



ILO Approach to Strategic Compliance Planning for Labour Inspectorates

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1. Further information on Strategic Compliance Planning and the workshop for labour inspectorates may be obtained from the Labour Administration, Labour Inspection and Occupational Safety and Health Branch (LABADMIN/OSH), International Labour Organization, Geneva.

I. Introduction

In today's world of work, the traditional enforcement model – reactive and routine inspections – is no longer sufficient to achieve effective and efficient enforcement and sustained compliance with national and international labour norms. The number of workplaces subject to inspection dwarfs the resources available to inspect them (ILO, 2006), leading to a situation in which workers are unprotected, violators operate with impunity, and unfair competition for compliant businesses pervades. The growth of non-standard forms of employment, global supply chains, and the introduction of new technologies, which enable new business models and give rise to new work-related hazards, outpace the evolution of the legal authority and enforcement tools available to the labour inspectorate; as a consequence, its enforcement levers are mismatched to the influences driving non-compliance (Weil, 2008). Where limited or declining union membership and affiliation weaken trade unions' counterbalance to employers in relation to working conditions (Ibid.), greater responsibility is placed on the labour inspectorate to promote the demand for compliance, as well as to achieve it. The emerging strategic compliance model – proactive, targeted, and tailored interventions engaging multiple stakeholders – provides the labour inspectorate with a new methodology to achieve compliance outcomes in light of limited resources, mismatched powers and a need to shoulder greater responsibility for promoting compliance in the ever-evolving world of work.

II. Traditional Enforcement Model vs. Strategic Compliance Model

The traditional enforcement model focuses on enforcement, whereas the strategic compliance model focus on compliance. Compliance is the status of conformity to rules, standards and practices established by national and international labour standards. Enforcement is a key mechanism of government to promote compliance (Howe et al., 2014).

Enforcement, however, does not necessarily achieve compliance. Employers subject to enforcement actions may comply initially and then revert to non-compliance, or may persistently not comply despite repeated enforcement actions (Ibid.). Even if an enforcement action achieves compliance in one workplace, this may not hold true in other workplaces in the same sector, which have the same business model or are beset with the same issue.

Compliance, likewise, does not necessarily require enforcement. All workplaces and employers have an affirmative duty to comply - and most do comply proactively - without being compelled by an enforcement action. Furthermore, not all employers are motivated to comply exclusively on the grounds of a straightforward cost/benefit analysis that weighs the cost of compliance against the cost of non-compliance (high likelihood of getting caught and/or high

	Traditional enforcement model	Strategic compliance model
Aim	Enforcement	Enforcement and compliance
Approach	Reactive (often complaint-driven) and routine	Proactive, targeted (labour inspectorate - driven) and tailored, based on diagnosis of causes of non-compliance
Interventions	Enforcement Education Communication	Enforcement Education Communication Political Systemic
Stakeholders	Workers and their organizations Employers and their organizations	Workers and their organizations Employers and their organizations Government entities Non-governmental entities Media Wild card (any and all others who can influence compliance)
Implementers	Labour Inspectorate	Labour Inspectorate + stakeholders
Performance measures	Effective and efficient enforcement	Effective and efficient enforcement and sustained compliance

penalties) (Ibid.). Employers, as people, are different and influenced by various factors, such as habits, civic motivations, behaviour of peers, or the desire to be industry leaders (Howe et al., 2014; New Economic Foundation, 2005).

Achieving compliance requires looking beyond the traditional enforcement model, used historically by most labour inspectorates, towards a strategic compliance model. Transformational labour inspectorates are pioneering the use of

proactive, targeted and tailored strategies, based on data-driven diagnoses of compliance influences, which more effectively target priority issues and employers, and engage stakeholders inside and outside of government; they also tailor a combination of deterrents, incentives, awareness-raising, and guidance interventions to empower workers to exercise their rights and motivate employers to meet their duty to comply.

III. Strategic Compliance Planning

To enable all labour inspectorates to apply the strategic compliance model, LABADMIN/OSH Branch of the ILO's Governance and Tripartism Department, developed the ILO approach to strategic compliance planning for labour inspectorates – a six-step exercise to formulate, sequence and operationalize broader thinking and action, that will help labour inspectorates attain the goal of sustained compliance.

The flexible and dynamic nature of this exercise allows labour inspectorates to develop a short-term inspection strategy for a discreet compliance issue, or to come up with a comprehensive proactive compliance strategy targeting multiple compliance priorities for a long-term inspection plan; it also covers contingencies that fall between these two extremes. The following outlines the exploration that goes into each step of strategic compliance planning.

● Step One: Explore the Labour Inspectorate

Step One in strategic compliance planning involves exploring the labour inspectorate, with a focus on three essential areas: its mandate, resources, and enforcement and compliance data. The labour inspectorate's

mandate is the sum of all its formal and informal “musts” (Bryson, 1995, p. 26). The formal mandate includes all enforcement obligations and authority derived from statute, regulation, and jurisprudence. The informal mandate includes all policy expectations derived from internal work plans, goals, and performance indicators, as well as political expectations driven by the government's public agendas and the stakeholders' political demands. Examining the informal mandate is essential to understanding what keeps the labour inspectorate relevant, adequately resourced, and well received by stakeholders.

The labour inspectorate's resources include the human, financial, technological, physical, and informational resources, deployable by the labour inspectorate, which may be allocated to operationalize the strategic compliance plan. A key objective of strategic compliance planning is to overcome resource gaps by identifying previously untapped resources and using available resources differently. It is important, therefore, to think broadly and creatively to catalogue available resources and not to be restricted by resource limitations.

Enforcement and compliance data are qualitative and quantitative information collected from internal and external sources - including the labour inspectorate itself, other government entities, workers' and

employers' organizations, community groups, the media, and academics. Enforcement data may comprise information about the enforcement activities of the labour inspectorate and other government enforcement entities, as well as the monitoring activities of private sector organizations; it may also include such information as the number and type of complaints, inspections, and violations. Compliance data may include information about the level or rate of compliance with a given issue or with respect to a specific target.

● Step Two: Explore Issues & Targets

Step Two in strategic compliance planning involves exploring priority compliance issues and targets. Issues are legal requirements relating to workers' conditions of employment and protections at work, which are enforceable by the labour inspectorate. The targets are the employers, workers and worksites in an identified region, sector, or business model. Priority issues and targets are those areas of greatest concern, which have been identified on the basis of the labour inspectorate's mandate and collected enforcement and compliance data.

The labour inspectorate may have a formal mandate to enforce labour legislation as a whole in all sectors, but its informal mandate may prompt it to prioritize certain issues and targets based on political commitments or stakeholder demands.

Prioritizing Political Commitments

As a precondition for entrance into force of the United States-Colombia Trade Promotion Agreement, the United States and Colombian Governments announced the Colombian Action Plan Related to Labor Rights of 2011, which provided a road map for Colombia to promote compliance with internationally recognized labour rights. Amongst other issues, the Action Plan highlighted the need to combat conduct prejudicial to the right of freedom of association in all sectors, and disguised employment relationships in five priority sectors (palm oil, ports, sugar, mines, and flowers). In addition, the Action Plan called upon the Colombian Government to seek the cooperation, advice and technical assistance of the ILO in implementing its specific measures. As a result, the Ministry of Labour of Colombia, in conjunction with ILO technical cooperation, developed and implemented targeted interventions to address these two issues and five targets.

Likewise, the exploration of enforcement and compliance data may reveal issues with high violation rates, such as child labour, and targets with high rates of work-related injuries

and illnesses, such as the construction sector. Finally, not all employers or their business models are the same, and interventions to improve compliance should take those differences into account. The labour inspectorate's enforcement data may show that the restaurant sector has a high violation rate for failure to pay the minimum wage. A closer look at the data on the employers within this sector and their business models might reveal that non-compliance with the minimum wage is most concentrated among franchised fast-food restaurants. Once the priority issues and targets have been selected, the labour inspectorate should map employers and their business models, which will allow it to further focus and tailor the strategic compliance plan taking into account these differences.

● Step Three: Explore Influences

Step Three in strategic compliance planning involves exploring influences on compliance. In the same way that a doctor must diagnose the cause or causes of an illness before prescribing a cure, the labour inspectorate must identify the cause or causes of compliance and non-compliance before devising an intervention.

The more the labour inspectorate understands why a target complies or does not comply with a given issue, the greater is its ability to identify stakeholders and tailor interventions that will influence compliance. For each priority issue or target the labour inspectorate should ask the following questions:

Why enterprises comply?

What influences have a positive impact on compliance?

In what way do these influences have an impact?

Who wields or could wield these influences?

How can positive influences be enhanced?

What positive influences could be added?

Why enterprises do NOT comply?

What influences have a negative impact on compliance?

In what way do these influences have an impact?

Who wields or could wield these influences?

How can negative influences be reduced or eliminated?

Powerful influences can be behavioural, environmental, systemic, market-based, financial, institutional, political, legal, cultural, and beyond. In global garment supply chains, Just-In Time requests from buyers may drive producers to demand

excess overtime. In piecework, production bonus quotas may incentivize the use of shadow workers, usually family members, to help them meet these quotas. In multi-employer worksites, the lack of joint liability laws may encourage the extensive use of subcontractors and day-labour workers, who are often more vulnerable to work-related injuries and illnesses. In small and medium-sized enterprises (SMEs), condensed management structures and the corporate lifespans of key personnel may mean that they have less knowledge and expertise about compliance responsibilities (Howe et al., 2014). In large established firms, greater resources and power may lead to increased capacity and an interest in challenging enforcement efforts or concealing violations (Ibid.). In industries with powerful market leaders, market followers may copy business processes without considering the compliance implications. These real-world examples demonstrate the importance of delving deeper into each specific case, and not dismissing any causes or influences as insignificant.

● Step Four: Explore Stakeholders

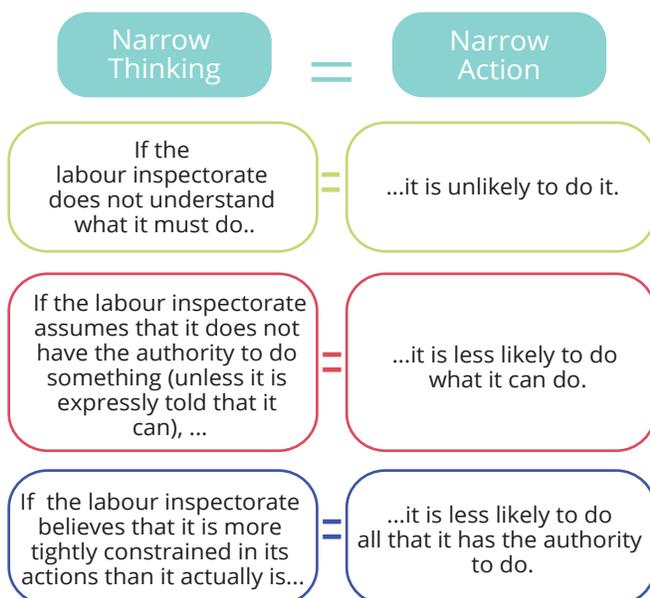
Step Four in strategic compliance planning involves exploring the stakeholders. In this context, stakeholders are any person, group,

or entity that does or can influence compliance (Bryson, 1995, p. 27). The labour inspectorate is the entity mandated to enforce national labour norms - but its interventions, which most often take the form of penalties and other sanctions, are not necessarily those that achieve the greatest sustained compliance. Many public and private stakeholders can wield influences that are more powerful and more sustainable than those of the labour inspectorate to combat particular compliance issues for specific targets. Harnessing those influences may be one of the labour inspectorate's most effective and sustainable compliance strategies.

In exploring the stakeholders, the labour inspectorate should attempt to identify the possible influence they might wield, the in-kind resource gaps they might fill, and the connections they might support. Once these aspects have been identified, the labour inspectorate needs to determine which stakeholders are the most allied to the compliance goal and which are the most hostile to it; indeed, it may be equally important to work with allies as it is to limit the influence of, if not to bring over, those that are the most hostile. Lastly, the labour inspectorate should match stakeholders with the issues and targets over which they have the most influence so that they can tailor and target their influence to make the greatest impact.

● Step Five: Explore Interventions

Step Five in strategic compliance planning involves exploring interventions. For this purpose, interventions comprise all activities, tasks, actions, campaigns, or tactics available to the labour inspectorate, or stakeholders engaged by the labour inspectorate, to achieve effective and efficient enforcement and sustained compliance. Given that there are multiple underlying causes of non-compliance, and that employers are influenced by varying factors to comply, promoting compliance requires a diverse intervention mix. Exploring these interventions requires that the labour inspectorate avoid the traps of narrow thinking which leads to narrow action (Bryson, 1995, p. 26).



Enforcement interventions are those available to the labour inspectorate or other public authorities, which primarily seek to punish non-compliance; these include administrative or criminal penalties, the suspension or revocation of licenses, or workplace closures. These interventions should be carefully reviewed to ensure they are being fully utilized. The fact that a specific intervention has never been used or only used in a given circumstance does not mean that it cannot be used - or used in a new or different way. Burdensome layers of internal procedures and permissions should not preclude the consideration of a given intervention, as these are not insurmountable obstacles when compliance is the objective.

To achieve and sustain compliance the labour inspectorate should not restrict itself to interventions that are set out in its statutes and regulations, as there are an infinite number of potential interventions that might influence compliance; although these might not be laid down in the law, they are clearly not prohibited by it. To facilitate brainstorming, these may be grouped into four broad categories: education and communication interventions, as well as political and systemic approaches.

Education interventions are those that primarily seek to prevent non-compliance by means of training programmes, assess-

Rediscovering 60-year old authority

From 2009 onwards, the Wage and Hour Division (WHD) of the United States Department of Labor began intensifying its enforcement interventions by tapping its authority to issue search warrants and subpoenas, and levy liquidated damages. This authority had been rarely used in practice due in part to burdensome layers of internal procedures and required permissions. By moving away from the mindset of narrow thinking, the inspectorate fully leveraged its enforcement tools to influence compliance by conducting more effective investigations, securing the full damages owed to workers, and penalizing non-compliant employers.

ments, recommendations, guidance, and interpretations. For example, education interventions may be used to drive demand for labour rights by educating workers about their rights and ways in which they might access protection of those rights through the labour inspectorate; and to educate employers about their duties and ways in which they might access compliance assistance through the labour inspectorate or other stakeholders.

Communication interventions are those that primarily seek to promote compliance through such means as awareness-raising campaigns delivered by and directed at workers, employers and/or citizens in general, or name and shame/acclaim campaigns. The Portuguese Authority for Working Conditions has set a good example by designing communication campaigns in conjunction with the employers and unions of a targeted sector. These campaigns spell

out the specific compliance objective and the timeframe required to reach this goal, making use of the employers' websites, bulletins, publications, newsletters, and billboards to reach the target audience.

Political interventions are those that primarily seek to promote compliance by exerting political pressure. These may concern the entry into force of a trade agreement, accession to the OECD, ratification and/or compliance with ILO Conventions, or the loan approval process of the World Bank. Effective January 2015, Swaziland lost eligibility for its African Growth and Opportunity (AGOA) status for failing to demonstrate that it had made progress on the protection of internationally recognized workers' rights (USTR, 2014). Since that time it has been working with ILO to improve compliance and regain eligibility (AGOA.info, 2016).

Systemic interventions are those that primarily seek to promote compliance through the creation/expansion of barriers or access to entry, including leveraging certifications, permits and licenses; and the creation/expansion of access to benefits and privileges, including government contracts, grants and loans, and the identification and remedying of gaps in law or practice. In the United Arab Emirates, the Ministry of Labour's Wages Protection System links banks and agents authorized to receive workers' payroll deposits to the Ministry of Labour (ILO, 2016). If employers fail to pay their workers on time or pay less than what is owed, they are not allowed to receive any additional work permits. Given that migrants constitute a large share of the workforce, the threat of losing access to work permits is a strong compliance incentive.

The labour inspectorate should also consider how the impact of any of these interventions might be enhanced and expanded by leveraging other stakeholders. Two cases in point are the way in which the Portuguese Working Conditions Authority worked with employers and their organizations to reach the targeted audience; and the way in which the Ministry of Labour of the United Arab Emirates link up with banks to automate wage payment compliance.

● Step Six: Operationalize the Strategic Compliance Plan

Step Six in strategic compliance planning involves operationalizing the strategic compliance plan. This requires drawing upon the previous steps with a view to transforming the tailor-made mix of interventions into an escalation timeline, developing an engagement strategy for the stakeholders, budgeting the plan, and designing indicators to assess performance. When developing an escalation timeline, the labour inspectorate should consider that each intervention is an opportunity to encourage a target to comply. Ordering, combining, and coordinating interventions are therefore a way of gradually turning up the pressure to drive sustained compliance across the target community. A labour inspectorate might do inspections in various stages, punctuated by communication or education campaigns; or it might start with a communication campaign, followed by education campaigns, and culminating in inspection campaigns.

When developing an engagement strategy for stakeholders, it is important to consider how the labour inspectorate will work with allies and win over foes. Partnering with some stakeholders may require



formal arrangements with memoranda of understanding or other mechanisms. Winning over foes may involve giving them the opportunity to participate in crafting the solution.

In budgeting the plan, the labour inspectorate should revisit the resources, enforcement and compliance data identified in Step One, given those of the stakeholders identified in Step Four, and consider how they may derive a maximum from both to fill resource gaps.

In assessing performance, the labour inspectorate should consider whether, why, and how a given intervention might influence compliance. Regardless of the performance indicators chosen, all strategic compliance plans should be reviewed through a continuous improvement model - allowing the labour inspectorate to experiment, evaluate, and evolve.

IV. Conclusion

The strategic compliance model provides the labour inspectorate with a new methodology allowing it to achieve compliance outcomes despite limited resources, mismatched powers and a need to shoulder greater responsibility for promoting compliance. Building upon the increasingly compelling and innovative tools and strategies deployed by transformational labour inspectorates, strategic compliance planning provides an additional mechanism that enables all labor inspectorates to make use of the strategic compliance model.

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