



COVID-19 and occupational exposure Rethinking rights and responsibilities for a safer workplace

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Throughout the Asia/Pacific region employers in all industries and sectors have implemented some form of COVID-19 measures in the workplace. In some cases, comprehensive measures were introduced through negotiations with unions, ensuring that workers' rights to representation and collective bargaining rights are respected. The right to negotiate change is a fundamental right and should not be suspended in an emergency. Through mutual agreement on changes in work arrangements and working conditions to reduce the risk of COVID-19, employers and unions ensure a safer workplace and safer communities. Unions play a vital role in explaining the mutually agreed COVID-19 safety measures to workers and their communities, ensuring more effective implementation. Any shortcomings in implementation - including cases where some workers are excluded or placed at greater risk - are communicated and resolved. This helps to ensure that COVID-19 safety measures are not discriminatory or unfair. Unions provide feedback on problems, *new* problems, and solutions and employers act to address this, resolving it together with the union. This is really the only instance where an employer can claim that we are "working together" to overcome the COVID-19 pandemic.

The reality is that in most cases COVID-19 policies were implemented unilaterally by employers. No negotiations, no feedback, no mutual understanding of what needs to be done or what needs to be fixed. COVID-19 measures introduced temperature checks, physical distancing, and changed work schedules, but did nothing to involve workers in making it work. And if something isn't working, no one will know until it's too late.

In some instances, safety measures were introduced to meet local government requirements to keep operating as an essential service. Since government requirements are often changing (in some countries local and national regulations are conflicting), workers are confused by the new arrangements and are unfairly penalized. Unable to report for duty, workers suffered a loss of pay or termination. In some countries, workers are threatened and intimidated at checkpoints where police or soldiers are more determined to suppress people rather than the coronavirus. Despite this, many employers refuse to even discuss with unions the challenges faced by workers getting to and from work.

In other cases, it seems as though COVID-19 measures are designed to promote the reputation of the company, boost the brand or avoid reputational damage. The public *announcement* of working together to overcome COVID-19 is apparently more important than what really happens in the workplace. This is evident in global companies making large public donations to fight COVID-19 while failing to provide adequate masks or other Personal Protective Equipment (PPE) to workers. There are also examples of major transnational companies making public donations while denying wages to workers suspected of being infected with COVID-19, under self-

quarantine. In this fight together against COVID-19, workers who do the right thing by self-isolating for 14 days are not paid: no work, no pay. Bottling a fizzy soft drink is work; staying home sick to reduce the risk of infecting others is just another a holiday.

Obviously unilateral approaches by employers to COVID-19 have led to serious weaknesses in implementation of safety measures in the workplace, often causing confusion and hardship that simply increases risk. There is also a lot of confusion about rights and responsibilities. Part of the problem is that employers are responding to COVID-19 as a public health emergency that indirectly affects the workplace. They see it as a public duty to tackle COVID-19 and to ensure that community transmission of the disease stops at the door to the workplace. But COVID-19 is already an *occupational disease*, and this changes the responsibility of employers and forces us to rethink workers' safety.

According to ILO Standards and COVID-19 published on March 27, 2020:

"COVID-19 and post-traumatic stress disorder, if contracted through occupational exposure, could be considered as occupational diseases."¹

While COVID-19 is not mentioned by name in the ILO's *List of Occupational Diseases Recommendation, 2002 (No. 194)* it is covered under Article 1.3.9.:

"1.3.9. Diseases caused by other biological agents at work not mentioned in the preceding items where a direct link is established scientifically, or determined by methods appropriate to national conditions and practice, between the exposure to these biological agents arising from work activities and the disease(s) contracted by the worker."²

The International Social Security Association (ISSA), founded in 1927 under the auspices of the International Labour Organization (ILO), observes that:

"Practically speaking, there needs to be a direct link between the exposure to the coronavirus itself (SARS-CoV-2) at work and the disease (COVID-19) to be able to classify it as an occupational one. The first condition – the scientific evidence that SARS-CoV-2 causes COVID-19 - is a proven scientific fact, but in many cases, it will be difficult to create the causal link; to prove that the disease was contracted at work. If proved that the virus was contracted through occupational exposure, any worker is covered under the ILO list."³

¹ ILO International Labour Standards Department, *ILO Standards and COVID-19 (coronavirus)*, Geneva: ILO, March 27, 2020, p.14. https://www.ilo.org/global/standards/WCMS_739937/lang-en/index.htm

² ILO *List of Occupational Diseases Recommendation, 2002 (No. 194)*
https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312532

³ International Social Security Association (ISSA), "Can COVID-19 be considered an occupational disease?", April 2, 2020. <https://www1.issa.int/news/can-covid-19-be-considered-occupational-disease>

The most obvious proof of occupational exposure is that a worker became infected with COVID-19 while in the workplace. But the workplace does not only mean the factory, hotel, farm or office. The ILO's *Occupational Safety and Health Convention, 1981 (No. 155)* defines the workplace as follows:

"(c) the term **workplace** covers all places where workers need to be or to go by reason of their work and which are under the direct or indirect control of the employer;"⁴

All places where workers need to be or to go by reason of their work. This means commuting to and from work is included in the workplace, and exposure to the risk of COVID-19 getting to and from work is regarded as occupational exposure.

With reference to Convention No. 155, the ILO Standards and COVID-19 report also reaffirms the right of workers to refuse to work if they believe that the workplace (including all places where workers need to be or to go by reason of their work) is unsafe:

"Workers have the right to remove themselves from a work situation that they have reasonable justification to believe presents an imminent and serious danger to their life or health. When a staff member exercises this right, he or she shall be protected from any undue consequences."⁵

One of the underlying challenges in understanding rights and responsibilities for a safe workplace in the COVID-19 pandemic is the tendency of employers to focus too much on worker behaviour as both the source of the problem and its solution. Over the past two decades many employers have adopted a Behaviour Based Safety (BBS) approach to occupational health and safety. Instead of guaranteeing workers' rights to a safe workplace, workers are held responsible for their own safety and the safety of others. BBS is premised on the assumption that worker's behaviour and unsafe acts by individual workers are the main causes of injuries, illnesses, and fatalities. According to the BBS approach, if the behaviour of workers can be changed, and workers work more carefully, occupational injuries, illnesses and fatalities will be prevented, and workplaces will be safer.⁶

This approach ignores the responsibility of employers to ensure a safe workplace. Reducing occupational exposure to toxic substances or biological agents, for example, is not simply a matter of individual workers using PPE. Employers must first take measures to reduce risk in the workplace by reorganizing work and removing or reducing toxic substances or other hazards. If an unavoidable occupational risk remains, then employers must provide free, adequate PPE as

⁴ ILO, *Occupational Safety and Health Convention, 1981 (No. 155)*
https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:::NO:12100:P12100_INSTRUMENT_ID:312300

⁵ ILO International Labour Standards Department, *ILO Standards and COVID-19 (coronavirus)*, Geneva: ILO, March 27, 2020, p.13. https://www.ilo.org/global/standards/WCMS_739937/lang--en/index.htm

⁶ IUF Food Processing Division, *Behaviour-Based Safety Programs*, Geneva: IUF, January 2019.

well as training in PPE use. Work arrangements and working time (including putting on and taking off PPE) must be reorganized to maximize safety.

Unilateral employer responses to COVID-19 are largely based on this BBS approach. It's all about individual responsibility for personal health and hygiene and following the rules. No doubt, personal health and hygiene are important (wash your hands!). So is wearing a mask and maintaining 1.5 Or 2 meter physical distancing. But employers are responsible for ensuring that workers' individual efforts are both feasible and effective. Workers must be provided with hand washing facilities, PPE, physical space and the time needed to do all of this. Adjustment to working time, including breaks and the speed and pressure of work, is vital to a safe workplace. Employers must also ensure safe transport to and from work to reduce the risk of becoming infected, and to reduce the risk for workers' families. This all depends on each workers' access to the *collective right* to a safe workplace. Only through access to these rights are workers able to contribute to safety.

Access to rights and collective representation through unions is vital to tackling the COVID-19 pandemic. It is vital to ensuring collective action and cooperation. It is vital to ensuring that we are doing this. It is also vital to tackling the post-COVID-19 crisis and recession. By ignoring unions and refusing to negotiate the changes necessary to ensure a safe workplace in this catastrophic pandemic, employers are increasing risk and creating doubt, leaving millions of workers with the obvious question: if we're working together to overcome COVID-19 ... who exactly is "we"?