploitative working conditions or to illegally employed minors. This is, however, limited to individuals who collaborate with the justice system.

Positive national coverage & enforcement features

In France and Belgium, there are national systems allowing the hiring domestic workers through “service cheques”: domestic workers are recruited by agencies supervised by the national authorities with a strict regulation in terms of contract transparency and working conditions for the workers, providing appropriate information to employers, looking after social security and tax issues and thus undermining moonlighting. A similar procedure has been introduced in Luxembourg, allowing the employers to register their domestic workers by reducing the administrative burden and tackle undeclared work.

In Spain, there are limitations on labour inspection within the domestic sphere imposed by the law but, labour inspection may be carried out if it safeguards the inviolability of the home and the right to personal and family privacy.

In Sweden or Denmark, labour inspection becomes involved on matters regarding domestic workers if any of the parties so requests, or can take the initiative in the presence of “other special reasons”, or “if the inspectorate becomes aware in any other manner” (Sweden or Denmark).

In general, given the private household sphere of the workplace, it is very difficult for labour inspectors to act on their own initiative but the enforcement mechanisms are evolving in Europe.

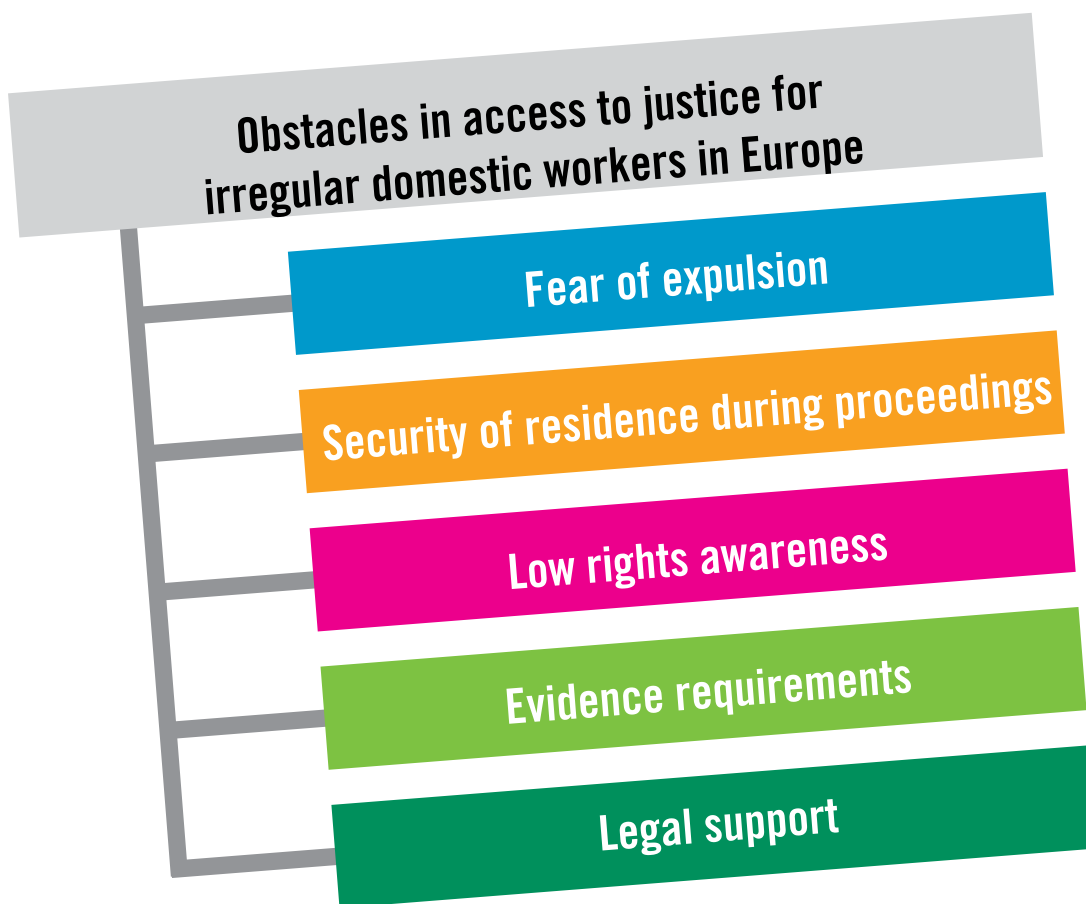
Black holes & limits

Even though the EU legal framework is quite advanced when looking at labour standards allotted to domestic workers, the coverage is still deficient in some areas: for instance, domestic workers are not included by the EU Directive on Safety and Health at Work (89/391/EEC) when studies have showed that accidents are not so rare in the domestic work sector, the household being wrongfully considered a safe place.

Regarding the enforcement area and labour inspection, even if good examples and signs of progress are undeniable in EU member States, a legal framework at the EU level should provide for the inspection of the workplaces of domestic workers to ensure safe and decent working conditions.

On compliance aspects, employers should be made aware of the obligation to treat their workers in accordance with existing labour law standards. Sanctions and penalties against employers responsible for abuse or exploitation of domestic workers are set forth in law (see Employers Sanctions Directive) but there is a need to improve awareness and to promote information.

With respect to access to justice for domestic workers seeking redress against their employers, in cases of a personal (which is often the case in this sector) relationships between the employer and the employee, migrant domestic workers are reluctant to seek judicial redress for fear of reprisal. A common strategy is to switch employers and not to report discriminatory or abusive treatment. Fear of detection, low awareness of rights and limited or no security of residence are additional factors that increase the dependency on employers and discourage recourse to courts.



Indeed, as stated above, other protection issues arise from the migration status of migrant domestic workers. Migration schemes are still very restrictive in several European countries and irregular migrant domestic workers constitute an important share among migrant domestic workers in Europe. Irregular migrants face increased risks of abuse and basic rights violation in the “invisible” domestic work sector.

According to the data collected in the framework of a project entitled “Clandestino, Undocumented Migration: Counting the Uncountable. Data and Trends Across Europe” , estimates suggest that in Europe, migrants in irregular situations number between 2.8 and 6 million, representing between 11 per cent and 23 per cent of total migrants. Further to this, European citizens were found to associate migrant workers very closely with the phenomenon of undeclared work. Migrants are often perceived as exploitable and expendable, a source of cheap, docile and flexible labour, apt for the 3-D -- dirty, dangerous and degrading-- jobs nationals are unavailable for and/or unwilling to take. This wrongful perception is in contradiction with a culture of compliance for the effective protection of migrant domestic workers.

In the case of undeclared work and irregular migrant domestic workers, effective protection is also impeded by the fact that the labour inspection system fail to detect irregularities and to perform their enforcement activities. Hence trafficking and forced labour cases, two major human rights failures, may remain hidden and unveiled.

Regarding access to health, according to a study conducted by the Fundamental Rights Agency, in 19 out of 27 EU Member States migrants in an irregular situation are entitled to emergency healthcare only. In 11 out of those 19 countries migrants in an irregular situation are entitled to emergency healthcare but have to pay for it. Depending on the type of health system, the requirements to access public health

services – such as citizenship, residence, membership in an insurance scheme – as well as the range of health services available to the beneficiaries with or without charge varies. Access to health corresponds to the satisfaction of a basic need that may be impeded for irregular workers.

Irregular migrant domestic workers are the first victims of their status but the whole society is affected by undeclared work. As the European Commission has stated in one of its communications (COM98, 7 April 1998) undeclared work is undermining Europe's potential for employment and social welfare and if not properly confronted, threatens to undermine the EU's ability to meet its employment targets for more and better jobs and stronger growth.

Hence, it is in the interest of the European Union to adhere more closely to the provisions of ILO C189. EU member states should benefit from developing a more comprehensive legal framework for domestic workers taking into account the migrant group and promoting soft measures such as broad awareness-raising campaigns and prevention and advisory services for domestic employers and workers to favour compliance.

Module IV – Effective Protection of Migrant Domestic Workers

Labour Rights – LEARNING BY DOING

Exercise



For this exercise, you have 45mn dedicated to the group work and 25mn to the reporting/discussion

LEARNING BY
DOING

Germany is a Member State of the EU. Germany has recently adopted a specific law governing domestic workers and has prepared and disseminated a leaflet to domestic workers providing them with information on their rights.

According to what you have learned so far on effective protection of MDW, please try to list in an exhaustive manner the positive aspects and the gaps which you can assume from this leaflet. Try to adopt a gender perspective and keep in mind the European context. Make specific comments regarding the migration status. Try to order your ideas and comments to present them in an analytical and concise way.

The Employment Rights of Domestic Workers

The German State Domestic workers' Law was adopted in January 2013 to provide protection from workplace harassment for domestic workers. Unlawful harassment includes sexual harassment, as well as harassment on the basis of gender, race, religion, or national origin.

Domestic workers are also protected from retaliation by their employers for complaining of such harassment.

You are a domestic worker if you are employed in a home or residence for the purpose of caring for a child, serving as a companion for a sick, convalescing or elderly person, housekeeping, or for any other domestic service purpose.

The protections for domestic workers apply regardless of the number of person employed. Even if you are the only worker employed by the household, you are protected.

PUBLIC POLICY

Domestic workers often labour under harsh conditions, work long hours for low wages with few benefits and little job security, are isolated in their workplaces, and can be endangered by sexual harassment and assault, as well as verbal, emotional and psychological abuse on the basis of gender, race, religion or national origin. The legislature has concluded that because domestic workers care for the most important elements of their employers' lives, their families and homes, it is in the interest of employees, employers, and the people of the State of Germany to ensure that the rights of domestic workers are respected, protected and enforced.

WHAT IS SEXUAL HARASSMENT?

Sexual harassment can consist of unwelcome sexual advances, requests for sexual favours, or other verbal or physical conduct of a sexual nature. Sexual harassment occurs when any of the following is true:

- Submission to such conduct is made either explicitly or implicitly a term or condition of your employment, such that you believe you would be fired if you object, or you would have to quit in order to escape from the conduct;
- Submission to or rejection of such conduct by you is used as the basis for employment decisions, such as the setting of your hours or pay rate;
- Such conduct has the purpose or effect of unreasonably interfering with your work performance by creating an intimidating, hostile, or offensive working environment.

Examples of sexually harassing conduct include:

- Pressure to engage in unwelcome sexual activities
- Unnecessary or inappropriate physical contact
- Sexual assault
- Verbal harassment or abuse in the form of a pattern of sexual comments or questions
- Displays of lewd photographs or drawings

WHAT OTHER HARASSMENT IS PROHIBITED?

Harassment consists of actions which have the purpose or effect of unreasonably interfering with your work performance by creating an intimidating, hostile, or offensive working environment. Harassment of domestic workers is in violation of the law when it is:

- Directed at you because of your gender, race, religion or national origin; or
- Consists of offensive or humiliating comments or jokes about people of your gender, race, religion or national origin.

WILL I SUFFER RETALIATION IF I COMPLAIN?

Germany's law prohibits retaliation for objecting to unlawful harassment in your workplace, or for filing a complaint with the Division. If you feel you are a victim of retaliation, you should contact the Division and file a complaint.

EXCLUSIONS FROM COVERAGE

You are not covered by the Human Rights Law as a domestic worker if you:

- Work only on a casual basis. Examples would be occasional babysitting or other household services that are for a limited amount of time, are performed without regularity, or are performed only during intermittent periods
- Work for a person related to you by blood, marriage or adoption

What if I'm not a citizen of Germany?

The Domestic Workers' Law protects you, whether you are:

- A citizen of Germany or of the European Union
- A legal permanent resident
- An immigrant with other lawful status (such as temporary protected status)
- An undocumented worker

These laws cover all workers. Immigration status does not matter

Protections under Labour Law

Your employer must:

- Pay you at least the minimum wage
- Pay you overtime at 1 1/2 times your basic rate of pay after 40 hours of work in a calendar week. If you live in their home, they must pay you overtime after 44 hours of work in a week
- Give you one day (24 hours) of rest per week – or, if you agree to work on that day, you must be paid at an overtime rate

- Pay you on a regular basis
- Not deduct money from your pay without your written permission
- Not take money from your wages for breakage or other such reasons
- Give you written notification of all deductions, whether you are paid in cash, by check, or by direct deposit
- Keep detailed pay slips and time records of:
 - The hours you work
 - Your wages
 - Any deductions from those wages



Module IV – Effective Protection of Migrant Domestic Workers Labour Rights – FACT SHEET

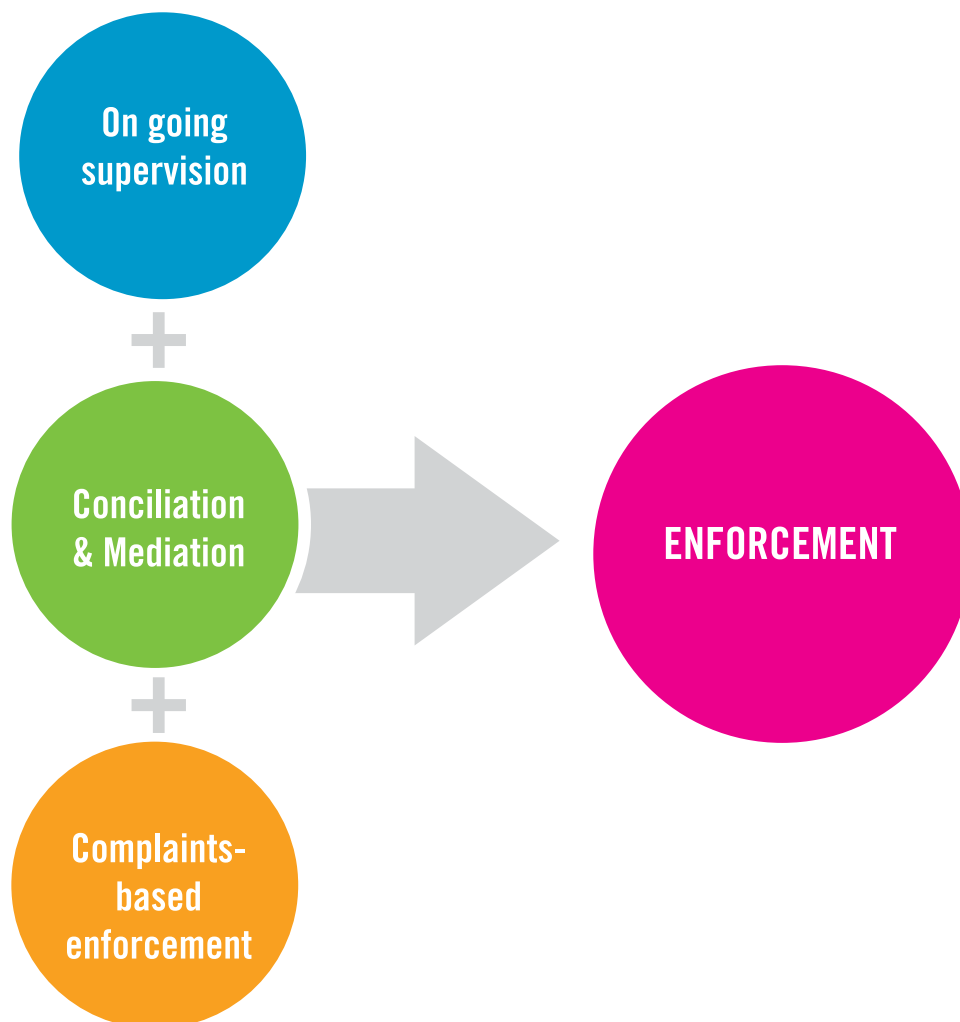


Effective Protection as a System

Effective protection of migrant domestic workers can be ensured through better labour law coverage of domestic workers in general, a majority of whom are women. The ILO sees the inclusion of domestic workers under the scope of labour law as essential for the implementation of the fundamental principles and rights at work. In addition to that, it is essential to enact laws that set specific labour regulations governing domestic work taking into account domestic work's peculiarities.



In addition to legal comprehensive coverage, effective protection for migrant domestic workers in Europe implies a proper enforcement and compliance. Enforcement in itself usually plays an important part in deterring non-compliance through monitoring, dispute-settlement and access to justice for workers.



Compliance emerges as a more complex process: in addition to deterrent and monitoring measures, it supposes soft measures to obtain the adherence of the majority: information, awareness raising and empowerment.



Legal protection of migrant domestic workers involves having laws that include several aspects which, together, constitute effective protection. Ideally, laws or regulations governing domestic work should contemplate the following aspects:

- The Definition of domestic work, domestic worker and the employer
- The Employment contract: its form (preferably written) and its contents (description of tasks, etc.)
- Minimum wage
- Deductions (not allowed), benefits (overtime etc.) and the modality of the payment of wages (bank account)
- Social security (contribution to health, accident insurance, pension scheme)
- Working hours, night work
- Leave (resting days, maternity leave)
- Employment termination
- Setting of respective responsibilities and mutual standards of treatment (prohibition of violence, verbal, moral or physical by the employer and the worker) providing for fines, payment of compensation and eventually imprisonment
- The Facilities for live-in domestic workers (room, furniture, utilities)
- Dispute settlement
- Right to information for the workers on his/her rights and the risks he/she may encounter in the country and the institutions to be contact for assistance
- Easy access and transparent access to regular channel for entry for migrant workers
- Easy administrative process for employers hiring a migrant worker
- Access to free local language training
- Cooperation with sending countries

What you have to know, in a nutshell, regarding effective protection of MDW in Europe

In the case of the European Union, the legal protection framework has been enriched in recent years and the Commission has released a communication encouraging all Member States to adhere to the standards spelled out in the ILO C189 on decent work for domestic workers.

However the legal coverage remains incomplete and the situation varies hugely from a country to another. Enforcement means depend on each Member State. At the EU level, enforcement provisions exist but do not cover every aspect of enforcement for protection. Good practices and evidence of progress exist but remain incomplete.

Moreover, EU migration policies for unskilled and low skilled workers, which include domestic workers (this occupation being still perceived as requiring low skills), are still very restrictive while the demand for domestic workers is rising and the local workforce sufficient in numbers to meet the demand.

Irregular migrant domestic workers represent an important share of domestic workers in Europe that do not have access to basic rights such as health and justice and represent a significant portion of undeclared work, difficult to detect, which has a high cost in terms of employment, social justice and development both for EU members and sending countries.

Recommended readings

- Communication from the Commission of 7 April 1998 on undeclared work [COM(98) 219 final - not published in the Official Journal].
- Labour inspection and labour administration in the face of undeclared work and related issues of migration and trafficking in persons: Practices, challenges and improvement in Europe towards a labour inspection policy, National Workshop on Labour Inspection and Undeclared Work, Budapest, 2009
- Coverage of domestic workers by key working conditions laws, Policy Brief N°5, Conditions of Work and Employment Programme, 2011
- Regional Tripartite Conference on ILO Convention No. 189: Raising Awareness and Sharing Knowledge on Decent Work for Domestic Workers, Cairo-Egypt, 22-24 October 2012, Background Note: Extending Labour Laws - Ensuring Compliance
- Effective protection for domestic workers: a guide to designing labour laws, International Labour Organization, 2012
- Working conditions: Commission urges Member States to implement ILO domestic workers convention, Press release, European Commission, 21 March 2013.

Module IV – Effective Protection of Migrant Domestic Workers

Labour Rights – GOOD PRACTICES



Protecting wages and rights of domestic workers

France – social security contributions

The Cheque Emploi Service Universal System shows that care work is seen as a sector with great potential for employment creation. As such this system involves a simplified registration of domestic workers and the payment of employer's contribution. Model employment contracts are made available. This system, and its transparency, contributes to clarifying domestic workers' statuses and employers' duties. Thanks to this system, even though undeclared and informal work persists, the number of domestic workers benefiting from social security benefits has increased.

Ireland – labour inspection

A pilot scheme of labour inspections of private homes was carried out by the National Employment Rights Agency in 2011. This emerged from legislation that provided for the inspection of written employments records such as contracts, pay slips and/or timesheets as well as interviewing and obtaining information from relevant people.

Spain – extension of labour law coverage & adoption of peculiar regulations

Spain became the first country to introduce new regulations regarding domestic work following the adoption of Convention No. 189. Royal Decree 1620/2011 of 14 November 2011 improves regulations from 1985 governing domestic work. The new measures include better protection from discrimination; a right to a written contract and the provision of a model contract by the authorities; a right to the national minimum wage, while payments in kind cannot represent more than 30 per cent of the remuneration (with a prohibition of payments in kind below the minimum wage threshold); an increase of the daily rest period to a minimum of 12 hours; improved rules for on-call periods; and improved support and information for employers to facilitate compliance. Spain has also recently adopted new legislation in 2011 extending the general social security system to domestic workers.

Compliance through social dialogue

Germany and France are good examples of countries having collective bargaining mechanisms for domestic workers with some combination of the following: a domestic worker union or another union representing domestic workers; an employer bargaining entity; an institutional monitoring framework for bargaining facilitated by government; a collective bargaining process that successfully ended in a collective agreement.

Compliance through advocacy and access to Justice

Kalayaan is a UK based NGO created in 1987 by domestic workers who had become undocumented after fleeing abusive employers. Its clients are mainly women from over 30 Asian and African countries. Kalayaan

partnered with others to advocate for the adoption of the Domestic Worker's Convention, revisions to the UK visa system for domestic workers and won protections for them, such as coverage in minimum wage legislation, maternity leave, and state-funded safe houses for victims of trafficking (Kalayaan, 2011). The organization partners with lawyers to offer its clients employment and immigration advice free of charge and helps them reclaim their passports – nearly a third of those who come into contact with Kalayaan have lost possession of their passports. Further, it empowers clients to claim labour protections, with women making up 91% of the cases that went to employment courts in 2010. Kalayaan and the North Kensington Law Centre helped its clients bring successful claims that added up to over £1.5 million (around USD 2.4 million) from 2009-2011 (Jenny Moss (2011)). Migrant domestic workers are also being supported to take a test case to the UK's highest courts, challenging a legal loophole that allows some employers to claim that their live-in domestic workers are “family workers” who are exempt from receiving the national minimum wage.

Access to justice: ruling on domestic workers, court cases

Ruling on migrant domestic workers plays a positive role by raising awareness on their situation and contributes towards reaching better compliance.

At the European level

The European Court on Human Rights has ruled twice on the basis of Article 4 of the European Convention of Human Rights which refers to forced labour and modern day slavery. Each time, the Court has condemned the State for failure to effectively protect the migrant domestic workers.

- **Siliadin vs. France – 2005.** The case of a Togolese girl, under the minimum age of employment, brought into France to work as a maid and became a victim of inhumane living conditions. The Court reasoning was based on States' positive obligation under Article 4 of the ECHR to criminalise and prosecute actions that hold any person in slavery, servitude, or forced or compulsory labour. “Slavery” and “servitude”, however, are not classified as offences under French criminal law. Articles 225-13 and 225-14 of France's Criminal Code do not specifically deal with these offences; instead, they deal only with general exploitation through labour and working and living conditions that are incompatible with human dignity. Because of this, France's criminal law did not afford Siliadin with practical and effective protection. Despite being subjected to treatment contrary to Article 4 of the Convention, Siliadin was unable to see her employers convicted under French criminal law.
- **CN vs United Kingdom – 2012.** CN came to the UK in September 2002. She said she was fleeing from sexual and physical violence she had been suffering in her native Uganda. A relative, called PS, who lived in London, helped her get a false passport and visa to enter the UK, but on her arrival PS took these travel documents away from CN and did not return them. She lived at a number of houses in London owned by PS, who told her that she should not talk to other people or she would be arrested or attacked. The Court again based its decision on Article 4 of the ECHR and held that there was a failure by the police to properly investigate her complaints, and that this was a result of a failure to have in place legislation which effectively criminalised treatment contrary to Article 4.

France

At a national level, since 2012, a case of slavery has been under the spotlight: the wife of a former Libyan official was convicted of exploiting her staff in France. She was convicted on charges of “submitting vulnerable persons to working or living conditions incompatible with human dignity”, “hidden work” and “assistance to unauthorised residence and employing foreigners without a work permit”. The case centred on four Tanzanians, two sisters in their 40s and a couple in their 30s, who had been hired in Libya and brought to work in France. The employees had been deprived of their passports, fed leftovers and worked long hours, with no holidays and almost no salaries. The court has ruled in favour of the irregular domestic workers by granting them with compensation for the damage and unpaid wages.

Module IV – Effective Protection of Migrant Domestic Workers Labour Rights – TEST YOUR KNOWLEDGE



1. In the phrase below, which is the correct year?
Since the European Union's approach to domestic work is based on ILO Convention 189 and Recommendation 201, and the EU promotes, in all its policies, the ratification and effective implementation of these instruments.
 - a. 2010
 - b. 2011
 - c. 2012
 - d. 2013
2. Convention 189 says that designing specific legislative provisions and extending the coverage of labour laws to domestic work is important. In particular, it states that these specific provisions...
 - a. Should not be less favourable than those available to workers in general
 - b. Should take into account the peculiarities of domestic work
 - c. Will enable domestic work to be recognized as work
 - d. All of the above
3. In the system of domestic workers' protection, labour inspectors can do which of the following?
 - a. Supply technical information and advice to ensure compliance while promoting preventive measures
 - b. Secure enforcement of legal provisions by arresting employers who violate domestic workers' rights
 - c. Act as a mediator in a dispute
 - d. All of the above

4.

One of the problems with using labour inspection to protect the rights of domestic workers is that...

- a. Labour inspection systems often fail to detect irregularities
- b. Labour inspectors usually give undue preference to the worker
- c. Labour inspection causes a conflict between the employers', and that of their families' right to privacy with the labour rights of the domestic worker
- d. Labour inspection is not in any of the provisions of C189, therefore not justifiable

5.

At the European Union level, the Employers Sanctions Directive contains provisions which are intended to facilitate access to justice by victims of abusive or exploitative employers. What are some of the weaknesses of this EU Directive?

- a. The Directive is not applicable to all the EU States
- b. The provisions allowing for effective mechanisms through which irregular third-country workers can lodge complaints is there but is only limited to individuals who collaborate with the justice system
- c. The Directive is not binding on EU States
- d. Although the Directive assists irregular third-country workers in complaints procedures, insecurity of residence of victims during the legal proceedings is an important factor discouraging recourse to courts

6.

Regarding access to health, it is important to note that...

- a. In most EU States, migrants in an irregular situation are entitled to comprehensive healthcare coverage
- b. In most EU States, migrants in an irregular situation are entitled to emergency healthcare only
- c. In most EU States, migrants in an irregular situation are denied access to all forms of healthcare

Responses to the quiz

- 1. Question 1: The correct answer is d)
- 2. Question 2: The correct answer is d)
- 3. Question 3: The correct answers are a) and c)
- 4. Question 4: The correct answers are a) and c)
- 5. Question 5: The correct answers are b) and c)
- 6. Question 6: The correct answer is b)

Notes

This image shows a full page of white paper with horizontal dashed lines. The lines are evenly spaced and run across the width of the page, providing a guide for writing. There are no margins, text, or other markings on the page.

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