

Description: Convention concerning Compulsory Invalidity Insurance for Persons Employed in Agricultural Undertakings (Note: Date of coming into force: 18.07.1937. The Convention was revised in 1967 by Convention No. 128. Following the coming into force of this Convention, Convention No. 38 is no longer open to ratification.)

Convention: C038
Place: Geneva
Session of the Conference: 17
Date of adoption: 29/06/1933
Subject classification: Old age, Invalidity and Survivors Benefit
Subject: Social Security

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 Seventeenth Session on 8 June 1933, and

Having decided upon the adoption of certain proposals with regard to compulsory invalidity insurance, which is included in the second item on the agenda of the Session, and

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

adopts this twenty-ninth day of June of the year one thousand nine hundred and thirty-three the following Convention, which may be cited as the Invalidity Insurance (Agriculture) Convention, 1933, for ratification by the Members of the International Labour Organisation in accordance with the provisions of the Constitution of the International Labour Organisation:

Article 1

Each Member of the International Labour Organisation which ratifies this Convention undertakes to set up or maintain a scheme of compulsory invalidity insurance which shall be based on provisions at least equivalent to those contained in this Convention.

Article 2

1. The compulsory invalidity insurance scheme shall apply to manual and non-manual workers, including apprentices, employed in agricultural undertakings, and domestic servants employed in the household of agricultural employers.

2. Provided that any Member may in its national laws or regulations make such exceptions as it deems necessary in respect of:-

(a) workers whose remuneration exceeds a prescribed amount and, where national laws or regulations do not make this exception general in its application, any non-manual workers engaged in occupations which are ordinarily considered as liberal professions;

(b) workers who are not paid a money wage;

(c) young workers under a prescribed age and workers too old to become insured when they first enter employment;

(d) outworkers whose conditions of work are not of a like nature to those of ordinary wage earners;

(e) members of the employer's family;

(f) workers whose employment is of such a nature that, its total duration being necessarily short, they cannot qualify for benefit, and persons engaged solely in occasional or subsidiary employment;

(g) invalid workers and workers in receipt of an invalidity or old-age pension;

(h) retired public officials employed for remuneration and persons possessing a private income, where the retirement pension or private income is at least equal to the invalidity pension provided by national laws or regulations;

(i) workers, who, during their studies, give lessons or work for remuneration in preparation for an occupation corresponding to such studies.

3. Provided also that there may be exempted from liability to insurance persons who, by virtue of any law, regulations or special scheme, are or will become entitled to invalidity benefits at least equivalent on the whole to those provided for in this Convention.

Article 3

National laws or regulations shall, under conditions to be determined by them, either entitle persons formerly compulsorily insured who are not in receipt of a pension to continue their insurance voluntarily or entitle such persons to maintain their rights by the periodical payment of a fee for the purpose, unless the said rights are automatically maintained or, in the case of married women, the husband, if not liable to compulsory insurance, is permitted to insure voluntarily and thereby to qualify his wife for an old-age or widow's pension.

Article 4

1. An insured person who becomes generally incapacitated for work and thereby unable to earn an appreciable remuneration shall be entitled to an invalidity pension.

2. Provided that national laws or regulations which secure to insured persons medical treatment and attendance throughout invalidity and, if invalidity terminates in death, secure pensions at the full rate to widows without any condition as to age or invalidity and to orphans, may make the award of an invalidity pension conditional upon the insured person being unable to perform remunerative work.

3. In the case of special schemes for non-manual workers, an insured person who suffers from incapacity which renders him unable to earn an appreciable remuneration in the occupation in which he was ordinarily engaged or in a similar occupation shall be entitled to an invalidity pension.

Article 5

1. Notwithstanding the provisions of Article 6, the right to a pension may be made conditional upon the completion of a qualifying period, which may involve the payment of a minimum number of contributions since entry into insurance and during a prescribed period immediately preceding the happening of the event insured against.

2. The duration of the qualifying period shall not exceed 60 contribution months, 250 contribution weeks or 1 500 contribution days.

3. Where the completion of the qualifying period involves the payment of a prescribed number of contributions during a prescribed period immediately preceding the happening of the event insured against, periods for which benefit has been paid in respect of temporary incapacity for work or of unemployment shall be reckoned as contribution periods to such extent and under such conditions as may be determined by national laws or regulations.

Article 6

1. An insured person who ceases to be liable to insurance without being entitled to a benefit representing a return for the contributions credited to his account shall retain his rights in respect of these contributions.

2. Provided that national laws or regulations may terminate rights in respect of contributions on the expiry of a term which shall be reckoned from the date when the insured person so ceased to be liable to insurance and which shall be either variable or fixed.

(a) Where the term is variable, it shall not be less than one-third (less the periods for which contributions have not been credited) of the total of the periods for which contributions have been credited since entry into insurance.

(b) Where the term is fixed, it shall in no case be less than eighteen months and rights in respect of contributions may be terminated on the expiry of the term unless, in the course thereof, a minimum number of contributions prescribed by national laws or regulations has been credited to the account of the insured person in virtue of either compulsory or voluntarily continued insurance.

Article 7

1. The pension shall, whether or not dependent on the time spent in insurance, be a fixed sum or a percentage of the remuneration taken into account for insurance purposes or vary with the amount of the contributions paid.

2. Where the pension varies with the time spent in insurance and its award is made conditional upon the completion by the insured person of a qualifying period, the pension shall, unless a minimum rate is guaranteed, include a fixed sum or fixed portion not dependent on the time spent in insurance.

3. Where contributions are graduated according to remuneration, the remuneration taken into account for this purpose shall also be taken into account for the purpose of computing the pension, whether or not the pension varies with the time spent in insurance.

Article 8

Insurance institutions shall be authorised, under conditions which shall be determined by national laws or regulations, to grant benefits in kind for the purpose of preventing, postponing, alleviating or curing invalidity to persons who are in receipt of or may be entitled to claim a pension on the ground of invalidity.

Article 9

1. The right to benefits may be forfeited or suspended in whole or in part if the person concerned-

(a) has brought about his invalidity by a criminal offence or wilful misconduct; or

(b) has acted fraudulently towards the insurance institution.

2. The pension may be suspended in whole or in part while the person concerned-

(a) is entirely maintained at the public expense or by a social insurance institution;

(b) refuses without valid reason to comply with the doctor's orders or the instructions relating to the conduct of invalids or voluntarily and without authorisation removes himself from the supervision of the insurance institution;

(c) is in receipt of another periodical cash benefit payable by virtue of any law or regulations concerning compulsory social insurance, pensions or workmen's compensation for accidents or occupational diseases; or

(d) is in employment involving compulsory insurance or, in the case of special schemes for non-manual workers, is in receipt of remuneration exceeding a prescribed rate.

Article 10

1. The insured persons and their employers shall contribute to the financial resources of the insurance scheme.

2. National laws or regulations may exempt from liability to pay contributions--

(a) apprentices and young workers under a prescribed age;

(b) workers who are not paid a money wage or whose wages are very low;

(c) workers in the service of an employer who pays contributions assessed on a basis which is not dependent on the number of workers employed.

3. Contributions from employers may be dispensed with under laws or regulations concerning schemes of national insurance not restricted in scope to employed persons.

4. The public authorities shall contribute to the financial resources or to the benefits of insurance schemes covering employed persons in general or manual workers.

5. National laws or regulations which, at the time of the adoption of this Convention, do not require contributions from insured persons may continue not to require such contributions.

Article 11

1. The insurance scheme shall be administered by institutions founded by the public authorities and not conducted with a view to profit or by State insurance funds.

2. Provided that national laws or regulations may also entrust its administration to institutions founded on the initiative of the parties concerned or of their organisations and duly approved by the public authorities.

3. The funds of insurance institutions and State insurance funds shall be administered separately from the public funds.

4. Representatives of the insured persons shall participate in the management of insurance institutions under conditions to be determined by national laws or regulations, which may likewise decide as to the participation of representatives of employers and of the public authorities.

5. Self-governing insurance institutions shall be under the administrative and financial supervision of the public authorities.

Article 12

1. The insured person or his legal representatives shall have a right of appeal in any dispute concerning benefits.

2. Such disputes shall be referred to special tribunals which shall include judges, whether professional or not, who are specially cognisant of the purposes of insurance and the needs of insured persons or are assisted by assessors chosen as representative of insured persons and employers respectively.

3. In any dispute concerning liability to insurance or the rate of contribution, the employed person and, in the case of schemes providing for an employer's contribution, his employer shall have a right of appeal.

Article 13

1. Foreign employed persons shall be liable to insurance and to payment of contributions under the same conditions as nationals.

2. Foreign insured persons and their dependants shall be entitled under the same conditions as nationals to the benefits derived from the contributions credited to their account.

3. Foreign insured persons and their dependants shall, if nationals of a Member which is bound by this Convention and the laws or regulations of which therefore provide for a State subsidy towards the financial resources or benefits of the insurance scheme in conformity with Article 10, also be entitled to any subsidy or supplement to or fraction of a pension which is payable out of public funds.

4. Provided that national laws or regulations may restrict to nationals the right to any subsidy or supplement to or fraction of a pension which is payable out of public funds and granted solely to insured persons who have exceeded a prescribed age at the date when the laws or regulations providing for compulsory insurance come into force;

5. Any restrictions which may apply in the event of residence abroad shall only apply to pensioners and their dependants who are nationals of any Member bound by this Convention and reside in the territory of any Member bound thereby to the extent to which they apply to nationals of the country in which the pension has been acquired. Provided that any subsidy or supplement to or fraction of a pension which is payable out of public funds may be withheld.

Article 14

1. The insurance of employed persons shall be governed by the law applicable at their place of employment.

2. In the interest of continuity of insurance exceptions may be made to this rule by agreement between the Members concerned.

Article 15

Any Member may prescribe special provisions for frontier workers whose place of employment is in its territory and whose place of residence is abroad.

Article 16

In countries which, at the time when this Convention first comes into force, have no laws or regulations providing for compulsory invalidity insurance, an existing non-contributory pension scheme which guarantees an individual right to a pension under the conditions defined in Articles 17 to 23 hereinafter shall be deemed to satisfy the requirements of this Convention.

Article 17

A person who becomes generally incapacitated for work and thereby unable to earn an appreciable remuneration shall be entitled to a pension.

Article 18

The right to a pension may be made conditional upon the claimant's having been resident in the territory of the Member for a period immediately preceding the making of the claim. This period shall be determined by national laws or regulations but shall not exceed five years.

Article 19

1. A claimant shall be entitled to a pension if the annual value of his means does not exceed a limit which shall be fixed by national laws or regulations with due regard to the minimum cost of living.

2. Means up to a level which shall be determined by national laws or regulations shall be exempted for the purpose of the assessment of means.

Article 20

The rate of pension shall be an amount which, together with any means of the claimant in excess of the means exempted, is at least sufficient to cover the essential needs of the pensioner.

Article 21

1. A claimant shall have a right of appeal in any dispute concerning the award of a pension or the rate thereof.

2. The appeal shall lie to an authority other than the authority which gave the decision in the first instance.

Article 22

1. Foreigners who are nationals of a Member bound by this Convention shall be entitled to pensions under the same conditions as nationals.

2. Provided that national laws or regulations may make the award of a pension to foreigners conditional upon their having been resident in the territory of the Member for a period which shall not exceed by more than five years the period of residence prescribed for nationals.

Article 23

1. The right to a pension may be forfeited or suspended in whole or in part if the person concerned--

(a) has brought about his invalidity by a criminal offence or wilful misconduct;

(b) has obtained or attempted to obtain a pension by fraud;

(c) has been sentenced to imprisonment for a criminal offence; or

(d) has persistently refused to earn his living by work compatible with his strength and capacity.

2. The pension may be suspended in whole or in part while the person concerned is entirely maintained at the public expense.

Article 24

Subject to the provisions of paragraph 5 of Article 13, this Convention does not refer to the maintenance of pension rights in the event of residence abroad.

Article 25

The formal ratifications of this Convention under the conditions set forth in the Constitution of the International Labour Organisation shall be communicated to the Director-General of the International Labour Office for registration.

Article 26

1. This Convention shall be binding only upon those Members whose ratifications have been registered with the International Labour Office.

2. It shall come into force twelve months after the date on which the ratifications of two Members of the International Labour Organisation 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 27

As soon as the ratifications of two Members of the International Labour Organisation have been registered with the International Labour Office, the Director-General of the International Labour Office shall so notify all the Members of the International Labour Organisation. He shall likewise notify them of the registration of ratifications which may be communicated subsequently by other Members of the Organisation.

Article 28

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 with the International Labour Office.

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 29

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 30

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 28 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 31

The French and English texts of this Convention shall both be authentic.