



DECENT WORK CHECK

BURKINA FASO 2023

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WageIndicator Foundation - www.wageindicator.org

WageIndicator started in 2001 to contribute to a more transparent labour market for workers and employers by publishing easily accessible information on a website. It collects, compares and shares labour market information through online and face-to-face surveys and desk research. It publishes the collected information on national websites, thereby serving as an online library for wage information, labour law, and career advice, both for workers/employees and employers. The WageIndicator websites and related communication activities reach out to millions of people on a monthly basis. The WageIndicator concept is owned by the independent, non-profit WageIndicator Foundation, established in 2003. The Foundation has offices in Amsterdam (HQ), Ahmedabad, Bratislava, Buenos Aires, Cape Town, Islamabad and Venice.

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TABLE OF CONTENTS

INTRODUCTION	1
MAJOR LEGISLATION ON EMPLOYMENT AND LABOUR	2
01/13 WORK & WAGES	3
03/13 ANNUAL LEAVE & HOLIDAYS	11
04/13 EMPLOYMENT SECURITY	15
05/13 FAMILY RESPONSIBILITIES	19
06/13 MATERNITY & WORK	21
07/13 HEALTH & SAFETY	25
08/13 SICK LEAVE & EMPLOYMENT INJURY BENEFIT	30
09/13 SOCIAL SECURITY	34
10/13 FAIR TREATMENT	38
11/13 MINORS & YOUTH	41
12/13 FORCED LABOUR.....	44
13/13 TRADE UNION	47
QUESTIONNAIRE.....	51

INTRODUCTION

Decent Work is the type of work for which all of us aspire. It is done under conditions where people are gainfully employed (and there exist adequate income and employment opportunities); social protection system (labour protection and social security) is fully developed and accessible to all; social dialogue and tripartism are promoted and encouraged; and rights at work, as specified in ILO Declaration on Fundamental Principles and Rights at Work and Core ILO Conventions, are practised, promoted and respected.

WageIndicator Foundation has been working, since late 2007, to raise awareness on workplace rights through a unique tool, i.e., **Decent Work Check**. The Decent Work Check considers different work aspects deemed necessary in attaining “decent work”. The work makes the abstract Conventions and legal texts tangible and measurable in practice.

The Decent Work Check employs a double comparison system. It first compares national laws with international labour standards and scores the national regulations (happy or sad face). If national regulations in a country are not consistent with ILO conventions, it receives a sad face and its score decreases (and vice versa). It then allows workers to compare their on-ground situation with national regulations. Finally, workers can compare their personal score with national score and see whether their working conditions are consistent with national and international labour standards. The Check is based on de jure labour provisions, as found in the labour legislation.

A Decent Work Check is beneficial both for employees and employers. It gives them knowledge, which is the first step towards any improvement. It informs employees of their rights at the workplace while simultaneously enlightening employers about their obligations. Decent Work Check is also helpful for researchers, labour rights organisations conducting surveys on the situation of rights at work and the general public wanting to know more about the world of work. For example, WageIndicator teams worldwide have found out that workers, small employers and even labour inspectors are not, sometimes, fully aware of the labour law. When you are informed – being a worker, self-employed, employee, employer, policymaker, labour inspector – there is a greater possibility that you ask for your rights (as a worker), you comply with rules (as an employer), and you strive to enforce these (as a labour inspector).

The work is relevant to the challenges posed to the future of work, especially the effective enforcement of legislation in financially constrained states, a rise in precarious employment and analysing the impact of regulatory regimes.

In 2023, the team aims to include at least 15 more countries, thus taking the number of countries with a Decent Work Check to 125!

The text in this document was last updated in March 2023. For the most recent and updated text on Employment & Labour Legislation in Burkina Faso in French, please refer to: <https://votresalaire.org/burkinafaso>

MAJOR LEGISLATION ON EMPLOYMENT AND LABOUR

1. Constitution of Burkina Faso 1991, last amended in 2012
2. Labour Act, 2008
3. Decree No. 2006-655/PRES/PMT/MTSS/MFB
4. Order No. 1234/FPT/DGTLS from 1976, establishing the modalities of application of the weekly work time of 40 hours in non-agricultural establishments
5. Order No. 539/ITLS/HV 1954 related to work of children
6. Decree No. 2010-812/PRES/PM/MTSS 2010 establishing conditions of work for workers whose professions or branches are not covered by collective agreement
7. Order No. 436/ITLS/HV, 1953, establishing the hours in which the work is considered night work
8. Law No. 019-2000 / AN of 27 June 2000
9. Order on Paid Annual Leave 1994 no. 94-00011/ETSS/SG/DT
10. Inter-Professional Collective Agreement, 1974
11. Decree No. 2010-356 IPRES/PM/MTSSIMS with determining the nature of hazardous work prohibited for women and to pregnant women
12. Social Security Law Act No. 015-2006, Journal official
13. Order No. 2008-008/MTSS/SG/DGPS concerning the affiliation, registration of workers and other insured of the regime managed by the National Fund of Social Security and the duties of employers in the operations of the regime
14. Law No. 2013-010/MFPTSS/MS with the terms and conditions for carrying out medical visits and additional tests Decree No. 2011-928 / PRES / PM / MFPTSS / MS / MATDS laying down general hygiene and safety in the workplace
15. Decree No. 2011-883 / PRES / PM / MFPTSS / MICA / MAH/MEED on measures relating to the distribution and use of industrial use substances or preparations presenting hazards for workers
16. ISSA Country Profile for Burkina Faso
17. Decree N° 2016-504 / PRES / PM / MFPTPS / MS / MFSNF of 09 June 2016 on Hazardous Work List

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01/13 WORK & WAGES

ILO Conventions

Minimum wage: Convention 131 (1970)

Regular pay & wage protection: Conventions 95 (1949) and 117(1962)

Burkina Faso has ratified the Convention 95 and 131 only.

Summary of Provisions under ILO Conventions

The minimum wage must cover the living expenses of the employee and his/her family members. Moreover, it must relate reasonably to the general level of wages earned and the living standard of other social groups. Wages must be paid regularly on a daily, weekly, fortnightly or monthly basis.

Regulations on work and wages:

- Labour Act, 2008
- Decree No. 2006-655/PRES/PMT/MTSS/MFB

Minimum Wage

Minimum wages in Burkina Faso are governed under the Labour Act of 2008 and Decree No. 2006-655/PRES/PMT/MTSS/MFB. Under the Labour Act, anyone who commits himself/herself to carry out his/her professional activity for remuneration, under the direction and authority of another person, called employer is considered to be an employee or worker. Civil servants, magistrates, militaries, employees of the local government and apprentices are excluded from the minimum wage provisions. Furthermore, there are different minimum wage rates for agricultural and non-agricultural workers.

The Government is solely responsible for deciding the minimum wage. The Decrees taken by cabinet meeting, upon advice of the consultative Labour Commission, determine: i) The inter professional minimum wages guaranteed according notably, to the general wage level in the country and the cost of living and considering the economic factors; ii) The composition, assignments and functioning of a national commission for the guaranteed inter-professional wages; In the absence of collective agreement or in their silence on wages, a decree taken in government meeting also fixes: i) The professional categories and the corresponding minimum wages; ii) The seniority and output premiums eventually. A 2010 Decree established a National Commission on Minimum Inter-

Professional Guaranteed Minimum Wage with different representatives from government departments, economic and social council, worker and employer organizations. The Commission is responsible for preparing a technical report to the Government for review of the SMIG basket, adopt any proposal to improve the living and working conditions of the people of the country and give its opinion on any question which is likely to affect wages.

Wages may also be determined by collective agreement provided that these rates are not lower than the minimum wage rates established by the government. In the event that a collective agreement does not stipulate wage rates for a sector or group of workers, the government may determine minimum wage scales according to the occupational category of the workers concerned. The remuneration for a task or piece work must be calculated in such a way that it gives an employee the salary which is at least equal to the one the employee is paid by the time doing similar work. The labour inspectorate, placed under the Ministry of Labour, is in charge of all the issues relating to the conditions of the workers and the professional relationships. Those who violate the minimum wage provisions, announced under a separate decree, are punished with a fine ranging between 5,000 to 50,000 CFA Francs. In the event of repetition of offence, the fine ranges between 50,000 to 100,000 CFA Francs.

An advisory Labour Commission is established at the level of the Ministry in charge of Labour. The commission, chaired by the Minister in charge of Labour or his representative, is made up of employers and employees on the basis of equal representation. The latter are designated by the organizations most representative of

the employers and of the workers or by the Minister in charge of Labour in the event of absence of representative organizations. Its responsibility is to study the criteria that could serve as basis for the determination and the readjustment of the minimum wage.

Sources: \$2, 107, 187, 405, 408 and 421 of the Labour Act, 2008; Decree No. 2006-655/PRES/PMT/MTSS/MFB; Decree N° 2010-809/PRES/PM/ MTSS / MEF // MFPRE of 31 December 2010 on the creation, composition, attributions and functioning of a National Commission on Minimum Interprofessional Guaranteed Wage

Regular Pay

Wages are defined as a benefit given to the employee by the employer against his/her work. It consists of the basic pay, whatever its denomination and the fringe benefits to the salary, notably, the paid leave allowance, the bonuses, the indemnities and benefits of similar kind.

The wage must be paid at regular intervals that should not exceed fifteen days for the employees hired on an hourly basis or daily basis and a month for employees hired on a monthly basis. However, the daily employee hired on an hourly or daily basis must be paid every day immediately after the end of his/her work. The monthly payments must be done eight days at the latest after the end of the month of work; two weeks payment must be done at the most 4 days after the end of the two weeks, while for weekly payment this period is two days. For professions which provide a different payment periodicity, the Minister in charge of Labour will statutorily determine the same, upon advice rendered to him/her by the consultative Labour Commission.

The wage is required to be given at the workplace, except in cases of absolute necessity and under no circumstances it can be made at a place of leisure (pubs or casinos), except for the employees working there nor they can be given on the rest day designated for employees. The salary must be paid in the legal currency in Burkina Faso (West African CFA Franc). Payment in any other currency is void. With equal conditions of work, professional qualification and output, the wage is equal for all workers irrespective of their origin, gender and age. In the absence of any collective agreement, the wage is fixed by consent between the employer and the employee.

Employers cannot fine or deduct wages of the employees for any reasons in the normal course of events. Deductions are made only by seizure-attribution or voluntary transfer by the court of competent jurisdiction or the Labour inspection authority.

The payment of all or part the salary in kind is also prohibited. The employee displaced from his usual residence for the execution of a labour contract who cannot, by his/her own means, obtain a decent lodging for him/her and his/her family has the right to a lodging from the employer. The terms and conditions of grant and the reimbursement are statutorily fixed by the Minister in charge of labour, upon advice of the consultative Commission of Labour. The law also fixes the reimbursement terms of this benefit to the employer and the conditions to which the lodging must be submitted, notably concerning labour security and health.

In case the employee is not able, by his/her own means, to get for him and his/her family, a regular supply for basic foods

products, the employer is to provide these in the conditions set statutorily by the Minister in charge of Labour, after advice from the consultative Labour Commission. The law also fixes the reimbursement terms of this benefit to the employer.

Source: §182-187, 192 to 194, 201, 213 & 214 of the Labour Act, 2008

02/13 COMPENSATION

ILO Conventions

Compensation overtime: Convention 01 (1919)

Night work: Convention 171 (1990)

Burkina Faso has not ratified the Convention 01 and 171.

Summary of Provisions under ILO Conventions

Working overtime is to be avoided. Whenever it is unavoidable, extra compensation is at stake - minimally the basic hourly wage plus all additional benefits you are entitled to. In accordance with ILO Convention 1, the overtime pay rate should not be less than one and a quarter-time (125%) of the regular rate.

Night work means all work which is performed during a period of not less than seven (07) consecutive hours, including the interval from midnight to 5 a.m. A night worker is a worker whose work requires the performance of a substantial number of hours of night work which exceeds a specified limit (at least 3 hours). Convention 171 requires that night workers be compensated with reduced working time or higher pay, or similar benefits. Similar provisions are found in the Night Work Recommendation No. 178 of 1990.

If a worker has to work on a national/religious holiday or a weekly rest day, he/she should be entitled to compensation. Not necessarily in the same week, provided that the right to paid compensation is not.

If a worker has to work during the weekend, he/she should thereby acquire the right to a rest period of 24 uninterrupted hours instead. Not necessarily at the weekend, but at least in the course of the following week. Similarly, if a worker has to work on a public holiday, he/she must be given a compensatory holiday. A higher rate of pay for working on a public holiday or a weekly rest day does not take away the right to a holiday/ rest.

Regulations on compensation:

- Labour Act, 2008
- Order No. 1234/FPT/DGTLS from 1976, establishing the modalities of application of the weekly work time of 40 hours in non-agricultural establishments
- Order No. 539/ITLS/HV 1954 related to work of children
- Decree No. 2010-812/PRES/PM/MTSS 2010 establishing conditions of work for workers whose professions or branches are not covered by collective agreement
- Decree No. 2010-812/PRES/PM/MTSS 2010 establishing conditions of work for workers whose professions or branches are not covered by collective agreement
- Order No. 436/ITLS/HV, 1953, establishing the hours in which the work is considered night work

Overtime Compensation

The legal maximum working hours are 40 hours per week. The agricultural establishments are exempted from this general rule. Other Establishments must implement the 40-hour work week and can choose to do so in the following modes:

- i. Limitation of the effective work to 8 hours per day during 5 working days, with rest on Saturday and Sunday;
- ii. Limitation of the effective work to 6 hours and 40 minutes per day during the week during a six day week with rest on Sunday;
- iii. Unequal division of the 40 hours of work during the week, with a maximum of 08 hours of work per day in order to allow at least half a day of rest per week.

In case of collective interruption of work resulting from accidents or force majeure (accidents with material, interruption of power, loss), an extension of the daily working time can be practiced, by compensation of the overtime work. In certain professions, considering the continuous nature of the work, duration of presence superior to the legal duration of work is considered equivalent to 40 hours of effective work. This equivalent duration is as follows:

- 42 hours for those working in pharmacies and retail commerce;
- 45 hours for hospital and health institutions staff, service stations, cooks in hotels and restaurants, etc.
- 48 hours for drivers working with transportation of company's staff;
- 50 hours for hairdressers, manicure, pedicure, beauty salons, massage and sideshows;
- 52 hours for drinking places, restaurants, hotels for staff other than cooks and taxi drivers;
- 56 hours for Fire Departments;
- 60 hours for domestic workers;
- 72 hours for security guards during the day or the night;

Concierges residing in their workplaces are required to be continuously present, subject to the fact they are given a rest of at least 24 consecutive hours per week and to a paid leave of 2 weeks besides the regular leave.

Children cannot be employed in work for more than 8 hours per day, interrupted by one or more breaks, of which duration cannot be inferior to 2 hours.

The hours of work done beyond the legal weekly duration are considered extra hours and entitle the employee with a salary increase. Statutory acts will determine the

maximum duration for overtime work which can be done in case of urgent or exceptional work and seasonal work. Overtime rates for day or night assignments during weekdays, Sundays, and holidays are determined by the collective agreements, and failing this, statutorily by the Minister in charge of Labour upon advice of the consultative Labour Commission. Nevertheless, exemptions may be granted statutorily by the minister in charge of labour upon advice of the consultative Labour Commission.

Every hour worked beyond the weekly legal limit of hours of work or time equivalent is compensated as follows:

- 15% of compensation for each of the first 8 hours worked after the 40th hour, or equivalent time;
- 35% of compensation for each hour worked after the 48th hour, or equivalent time;
- 50% of compensation for each hour worked during the night in ordinary days;
- 60% of compensation for each hour worked on Sundays or Holidays;
- 120% of compensation for each hour worked during the night on Sundays or holidays.

Source: §137-139 of The Labour Act, 2008; §1-5 of the Order No. 1234/FPT/DGTLs from 1976, establishing the modalities of application of the weekly work time of 40 hours in non-agricultural establishments; §2 of the Order No. 539/ITLS/HV 1954 related to work of children; §45 of the Decree No. 2010-812/PRES/PM/MTSS 2010 establishing conditions of work for workers whose professions or branches are not covered by collective agreement

Night Work Compensation

The hours during which the work is considered as night work are decided statutorily. Night work is work performed between 22:00 and 05:00 of the following day.

For every hour worked at night, an additional 50% on the agreed wage is paid (150% of the normal wage rate for night hours is paid). Furthermore, workers who perform at least 6 hours during the night benefit from an indemnity called "premium cart", which is an amount equal to 3 times the minimum hourly inter professional wage. This indemnity is paid also to workers who, after having worked 10 hours or more, considering the interruptions, extend at least one hour of work after the beginning of the regular period of night work.

In plants, factories, mines, mining and quarrying, construction sites, and workshops and in their facilities, children cannot be employed in any night work. They cannot be employed in any night work involving commodity transportation in roads or rail in companies of loading and unloading of goods. However, in industries where work is done with material that can rapidly change or deteriorate, or where the work is continuous, the male young workers over the age of 16 can be allowed to work, in order to prevent imminent accidents or to repair eventual accidents. The headmasters will always notify the labour inspector in such a case, and they can only work if special authorization is given by the inspector.

Source: §45 & 47 of the Decree No. 2010-812/PRES/PM/MTSS 2010 establishing conditions of work for workers whose professions or branches are not covered by

collective agreement; §1-7 of the Order No. 436/ITLS/HV, 1953, establishing the hours in which the work is considered night work

Compensatory Holidays / Rest Days

No provisions could be located within the law which required for a compensatory holiday in case of work on a rest day or a public holiday.

Weekend / Public Holiday Work Compensation

The hours worked during the weekly rest days are considered as overtime work and paid accordingly under the rates of the overtime work. According to the Decree No. 812 of 2010, 60% of compensation is paid for each hour worked on Sundays or Holidays and 120% of compensation is paid for each hour worked during the night on Sundays or holidays.

Source: §08 of the Order no. 1244/FP.T/DGTLS, 1976, establishing the modalities of application of the weekly rest period; §45 of the Decree No. 2010-812/PRES/PM/MTSS 2010 establishing conditions of work for workers whose professions or branches are not covered by collective agreement

03/13 ANNUAL LEAVE & HOLIDAYS

ILO Conventions

Convention 132 (1970) on Holidays with Pay Convention
Conventions 14 (1921), 47 (1935) and 106 (1957) for weekly rest days.
In addition, for several industries, different Conventions apply.

Burkina Faso has ratified the Convention 14 and 132 only.

Summary of Provisions under ILO Conventions

An employee is entitled to at least 21 consecutive days of paid annual leave. National and religious holidays are not included. Collective agreements must provide at least one day of annual leave on full remuneration for every 17 days on which the employee worked or was entitled to be paid.

A worker should be entitled to paid leave during national and officially recognised public holidays.

Workers should enjoy a rest period of at least twenty-four consecutive hours in every 7-day period, i.e., a week.

Regulations on annual leave and holidays:

- Labour Act, 2008
- Order on Paid Annual Leave 1994 no. 94-00011/ETSS/SG/DT
- Decree no. 2010-812/PRES/PM/MTSS 2010 on workers not covered by a collective agreement
- Decree no. 2010-812/PRES/PM/MTSS 2010 on workers not covered by a collective agreement
- Law No. 019-2000 / AN of 27 June 2000

Paid Vacation / Annual Leave

An employee is entitled to 22 working days of annual leave after completion of 12 months of service with an employer. The employee has a right to a paid leave chargeable to the employer, at the rate of two and a half calendar days (30 calendar days) per month of effective service unless more favourable provisions are found in a collective agreement or individual employment contract. For the calculation of the duration of the leave acquired, the absences due to accidents at work or professional illness, the legal periods of rest for pregnant women, the periods of compulsory military service, not even to the limit of one year, illness duly attested by a medical certificate and exceptional permissions, are not deducted from the leave. The duration of the leave is increased at the rate of two working days after 20 years of continuous service, four working days after 25 years and six working days after 30 years.

Employees aged under eighteen have the right to a leave of 30 days without pay if they apply for it, whatever the duration of the service. This leave comes in addition to the paid leave acquired because of the work.

The enjoyment of a right of paid leave is acquired after a minimal period of 12 months of effective service. However, a collective agreement or the individual employment contract bestowing a leave of a duration superior to the one provided in the Labour Act, can foresee a longer duration of effective service giving right to a leave without this duration being superior to 3 years. In this case, a minimum leave of six calendar days deductible must be granted to the employee every year. The paid leave is determined under a reference period that starts on the first day of employment, or after the return of the employee from a previous leave. A time period constituting 24 working days or 4 weeks is considered as a month of effective service for the determination of the duration of the leave.

The regular date of departure on leave of each worker is agreed between the employee and the employer. This date, once established, cannot be delayed for more than 3 years, without authorization of the labour inspector. Furthermore, splitting of leave into parts is allowed in agreement with the worker. However, one of the fractions has to be of at least 15 consecutive days.

Annual leave is fully paid leave. The employer must give to the employee, before his/her departure on leave and for the whole duration of the leave, an allowance that is at least equal to the average of the wages and any bonuses, commissions or various benefits, which the employee benefited from during the 12

months preceding the date of the departure on leave. Unless there are more favourable provisions in collective agreements or individual employment contract, the leave payment is calculated as follows:

- a) Determination of the monthly average salary of the 12 months preceding the departure on leave;
- b) Division of the monthly average salary by 30 in order to obtain the daily average salary;
- c) Multiplication of the daily average salary by the number of days of the calendar days of leave to which the worker is entitled to.

The worker hired to work by hour or by day for a short-term position not exceeding one day, will have his/her leave paid at the same time as the salary is due, at latest at the end of the day of work, as compensation for the paid leave, calculated on the basis of 1/12 of the daily remuneration acquired. The collective agreement or the orders from the Ministry of Labour establish the minimum amount of the in-kind benefits as part of annual leave.

Source: §156,157,165 & 1070 of the Labour Act, 2008; §2-7 & 11-13 of the Order on Paid Annual Leave 1994 no. 94-00011/ETSS/SG/DT; §51 of the Decree no. 2010-812/PRES/PM/MTSS 2010 on workers not covered by a collective agreement

Pay on Public Holidays

The legislation regarding public holidays is the Decree on workers not covered by a collective agreement (2010) and Zatu on Holidays (1989). These decrees stipulate 15 national holidays in a calendar year. The holidays are as follows: New Year Day (January 01), Mouloud (Birthday of the Prophet Muhammad), Women's Day (March

08), Ramadan or Aid es Segheir (Feast of Ramadan), Easter Monday, Labour Day (May 01), Aid el Kebir or Tabaski (Feast of the Sacrifice), Ascension Day, Independence Day (August 05), Assumption Day, All Saints Day, Proclamation of the Republic (December 11) & Christmas (December 25).

August 4 (Revolution Day) and October 15 (Anniversary of the 1987 coup d'état) are classified as commemorative days. Date of holidays of Muslim festivals is subject to sighting of moon and thus is liable to change. The holidays are paid according to the current legislation in force.

Source: §181 of the Decree no. 2010-812/PRES/PM/MTSS 2010 on workers not covered by a collective agreement; §1-3 of the Law No. 019-2000 / AN of 27 June 2000

Weekly Rest Days

The weekly rest period is compulsory. It is at least 24 hours per week and should be taken in principle on Sunday, except where derogation is statutorily granted by the Minister in charge of Labour. However, establishments such as agricultural enterprises, manufacturers of food products destined to immediate consumption, hotels, restaurants and drinking places, tabacs, retirement houses, bathhouses, game houses, news houses, spectacle houses, and transportation companies are allowed to concede the weekly rest by rotation. The labour inspector usually determines if these industries correspond to the criteria.

In case it is decided that the simultaneous rest on Sunday of the whole staff can be prejudicial to the public or to the normal functioning of the establishment, the

weekly rest period can be conceded, during the whole year or in certain time of the year only on:

- Another day other than Sunday to the whole staff;
- From Sunday noon until Monday noon to the whole staff;
- Sunday afternoon, with a compensatory rest day, by rotation;
- By rotation to part or to the whole staff.

These derogations however do not apply to young workers under the age of 18 and to working women.

Source: §155 of The Labour Act 2008; §02 & 07 of the Order no. 1244/FP.T/DGTLS, 1976, establishing the modalities of application of the weekly rest period; §55 of the Decree no. 2010-812/PRES/PM/MTSS 2010 on workers not covered by a collective agreement

04/13 EMPLOYMENT SECURITY

ILO Conventions

Convention 158 (1982) on employment termination

Burkina Faso has not ratified the Convention 158.

Summary of Provisions under ILO Convention

The questions under this section measure the security or even flexibility or precariousness of an employment relationship. Although these are not clearly mentioned in a single convention (severance pay and notice requirement are provided in the Termination of Employment Convention No. 158) however, the best practices in the field require that employees be provided with a written contract of employment; workers on fixed-term contracts should not be hired for tasks of permanent nature; a reasonable probation period (ideally lower than or equal to 6 months) may be followed to assess the suitability of an employee; a period of notice must be specified in an employment contract before severing the employment relationship; and workers be paid severance allowance on termination of employment relationship.

A contract of employment may be oral or written however workers should be provided with a written statement of employment at the start of their employment.

Fixed Term Contract workers must not be hired for permanent tasks as it leads to precarious employment.

A reasonable probation period must be allowed to let a worker learn new skills. A newly hired employee may be fired during the probation period without any negative consequences.

A reasonable notice period, depending on the length of service of an employee, may be required before an employer may sever the employment relationship.

Employers may be required to pay a severance allowance on termination of employment (due to redundancy or any other reason except for lack of capacity or misconduct).

Regulations on employment security:

- Labour Act, 2008
- Inter-Professional Collective Agreement, 1974

Written Employment Particulars

Labour Contracts are regulated under the Labour Act which stipulates that a labour contract is any agreement in writing or verbal by which a person called employee commits himself/herself to devote his/her professional activity for a remuneration under the direction and authority of another person called employer.

Provisions have been made for probationary contracts, Part time contracts, fixed term contracts and contracts for an indefinite. However no law can be found within the law that necessitate the provision of a letter of appointment or written employment particulars upon hiring, the details to be included in it and the days in which such a letter must be provided to a worker.

Sources: §29, 41, 47, 49 & 62 of the Labour Act, 2008

Fixed Term Contracts

The Legal Provisions on Fixed Term Contracts are enshrined in the Labour Act 2008, which states that such contracts involve the relevant terms being specified in advance by the will of both parties. Law defines fixed-term contract as a Labour contract concluded for the execution of a determined infrastructure, the realization of an enterprise the duration of which cannot be assessed beforehand with precision or a Labour contract, the terms of which are subject to the occurrence of a

future and sure event the date of which is not known exactly.

A single fixed-term contract can be concluded for a maximum of two years for local workers and three years for foreign workers. There is no restriction on the number of renewals that can be made of the fixed-term contract and no provision could be located on the maximum length of the fixed term contracts including renewals. However, if the competent court rules that the number of successive fixed term contract is excessive, the contract is deemed to be of an indefinite duration except in some specific situations. A fixed term contract must be concluded in writing, failing which it is deemed to be an indefinite contract.

Sources: §49 & 52-55 of the Labour Act, 2008

Probation Period

The Labour Act 2008 contains the provisions on probation period. It defines probation period as a preliminary step to appreciate, mainly for the employer, the quality of the services of the worker and his output and for the worker, the work, living, remuneration, hygiene, and safety conditions as well as the social climate in the company. Any contract based on probation must be concluded in writing which otherwise would be a considered a permanent or indefinite labour contract.

The probation cannot be for a longer period than which is necessary to test the engaged personnel, considering the technique and norms of the profession. The probation period is eight days for the workers whose wages are fixed per hour or the day, one month for the employees other than the

executives, supervisors, technicians and similar staff; and three months for the executive, supervisors, technicians and similar staff. The probation period can be renewed only once and for the same amount of time, based on the categories of the workers as follows:

- 8 additional days for the workers whose wages are fixed per hour or the day (which amounts to 16 days in total);
- one month for employees other than executives (2 months in total); and
- 3 months for executives (6 months in total)

Service of an employer can be extended without any written contract after the completion of the probationary period. Probationary contract then converts into a permanent labour contract, starting on the date of the beginning of probation period.

Probationary contract can be terminated any time without any prior notice, on the will of either party, except with specific provisions expressly defined in the contract.

Source: §41-44 of the Labour Act, 2008

Notice Requirement

The legal provision on notice before contract termination stems from the Labour Act 2008. Article 65 requires a written notice to be provided by the party which takes the initiative in terminating their contract. The notice is effective from the delivery date of the notification. The reason for the termination must be clearly stated in the notification.

Employment contracts are terminated by a dismissal based on reasonable and socially

acceptable grounds, economic reasons, for serious misconduct; on expiry of its term (for fixed term contracts) and on cancellation of a contract by either of the parties on the bases provided under the law. A dismissal carried out without legitimate reason is regarded as abusive and unfair.

The term of the notice deadline is different for different categories of workers. It is described as follows;

- (i) Eight days for the workers whose wages are fixed per hour or the day;
- (ii) One month for the employees other than the executives, supervisors, technicians and similar staff; and
- (iii) three months for the executives, supervisors, technicians and similar staff.

In the event there is a serious misconduct on part of the employee, no notice will be required before termination and the employee can be terminated immediately. During notice period, the employer and the worker are held to comply with all the reciprocal obligations which they are entitled to.

Any breach of the permanent Labour contract without advance notice or without complying with the term of the notice subjects the party which took the initiative of it, to pay a compensation allowance to the other party. The amount of this allowance corresponds to the remuneration and advantages of any nature which the worker would have benefited from during the notice, which was not actually respected.

Sources: §65-71 of The Labour Act 2008

Severance Pay

No statutory provision could be located in Labour Act. Severance pay is governed by the Inter-Occupational Collective Agreement of 1974. It states that a worker is entitled to severance pay provided that he/she has been employed continuously for a period of at least one year and has not committed any serious misconduct.

Severance pay corresponds to a percentage of the monthly overall wages per year of service and is set according to the length of service as follows:

- 25% of one monthly wage for every year during the first 5 years of service;
- 30% of one monthly wage for every year during the subsequent 5 years of service; and
- 40% of one monthly wage for every year after the tenth year.

Accordingly, it could be ascertained that severance pay is equivalent about one week and one day wages for one year of service, two weeks (15 days) wages for two years, 38 days wages for five years of service, and 83 days wages for 10 years of service.

Source: §35 of the Inter-Professional Collective Agreement, 1974

05/13 FAMILY RESPONSIBILITIES

ILO Conventions

Convention 156: Workers with Family Responsibilities Convention (1981) Recommendation 165: Workers with Family Responsibilities (1981)

Burkina Faso has not ratified both the Conventions 156 & 165.

Summary of Provisions under ILO Convention

Paternity leave is for new fathers around the time of childbirth and is usually of a shorter duration.

Recommendation (No. 165) provides for parental leave as an option available to either parent to take a long leave of absence (paid or unpaid) without resigning from work. Parental leave is usually taken once the maternity and paternity leave have been exhausted. For working parents, laws may define the portion of parental leave that has to be compulsorily taken by fathers or mothers.

Flexible Work Option for Parents / Work-Life Balance Recommendation 165 asks employers to look into the measures for improving general working conditions through flexible work arrangements.

Regulations on family responsibilities:

- Labour Act, 2008

Paternity Leave

The Inter professional collective agreement of 1974 provides 03 days of paid paternity leave on birth of a child. The paternity leave is paid by the employer.

Source: §60 of Inter-Professional Collective Agreement, 1974

Parental Leave

Labour Act 2008 provides unpaid leave of six months to an employee to take care of his child. The employer should grant it to him/her provided that the concerned person fills his application for vacation at least one month before the outgoing date. In case of serious illness of the child, the period of non-paid leave for six months can be extended up to one year, renewable once.

Source: §160 of the Labour Act, 2008

Flexible Work Option for Parents / Work-Life Balance

No provisions as such could be located within the law.

06/13 MATERNITY & WORK

ILO Conventions

An earlier Convention (103 from 1952) prescribed at least 12 weeks maternity leave, 6 weeks before and 6 weeks after birth. However, a later convention (No. 183 from year 2000) requires that maternity leave be at least 14 weeks of which a period of six weeks compulsory leave should be after childbirth.

Burkina Faso has ratified Convention 183 only.

Summary of Provisions under ILO Convention

During pregnancy and maternity leave, a worker should be entitled to medical and midwife care without any additional cost.

During pregnancy and while breastfeeding, a worker should be exempt from work that might bring harm to you or your baby.

The total maternity leave should last at least 14 weeks.

During maternity leave, a worker's income should amount to at least two-thirds of your preceding salary.

During pregnancy and maternity leave, a worker should be protected from dismissal or any other discriminatory treatment.

Workers have the right to return to the same or equivalent position after availing maternity leave.

After childbirth and re-joining work, a worker must be allowed paid nursing breaks for breastfeeding the child.

Regulations on maternity and work:

- Labour Act, 2008
- Decree No. 2010- 356 IPRES/PM/MTSSIMS with determining the nature of hazardous work prohibited for women and to pregnant women
- Decision no. 436/ITLS/HV du Juillet 1953
- Social Security Law Act No. 015-2006, Journal official
- Order No. 2008-008/MTSS/SG/DGPS concerning the affiliation, registration of workers and other insured of the regime managed by the National Fund of Social Security and the duties of employers in the operations of the regime

Free Medical Care

The provisions for medical care are found in the Labour Act and the Social Security Act. The expenses related to the employee's confinement in a public medical establishment or a medical establishment approved by the state, as well as any necessary medical care during the maternity leave is exclusively financed by the social security fund, which consists of contributions to various branches of the social security system, either as penalties for delay in payment of contributions or the filing of nominal wages or investment income of funds and gifts and bequests.

In order to get entitled to the prenatal medical allowance, a parent must have at least three months of covered employment based on at least 18 days or 120 hours a month of work. The mother must undergo prescribed medical examinations. The full benefit is paid if the claim is made in the first three months of pregnancy.

Source: §146 of The Labour Act, 2008; §34 & 47 of The Social Security Law Act No. 015-2006, Journal official, 2006-07-20; ISSA Country Profile of Burkina Faso 2015

No Harmful Work

A woman worker cannot be assigned to work which is likely to affect her reproductive capacities or, in the case of a pregnant woman, her health or that of the child. The nature of the work prohibited for women is determined by law after opinion of the consultative Labour Commission.

Night work (between 22.00 and 05.00) is prohibited, generally, for all the women in factories, manufacturing, mines and quarries, building sites and workshops. No provision could be located in law that prohibits overtime work and work on weekly rest day for pregnant workers and nursing mothers.

A pregnant woman who is usually employed in work which is recognized as dangerous to the health has the right to be transferred to another post not detrimental to her state, without reduction in salary throughout the transfer. This right is also granted to any woman who produces a medical certificate indicating that a change in the nature of her work is necessary in the interest of her health and that of her child.

Pregnant women cannot be placed in jobs which expose them to harmful chemicals that might affect their health or the unborn child's health. Lastly, they are also prohibited from carrying or pushing or hanging any heavy load and from work involving squatting, bending and standing for long periods of time.

Source: §90, 142-144, 155 & 236 of the Labour Act, 2008; §3-6, 8-12 of the DECREE NO. 2010- 356 IPRES/PM/MTSSIMS with determining the nature of hazardous work prohibited for women and to pregnant women; §1 of the Decision no. 436/ITLS/HV du Juillet 1953

Maternity Leave

Female workers are entitled to 14 weeks of paid maternity leave. The provisions on maternity leave in the Labour Act cover all pregnant women working in Burkina Faso, except for public servants, magistrates, employees of the local government and persons working for the army.

A pregnant woman has the right to suspend her work according to a medical opinion without this interruption of service being regarded as a cause of breach of contract. A pregnant woman is entitled to a maternity leave of 14 weeks starting at the earliest 8 weeks and at the latest 4 weeks before the expected date of delivery, regardless of whether the child was born alive or not. The employer cannot, even with the worker's agreement, employ the woman during the first six weeks after childbirth.

The maternity leave can be extended by three weeks in case of complications resulting from pregnancy or confinement. Annual leave may be extended for the salaried women or apprentices aged under twenty-two years up to two additional days off for every dependent child. The increase of leave leads to an increase of the paid leave allowance. The maternity leave can be prolonged up to three weeks in the event of disease resulting from pregnancy or confinement.

Source: §1, 3, 93, 145-147 & 158 of the Labour Act, 2008

Income

All the women covered by the Labour Act who are on maternity leave, including students and apprentices, are entitled to benefits during maternity leave. However, the self-employed are excluded. In order to avail these benefits, a medical certificate of pregnancy must be issued by a medical doctor or mid-wife to the pregnant woman. In addition, the employer's certification regarding the effective suspension of the working activities by the pregnant worker on leave along with the pay slip or the employer's attestation on the salary received effectively by the worker before the starting date of leave is also be required.

Women on maternity leave are entitled to receive cash benefits to compensate for the salary loss during their absence. The benefit period is 14 weeks, plus three-week extension on medical grounds, plus any additional period due to confinement occurring later than expected. The amount is 100% of the earnings gained just before the leave. Alternatively, an employed insured woman or a spouse of an employed insured man, who has worked three consecutive months for one or several employers, is entitled to receive a prenatal allowance as from the day she announces that she is pregnant. If this announcement is made during the first three months of pregnancy, the allowance is paid for the 9 months preceding the birth. To receive the prenatal allowance, the woman must undergo medical examinations whose modalities are determined by Ministerial Order.

The benefits are financed by the employer and social security. The employer pays exclusively the family allowances contribution as well as the one on professional risks. The benefit under the Social Security Fund is equivalent to the part of the woman's salary on which social security contributions are paid. The employer must pay the difference between this amount and the woman's actual salary.

Source: §3, 8, 13, 34, 44-46 of the Social Security Law Act No. 015-2006, Journal official, 2006-07-20; §16-18 pf the Order No. 2008-008/MTSS/SG/DGPS concerning the affiliation, registration of workers and other insured of the regime managed by the National Fund of Social Security and the duties of employers in the operations of the regime; §146 of The Labour Act, 2008

Protection from Dismissals

During the period of maternity leave, the employer cannot dismiss the female worker. Any abusive layoff brings about the reinstatement of the worker or in the even if reinstatement is not possible, then payment of damages. Dismissal is considered abusive when a woman worker can demonstrate it by pregnancy or birth of her child. The employer also cannot, even with the woman's agreement, employ her within six weeks that follow her delivery.

Source: §70 & 147 of The Labour Act 2008

Right to Return to Same Position

No provision could be located in law with respect to the right to return to work after availing maternity leave. However, it is mentioned that a worker cannot be dismissed during the term of her maternity

leave which means that right to return to work is implicitly guaranteed under the law.

Source: §70 & 147 of the Labour Act 2008

Breastfeeding

During a period of 14 months after returning to work from maternity leave, a woman worker has the right to breastfeeding breaks. The total duration of these breaks cannot exceed one hour and a half per working day, and such breaks are counted as time worked and remunerated accordingly.

Nursing rooms can be created under conditions fixed by a joint statutory act of the ministries in charge of labour and of the social action, upon advice of the consultative Labour Commission.

Source: §148 & 234 of the Labour Act, 2008

07/13 HEALTH & SAFETY

ILO Conventions

Most ILO OSH Conventions deal with very specific Occupational Safety hazards, such as asbestos and chemicals.

Convention 155 (1981) is the relevant general convention here.

Labour Inspection Convention: 81 (1947)

Burkina Faso has ratified the Convention 81 only.

Summary of Provisions under ILO Conventions

The employer, in all fairness, should make sure that the work process is safe.

The employer should provide protective clothing and other necessary safety precautions for free.

Workers should receive training in all work-related safety and health aspects and must have been shown the emergency exits.

In order to ensure workplace safety and health, a central, independent and efficient labour inspection system should be present.

Regulations on health and safety:

- Labour Act, 2008
- Law No. 2013-010/MFPTSS/MS with the terms and conditions for carrying out medical visits and additional tests Decree No. 2011-928 / PRES / PM / MFPTSS / MS / MATDS laying down general hygiene and safety in the workplace
- Decree No. 2011-883 / PRES / PM / MFPTSS / MICA / MAH/MEED on measures relating to the distribution and use of industrial use substances or preparations presenting hazards for workers

Employer Cares

The employers are required to take all necessary measures to ensure the safety and protect the physical and mental health of the workers in the undertaking, including temporary workers, apprentices and interns. When workers from several companies perform their work at the same workplace, employers must cooperate in the implantation of the requirements for safety and health at work. They are required to inform each other and inform their workers about the occupational hazards and the measures taken to prevent them.

The employer is required to ensure that employees undergo the medical visits and examinations prescribed by national laws and regulations, and in particular, medical examinations upon recruitment, termination and when returning to work, and the periodical and special monitoring visits. The time taken to carry out the medical examinations and the complementary examinations is considered as actual working time. The HIV test is not required in these medical visits

and examinations. The costs of the medical visits and complementary examinations mentioned above deemed useful to determine the medical fitness of the worker for his/her occupation are borne by the employer. A special medical surveillance must also be undertaken for the employees assigned to occupations involving certain requirements or special risks which primarily involve the use of chemical substances.

Workplaces must be submitted to regular surveillance following the terms and conditions established by the competent authority in order to ensure the safety of the equipment and the facilities, and to monitor health hazards at the workplace.

Furthermore, the employer must provide workers with the means to ensure their personal hygiene. To this end, a number of sanitary installations, according to the nature and the type of the activity must be created and maintained. This includes lavatories, showers, sinks, changing rooms, individual lockers and laundry room.

The employer must also provide workers with sufficient quantity of drinking water and where the workers consume their meals in the workplace, the employer must provide a dining room or a location allowing them to take their meals in good conditions of hygiene and safety, as well as a resting room. This room or location must have seats and tables in sufficient numbers.

The employer is required to annually develop and implement a program to improve the working conditions and the workplace and must take the necessary measures to ensure that substances (chemical and biological) placed under his/her control do not present risks to the workers' health and safety. Chemical

substances that are used must be labelled, stored and handled in accordance with safety and health requirements. Workstations must be fitted out in accordance with ergonomic principles including mobility during the activity, the possibility to work in a seated or upright position, adapting workstations to each worker. Measures for noise reduction must be taken and where required, protective measures against ionizing radiations must also be taken to minimize the risk of exposure, and ensure that exposed workers undergo a special medical surveillance and the medical visit upon termination of contract. Scaffolds, footbridges, floors in corbelled construction, platforms of extra height, as well as the points of access are required to be built, installed and protected so that the workers who use them are not exposed to falls.

Lastly the machines and tools used in the workplace must not present risks to the workers' health and safety.

Workers are required to strictly follow the guidelines designed to ensure a healthy and safe workplace. They must also contribute towards the observance of the employer's obligations relating to the occupational health and safety.

Source: §236, 237, 247 & 261 of the Labour Act, 2008; §20 of the Law No. 2013-010/MFPTSS/MS with the terms and conditions for carrying out medical visits and additional tests; §26, 30-34, 37-49, 77, 81-96, 99 & 100 of the Decree No. 2011-928 / PRES / PM / MFPTSS / MS / MATDS laying down general hygiene and safety in the workplace; §10-23 of the Decree No. 2011-883 / PRES / PM / MFPTSS / MICA / MAH/MEED on measures relating to the distribution and use of industrial use

substances or preparations presenting hazards for workers

Free Protection

Where the collective measures taken are not sufficient to ensure the safety and health of workers, personal protective measures against occupational hazards are implemented. When these personal protective measures require the use of appropriate equipment by the worker, this equipment and the necessary instructions for its usage and optimal maintenance are provided by the employer.

Workers without their personal protective equipment are not admitted to the work place. Lastly those workers who work in pits, conduits, cesspits, tanks or any devices that may contain noxious gases must be attached by a belt and protected by a safety device.

Source: §237 & 238 of The Labour Act, 2008; §80 of the Decree No. 2011-928 / PRES / PM / MFPTSS / MS / MATDS laying down general hygiene and safety in the workplace

Training

According to the provisions of the law, all workers must be fully and comprehensively informed and instructed on the risks existing in the workplace and must receive adequate instructions on the available means and on the action to be taken to prevent these risks. On this basis, the employer must provide workers with a minimum general training on occupational safety and health.

The employer is required to implement a safety service in the workplace in industrial companies with at least fifty (50) workers.

This service is placed when possible, under the responsibility and supervision of staff who have acquired adequate training in the field of occupational safety and health.

The employer must also contribute to the sanitary education of workers in view of ensuring that their conduct is in compliance with the occupational safety and health standards and instructions, as well as with the prevention against HIV.

Lastly, the employer will be responsible for training a rescue team, which quickly responds to any fire outbreak, have effective means to fight against the fire and implement an internal system for alert, verification and periodic testing of fire-fighting devices.

Source: §242, 254 & 257 of the Labour Act, 2008; §60-74 of the Decree No. 2011-928 / PRES / PM / MFPTSS / MS / MATDS laying down general hygiene and safety in the workplace

Labour Inspection System

The Labour Inspectorate, composed by labour inspectors and labour controllers, is responsible for all matters relating to working conditions.

Labour inspectors provided with credentials have the power to enter workplaces freely and without previous notice at any hour of the day or night in any establishment liable to inspection, and to enter during daytime in the premises in which they may have reasons to believe that workers are employed. Labour inspectors have the power to carry out any examination, test or inquiry considered necessary to ensure that labour provisions are being strictly observed, including:

1. development of the regulations within their sphere of competence;
2. enforcement of the provisions in the area of labour and of the protection of the workers;
3. provision of advice and recommendations to the employers and the workers;
4. Refer to the relevant authority the violations and abuses which are not specifically covered by the existing legal provisions;
5. Take part in the coordination and the control of the services and organizations contributing to the application of the social regulation;
6. Engage any studies and investigations related to the various social problems, other than those which concern technical departments with which the labour inspectorate collaborates.
7. interview, with or without witnesses, the employer and workers of the company, check their identity, request information from any person whose testimony may be necessary;
8. Ask for any record or document which is required by the Labour Act and by its implementing regulations;
9. Collect and remove samples of materials and substances which are used or handled at the workplace in order to analyse them, provided that the employer or his/her representative have been notified.

When according to the medical certificates submitted in fulfilment of the obligation to report occupational risks or products at any time by the victim or his/her successors, the injury seems likely to result in death or permanent total or partial disability equal to or more than 15%, or when the victim has deceased, the Labour Inspectorate will conduct an investigation.

The labour inspector, who notes a breach of the standards or requirements, gives a formal notice to the employer to comply. Inspectors have the power to order immediately enforceable measures, including the cessation of work when it presents an imminent danger to the workers' health and safety. Labour inspectors have the power to issue minutes noting the infringements of labour laws and regulations. These minutes are forwarded to the prosecutor for further action.

The Inspectors can set fines on minor offences. Violations of occupational hygiene, health and safety requirements are punished with a fine from 5000 West African CFA francs to 100 000 CFA.

Source: §266, 391, 395-397 & 421 of the Labour Act, 2008; §43 of the Decree No. 2008-001 / MTSS / SG / DGPS service regulations relating to social security benefits

08/13 SICK LEAVE & EMPLOYMENT INJURY BENEFIT

ILO Conventions

Convention 102 (1952), Conventions 121 (1964) and 130 (1969) concerning Social Security, Employment Injury Benefits and Medical Care and Sickness Benefits

Burkina Faso has not ratified the Conventions 102, 121 & 130.

Summary of Provisions under ILO Conventions

A worker's rights to work and income should be protected when illness strikes. The national labour law may provide that sickness benefits may not be paid during the first 3 days of your absence. Minimally, a worker should be entitled to an income during the first 6 months of illness. This income should be at least 45 per cent of the minimum wage. (Countries are free to opt for a system which guarantees 60 per cent of the last wages during the first 6 months of illness or even during the first year). A worker must be entitled to paid sick leave.

During illness, a worker should be entitled to medical care without any additional cost. Employees and their family members should have access to the necessary minimal medical care at an affordable cost.

During the first 6 months of illness, a worker should not be fired.

If a worker is disabled due to an occupational disease or accident, he/she must receive a higher benefit. In the case of temporary or total incapacity/disability, a worker may at least be provided 50% of his average wage, while in the case of fatal injury, the survivors may be provided with 40% of the deceased worker's average wage in periodical payments.

Regulations on sick leave & Employment Injury Benefits:

- Labour Act, 2008
- Social Security Law, 2006

Income

Under the Labour Act, the contract may be suspended in the event of the absence of the employee because of sickness or non-professional accident testified by a medical certificate, within a time limit of one year. However, there are no provisions on the maximum duration of sick leave in days and the law on the right of paid leave in general will include whatever the duration for which the employee is sick.

Duration and payment during sick leave is affected by the years of service. During the period of absence from work, the compensation of the employee is established in accordance with his/her seniority in the company, as follows:

- For less than one year of service, the paid sick leave is two months (one month with full pay and the next month on half pay);
- For one to five years of service, the paid sick leave is 4 months (one month with full pay and the next month on half pay);
- For six to ten years of service, the paid sick leave is 5 months (two months with full pay and three months on half pay);
- For eleven to fifteen years of service, the paid sick leave is 6 months (three months on full pay and three months on half pay); and
- for more than fifteen years of service, the paid sick leave is 8 months (four months on full pay and four months on half pay)

Total compensation provided above represents the maximum amounts that the employee may claim during the calendar year, whatever the number and the duration of his/her absence for non-occupational sickness or accidents.

Source: §93 & 96 of the Labour Act, 2008; §23 of the DECREE ° 2010-812 / PRES / PM / MTSS of 31 December 2010 laying conditions of work for workers of professions and branches of activities not governed by collective agreement

Medical Care

The law has provisions with regard to medical care in respect of workers who suffer work-related illness, injuries and disabilities. These are contained within the Social Security Law of 2006. Medical benefits include medical, surgical, and dental care; hospitalization; medicine; X-rays; laboratory services; rehabilitation; retraining; appliances; and transportation.

In accordance with the Labour Act, employers are required to maintain proper health standards but in addition to those requirements, employer must bring his/her employees to medical check-ups and exams prescribed by the national legislation and the regulation, notably the medical checks required in hiring, the regular checks, checks for special surveillance, work resumption, or contract end. The expenses of these examinations and the additional checks considered useful to decide on the employee's medical faculty at his/her workplace are fully borne by the employer. However, no provisions could be found within the law on medical care for non-professional illnesses and their respective co-sharing of the expense between the employer and the employee.

Source: §261 of the Labour Act, 2008; §58 of the Social Security Law, 2006

Job Security

An Employer cannot terminate an employment contract where the worker has been absent due to illness within the one-year limit, and this one-year period can be extended till when the employer finds a suitable replacement for the employee who is still absent after the elapse of the one-year limit. If a replacement worker is hired in this one-year period, the said worker must be informed about the provisional nature of his employment. Where, after the one-year limit, the employer terminates the contract of the sick worker, it is incumbent on the employer to send the affected worker the severance pay and all indemnities to which the worker may be entitled.

Source: §21, 22 & 31 of the DECREE ° 2010-812 / PRES / PM / MTSS of 31 December 2010 laying conditions of work for workers of professions and branches of activities not governed by collective agreement

Disability / Work Injury Benefit

The legal provision on work injuries and relevant benefits are contained within the Social Security Act of 2006. The benefits are funded by social insurance system and employer.

The social insurance system covers benefits which are 3.5% of covered payroll. The minimum earnings used to calculate contributions are the legal monthly minimum wage, while the maximum monthly earnings used to calculate contributions are 600,000 CFA francs. Employers with 20 or more employees pay

contributions monthly while employers with less than 20 employees pay such contributions quarterly. The employer is liable for total cost and where the employees belong to the public-sector who are not civil servants, the employer is required to contribute as an employer.

There is no minimum qualifying period. Accidents that occur while commuting to and from work are covered.

With respect to temporary disability covered by social insurance, two-thirds (66.7%) of the insured's average daily earnings in the 90 days before the month in which the disability began is paid from the day after the disability began until full recovery or certification of permanent disability.

The minimum earnings used to calculate benefits are the legal minimum wage, while the maximum monthly earnings used to calculate benefits are 600,000 CFA francs. As far as employer's liability is concerned, one-third (33.3%) of the insured's average daily earnings in the 90 days before the month in which the disability began is paid by the employer from the day after the disability began until full recovery or certification of permanent disability.

Where there is permanent disability, benefits are paid through social insurance if the insured is assessed with a total disability. In such a case, 85% of the insured's average monthly earnings in the three months before the disability began are paid. The minimum earnings used to calculate benefits are the legal minimum wage, while the maximum monthly earnings used to calculate benefits are 600,000 CFA francs. In addition, if the insured person requires the constant attendance of others to perform daily

functions, 50% of the permanent disability pension is also paid. Alternatively, the pension may be paid partially as a lump sum after five to seven years, subject to conditions.

In case of permanent partial disability, if the insured is assessed with at least a 15% disability, a percentage of the full pension is paid according to the assessed degree of disability. The pension is paid quarterly if the assessed degree of disability is at least 15% and less than 75%; and paid monthly if assessed degree of disability is at least 75%. If the assessed degree of disability is less than 15%, a lump sum of three years of the disability pension is paid according to the assessed degree of disability.

The spouse is paid 50% of the deceased's average monthly earnings in the last three months. If there is more than one widow(er), the pension is split equally. With respect to orphans, 40% of the deceased worker's average monthly earnings in the last three months are split equally among eligible orphans. The pension amount paid to each orphan is not recalculated if the number of eligible orphans changes. Eligible orphans must be younger than age 16 (age limit is 19 years for apprentices and 22 years for students or disabled). Lastly, 10% of the deceased worker's average monthly earnings in the last three months are split equally among eligible dependent parents and grandparents.

All survivor benefits combined must not exceed 85% of the disability pension the deceased received or was entitled to receive.

50% of the maximum monthly earnings used to calculate contributions (300,000 CFA francs) is paid as funeral expenses. These benefits are adjusted by

Decree according to changes in wages and the legal minimum wage, depending on the financial resources of the system.

Source: §48-94 of The Social Security Law, 2006; ISSA Country Profile for Burkina Faso 2015

09/13 SOCIAL SECURITY

ILO Conventions

Social Security (minimum standards): Convention 102 (1952). For several benefits somewhat, higher standards have been set in subsequent Conventions

Employment Injury Benefits: Conventions 121 (1964),

Invalidity, Old age and survivors' benefits: Convention 128(1967)

Medical Care and Sickness Benefits: Convention 130 (1969)

Unemployment Benefits: Convention 168 (1988).

Burkina Faso has not ratified the Conventions 102, 121, 128, 130 and 168.

Summary of Provisions under ILO Conventions

In normal circumstances, the pensionable age may not be set higher than 65 years of age. If the retirement age is fixed above 65 years, it should give “due regard to the working ability of elderly persons” and “demographic, economic and social criteria, which shall be demonstrated statistically”. The pension can be set as a percentage of the minimum wage or a percentage of the earned wage.

When the breadwinner has died, the spouse and children are entitled to a benefit, expressed as a percentage of the minimum wage or a percentage of the earned wage. This must at least be 40% of the reference wage.

For a limited period of time, the unemployed have a right to unemployment benefits set as a percentage of the minimum wage or a percentage of the earned wage.

Invalidity benefit is provided when a protected person is unable to engage in gainful employment, before the standard retirement age, due to a non-occupational chronic condition resulting in disease, injury or disability. Invalidity Benefit must at least be 40% of the reference wage.

Regulations on social security:

- Social Security Law 2006
- ISSA Country Profile for Burkina Faso

Pension Rights

The legal provision on pension is contained within the Social Security act of 2006. These benefits are funded by the social security system and the amount of benefits used to calculate contributions are at minimum the legal monthly wage and at maximum 600,000 CFA francs.

An Insured person makes a contribution of 5.5% of the covered earnings, while a self-employed person pays 11% of the declared earnings. An employer makes a 5.5% contribution of the covered payroll. Employers with 20 or more employees pay contribution on monthly basis while those with less than 20 employees pay contribution on quarterly basis.

The qualifying conditions of old-age pension for a blue-collar worker or the voluntarily insured are that they must be aged 56. This age is 58 for white-collar workers, 60 for supervisors and managers, 63 (doctors and university teachers), or 50 (if prematurely aged). In addition to this age requirement, they must have at least 180 months (15 years) of coverage. For this purpose, a month of coverage is any month in which the insured worked for at least 18 days in covered employment. As far as early pension is concerned, entitlement to it is considered 5 years before the normal retirement age, if the insured became unemployed due to economic reasons, or under a mutual agreement with the employer.

The benefits paid for pension are 2% of the insured person's average monthly earnings in the five best years multiplied by the number of years of contribution up to 80%. The minimum pension is 84% of the legal monthly minimum wage. Depending on the amount, the pension is paid monthly or quarterly.

A child's supplement of 2,000 CFA francs a month is for each of the first six dependent children is also paid for up to six dependent children, and the pension is payable abroad under a reciprocal agreement.

There is also an old-age settlement, where upon reaching the pension age, the employer and the employee agree that in exchange for the employee ceasing his/her employment, they will receive benefits, funded by the social insurance system. The qualifying condition is same as for entitlement to old-age pension. A lump sum of 20% of the insured person's average monthly covered earnings in the five best years of coverage is paid for each six-month period of coverage.

Source: §88-91 of the Social Security Regime Loi N°004-2021; ISSA Country Profile for Burkina Faso

Dependents' / Survivors' Benefit

The legal provision on dependents/survivor benefits is contained within the Social Security Act of 2006. In order to qualify for receiving these benefits, it is important that the deceased person received or was entitled to receive an old-age or disability pension.

Eligible survivors include the widow(er) and orphans younger than age 16 (age limit is raised to 19 years for apprentices and 22

years for students or disabled) or parents (if the deceased was not married and had no children). If the deceased was voluntarily insured, the guardian of an orphan entitled to the survivor pension must provide school attendance and medical certificates annually. The pension ceases on remarriage.

A survivor settlement is only paid if the deceased had less than 180 months of coverage and did not qualify for a disability pension at the time of death. A lump sum of 20% of the deceased person's average monthly covered earnings in the five best years of coverage is paid for each six-month period of coverage.

The benefits received by spouse is 50% of the old-age or disability pension the deceased received or was entitled to receive. If there is more than one widow(er), the pension is split equally. Depending on the amount, the pension is paid monthly or quarterly. The ratio is same for orphans, except that the benefit is split equally among eligible orphans. Where there are no survivors, 25% of the old-age or disability pension the deceased received or was entitled to receive is paid to each eligible parent. All survivor benefits combined must not exceed 100% of the old-age or disability pension the deceased received or was entitled to receive.

An eligible survivor may also receive survivor benefits under the work injury program. The total combined benefit is 100% of the work injury survivor pension plus the portion of the non-work injury survivor pension that exceeds this amount.

Source: §88-91 of the Social Security Regime Loi N°004-2021; ISSA Country Profile for Burkina Faso

Unemployment Benefits

No legal provisions on Unemployment Benefits are available within the law.

Invalidity Benefits

The legal provisions on invalidity benefits are found in the social Security Act 2006, which provides for a social insurance system.

In order to get entitled with invalidity benefit the worker must be assessed with at least a 66.7% of the permanent loss of earning capacity, have at least five years of coverage, including six months in the last year, and be younger than the normal retirement age. There is no minimum qualifying period for a disability that is the result of a non-occupational accident. A constant-attendance allowance is also paid if the insured requires the constant attendance of others to perform daily functions.

The benefits paid are 2% of the insured's average monthly covered earnings in the five best years of coverage for each year of coverage, up to 80%. The insured person is credited with a six-month coverage period for each year that a claim is made before the normal retirement age. The minimum benefit is 84% of the legal monthly minimum wage. Where required, 50% of the disability benefit is paid as constant-attendance allowance.

The disability pension ceases at the normal retirement age and is replaced by an old-age pension of the same value, plus any constant-attendance allowance. A disability pensioner may also receive disability benefits under the work injury

program. Depending on the amount, the pension is paid monthly or quarterly.

Source: §88-91 of the Social Security Regime Loi N°004-2021; ISSA Country Profile for Burkina Faso

10/13 FAIR TREATMENT

ILO Conventions

Convention 111 (1958) lists the discrimination grounds which are forbidden.

Convention 100 (1952) is about Equal Remuneration for Work of Equal Value.

Convention 190 (2019) is about elimination of violence and harassment in the world of work.

Burkina Faso has ratified the Conventions 100 and 111.

Summary of Provisions under ILO Conventions

At workplaces, equal pay for men and women for work of equal value is a must, regardless of marital status. Pay inequality based on race, colour, sex, religion, political opinion, national extraction/place of birth or social origin is also forbidden. A transparent remuneration system and a clear matching of pay and position should be in place to help prevent wage discrimination.

Convention No. 190 recognises the right of everyone to a world of work free from violence and harassment. It defines violence and harassment as “a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aims at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment”. This definition covers physical abuse, verbal abuse, bullying and mobbing, sexual harassment, threats and stalking, among other things.

An employer can't discriminate against you on in any aspect of employment (appointment, promotion, training and transfer) on the basis of union membership or participation in union activities, filing of a complaint against an employer, race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin, temporary absence due to illness, age, trade union membership, disability/HIV-AIDS, or absence from work during maternity leave. (Conventions 111, 156, 158, 159 and 183)

People have the right to work and there can't be occupational segregation on the basis of gender.

Regulations on fair treatment:

- Constitution of Burkina Faso, 1991
- Labour Act, 2008

Equal Pay

The legal provision on equal pay is found in the Constitution and the Labour Act. Under the Constitution, the right to work is recognized and is equal for all. It is prohibited to discriminate in matters of employment and of remuneration on the ground of sex, colour, social origin, ethnicity or political opinion.

Labour Act requires that with equal conditions of work, professional qualification and output, the salary must be equal for all workers regardless of their origin, gender, age and status.

The determination of the wages and the fixing of the remuneration rates must respect the principle of remuneration equity between the masculine and the feminine manpower for a work of equal value.

Source: §19 of the Constitution of Burkina Faso, 1991; §182 of the Labour Act, 2008

Sexual Harassment

The legal provision on the prevention of sexual harassment is found in the Labour Act. Sexual Harassment between colleagues, suppliers or customers is prohibited, and consists in obtaining from others by order, word, intimidation, act, gesture, threat or force, favors of sexual nature.

The employers are required by law to prohibit any form of physical or moral violence or any other abuse, including sexual harassment.

The Labour Act prescribes a punishment of one month to three years imprisonment or of a fine of fifty thousand to three hundred thousand (50,000 - 300,000) CFA Francs or both. In the event of repetition, the punishment is either three hundred thousand to six hundred thousand (300,000 - 600,000) CFA Francs or two months to five years of imprisonment or both.

Source: §36, 37 & 422 of the Labour Act, 2008

Non-Discrimination

The legal provisions on non-discrimination in Burkina Faso are found in the Constitution and the Labour Act. Under the Constitution, discrimination of all sorts, notably those founded on race, ethnicity, region, colour, sex, language, religion, caste, political opinions, wealth and birth, are prohibited. The right to work is recognized and is equal for all. It is prohibited to discriminate in matters of employment and of remuneration founded notably on sex, colour, social origin, ethnicity or political opinion.

The Labour Act also prohibits job and profession related discrimination. Discrimination is defined as any distinction, exclusion or preference based mainly on the race, colour, sex, religion, political opinion, disability, pregnancy, national ancestry or social origin or any other distinction, exclusion or preference, the effect of which is to destroy or alter the

equal opportunity or treatment regarding job or profession.

The employer must prohibit discrimination of any nature as regards access to employment, work conditions, professional training, job protection or dismissal, particularly as regard the HIV infection, real or apparent.

The punishment for any employer who is involved in discrimination is a one month to three-year imprisonment or a fine of fifty thousand to three hundred thousand (50,000 - 300,000) CFA Francs or both. In the event of repetition, the punishment is either three hundred thousand to six hundred thousand (300,000 - 600,000) CFA Francs or two months to five years of imprisonment or both.

Source: §1 & 19 of the Constitution of Burkina Faso, 1991; §4, 38 & 422 of the Labour Act, 2008

Equal Choice of Profession

Although the Labour Act prohibits discrimination on the basis of sex, it does not allow women to do same job as men. A woman worker cannot be hired for the jobs that are likely to undermine her capacity of reproduction or, in case of pregnancy, her health or that of her child.

Decree No. 356 of 2010 also prohibits the employment of women in work that is detrimental to their health. The Decree also provide the list of tasks that are prohibited for women.

Source: §38 & 142 of the Labour Act, 2008; Décret 2010-356/PRES/PM/MTSS/MS

11/13 MINORS & YOUTH

ILO Conventions

Minimum Age: Convention 138 (1973)

Worst Forms of Child labour: Convention 182 (1999)

Burkina Faso has ratified the Conventions 138 and 182.

Summary of Provisions under ILO Conventions

At workplaces, children may not be forced to perform work that could harm their health and hamper their physical and mental development.

All children should be able to attend school. Once this is safeguarded, there is no objection against children performing light jobs between the ages of 12 and 14. The general minimum age is 15 years however, developing countries may set this at 14 years. The minimum age for hazardous work, work that is likely to jeopardise the health, safety or morals of young persons, is 18 years. It can also be set at a lower level of 16 years under certain circumstances

Children should not be employed in a work that is likely to harm the health, safety or morals of children. It is considered one of the worst forms of child labour. The minimum age for such hazardous work is 18 years.

Regulations on minors and youth:

- Constitution of Burkina Faso, 1991
- Labour Act, 2008
- Decree N° 2016-504 / PRES / PM / MFPTPS / MS / MFSNF of 09 June 2016 on Hazardous Work List

Minimum Age for Employment

Minimum age of employment is 16 years however an exemption can be made to this minimum wage requirement when it is about small activities. In labour law, the term “child” refers to any person aged under eighteen years and the term adult refers to any person aged 18 to 20. The compulsory education age is 16 years.

The worst forms of child labour are prohibited. Under the present law, the worst forms of child labour include mainly:

- a. Any form of slavery or similar practices, such as the selling and exchange of children, slavery for servitude due to contracted debts, as well as forced or compulsory work, including forced or compulsory recruitment of children in order to use them in armed conflicts;
- b. The use, recruitment or offer of a child for prostitution means, pornographic production or pornographic spectacles;
- c. The use, recruitment or offer of a child for illegal activities, mainly for drug production and trafficking, such as defined by the international conventions;
- d. Activities which, by their nature or the conditions in which they are carried out, are likely to undermine the health, security or morality of the child;

The list of such activities is determined by a decree taken in cabinet meeting after consultation of the worker's and employer's organizations which are the most representative by professional branch and upon advice of the national technical consultative committee in charge of labour security and health.

The child and the teenager/adult workers cannot be assigned in activities that are recognized to be beyond their force. Failing that, the Labour contract is terminated with payment of the legal rights. The Labour inspector can require examination of the teenagers by a certified physician, in order to check if the work they are assigned is not beyond their force. This requisition is legal if requested by the teenager, his/her parents and guardians.

The punishment for violation of these provisions is a one month to three-year imprisonment or a fine of fifty thousand to three hundred thousand (50,000 - 300,000) CFA Francs or both. In the event of repetition, the punishment is either three hundred thousand to six hundred thousand (300,000 - 600,000) CFA Francs or two months to five years of imprisonment or both.

Source: §149-154 & 422 of The Labour Act, 2008; §4 of the Law N° 013-2007/AN, Orienting the Education System, enacted July 30, 2007

Minimum Age for Hazardous Work

The minimum age for hazardous work is 18 years. The legal provision on the minimum age for hazardous work is provided for in the Labour Act 2008 and Decree on Hazardous Work List. A new decree has

been promulgated in 2016 which repeals the earlier 2009 decree.

The constitution guarantees protection of life, security, and physical integrity. Slavery-like practices, inhuman and cruel, degrading and humiliating treatments, physical or moral torture, services and mistreatments inflicted on children and all forms of the degradation of man are forbidden and punished by the law. Children and teenagers cannot be assigned to activities liable to undermine their development and their capacity of reproduction.

The list of all those activities which are regarded as Hazardous for children under the age of 18 is contained within the Decree. The Decree requires that children must be protected from all those activities which deprive them of their childhood, their potential, dignity or harm their physical and psychological development. It further prohibits employment of children in hazardous work in all kinds of establishments whether agricultural or commercial or industrial including family enterprises. The Decree has a long list of prohibited works including the hazards involved in such works and the reasons for prohibition. Generally, it prohibits work that exposes children to physical, psychological or sexual abuse; work that is carried out underground, underground, at hazardous heights or in confined spaces; work carried out with hazardous machinery or work involving carrying or handling of heavy loads; work carried out in unhealthy environment which may expose children to dangerous substances; work carried out in difficult conditions including long hours where a child is unjustifiably detained at the employer's premises; work that is unlikely to undermine the development and reproductive capacity of children.

The duration of night rest for children must be at least of twelve consecutive hours per day. Young workers under 18 are not allowed to work at night, while workers above 16 are only allowed to work at night in the case of natural calamities. Children cannot be employed in work for more than 8 hours per day, interrupted by one or more breaks whose duration cannot be less than 2 hours.

Source: §2 of the Constitution of Burkina Faso, 1991; §151 of the Labour Act, 2008; Decree N° 2016-504 / PRES / PM / MFPTPS / MS / MFSNF of 09 June 2016 on Hazardous Work List

12/13 FORCED LABOUR

ILO Conventions

Forced labour: Conventions 29 (1930)

Abolition of Forced labour: Conventions 105 (1957)

Forced labour is the work one has to perform under threat of punishment: forfeit of wages, dismissal, harassment or violence, even corporal punishment. Forced labour means violation of human rights.

Burkina Faso has ratified both Conventions 29 & 105.

Summary of Provisions under ILO Conventions

Except for certain cases, forced or compulsory labour (exacted under the threat of punishment and for which you may not have offered voluntarily) is prohibited.

Employers have to allow workers to look for work elsewhere. If a worker is looking for work elsewhere, he/she should not be shortened on wages or threatened with dismissal. (In the reverse cases, international law considers this as forced labour).

If the total working hours, inclusive of overtime, exceed 56 hours per week, the worker is considered to be working under inhumane working conditions.

Regulations on forced labour:

- Constitution of Burkina Faso, 1991
- Labour Act, 2008

Prohibition on Forced and Compulsory Labour

The constitution guarantees the protection of life, security, and physical integrity. Slavery-like practices, inhuman and cruel, degrading and humiliating treatments, physical or moral torture, services and mistreatments inflicted on children and all forms of the degradation of man are forbidden and punished by the law.

Under the Labour Act, slave labour or compulsory labour is prohibited. “Slave” or “compulsory” labour refers to any work or service assigned to someone under a menace of a sanction of any kind, and for which he/she has not agreed to do of his/her own free will.

No one can be subject to such forced or compulsory labour as a means of:

- i. coercion or political education measure, or sanction towards people who have expressed their political opinions;
- ii. mobilization and use of workforce method to political ends
- iii. labour discipline;
- iv. social, racial, national or religious discrimination;
- v. sanction for taking part in strikes.

However, the following is not considered as slave or compulsory labour under the Labour Act:

1. Any work or service assigned to a person in pursuance of the national laws on the military service requiring to carry out military work;

2. Any work or service resulting from the citizens’ normal civic obligations;
3. Any work or service assigned to a person resulting from a legal sentence, under the condition that this work is executed under the surveillance and control of public authorities, and that the person is neither conceded nor made available to private persons, companies or private businesses, except to public utility associations;
4. Any work or service assigned to a person in case of circumstances jeopardizing or with the risk to jeopardize lives or the normal existence conditions of the whole community or a group of it, and in case of natural calamities.

The work or services mentioned above can be assigned to valid adults only, neither below eighteen years of age or above-forty-five.

The punishment for violation of these provisions is a one month to three-year imprisonment or a fine of fifty thousand to three hundred thousand (50,000 - 300,000) CFA Francs or both. In the event of repetition, the punishment is either three hundred thousand to six hundred thousand (300,000 - 600,000) CFA Francs or two months to five years of imprisonment or both

Source: §2 of the Constitution of Burkina Faso, 1991; §5, 6 & 422 of the Labour Act, 2008

Freedom to Change Jobs and Right to Quit

Under the Constitution, the right to work is recognized and is equal for all.

The Labour Act requires a written notice to be provided by the worker when terminating their contract. The notice is effective from the delivery date of the notification. The reason for the termination must be clearly stated in the notification.

The term of the notice deadline is different for different categories of workers;

- (i) Eight days for the workers whose wages are fixed per hour or the day;
- (ii) One month for the employees other than the executives, supervisors, technicians and similar staff; and
- (iii) three months for the executives, supervisors, technicians and similar staff.

Source: §19 of the Constitution of Burkina Faso, 1991; §64-66 of the Labour Act, 2008

Inhumane Working Conditions

The legal maximum working hours are 40 hours per week. Statutory acts determine the maximum duration for overtime work which can be done in case of urgent or exceptional work and seasonal work. However, no such legislative provisions could be located limiting the overtime hours.

Source: §137-139 of the Labour Act, 2008

13/13 TRADE UNION

ILO Conventions

Freedom of association and protection of the right to organize: Convention 87 (1948)

Right to Organize and Collective Bargaining: Convention 98 (1949)

Burkina Faso has ratified both Conventions 87 & 98.

Summary of Provisions under ILO Conventions

Freedom of association means freedom to join a trade union. This is part of the fundamental human rights. Employees may not be put at a disadvantage when they are active in the trade union outside of working hours. The list of exclusions for sectors of economic activity and workers in an organisation should be short.

Trade unions are entitled to negotiate with employers on the terms of employment without hindrance. The freedom of a trade union to negotiate with employers to try and conclude collective agreements is protected. (The ILO has a special procedure for handling complaints from unions about violations of this principle).

Workers have the right to strike in order to defend their social and economic interests. It is incidental and corollary to the right to organise provided in ILO convention 87.

Regulations on trade unions:

- Constitution of Burkina Faso 1991, last amended in 2012
- Labour Act, 2008

Freedom to Join and Form a Union

The freedom of association is guaranteed under the constitution. Every person has the right to constitute associations and to participate freely in the activities of the associations. The functioning of the associations must conform to the laws and regulations in force. The syndical freedom is guaranteed. The unions exercise their activities without constraint and without limitation other than those specified by the law.

According to the Labour Act, the purpose of trade unions is the promotion and defence of their member's, material, moral and professional interests. Employees and employers can freely constitute trade unions including people practicing the same occupation, similar professions or related occupations contributing to the establishment of determined products. An employee or employer can freely join any chose trade union in the frame work of his/her occupation.

The founders of the trade union must submit their statutes and the names of those who are in charge of its administration or its management. Submission is done at the Ministry in charge of public freedoms, when the association has a national or international jurisdiction. A copy of statutes is addressed to the labour inspector of the jurisdiction, to the general director of labour and to the Prosecutor of Burkina Faso.

The amendments to the statues and the changes that occur in the constitution of the association management or administration must be brought in the same conditions, to the knowledge of the same authorities. The declaration must be accompanied with the following documents: a written application signed by two founders at least; three signed and legalised copies of the statutes, the constitution and the minutes of the constituting meeting; and three signed and legalised copies of the nominal list specifying the quality of the people in charge of leading the association.

Children aged 16 years and above can join the union on consent with their parents or guardian. The law considers it to be an abusive dismissal when a worker is dismissed by an employer due to his trade union membership and activity.

Source: §21 of the Constitution of Burkina Faso 1991, last amended in 2012; §71, 275-280 & 283 of the Labour Act, 2008

Freedom of Collective Bargaining

Under the Labour Act, the representatives of the trade unions or any other professional groups can conclude a collective agreement provided the rules of such trade unions authorize them to conclude such agreements on the trade unions' behalf.

Where the agreement is called a collective convention, it might be concluded between two different trade union groups of employees or employers, who then both bound by it. Where it is called a collective institution agreement, it is usually an agreement between an employer and the employees whereby the provisions of a

collective convention is extended to that particular institution.

A collective agreement may include clauses which are more favourable to the employees than those of laws and rules in force. It cannot depart from the provisions related to law and order defined by these laws and regulations. The scope of a collective agreement may be local or national.

The duration of the collective agreement is decided on agreement of the parties. At the expiry of a collective agreement for a short-term work, it continues to be effective until a new agreement is concluded. The collective agreement must contain clauses about its renewal, revision or denunciation.

The matters which are discussed in collective bargaining and which are provided for in the collective agreements include salaries; rates of premium for working overtime, during night, rest days and public holidays; probation and notice periods; principles of non-discrimination and equal pay for work of equal value; paid vacation; unemployment, travelling, transport output and seniority allowances; hiring and dismissal provisions; employment conditions; and provisions on revision, modification and denunciation of collective agreements.

Where there is no local or national collective agreement, the factory or institutional agreements can only deal with the salary rates and fringe benefits, except where exemptions are granted by the Minister in charge for Labour.

An advisory Labour Commission is established at the level of the Ministry in charge of Labour. The commission, chaired by the Minister in charge of Labour or his

representative, is made up of employers and employees on the basis of equal representation. The latter are designated by the organizations most representative of the employers and of the workers or by the Minister in charge of Labour in the event of absence of representative organizations. Its responsibility is to study the criteria that could serve as basis for the determination and the readjustment of the minimum wage. The Advisory Labour Commission is consulted on all matters relating to labour, workforce and social security. As required under the Labour Act, its opinion must be sought on certain matters including the apprenticeship contract, probation contract, and employment conditions for persons with disabilities. The Commission may also examine any difficulty born at the time of negotiation of the collective agreements and deliberate on all the issues relating to the conclusion and to the application of collective agreements and in particular on their economic impact.

The Constitution of Burkina Faso provides for an Economic and Social Council which is required to give its opinion on matters of economic, social or cultural importance which are brought to its consideration by the President of Burkina Faso or the government. The Council may also carry out analysis of the problems of development, economic and social nature. Economic and Social Council is a 90-member advisory body created in 2000 through a Constitutional amendment. Its members include government representatives, worker representatives, employer representatives and other civil society organizations.

Source: §141 of the Constitution of Burkina Faso 1991, last amended in 2012; §107-117, 125 and 405-409 of the Labour Act, 2008

Right to Strike

Under the Constitution of Burkina Faso, right to strike is guaranteed. The Labour Act defines the strike as a concerted and collective suspension of work in order to support professional claims and to ensure the defence of the material and moral interests of the workers. The right to strike does not authorize the worker to carry out his work under conditions other than those envisaged with their contract of employment or practiced in the profession and does not include disposing arbitrarily of the premises of the company.

The right to strike is a consequence of a collective dispute, which is a disagreement borne in the course of the execution of a labour contract between the employer and a group of employees. The law requires both the employer and the employees to resolve the disputes firstly through conciliation and then arbitration, the procedures of which have been laid down in the Labour Act. In the event the parties are unable to resolve the dispute through conciliation or arbitration, the employees can resort to going on strike.

The strike does not terminate the contract of employment, except for a serious offense ascribable to the worker. In order to ensure a minimum service, the relevant administrative authority can, at any moment, proceed to the requisition of workers of private companies and of state-owned companies who occupy employment that are essential to the security of the people and properties, to the maintenance of law and order, to the continuity of the public utility or to the satisfaction of the essential needs of the community. The list of the employment thus defined the conditions and procedures

of requisition of the workers, the notification and the ways of publication are laid down statutorily by the minister in charge of Labour, upon advice of the consultative Labour Commission.

The exercise of the right to strike should in no way be accompanied by the occupation of the place of work or of its immediate surroundings, under the penalty of penal sanctions provided by the legislation in force. Any lockout or any strike before the exhaustion of the arbitration and conciliation procedures set by the present law is prohibited. These procedures do not however apply to the strikes at national scale started by the Labour unions.

The strike practiced in violation of this procedure results in loss of compensation right to notice and damages for termination of contract for workers; for employers the payment of workers for the lost days due to this fact and upon decision of a competent court of law ineligibility to the position of members of the chambers of commerce, economic and social council, consultative Labour Commission and a council of arbitration. However, strikes started after notification or the refusal of the sentence of the council or arbitration are considered legal.

Source: §367-372 & 382-390 of the Labour Act, 2008; §22 of the Constitution of Burkina Faso 1991, last amended in 2012

QUESTIONNAIRE

DECENTWORKCHECK.ORG

Check

Decent Work Check Burkina Faso is a product of www.wageindicators.org
and www.votresalaire.org/burkinafaso/Home



National Regulation exists



National Regulation does not exist

01/13 Work & Wages

	NR	Yes	No
1. I earn at least the minimum wage announced by the Government		<input type="checkbox"/>	<input type="checkbox"/>
2. I get my pay on a regular basis. (daily, weekly, fortnightly, monthly)		<input type="checkbox"/>	<input type="checkbox"/>

02/13 Compensation

3. Whenever I work overtime, I always get compensation <i>(Overtime rate is fixed at a higher rate)</i>		<input type="checkbox"/>	<input type="checkbox"/>
4. Whenever I work at night, I get higher compensation for night work		<input type="checkbox"/>	<input type="checkbox"/>
5. I get compensatory holiday when I have to work on a public holiday or weekly rest day		<input type="checkbox"/>	<input type="checkbox"/>
6. Whenever I work on a weekly rest day or public holiday, I get due compensation for it		<input type="checkbox"/>	<input type="checkbox"/>

03/13 Annual Leave & Holidays

7. How many weeks of paid annual leave are you entitled to?*		<input type="checkbox"/> 1 <input type="checkbox"/> 2	<input type="checkbox"/> 3 <input type="checkbox"/> 4+
8. I get paid during public (national and religious) holidays		<input type="checkbox"/>	<input type="checkbox"/>
9. I get a weekly rest period of at least one day (i.e. 24 hours) in a week		<input type="checkbox"/>	<input type="checkbox"/>

04/13 Employment Security

10. I was provided a written statement of particulars at the start of my employment		<input type="checkbox"/>	<input type="checkbox"/>
11. My employer does not hire workers on fixed terms contracts for tasks of permanent nature <i>Please tick "NO" if your employer hires contract workers for permanent tasks</i>		<input type="checkbox"/>	<input type="checkbox"/>
12. My probation period is only 06 months		<input type="checkbox"/>	<input type="checkbox"/>
13. My employer gives due notice before terminating my employment contract (or pays in lieu of notice)		<input type="checkbox"/>	<input type="checkbox"/>
14. My employer offers severance pay in case of termination of employment <i>Severance pay is provided under the law. It is dependent on wages of an employee and length of service</i>		<input type="checkbox"/>	<input type="checkbox"/>

05/13 Family Responsibilities





15. My employer provides paid paternity leave <i>This leave is for new fathers/partners and is given at the time of child birth</i>		<input type="checkbox"/>	<input type="checkbox"/>
16. My employer provides (paid or unpaid) parental leave <i>This leave is provided once maternity and paternity leaves have been exhausted. Can be taken by either parent or both the parents consecutively.</i>		<input type="checkbox"/>	<input type="checkbox"/>
17. My work schedule is flexible enough to combine work with family responsibilities <i>Through part-time work or other flex time options</i>		<input type="checkbox"/>	<input type="checkbox"/>

06/13 Maternity & Work





18. I get free ante and post natal medical care		<input type="checkbox"/>	<input type="checkbox"/>
19. During pregnancy, I am exempted from nightshifts (night work) or hazardous work		<input type="checkbox"/>	<input type="checkbox"/>
20. My maternity leave lasts at least 14 weeks		<input type="checkbox"/>	<input type="checkbox"/>

* On question 7, only 3 or 4 working weeks is equivalent to 1 "YES".





DECENTWORKCHECK.ORG

- | | | | | |
|-----|---|---|--------------------------|--------------------------|
| 21. | During my maternity leave, I get at least 2/3rd of my former salary |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 22. | I am protected from dismissal during the period of pregnancy
<i>Workers can still be dismissed for reasons not related to pregnancy like conduct or capacity</i> |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 23. | I have the right to get same/similar job when I return from maternity leave |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 24. | My employer allows nursing breaks, during working hours, to feed my child |  | <input type="checkbox"/> | <input type="checkbox"/> |





07/13 Health & Safety

- | | | | | |
|-----|--|---|--------------------------|--------------------------|
| 25. | My employer makes sure my workplace is safe and healthy |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 26. | My employer provides protective equipment, including protective clothing, free of cost |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 27. | My employer provides adequate health and safety training and ensures that workers know the health hazards and different emergency exits in the case of an accident |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 28. | My workplace is visited by the labour inspector at least once a year to check compliance of labour laws at my workplace |  | <input type="checkbox"/> | <input type="checkbox"/> |









08/13 Sick Leave & Employment Injury Benefits

- | | | | | |
|-----|---|---|--------------------------|--------------------------|
| 29. | My employer provides paid sick leave and I get at least 45% of my wage during the first 6 months of illness |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 30. | I have access to free medical care during my sickness and work injury |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 31. | My employment is secure during the first 6 months of my illness |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 32. | I get adequate compensation in the case of an occupational accident/work injury or occupational disease |  | <input type="checkbox"/> | <input type="checkbox"/> |

09/13 Social Security













- | | | | | |
|-----|---|---|--------------------------|--------------------------|
| 33. | I am entitled to a pension when I turn 60 |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 34. | When I, as a worker, die, my next of kin/survivors get some benefit |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 35. | I get unemployment benefit in case I lose my job |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 36. | I have access to invalidity benefit in case I am unable to earn due to a nonoccupational sickness, injury or accident |  | <input type="checkbox"/> | <input type="checkbox"/> |

10/13 Fair Treatment



- | | | | | |
|-----|--|---|--------------------------|--------------------------|
| 37. | My employer ensure equal pay for equal/similar work (work of equal value) without any discrimination |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 38. | My employer take strict action against sexual harassment at workplace |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 39. | I am treated equally in employment opportunities (appointment,promotion, training and transfer) without discrimination on the basis of:* |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Sex/Gender |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Race |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Colour |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Religion |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Political Opinion |  | <input type="checkbox"/> | <input type="checkbox"/> |

* For a composite positive score on question 39, you must have answered "yes" to at least 9 of the choices.




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	Nationality/Place of Birth		<input type="checkbox"/>	<input type="checkbox"/>
	Social Origin/Caste		<input type="checkbox"/>	<input type="checkbox"/>
	Family responsibilities/family status		<input type="checkbox"/>	<input type="checkbox"/>
	Age		<input type="checkbox"/>	<input type="checkbox"/>
	Disability/HIV-AIDS		<input type="checkbox"/>	<input type="checkbox"/>
	Trade union membership and related activities		<input type="checkbox"/>	<input type="checkbox"/>
	Language		<input type="checkbox"/>	<input type="checkbox"/>
	Sexual Orientation (homosexual, bisexual or heterosexual orientation)		<input type="checkbox"/>	<input type="checkbox"/>
	Marital Status		<input type="checkbox"/>	<input type="checkbox"/>
	Physical Appearance		<input type="checkbox"/>	<input type="checkbox"/>
	Pregnancy/Maternity		<input type="checkbox"/>	<input type="checkbox"/>
40	I, as a woman, can work in the same industries as men and have the freedom to choose my profession		<input type="checkbox"/>	<input type="checkbox"/>





11/13 Minors & Youth

41.	In my workplace, children under 15 are forbidden		<input type="checkbox"/>	<input type="checkbox"/>
42.	In my workplace, children under 18 are forbidden for hazardous work		<input type="checkbox"/>	<input type="checkbox"/>

12/13 Forced Labour

43.	I have the right to terminate employment at will or after serving a notice		<input type="checkbox"/>	<input type="checkbox"/>
44.	My employer keeps my workplace free of forced or bonded labour		<input type="checkbox"/>	<input type="checkbox"/>
45.	My total hours of work, inclusive of overtime, do not exceed 56 hours per week		<input type="checkbox"/>	<input type="checkbox"/>

13/13 Trade Union Rights

46.	I have a labour union at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
47.	I have the right to join a union at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
48.	My employer allows collective bargaining at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
49.	I can defend, with my colleagues, our social and economic interests through "strike" without any fear of discrimination		<input type="checkbox"/>	<input type="checkbox"/>

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Results

Your personal score tells how much your employer lives up to national legal standards regarding work. To calculate your DecentWorkCheck, you must accumulate 1 point for each YES answer marked. Then compare it with the values in Table below:



is your amount of "YES" accumulated.

Burkina Faso scored 42 times "YES" on 49 questions related to International Labour Standards

If your score is between 1 - 18

This score is unbelievable! Does your employer know we live in the 21st century? Ask for your rights. If there is a union active in your company or branch of industry, join it and appeal for help.

If your score is between 19 - 38

As you can see, there is ample room for improvement. But please don't tackle all these issues at once. Start where it hurts most. In the meantime, notify your union or WageIndicator about your situation, so they may help to improve it. When sending an email to us, please be specific about your complaint and if possible name your employer as well. Also, try and find out if your company officially adheres to a code known as Corporate Social Responsibility. If they do, they should live up to at least ILO standards. If they don't adhere to such a code yet, they should. Many companies do by now. You may bring this up.

If your score is between 39 - 49

You're pretty much out of the danger zone. Your employer adheres to most of the existing labour laws and regulations. But there is always room for improvement. So next time you talk to management about your work conditions, prepare well and consult this DecentWorkCheck as a checklist.