



Occupational Safety and Health of Undocumented Migrant Workers in Europe

Executive Summary



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Executive Summary

Undocumented workers are an integral part of key sectors of the European labour market but face unsafe, unhealthy and exploitative working conditions across the European Union, with limited access to justice, healthcare, and compensation.

Drawing on information from PICUM members in Belgium, Czechia, Germany, Greece, the Netherlands and Sweden, this report analyses undocumented workers' exposure to occupational health and safety risks, and access to preventative and post-incidence measures under major legal and policy frameworks and in practice.

Disproportionate occupational health and safety risks

Undocumented workers often work in jobs and sectors with high exposure to occupational health and safety (OSH) risks, including construction, agriculture and food processing, delivery work, hospitality, logistics, and domestic work and care. Many of the jobs are physically demanding, impose excessive workloads, and involve repetitive strenuous tasks and working in physical conditions and with machinery and toxic substances that are dangerous, especially if training, protective equipment and safety measures are inadequate. The climate crisis is also exacerbating conditions, with workers exposed to extreme weather events and conditions.

Both within these sectors and in others, workers face disproportionate and particular occupational health and safety (OSH) risks related to their status and experiences as migrants, especially

when undocumented. For example, undocumented workers are often required to carry out the most hazardous tasks in the workplace, are not provided with necessary training and protective equipment, and face highly restricted and prohibitive costs to access medical care in case of injury or illness. Undocumented workers are usually unable to access paid sick leave or incapacity allowance and may even lose their job if unable to work for health reasons, forcing them to continue working at the expense of their health and meaning that workplace accidents or illnesses can lead to financial ruin. Migrant workers also frequently face threats, violence and psychosocial risks stemming from unpredictable and precarious working conditions and dependency on their employers.

A generally inclusive legal framework at international and EU level

A healthy and safe working environment is recognised as a fundamental right, principle and social objective across various International Labour Organization (ILO) and European Union (EU) legal and policy instruments. While there are some gaps for specific groups of workers and emerging occupational health and safety risks, there is an extensive legal framework around preventative measures and labour rights, which is inclusive of undocumented workers at international and EU level.

Undocumented workers and their families are also entitled to equal treatment according to ILO conventions related to measures to provide income support and compensation for workplace or occupational injury or illness (post-incident responses), but there is no EU-level legislation.

Inability to exercise these rights in practice

Despite these occupational safety and health legal provisions for undocumented workers, there are significant barriers to access these rights in practice. The main means of enforcing preventative OSH provisions is through inspections, and proof gathered by an inspection may be crucial to access remedy post-incident. Yet inspections may lead to a loss of income and job, and risks of detention and deportation – both for migrant workers with dependent permits and undocumented workers.

While specialist health and safety inspections do not systematically involve immigration enforcement, they generally do not provide for individual complaints and redress, and measures taken to prevent occupational health and safety incidents from occurring may lead to loss of employment and associated work permits, as well as loss of essential income for migrant workers who are unable to access income support schemes.

General labour inspectorates that address occupational health and safety standards may report data from inspections or complaints to police or immigration authorities, exposing workers to direct risks of detention and deportation. Both specialist and general labour inspections are sometimes carried

out together with police, who may also enforce immigration rules against workers onsite. The efficacy of labour inspectorates is also hampered by limitations in mandate, capacity and resources.

National systems for employer liability and accident insurance are diverse and often have significant gaps in coverage for workers who are undeclared and/or are unable to prove their employment relationship and the work-related nature of the harm experienced. For example, in some cases, such as Czechia, undocumented workers are specifically excluded as beneficiaries, while the systems of both Germany and Greece theoretically contain routes for remedy for undocumented workers, but practical barriers mean these routes are all but inaccessible.

In practice, access to post-incident income support and compensation would require undocumented workers to pursue a case via civil courts and administrative procedures. Evidential requirements are extremely difficult for undocumented workers to meet, and stack together with the length of procedures, costs, and difficulty to access legal representation, to prevent access to remedy for the majority of workers.

The way forward

The state of play regarding occupational safety and health for undocumented workers as well as those with precarious work permits, is bleak.

The denial of occupational safety and health rights to undocumented workers is not accidental. It is the result of intersecting policy failures: the criminalisation of migration, the informalisation of labour, and the prioritisation of border control over human dignity. These failures create the conditions for exploitation, injury, and, in some cases, death.

At the same time, there are notable examples of law and policy that aim to protect workers' rights, including occupational safety and health, and are inclusive of migrant workers. Spain has introduced measures to address new occupational safety risks posed by climate change, including paid 'climate leave' when workers cannot access the workplace

due to extreme weather events, and mandating employers to inform workers about disaster alerts and extreme weather warnings. Whilst not without its practical barriers, Belgium has a system that provides for workers and their families – including when undocumented – to receive compensation for occupational accidents from the state if the employer has no insurance, or the insurance company defaults. The report also sets out numerous policy and practical measures that can be taken both at EU and national level to protect some of Europe's most vulnerable workers, ensuring that they are able to contribute to the economy without sacrificing their health, safety, or well-being, and to uphold fundamental labour standards for all. Chief among these is the establishment of effective complaints mechanisms and channels for remedy for all workers, no matter their residence status, without threat of detention and deportation.

Recommendations

The EU and its member states must uphold their obligations under the European Charter of Fundamental Rights and other relevant legal instruments by ensuring that all workers, regardless of their immigration status, can work in safe, dignified conditions. This includes strengthening the protection and enforcement of all labour rights, making systemic changes to immigration policies, increasing the capacity of labour inspectorates, and strengthening access to healthcare and legal protection.¹

EU Level

1. Improve the EU legal framework.

- Address gaps in labour – including occupational safety and health - law coverage and make explicit the inclusion of all workers, regardless of their occupation and type of employment relationship.
- Examine possibilities to establish EU minimum standards on state provision or pre-payment of compensation in case of workplace accidents and illness, when employers have not insured workers or default on payment.
 - » Draw on the system in Belgium highlighted in this report, and the precedent of the Employers' Insolvency Directive,² as examples.
- Address emerging occupational safety and health risks, including those related to climate change, such as flooding and extreme heat, to provide both temporary protection during and following extreme climate events and long-term provisions and protections.
 - » Draw on the measures taken by Spain and France highlighted in this report as examples.

¹ A wider list of recommendations for improving the working conditions of precarious and undocumented migrant workers can be found in PICUM, [A Worker is a Worker: How to Ensure that Undocumented Migrant Workers Can Access Justice](#), PICUM: 2020, Brussels

² [Directive 2008/94/EC of 22 October 2008 on the protection of employees in the event of the insolvency of their employer](#). This directive provides rights to employees in the case of employer insolvency, in particular that guarantee institutions take over outstanding claims resulting from contracts of employment or employment relationships, including some unpaid remuneration. The Directive defers to the definition of "employee" under national law, although certain groups – including undocumented workers - cannot be excluded (Tümer C-311/13, 2014 – for more information see PICUM, ['Guide to Undocumented Workers' Rights at Work under International and EU Law](#)', 2022).

2. Improve implementation of workers' rights in and through existing legislation:

- Ongoing monitoring and evaluation of the Employers' Sanctions Directive by the European Commission should support member states to implement undocumented workers' rights and effective complaints mechanisms which do not lead to immigration enforcement, as part of a comprehensive and coherent migration policy.
- Support member states to implement the revised EU Single Permit Directive³ and its provisions on change of employer in a way that protects migrant workers from losing their permit and becoming undocumented due to employer misconduct regarding occupational safety and health standards and/or work-related injury or illness.
- Encourage member states to use their national prerogative and various possibilities in EU law (e.g. from the Employers Sanctions Directive, the Directive on residence permits for victims of trafficking and smuggling, the Return Directive) to provide people in civil and criminal proceedings with residence permits both to participate in proceedings and access protection and justice in the longer term.
- Support member states to implement and enforce social conditionality on Common Agricultural Policy (CAP) payments, while ensuring migrant workers are protected from employer retaliation and negative repercussions (including regarding their residence status) as a result.
- Support member states in the ratification and implementation of relevant ILO instruments, in particular C189 on domestic workers and C190 on violence and harassment in the world of work.

3. Address the rights and situation of workers with precarious or irregular status facing occupational safety and health risks and violations through relevant EU policy instruments and entities.

- The following instruments and entities should be prioritised during the 2024-2029 EU legislature:
 - » Strategy on victims' rights
 - » European care strategy
 - » Quality Jobs Roadmap
 - » Quality Jobs Act
 - » Anti-Poverty Strategy
 - » Anti-Racism Strategy
 - » Gender equality strategy
 - » Efforts to promote mandatory due diligence in supply chains
 - » Efforts to address exploitation of posted migrant workers, including through the Fair Labour Mobility Package
 - » EU Platform on Undeclared Work
 - » European Labour Authority.

3 [Directive 2024/1233 of 24 April 2024 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State \(recast\).](#)

4. Develop meaningful engagement and consultation with NGOs, including direct service providers and migrant worker organisations.

- Enable the participation of civil society in existing fora such as the Labour Migration Platform.
- Within the European Labour Authority, include regular consultation of relevant NGOs.

5. Channel EU funds in the current and next multi-annual financial framework to support effective occupational safety and health and labour complaints mechanisms for all workers, regardless of status.

- This can mean support for:
 - » Civil society and trade union organisations to provide independent information and advice, legal assistance, and support services to workers with precarious or irregular status, to facilitate effective access to complaints mechanisms and cooperation with occupational health and safety inspection and labour inspection, in line with Article 6.2 and 13.1 and 13.2 of the 'Employers' Sanctions Directive' (in particular in relation to complaints via third parties).
 - » Training for occupational safety and labour inspectors on the rights of undocumented workers, including under the Employers Sanctions Directive, and on the obligation to provide information.
 - » Mechanisms with clear lines of responsibility within migration and labour authorities to ensure that persons who are in immigration enforcement proceedings receive back wages and/or due compensation following occupational safety and health incidents whether they are in the country, or elsewhere, including through cooperation with NGOs.
 - » Establishment of special funds to pre-pay compensation to workers in cases where employers evade paying due financial settlements (similar to those in place in cases of employer insolvency or for victims of violent crime).
- Ensure that EU funds allocated for complaints mechanisms for undocumented workers do not establish separate complaints mechanisms or support any aspect of labour complaints mechanisms that may lead to immigration enforcement, but facilitate access of undocumented workers to existing complaints mechanisms for all workers.

6. Use initiatives such as the Quality Jobs Roadmap to promote fair recruitment and decent work in sectors disproportionately staffed by undocumented migrant workers such as agriculture, construction, cleaning, and hospitality, which all have high rates of occupational safety and health risks.

National and regional governments and labour authorities

1. Increase the impact and efficiency of occupational safety and labour inspections:

- Implement firewalls between occupational safety and labour inspections, and immigration enforcement. Ensure that if data on immigration status is collected during labour inspections (including by police who may participate for inspectors' safety) or as part of complaints procedures, it cannot be used for detention or deportation.
- Strengthen both general labour and specialist occupational safety and health inspectorates' transparency, mandate and resources to uphold labour rights and standards through inspections and complaints mechanisms.

2. Improve access to income support and compensation for occupational or workplace injury or illness:

- Ensure that all workers – including when undocumented - have equal access to income support and compensation if they suffer a workplace injury or illness, in line with ILO standards.
- Adapt the evidential requirements and burden of proof in legal and administrative procedures, considering the situation of undeclared workers, to:
 - » provide for the determination that an employment relationship existed without official written documents such as contracts and payslips, or an inspection;
 - » consider forms of evidence including photos, text messages and testimonies to both establish the existence of an employment relationship and the occupational nature of an injury or illness.

3. Make legal assistance more accessible to undocumented migrants:

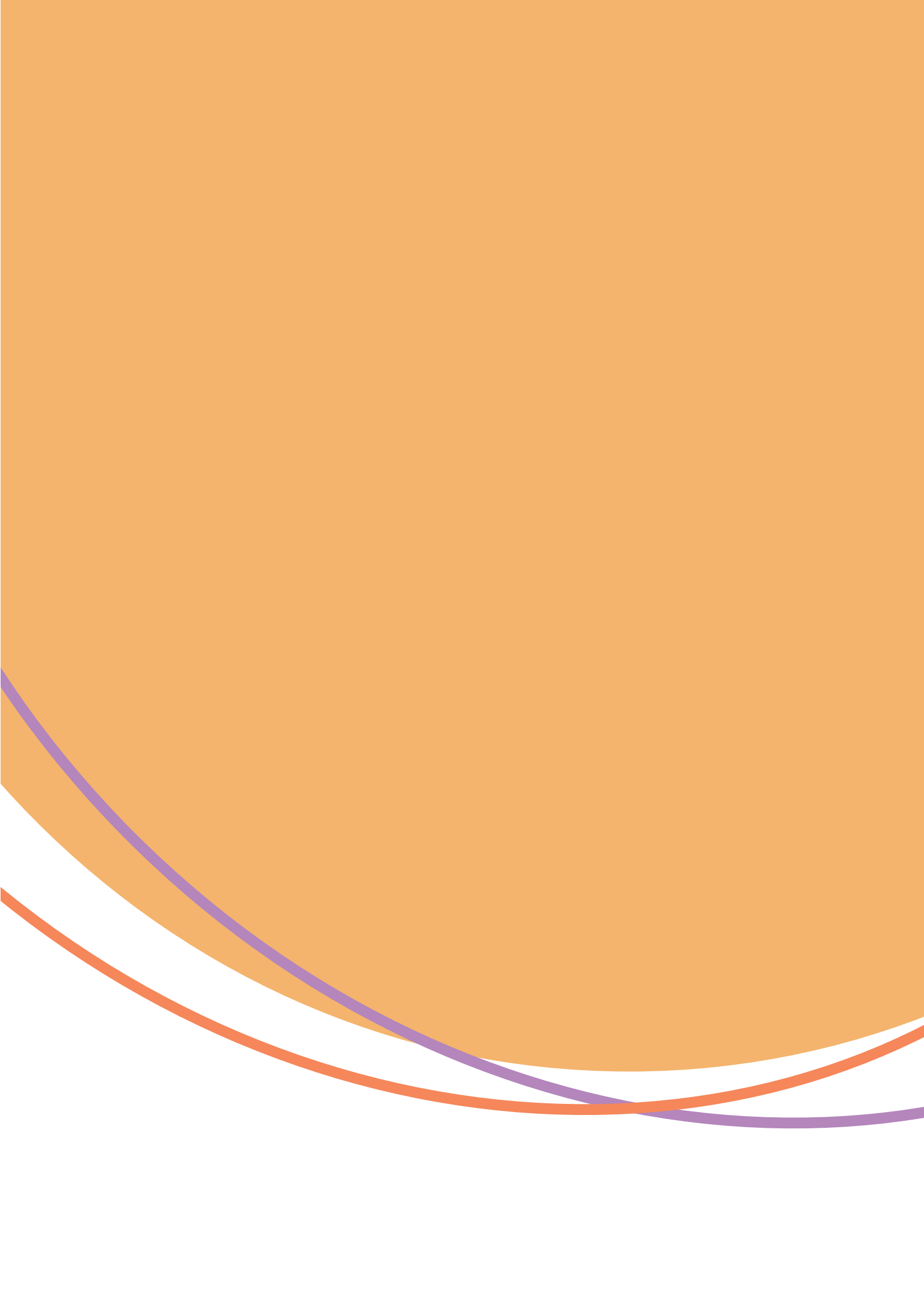
- Ensure undocumented workers have full access to legal assistance - including by providing legal aid and financial resources - to make it easier for lawyers to prove employment relationships and support undocumented workers to claim compensation.

4. Provide residence permits in cases of occupational incidents, at least for the duration of incapacity, with pathways to transition to other permits.

- Workers who are able to work but have to change jobs due to employer misconduct regarding occupational health and safety standards should be provided a work permit or permit continuation of a minimum of six months to find alternative employment, building on minimum provisions in the EU Single Permit Directive.

5. Ensure that emergency healthcare and rehabilitation is accessible to undocumented migrants without fear of deportation or financial barriers

- Include follow-up care with the necessary medical documents so that undocumented workers can pursue personal injury claims if needed.





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for social justice.

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