The Scope of the Employment Relationship

Agenda Item for a General Discussion
OUTLINE OF PRESENTATION

• Background
• Work undertaken by the Office
• Role and structure of the report
• Issues addressed
• Suggested points for discussion
BACKGROUND TO GENERAL DISCUSSION

- 1995
  - Governing Body decision to place « Contract Labour » on the Agenda of the 1997 International Labour Conference
    - Standard-setting item – double discussion procedure
    - Convention and/or Recommendation
• 1997/98
  – Failure to adopt a standard
  – Resolution adopted by the 1998 Conference

« ….. invites the Governing Body of the ILO to place these issues on the agenda of a future session of the International Labour Conference with a view to the possible adoption of a Convention supplemented by a Recommendation if such adoption is, according to the normal procedures, considered necessary by that Conference ……..»
Work Undertaken by the Office

1998 Resolution

• Hold meetings of experts
• Take other measures with a view to completing the work commenced by the Committee

• 39 National studies undertaken (1999/2000)
• Tripartite meeting of experts (May, 2000)
• Informal regional meetings (1999)
  (Budapest, Yaoundé, Manila, Santiago de Chile, New York)
ROLE OF THE REPORT

To provide relevant background information to facilitate the discussion of the item in the 2003 Conference Committee
Employment Relationship

Defined in general terms in the report as follows:

- the employment relationship legally links a person, called the employee (frequently also referred to as a ‘worker’) with another person, called the employer, to whom she or he provides labour under certain circumstances in return for remuneration
Employment Relationship

The report does not evaluate or assess the merits of:

• different criteria for determining the existence of an employment relationship,

• the substantive content of the employment relationship
What is meant by ‘labour protection’?

• The obligations, rights and entitlements of workers which arise from laws, regulations or collective agreements and which depend on the existence of an employment relationship
Format of the Report

• Background and context (Chapter 1)
• Disguised and objectively ambiguous relationships (Chapter 2)
• Triangular relationships (Chapter 3)
• Recent developments (Chapter 4)
• Prospects for international/national action (Chapter 5)
Chapter 2

Workers who lack labour protection because of one or a combination of the following:

• The law is too narrow or it is narrowly interpreted
• Law is poorly or ambiguously drafted
• Disguised relationship
• Objectively ambiguous relationship
• Lack of compliance/enforcement
Chapter 3: ‘Triangular’ relationships

Employer (Provider)

Employee  User
The issues to be addressed

• **Who is the employer?**
  Need to distinguish between
  - employer and the user, and
  - employer and the intermediary

• **What are the worker’s rights?**

• **Who is responsible?**
  Possible sharing of responsibilities between the employer and the user
Chapter 4

Describes recent initiatives in ILO member States aimed at refocusing the employment relationship

The objectives of these initiatives are to:
– Clarify the scope of the employment relationship
- Regulate ‘triangular’ relationships
Recent initiatives

- Laws and Bills
- Jurisprudence/case law
- Official Reports
- Social Dialogue initiatives
- Codes of Conduct
- International Labour Instruments
Clarifying the scope: Laws/Bills

- Broaden definitions
- Promotion of indefinite contracts
- Flexible adaptation of the scope
- Rationalization and simplification of the legislation
- Standardize the definition of ‘worker’
- Defining certain types of work as within the scope of the employment relationship (e.g. homeworkers, teleworkers)
Application and Enforcement

- The requirement to provide information to the worker
- Sanctions against fraudulent/disguised relationships
- Strengthening labour inspection
- Access to adjudication on disputes about employment status
Chapter 5

Bases and guidelines for national and international action
International action

• Discussion and exchange of information
• Promotion of good practices
• Technical cooperation and assistance
• Instruments
National action

• Analysis of specific problems

• A transparent national policy based on social dialogue

• Procedures, processes and mechanisms for resolving disputes about employment status
Suggested points for discussion

1. What are the main factors leading to the lack of protection of workers who should be protected within the framework of an employment relationship? What are the main consequences of this lack of protection for governments, employers and workers?
Suggested points for discussion

2. To what extent do employees fail to benefit from the protection they should enjoy in the employment relationship because of one or a combination of the following factors:

- the law is unclear, too narrow in scope or otherwise inadequate;
- the employment relationship is ambiguous;
- the employment relationship is disguised;
- an employment relationship clearly exists but it is not clear who the employer is, what rights the worker has and who is responsible for them?
Suggested points for discussion

3. How should labour administration systems and their services be developed so as to respond more effectively to the challenges posed by non-compliance and lack of enforcement?

4. What are the solutions to the problems referred to in points 1 and 2 and how can the gender dimension of these problems be addressed?
Suggested points for discussion

5. What are the roles of governments, employers and workers and their representative organizations in the design and implementation of these solutions? What role can social dialogue play?

6. What should be the priorities for the ILO’s policy, research, standard-setting and technical assistance within its overall goal of decent work for all?