



**SRI LANKA**

# **Decent Work Check 2019**

**Iftikhar Ahmad**

## WageIndicator Foundation - [www.wageindicator.org](http://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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### Bibliographical information

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For an updated version in the national language, please refer to <https://salary.lk/>

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## Table of Contents

INTRODUCTION .....	1
Major Legislation on Employment and Labour .....	2
01/13 WORK & WAGES .....	3
02/13 COMPENSATION .....	9
03/13 ANNUAL LEAVE & HOLIDAYS.....	12
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 .....	28
09/13 SOCIAL SECURITY .....	31
10/13 FAIR TREATMENT .....	33
11/13 MINORS & YOUTH.....	36
12/13 FORCED LABOUR .....	39
13/13 TRADE UNION.....	41
DECENT WORK QUESTIONNAIRE.....	45

# 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 practiced, 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, which are deemed important in attaining "decent work". The work makes the rather 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 gives a score to 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. Workers can compare their own 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.

Decent Work Check is useful 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 useful for researchers, labour rights organizations conducting surveys on the situation of rights at work and general public wanting to know more about the world of work. WageIndicator teams, around the world, 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 workers, self-employed, employee, employer, policy maker, 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, rise of precarious employment and measuring the impact of regulatory regimes.

Currently, there are more than 100 countries for which a Decent Work Check is available here: [www.decentworkcheck.org](http://www.decentworkcheck.org) During 2019, the team aims to include at least 10 more countries, thus taking the number of countries with a Decent Work Check to 115!

## Major Legislation on Employment and Labour

1. Wages Boards Ordinance, Ordinance No. 27, 1941
2. Shop and Office Employees (Regulation of Employment and Remuneration) Act, 1954
3. Budgetary Relief Allowance of Workers Act 2016
4. National Minimum Wage of Workers Act 2016
5. Industrial Disputes Act, 1950
6. Payment of Gratuity Act, 1983
7. The Health Services Act, 2000
8. Maternity Benefits Ordinance, 1939
9. Factories Ordinance, 1942
10. Workmen's Compensation Ordinance, 1934
11. Employees' Provident Fund Act, 1958
12. Employees' Trust Fund Act, 1980
13. Penal Code, 1885
14. Employment of Women, Young Persons and Children' Act, 1956
15. Hazardous Occupations Regulations, 2010
16. The Constitution of Sri Lanka 1978, amended up to 2015
17. Trade Union Ordinance, 1935

# 01/13 WORK & WAGES

## ILO Conventions

Minimum wage: Convention 131 (1970)

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

**Sri Lanka has ratified the Conventions 95 & 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:

- Wages Boards Ordinance, Ordinance No. 27, 1941
- Shop and Office Employees (Regulation of Employment and Remuneration) Act, 1954
- Budgetary Relief Allowance of Workers Act 2016
- National Minimum Wage of Workers Act 2016

## Minimum Wage

There is no single minimum wage in Sri Lanka. Minimum wages are determined by sector specific tripartite wage boards for more than 40 trades in Sri Lanka. Minimum wage may be determined on hourly, daily, weekly or monthly basis by Wage Boards constituted under the Wage Boards Ordinance. Employers are required to pay the minimum wage determined by a trade specific Wage Board.

There are no specific criteria for determining the minimum wage rate. It is adjusted according to the variation in cost of living index applicable to workers in that trade.

Minimum wage rates vary in accordance with the occupation, sector, region and the category of workers. Increase in minimum wage rate is mutually decided by the Government, trade union representatives and employers.

Under the National Minimum Wage for Workers Act 2016, national minimum monthly wage for all workers in any industry or service is set as 10,000 (ten thousand) rupees and the national minimum daily wage of a worker is set as 400 (four hundred) rupees. Employer is required to maintain a register at the premises, which should contain the following information: name of each worker employed by him; class of work performed by each employed worker; and the amount paid to each worker. Employer is required to preserve such register for a period of 6 years.

The Wage Boards determine a minimum rate of wages for time worked (referred to as general minimum time rate), a minimum rate of wages for piece work (referred to as general piece rate), a minimum time rate applicable to the piece rate workers to ensure a minimum remuneration based on time worked (referred to as guaranteed time rate), and a minimum rate for overtime work done by the workers (referred to as overtime rate).

Under the Budgetary Relief Allowance of Workers Act of 2016, employers are required to pay the following amount with effect from 01 May 2015 (to December 2015) to every worker the following amounts as “budgetary relief allowance”, depending on the worker’s usual remuneration:

- a) 1,500 rupees per month if the monthly pay does not exceed 40,000 rupees;
- b) 60 rupees per day if his/her daily rate does not exceed 1,600 rupees;
- c) 15% of the wages or salary payable to a worker in a month for piece rated workers;

- d) Difference between the maximum wage and actual wage where the wage rate exceeds 40,000 rupees but does not exceed 41,500 rupees (maximum wage); and
- e) 4% of the difference between 41,500 rupees and the total wages for the relevant month if the daily rate is between 1,600 and 1,660 rupees.

The maximum amount of budgetary relief allowance for the first three cases is 1,500 rupees.

From January 2016 onward, the following amounts are paid as “budgetary relief allowance”, depending on the worker’s usual remuneration:

- a) 1,000 rupees per month if the monthly pay does not exceed 40,000 rupees;
- b) 40 rupees per day if his/her daily rate does not exceed 1,600 rupees; and
- c) 10% of the wages or salary payable to a worker in a month for piece rated workers;

The maximum amount of budgetary relief allowance in 2016 is 1,000 rupees.

As provided under the Wage Boards Ordinance, compliance with minimum wages is ensured by the office of Labour Commissioner, which appoints officers in order to give effect to the provisions of Ordinance. Employers of workers in any trade are required to maintain and keep in the premises where the trade carried out a clear and accurate written record of the following information in respect of each wage period:

- (a) the wage period;
- (b) the names of the workers who are paid wages in respect of such wage period;
- (c) the number of hours or days during which each such worker has worked in such wage period;
- (d) the wages paid to each such worker in respect of such wage period;
- (e) the date of payment of such wages;
- (f) the deductions from such wages; and
- (g) particulars of such other matters as may be prescribed.

If an employer fails to comply with the Wages Boards Ordinance or a Wages Board determination on minimum wage, the employer is liable to a fine of:

- (i) not less than 100 rupees but not more than 250 rupees in the case of a first offence;
- (ii) not less than 250 rupees but not more than 500 rupees in the case of a second offence; and
- (iii) not less than 500 rupees but not more than 1,000 rupees in the case of a third and subsequent offences.

If the fine relates to the failure to pay the minimum wages as are determined by a Wages Board, the employer is further liable to a fine not exceeding 50 rupees for each day on which the offence is continued after conviction. In the event of a third or subsequent offence, an employer may also be liable to a term of imprisonment not exceeding 6 months.



In addition to the above penalties (fine or prison sentence), the court may order an employer to pay:

- (a) the difference between the due amount (minimum wage) and the amount actually paid and the surcharge as payable in accordance with §4(2A) Wages Ordinance Board;
- (b) such sums as are determined by the court plus any surcharge as payable in accordance with §4(2A) Wages Ordinance Board if no wages are paid by the employer to the worker.

Under the Minimum Wage Act 2016, employers are required to maintain and keep in the premises the relevant record setting out the name of each worker employed by him; the class of work performed by each worker employed by him; and the amount paid to each such worker as wages. If an employer fails to pay the national minimum wage (monthly or daily) payable to workers, the Commissioner-General, may after investigation, require the employer to deposit with him the amount of such part of the national minimum wage that is defaulted in respect of such worker or workers for the period the amount is due, within the date specified in such notice.

If an employer contravenes the provisions on payment of minimum wage, he is guilty of an offence is liable on conviction to a fine not exceeding twenty-five thousand rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment.

Source: §21-22 and 40-44 of the Wage Boards Ordinance; §3 of the Budgetary Relief Allowance of Workers Act 2016; §3-9 of the National Minimum Wage of Workers Act 2016

For updated minimum wage rates, kindly refer to the section on minimum wages

## Regular Pay

In accordance with the Wage Boards Ordinance, wage includes any remuneration due in respect of overtime work or of any holiday. Both the Wage Boards Ordinance and the Shop & Office Act have provisions related to the payment of wages.

A Wage Board may fix a wage period for a specific trade and specify the days at the end of which the wages must be paid to the workers. If a worker is not covered under the Wage Board decision, an employer may fix the wage period. However, in either case, wage period cannot exceed one month. The Wage Board Ordinance and the Shop & Office Act require payment of wages at the following intervals:

- within 3 days of the end of wage period if the period does not exceed 1 week;
- within 5 days of the end of wage period if the period does not exceed 2 weeks; and
- within 10 days of the end of wage period if the period exceeds 2 weeks (but is less than one month)

In certain unavoidable circumstances, when the employer is unable to pay remuneration to the worker within specified time period, the employer must retain the remuneration and pay it at the earliest possible opportunity.

The Wages Boards Ordinance and the Shop & Office Employees Act specifically require the employer not to make any deduction other than those authorized by the law. Deductions imposed by Statute are those relating to the collection of income tax at source, Employees' Provident Fund deductions (8% of a worker's total earnings) and deductions on account of payments to approved provident funds, etc. If an employer makes unlawful deductions, there is a risk of prosecution.

The employer is authorized to deduct certain amounts from the employee's salary in case of misbehaviour. The employee in turn is called to maintain a certain standard to avoid such fines. One can interpret such standards as the actual responsibility that the law calls the employee to fulfil. Examples are: absence from work without a reasonable excuse, late attendance at work without a reasonable excuse, wilful failure on the part of the employee to comply with any lawful order given to him in relation to his work and intoxication during working hours. However, such fines cannot amount to more than 5% of the total salary due for the period to which they refer to, while the approval of the Commissioner is needed if the amount is higher.

The Regulation 17 under the Shop & Office Employees Act requires an employer to keep salary record, which should include following information: name of the employee; age; sex; class or grade, if any; category or designation or occupation; remuneration period (month, fortnight or week); number of hours of work performed during the remuneration period; number of hours of overtime work performed during the remuneration period; rate of remuneration payable; allowances payable (showing each allowance separately); gross remuneration earned for the remuneration period; all deductions made from the gross remuneration (showing each deduction separately); all advances made out of the remuneration during the remuneration period; contributions made by the employer and employee respectively in respect of the remuneration period, to any pension or provident fund; the amount of balance remuneration paid and the date of payment; the total amount of overtime remuneration paid in respect of each remuneration period; the amount recovered under the Income Tax Ordinance or under any other written law or order of court; acknowledgement of the employee in proof of receipt of net remuneration. Employers are required to keep the remuneration record up to date and preserve it for a period of 4 years.

Employers are required under the Shop & Office Employees Act to pay remuneration directly to the person in legal tender and without any deductions (except those authorized under the law and with the consent of such person). The law however requires that the aggregate of such deductions must not exceed 60% of the remuneration due to a worker.

The Wages Board Ordinance however has a different provision. It also requires an employer to pay remuneration directly to a worker in legal tender and without any unauthorized deductions. However, such deductions must not exceed 75% for workers engaged in a trade specified by the Minister and 50% of wages for workers engaged in any other trade.

Source: §2, 5 & 23 of the Wage Boards Ordinance; §19 and Regulation 17 under the Shop & Office Employees Act

# 02/13 COMPENSATION

## ILO Conventions

Compensation overtime: Convention 01 (1919)

Night work: Convention 171 (1990)

**Sri Lanka has not ratified the Convention 01 only.**

### *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, overtime pay rate should not be less than one and a quarter times (125%) 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 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 a 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 in 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:

- Shop and Office Employees (Regulation of Employment and Remuneration) Act, 1954

## Overtime Compensation

In accordance with the Shop and Office Employees Act, normal working hours are 8 hours per day and 45 hours per week. The Factories Ordinance states that the normal working hours must not exceed 09 hours per day, exclusive of intervals allowed for meals and rest. The normal working hours limit does not apply to any person who holds an executive or managerial position in a public institution and who is in receipt of a consolidated salary the initial of the scale of which is not less than Rs. 6, 720 per annum.

If a worker works beyond the stipulated working hours, he/she is entitled to an overtime pay that is 150% (1.5 of X) of the rate of his ordinary pay. The overtime hours in a week cannot exceed 12 hours.

The number of hours constituting a normal workday is fixed by a Wages Board for a trade in respect of which it is established. The daily working hours cannot exceed 9 hours if the interval(s) specified for meals or rest do not exceed one hour. If this interval exceeds one hour, the length of a working day cannot be more than 9 hours plus the time period by which such duration exceeds one hour. The normal working days cannot exceed 12 hours even if such aggregate exceeds 12 hours. For a special class of workers, Wages Board may determine a working day of more than 12 hours.

Source: Regulation 3, 6 & 7 of the Shop and Office Employees Act of 1954; §67 of the Factories Ordinance

## Night Work Compensation

There is no premium payment for night work.

## Compensatory Holidays / Rest Days

No provision could be identified in laws to require an employer to provide compensatory rest day to those workers working on weekly rest day. However, if a worker works on a public holiday, he/she has to be allowed a holiday with full pay on or before the 31st of December.

Source: §7 of Shop and Office Employees Act, 1954

## **Weekend / Public Holiday Work Compensation**

Employees may be required to work on weekend and public holidays. If workers have to work on a public holiday, they are entitled to 200% of the normal rate of wages. No premium is provided for working on weekly rest days.

Source: §7 of Shop and Office Employees Act, 1954

# 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.

**Sri Lanka has ratified the Convention 106 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 recognized 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:

- Shop and Office Employees (Regulation of Employment and Remuneration) Act, 1954

## Paid Vacation / Annual Leave

An employee is entitled to take annual leave when the next calendar year starts. The duration of that first annual leave period is determined according to the date/month on which the employment commenced. From the second year onward, an employee is entitled to 14 days of paid annual leave, after completion of 12 months of continuous service. For the first year, an employee would have following annual leave, depending upon the time of commencement of his employment:

- 14 days if the employment commences on or after the first day of January but before the first day of April;
- 10 days if the employment commences on or after the first day of April but before the first day of July;
- 7 days if the employment commences on or after the first day of July but before the first day of October; and
- 4 days if the employment commences on or after the first day of October.

A worker is required to take his annual leave within twelve months of its entitlement. Annual leave schedule is determined by the mutual agreement between the employer and the employee. It may be split however its minimum duration cannot be less than 07 days.

Employers are not allowed to compel workers to work during annual leave.

If the employment contract expires before a worker could acquire the right to annual leave, the employee is entitled to the annual leave earned by him or her in respect of the previous year plus the days earned during the year of termination.

Under Wages Board Ordinance, a higher level of annual leave (up to 21 days) is provided for some trades by the Wage Boards.

Source: §6 of the Shop and Office Employees (Regulation of Employment and Remuneration) Act, 1954

## Pay on Public Holidays

Workers are entitled to paid Festival (public and religious) holidays. Festival holidays are announced by Sri Lankan Government at the start of calendar year (usually 16 in number). The public holidays are regulated under the Holidays Act (No. 29 of 1971). The Shop and Office Employees (Regulation of Employment and Remuneration) Act, 1954 also provides for Full Moon Poya Day and 8 other public holidays. If a public holiday falls on weekly rest day, no additional holiday is granted.



Public Holidays includes Thai Pongal day; National day (Feb 4); Day prior to Sinhala and Tamil New Year; The Sinhala and Tamil New Year day; May day (May 01); Vesak Full Moon Poya Day (May 03); The day after the Full Moon day, in the Sinhala month of Vesak (May 04); Poson Full Moon Poya Day (June 02); Adhi-Esala Full Moon Poya Day (July 01); Id-ul-Fitr (July 18); Binara Full Moon Poya Day (August 29); Vap Full Moon Poya Day (October 27); Deepavali Festiva Day (November 10); III Full Moon Poya Day (November 25); Milda-un-Nabi (December 24); Unduwap Full Moon Poya Day (December 24); Christmas day (December 25)

Source: §7 of the Shop and Office Employees (Regulation of Employment and Remuneration) Act, 1954; Holidays Act (No. 29 of 1971)

## **Weekly Rest Days**

Workers are entitled to at least one and a half day of rest per week at the worker's full rate of remuneration. However, the entitlement of full remuneration is not applicable to workers who have worked for less than 28 hours, exclusive of overtime work.

Weekly rest day is not specified in the Act. The rest day can be postponed and taken in 5-weekly blocks, provided that the Commissioner is satisfied that such postponement is necessary by reason of the nature of the business or for unforeseen circumstances.

Source: §5 of Shop and Office Employees Act, 1954

# 04/13 EMPLOYMENT SECURITY

## **ILO Conventions**

Convention 158 (1982) on employment termination

**Sri Lanka 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 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:

- Shop and Office Employees Act, 1954
- Industrial Disputes Act, 1950
- Payment of Gratuity Act, 1983

## Written Employment Particulars

The Shop and Office Employees Act, 1954 requires the employer to furnish the particulars of a worker's employment on the commencement of his/her work.

The written employment contract must include the following particulars: the name of the employee and designation and nature of the appointment; the date on which the appointment takes effect; the grade to which the person is appointed; basic remuneration and the scale of remuneration; whether the remuneration is paid weekly, fortnightly or monthly; cost of living allowance, if any, and other allowances if any; the period of probation or trial, if any, and the conditions governing such period of probation or trial along with the circumstances under which the appointment may be terminated during such probation or trial; conditions governing the employment along with the circumstances and conditions under which the employment can be terminated; normal hours of work; number of weekly holidays, and annual holidays; overtime rate payable; provision of medical aid, if any, by the employer; the provision of and the conditions governing any provident fund, pension scheme or gratuity scheme applicable to the employment; and prospects of promotion.

The contract is written in a language that is completely understandable by the worker and it is duly signed by the employer. The employer must retain a copy of this contract. In absence of written employment contract, the terms and conditions of employment would need to be ascertained from the oral agreement; the common law; any applicable statutory provisions; customs or usage and practices in the workplace; and any Collective Agreement or decisions of Labour Tribunals.

There is no provision on internship contracts in the labour legislation. This entails, amongst other, that for an internship payment of an allowance during the period is optional, not mandatory.

Source: §17 & Regulation 15 of the Shop and Office Employees (Regulation of Employment and Remuneration) Act, 1954

## Fixed Term Contracts

Sri Lankan labour Law allows hiring fixed term contract workers for tasks of permanent nature. (EWI) There is no provision on fixed term contracts in the labour laws. The Law does talk about temporary employees and specifies that these are employed "temporarily by an employer to perform work of a temporary nature on not more than one hundred and eighty days in any year in the aggregate.

Source: §54 of the Employees' Councils Act, No.32 Of 1979

## Probation Period

There is no clear provision in labour laws on the duration of probation period in Sri Lanka. Generally, probation period is six months. The Shop and Office Employees Act requires the employer to clearly mention the period of probation, conditions governing such probation and circumstances under which the employment contract may be terminated during probation.

Employment of Trainees (Private sector) Act No. 8 of 1978 provides that employers and workers may enter a contract of training for up to maximum one year. At the end of the training period, unless for disciplinary reasons or for failure to attain satisfactory competencies in the vocation chosen, the Employer should provide employment to the trainee or in the alternative find him a suitable employment.

Source: Regulation 15(g) of the Shop and Office Employees (Regulation of Employment and Remuneration) Act, 1954; Employment of Trainees (Private sector) Act No. 8 of 1978

## Notice Requirement

The contract of employment can be terminated by the employer on disciplinary grounds; or non-disciplinary grounds; or death or operation of law, (this category would include termination of the contract of employment due to factors such as frustration of contract and impossibility of performance); or an act of the employee which may arise in a variety of circumstances such as resignation, vacation of post or abandonment of employment. In case of fixed term contract, it would terminate by reaching the term of fixed period, as specified under the contract.

In accordance with the terms of TEWA, the employer is required to inform the employees of the reasons for dismissal except for disciplinary dismissal) However, any dismissal of a worker covered by the Termination of Employment of Workman Act (TEWA) which is not a disciplinary dismissal cannot take place without the prior written consent of the workman or the prior written approval of the Commissioner of Labour. However, cases where written approval is not required, include voluntary resignations by employees; retirements on the date clearly specified in the letter of appointment; retirements according to a provision of a collective agreement; termination by reaching the end of the fixed term; and termination by operation of law. These provisions are applicable only to “scheduled employment”, i.e., the employment contract that falls under Shop & Office Employees Act, Wages Board Ordinance and Factories Act.

The law requires termination notice before terminating services of an employee. However, the law does not deal with individual dismissals rather it talks only about retrenchment (collective dismissals). Workers may be retrenched only after giving at least one month's notice. A worker is eligible for this one-month notice only after one year of service. A worker with less than one year of service is not entitled to any notice.

Source: §31 of the Industrial Dispute Act, 1950

## Severance Pay

Workers who have completed five years of service with an employer employing fifteen or more workmen, are entitled to gratuity at following rates in the event of termination (whether by the employer or workman, or on retirement or by the death of the workman, or by operation of law, or otherwise) of the services:

1. Half a month's wages or salary for each completed year of service for monthly rated workmen; and
2. 14 days salary for each year of completed service for other workmen.

This amount is payable in all circumstances whatever the reason for termination may be, (resignation, dismissal, retirement, death of the worker, by operation of law, or otherwise), and may only be withheld in certain narrowly defined instances.

Under the Termination of Employment of Workmen (Special Provisions) Act 1975, there is provision for redundancy payment. The compensation in lieu of reinstatement is only payable in the event of termination by the employer resulting from the closure of any business which is in violation of the Act in accordance with the following compensation formula:

- i. 2.5-month pay per year of service for 1<sup>st</sup> to 5<sup>th</sup> year of service (maximum compensation: 12.5 months);
- ii. 2-month pay per year of service for 6<sup>th</sup> to 14<sup>th</sup> year of service (maximum compensation: 30.5 months);
- iii. 1.5-month pay per year of service for 15<sup>th</sup> to 19<sup>th</sup> year of service (maximum compensation: 38 months);
- iv. 1-month pay per year of service for 20<sup>th</sup> to 24<sup>th</sup> year of service (maximum compensation: 40 months); and
- v. 0.5-month pay per year of service for 25<sup>th</sup>-34<sup>th</sup> year of service (maximum compensation: 48 months).

Source: §5 & 6 of Payment of Gratuity Act; Termination of Employment of Workmen (Special Provisions) Act 1975

# 05/13 FAMILY RESPONSIBILITIES

## ILO Conventions

Convention 156: Workers with Family Responsibilities Convention (1981)

Recommendation 165: Workers with Family Responsibilities (1981)

**Sri Lanka has not ratified the Conventions 156 & 165.**

### *Summary of Provisions under ILO Convention*

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

Recommendation (No. 165) provides for parental leave as an option available to either parent to take 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 the employers to look into the measures for improving general working conditions through flexible work arrangements.

## **Regulations on family responsibilities:**

- Shop and Office Employees Act, 1954

### **Paternity Leave**

There is no provision for paternity leave in the labour & employment laws of Sri Lanka.

### **Parental Leave**

There is no provision in the law on paid or unpaid parental leave

### **Flexible Work Option for Parents / Work-Life Balance**

No provisions could be located in the law supporting work-life balance for parents or workers with family responsibilities.

# 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.

**Sri Lanka has ratified Convention 103 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 same or equivalent position after availing maternity leave.

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



## Regulations on maternity and work:

- The Health Services Act, 2000
- Maternity Benefits Ordinance, 1939
- Shop and Office Employees Act, 1954

## Free Medical Care

Under the Health Services Act of 2000, maternity homes are established. Family Health Bureau, established under the Ministry of Health in Sri Lanka is responsible for provision of comprehensive ante-natal and post-natal care. The medical care is available to all free of charge.

Source: Health Services Act, 2000

## No Harmful Work

Pregnant workers (covered under the Maternity Benefits Ordinance, 1939 or the Shop and Office Employees Act, 1954) must not be employed in any such work that may be injurious to her or her child's health during the three months before the expected date of confinement. Similar prohibitions are enacted for employment in injurious work in three months after childbirth.

Source: §10(B) of the Maternity Benefits Ordinance, 1939; §18(D) of the Shop and Office Employees Act, 1954

## Maternity Leave

The duration of maternity leave is 12 weeks (84 days) excluding weekly holidays, Poya days and statutory holidays. Out of these 12 weeks, 02 weeks maternity leave is before confinement (including the day of her confinement) and 10 weeks following the day of confinement.

In accordance with the Maternity Benefits Ordinance, 12 weeks, inclusive of all non-working days, maternity leave is allowed. In line with the Maternity Benefits (Amendment) Act, (No. 15 of 2018), the 12-week maternity leave is applicable in the case of birth of live child while the 6-week maternity leave is provided in the birth of non-live child. The earlier restriction, based on the number of third or subsequent birth, has been repealed. Now, irrespective of the prior number of children, women workers are entitled to maternity leave of 12 weeks if the confinement results in the birth of a live child. For the third and subsequent confinement, duration of maternity leave is 42 days excluding weekly holidays, Poya days and statutory holidays. Under the Maternity Benefits Ordinance, 6 weeks, inclusive of all non-working days, maternity leave is allowed.

Maternity leave is granted to a female worker upon providing a notice to her employer mentioning that her date of delivery is within a month or 14 days (in case of shop and office worker). After confinement, she must inform the employer, within a week, about her date of delivery for the purpose of ascertaining the number of days she is permitted to absent herself from the employment. She should also, specify the number of children she has.

There is no provision in law regarding extension of maternity leave in case of complications or sickness due to confinement or in case of multiple births.

Source: §02 of the Maternity Benefits Ordinance, 1939; §18(B) of the Shop and Office Employees Act, 1954

## **Income**

Maternity Leave under the Shop and Office Employees Act is fully paid leave while under the Maternity Benefits Ordinance, 6/7th (86%) of a worker's wages are paid for the period.

Maternity benefits are provided to a woman who has worked at least one hundred and fifty days within the period of one year, under the employer from whom she claims such benefit, immediately preceding the date of the notice that women may give to the employer before confinement.

Earlier, the law limited 12-week maternity benefits to women workers for the first and second child only. The Maternity Benefits (Amendment) Act, (No. 15 of 2018) repeals this restriction. Now, the difference in maternity benefits (12 weeks or 6 weeks) is based solely on the birth of a live or non-live child.

Source: §18(C) of the Shop and Office Employees Act; §3-5 of the Maternity Benefits Ordinance

## **Protection from Dismissals**

In accordance with the Maternity Benefits Ordinance and the Shop and Office Employees Act, it is illegal for an employer to dismiss a female employee due to her pregnancy or any other reason connected with her pregnancy in all aspects of employment. So it could be ascertained that the employment of a worker is secure during pregnancy and maternity leave.

Source: §10 of Maternity Benefits Ordinance; §18(E) of Shop and Office Employees Act

## **Right to Return to Same Position**

In accordance with the Maternity Benefits Ordinance and Shop and Office Employees Act, a woman cannot be served a notice of dismissal during her maternity leave. It gives workers the right to return to job, however, not necessarily to same position.

Source: §10 of the Maternity Benefits Ordinance; §18(E) of Shop and Office Employees Act

## **Breastfeeding/ Nursing Breaks**

Nursing breaks are not provided under the Shops and Office Employees Act. However, Maternity Benefits Ordinance provides for two paid breaks, each of at least 30-minute duration during nine hours of working day, till the child is one-year-old.

Employer should provide nursing facilities to the workers for nursing their children. The duration of each nursing break is 30 minutes if a creche or other suitable place is provided by the employer; otherwise it would not be less than one hour.

Nursing breaks are provided in addition to the meal or rest break provided and they are regarded as time worked.

Source: §12(B) of the Maternity Benefits Ordinance

# 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)

**Sri Lanka 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:

- Factories Ordinance, 1942

## Employer Cares

In accordance with the Factories Ordinance, it is obligatory for the employer to ensure health, safety and welfare of persons at workplace.

The establishment should be monitored to check the quality of the premises; cleanliness; overcrowding; maintain reasonable temperature; ventilation; lighting; drainage of floors and sanitary convenience.

Safety of the worker must be ensured by installing and maintaining the machinery, mechanisms, transmission apparatus, tools, equipment and machines in best possible safety conditions. Tools, equipment, machines, or products used must be organized properly guaranteeing the safety of workers.

Safety conditions of an establishment should also be monitored regarding risks of falling; moving heavy objects; protection from dangerous machines and apparatus; preventive measures to be taken for work in confined areas or for work done in an isolated environment; risks of liquids spilling and fire prevention.

Factories Ordinance further contain provisions which specifically call for the employers to put in place all practicable measures to protect the persons employed against inhalation of the dust, fume or other impurity. Moreover, specific conditions for the usage of internal combustions engines are dictated such as the need to conduct the exhaust of gases from the engine into the open air; and to partition the rooms so that any injurious fumes from are not shifted to other persons other than those attending to the engine.

Source: §6-60 of the Factories Ordinance, 1942

## Free Protection

Different provisions under the Factories Ordinance, 1942 require the employer to provide free protective equipment (breathing apparatus, eye protection glasses, exhaust appliances) to the worker whose work involves exposure to wet or injurious substances.

Source: §32, 51, 53 & 58 of the Factories Ordinance, 1942

## Training

The Factories Ordinance requires that no young worker (under the age of 18 years) is allowed to work on a machine unless he has been fully instructed about the dangers involved in operating the machine, has received sufficient training in that regard and is working under supervision of an experienced and knowledgeable worker.

Source: §26 of the Factories Ordinance, 1942

## Labour Inspection System

Labour Inspection system seems quite in line with the provisions of C081 as Sri Lanka became the first South Asian country to launch the Labour Inspection System Application. The system allows the Labour Ministry to better coordinate its labour administration institutions in country's 56 labour department offices. The Industrial Safety Division works under the Department of Labour to ensure safety, health and welfare of workers at the workplace by registering factories and conducting routine inspections. Labour Inspection system is provided under various sections of Factories Ordinance.

The inspector has the power to enter the work premises; take samples for investigation; carry out investigations on accidents or dangerous occurrences; and issue improvement or prohibition notices until elimination of risk or its reduction to a suitable level.

# 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

**Sri Lanka 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 benefit may not be paid during the first 3 days of your absence. Minimally, a worker should be entitled to an income during 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:

- Shop and Office Employees Act, 1954
- Workmen's Compensation Ordinance, 1934

## Income

In accordance with the Shop and Office Act, every worker certified by a medical practitioner is entitled to a paid sick leave (sickness benefit) for a period of 07 days (in a 12-month period) for private business, ill-health or any other reasonable cause. These are generally known as casual leave. Casual leave is normally availed from one-half day to one or more days at a time. This does not include a case of prolonged ill health.

The Employment of Trainees (Private Sector) Act contains specific provision for medical leave due to ill health. A trainee is entitled to seven days of sick leave with full allowances payable to him, for a period, or aggregate of periods, if the application for leave is supported by a medical certificate issued by a registered medical practitioner.

Source: §6(3 & 4) of the Shop and Office Employees Act; §6 of the Employment of Trainees (Private Sector) Act

## Medical Care

Medical benefits are available for all citizens free of charge. Members are eligible to avail medical benefits through Shramasuwa Rekawarana" Hospitalization Medical Scheme. Employee Trust Fund Act requires employer to remit 3% of earnings of each employee to the Fund monthly, before the last working day of the following month, for members to enjoy various benefits above benefits.

The hospitalization scheme allows members to get hospitalization expenses reimbursed. Members are eligible to claim costs of treatment subject to 25,000 rupees in a year (maximum amount during employment period: 50,000 rupees), subject to conditions applicable to the scheme (contributions must have been paid for at least 5 years).

Source: ISSA Country Profile; [http://www.etfb.lk/sub\\_pgs/ben\\_statutory\\_eligibility.html](http://www.etfb.lk/sub_pgs/ben_statutory_eligibility.html)

## Job Security

Employment of a worker is secure during the period of his/her sick leave of 07 days.

Source: §6(5) of the Shop and Office Employees Act



## Disability / Work Injury Benefit

Work injuries are divided into four categories: (i) permanent total incapacity (ii) permanent partial incapacity (iii) temporary incapacity and (iv) fatal injury leading to death of a worker. The compensation to the injury depends on a worker's wages. Work injury benefits are provided to the worker with at least 06 months of employment and the minimum qualifying period for a temporary disability is 03 days.

In the case of permanent total incapacity/disability, amount of compensation is paid as a lump sum according to the wage category of a worker. The minimum permanent disability benefit is 196,083.80 rupees while the maximum disability benefit is 550,000 rupees. Employees' Trust Fund Board also provides benefits in the event loss of employment due to permanent disability. The benefit is subject to a ceiling of 200,000 rupees depending on the degree of disablement. A worker qualifies for this benefit only when disability is found to be more than 50% and employer certifies that the employment has ceased due to disability.

In the case of permanent partial disability, amount of compensation depends on the assessed degree of disability. In the case of temporary disability, 50% of the wages are paid for up to five years. After six months, benefit can be paid as lump sum. Minimum temporary disablement benefit is Rs. 1,320 while the maximum benefit is Rs. 5,500.

In the case of fatal injury, dependents (widow, children, widowed mother) receive survivors' benefit as a lump sum amount in accordance with the wage class/category of a worker. The minimum survivors' benefit is Rs. 196,083.80 while the maximum survivors' benefit is Rs. 550,000.

The funeral cost is deducted from the survivors' benefit and is paid to the person who incurred such expenses. It can't be greater than:

- (i) Rs. 10,000 if the compensation does not exceed Rs. 200,000;
- (ii) Rs. 15,000 if the compensation does not exceed Rs. 300,000; and
- (iii) Rs. 20,000 if the compensation does not exceed Rs. 500,000.

Source: §6, 12, Part III& Schedule IV of Workmen's Compensation Ordinance, 1934; ISSA Country Profile for Sri Lanka 2014;[http://www.etfb.lk/sub\\_pgs/ben\\_statutory\\_eligibility.html](http://www.etfb.lk/sub_pgs/ben_statutory_eligibility.html)

# 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).

**Sri Lanka has not ratified the Conventions 102, 121, 128, 130 & 168.**

## *Summary of Provisions under ILO Conventions*

In the normal circumstances, the pensionable age may not be set higher than 65 years of age. If 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". 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 has a right to unemployment benefit 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 a gainful employment, before 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:**

- Employees' Provident Fund Act, 1958
- Employees' Trust Fund Act, 1980

## **Pension Rights**

Insured workers are eligible for old age benefit (pension) when they reach the age of 55 years (50 years for women workers), or when they retire from the covered employment and join public service, on the marriage of an employed women, on emigrating from Sri Lanka permanently, on permanent disability or on the closure of a workplace by government orders. The required contribution by dividend is at least 10 years.

The amount of old-age benefit is a lump sum of employee and employer contributions plus interest. Dividend benefit is 1,000 rupees per year.

Under the Employees' Provident Fund Act, an employee's contribution is 8% of his/her total earnings while employer's contribution is 12% of worker's earnings. Employer is required to remit 20% of the total employee earnings to the EPF department of the Central Bank of Sri Lanka before the last day of the next month.

Source: §10 & 23 of Employees' Provident Fund Act, 1958

## **Dependents' / Survivors' Benefit**

The laws provide survivor benefit to nominee or legal heirs if the fund member dies before retirement. The benefit is paid to one or more eligible survivors as a lump sum of the total employee and employer contributions plus interest.

Source: §25 of the Employees' Trust Fund Act, 1980

## **Unemployment Benefits**

No provision in law for unemployment insurance and benefits.

## **Invalidity Benefits**

The Employees' Trust Fund Act, 1980 provides for invalidity benefit in the case of non-occupational accident/injury/disease resulting into permanent invalidity. The benefit is paid as a lump sum of the total employee and employer contributions plus interest. The worker must be assessed with a permanent and total incapacity for work.

Source: §24 of the Employees' Trust Fund Act, 1980

# 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.

**Sri Lanka has ratified both Conventions 100 & 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 the clear matching of pay and position should be in place and to help prevent wage discrimination.

Not clearly provided in ILO Conventions. However, sexual intimidation/harassment is gender discrimination.

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:**

- The Constitution of Sri Lanka 1978, amended up to 2015
- Factories Ordinance, 1942
- Penal Code, 1885

## **Equal Pay**

In accordance with the Constitution of Sri Lanka, all persons are equal before the law and entitled to equal protections of the law. It also prohibits discrimination on the ground of sex besides many other grounds. However, neither in Constitution nor in Labour Laws, we find a provision requiring equal pay for work of equal value.

Source: §12 of the Constitution of Sri Lanka 1978

## **Sexual Harassment**

In accordance with the Sri Lankan Penal Code, unwelcome sexual advances by a person of authority in a working place are considered sexual harassment. The perpetrator of harassment may be punished either with imprisonment up to a term of five years, or with fine, or both. He/she may also be ordered by the court to pay an amount, as determined by the court, to the victim of harassment for injuries.

Source: §345 of the Penal Code of Sri Lanka, 1885

## **Non-Discrimination**

In accordance with the Constitution, there cannot be any discrimination on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any one of such grounds. There is no special provision in constitution or labour laws to prevent discrimination in employment related matters. Laws also prohibit discrimination against disabled persons in matters of employment as well as workers involved in union activities.

Constitution of Sri Lanka gives every person the right to apply to the Supreme Court in respect of violations of fundamental rights by the State (executive action). It is not clear whether individuals can obtain redress with respect to discrimination by the private sector employers.

Source: §12 & 17 of the Constitution of Sri Lanka 1978

## Equal Choice of Profession

In accordance with the Sri Lankan Constitution, every citizen is entitled to the freedom to engage by himself or in association with others in any lawful occupation, profession, trade, business or enterprise. However, certain labour law prohibits employment of women in the same industries as men (especially mining sector).

Source: §14(1)(g) of the Constitution of Sri Lanka 1978; §02 of the Employment of Females in Mines Ordinance, 1937; §86 of Factories Ordinance

# 11/13 MINORS & YOUTH

## ILO Conventions

Minimum Age: Convention 138 (1973)

Worst Forms of Child labour: Convention 182 (1999)

**Sri Lanka has ratified both Conventions 138 & 182.**

### *Summary of Provisions under ILO Conventions*

At workplaces, children may not be forced to perform work that could harm their health and hampers 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 jeopardize 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:

- Employment of Women, Young Persons and Children' Act, 1956
- Shop and Office Employees Act, 1954
- Hazardous Occupations Regulations, 2010

## Minimum Age for Employment

In accordance with provisions of Employment of Women, Young Persons and Children' Act, a child is a person under the age of 14 years.

The Act prohibits employment of children except in those circumstances provided under the Act. Section 10 of Shop and Office Employees Act also prohibits employment of children under the age of 14 years.

According to the Factories Ordinance, normal working hours for workers between 16-18 years should not be more than 12 hours per day. They are not allowed to work between 6 p.m. to 6 a.m. The maximum number of working hours, including overtime, is 60 hours per week.

The Mines and Minerals Law no. 4 of 1973 prohibits young person less than 16 years of age from working underground in any mine. Young workers between 16 to 18 years of age are permitted to work in a mine if they meet the conditions of fitness and criteria listed in the Hazardous Occupations Regulations 2010 issued by the Ministry of Labour.

The Shop & Office Employees Act prohibits the employment of children under the age of 14 years in a shop or office. The Act further states that male children, between the ages of 14 and 18 years, cannot be employed before 6 a.m. or after 6 p.m. except in certain specified types of employment.

The penalty for violation of the Employment of Women, Young Persons and Children' (EWYP&C) Act depends on the offence committed. The fines imposed range from Rs. 5,000 to Rs. 10,000 and imprisonment of at least 12 months or both fine and imprisonment in certain circumstances.

Source: §13 of the Employment of Women, Young Persons and Children' Act, 1956; §10 of the Shop and Office Employees Act, 1954; §67(b) of the Factories Ordinance; §56 of the Mines and Minerals Law no. 4 of 1973



## Minimum Age for Hazardous Work

Employment of young persons under the age of 18 years is prohibited. Government has also issued a list of hazardous occupations/activities where employment of young person is prohibited. Employment of young person is also prohibited at night. The Government has a hazardous work activities list that includes the 51 occupations and/or working conditions in which employing children under the age of 18 years is prohibited. These include slaughtering of animals; manufacture or use of pesticides; production, transport or sale of alcohol; work in liquor bar or casino; manufacturing, transport or sale of explosives; fishing in deep waters; mining or underground work; transportation of passengers or heavy goods; diving; and working at night between 08 p.m. and 06 a.m.

Source: §20(A) of the Employment of Women, Young Persons and Children' Act, 1956; §10(2) of the Shop and Office Employees Act, 1954; Hazardous Occupations Regulations, 2010

# 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.

**Sri Lanka 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:**

- The Constitution of Sri Lanka 1978, amended up to 2015
- Penal Code, 1885

## **Prohibition on Forced and Compulsory Labour**

Forced or compulsory labour is prohibited in the Constitution. The Penal Code also prohibits forced or compulsory labour and considers it a punishable offense.

A person who contravenes the provisions of this section commits an offence and shall, on conviction be liable to imprisonment of not more than 20 years or a fine. However, if a child is involved in forced labour, the perpetrator is liable to either imprisonment of a term not exceeding 30 years and a fine.

Source: §11 of the Constitution of Sri Lanka 1978; §358 of the Penal Code, 1885

## **Freedom to Change Jobs and Right to Quit**

Workers have the right to change jobs after serving due notice on their employer. For more information on this, please refer to the section on employment security.

Source: §31 of the Industrial Dispute Act, 1950

## **Inhumane Working Conditions**

Working time may be extended beyond normal working hours of forty-five hours per week and eight hours a day. The Factories Ordinance states that the normal working hours must not exceed 09 hours per day, inclusive of intervals allowed for meals and rest.

For more information on this, please refer to the section on compensation.

Source: Regulation 6 & 7 of The Shop and Office Employees Act of 1954

# 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)

**Sri Lanka 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 working hours. The list of exclusions for sectors of economic activity and workers in an organization should be short.

Trade unions are entitled to negotiate with employers on term 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 violation 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 organize provided in ILO convention 87.

## Regulations on trade unions:

- The Constitution of Sri Lanka 1978, amended up to 2015
- Trade Union Ordinance, 1935
- Industrial Disputes Act, 1950

## Freedom to Join and Form a Union

The Constitution provides for Freedom of Association and allows workers to form and join Trade Unions.

The Trade Unions Ordinance defines trade union as any association or combination of workmen or employers, whether temporary or permanent, having among its objects one or more of the following objects:

- (a) the regulation of relations between workmen and employers, or between workmen and workmen or between employers and employers; or
- (b) the imposing of restrictive conditions on the conduct of any trade or business; or
- (c) the representation of either workmen or employers in trade disputes; or
- (d) the promotion or organization of financing of strikes or lock-outs in any trade or industry or the provision of pay or other benefits for its members during a strike or lock-out and includes any federation of two or more trade unions.

A trade union must get registered within three months of commencement, however extension up to six months can be granted. The prescribed application form, signed by at least seven persons, is submitted to the registrar along with a copy of the rules of the trade union and a statement of the following particulars, namely: the names, occupations and addresses of the members making the application; the name of the trade union and the address of its head office; and the titles, names, ages, addresses and occupations of the officers of the trade union.

If the objects, rules and constitution of the union do not conflict with any of such provisions, the Registrar issues the certificate of registration the union. The union can be prosecuted for non-compliance with the requirements.

The Industrial Disputes Act considers it an unfair labour practice if workers are coerced/forced by the employer to join or refrain from joining a union as a condition of employment. Similarly, an employer cannot discriminate against a worker in any aspect of employment due to the worker's participation in trade union activities. A person above the age of 21 but under the age of 16 years may become a union member.

In Sri Lanka, there are 2,074 registered trade unions, of which 54.5 per cent are in the public sector, 27.5 per cent in public corporations and 18 per cent in the private sector. The number of members covered by the trade unions amount to 9.5 per cent of the total workforce of Sri Lanka. While several unions are affiliated to the Global Union Federations (GUFs), there are four unions that are affiliated to the

International Confederation of Trade Unions (ICTU). The ICTU members being: Ceylon Workers Congress (CWC), Sri Lanka Nidahas Sevaka Sangamaya (SLNSS), National Trade Union Federation (NTUF) and the National Workers Congress (NWC). Below their reference:

1. Ceylon Workers Congress  
Add: 72, Anada Coomaraswamy Mawatha, Colombo 07  
TP: 94 011-2574528, 011-2574524  
E-mail: cwconline@sltnet.lk
2. National Trade Union Federation  
No. 60, Bandaranayakepura,  
Sri Jayawardenapura Mawatha Welikada, Rajagiriya, Sri Lanka

## Freedom of Collective Bargaining

Industrial Disputes Act provides for collective bargaining. However, the requirement that a union must represent at least 40% of workers at a given workplace seems quite restrictive.

Industrial Disputes Act defines collective agreement as an agreement relating to the terms and condition of employment of workmen in any industry. Collective Bargaining Agreement (CBA) usually provides better benefits to the worker than those provided in the law. If a CBA has provisions which are less favourable than those provided under the law, it cannot be enforced.

The CBA is effective on the date it gets published. It binds the parties, trade unions, employers and workmen referred in the agreement.

A CBA may be concluded for definite or indefinite time period. A CBA of indefinite term may be cancelled by giving a written cancellation notice in the prescribed form sent to the Commissioner and to every other party, trade union and employer.

A CBA must be in writing and signed by either the parties or their representatives.

Source: §5-10 & 32(A)(g) of the Industrial Disputes Act, 1950

## Right to Strike

Sri Lankan law does not explicitly recognize the right to strike however since the Trade Union Ordinance defines what the strike action involves and also prohibits the strike in essential services, it can be implicitly assumed that strike action in enterprises other than essential services is legal and allowed by law if an employer is informed at least 21 days prior to the commencement of the strike in a prescribed manner and form. Compulsory recourse to arbitration and long list of so-called essential services actually restrict the right to strike.

The Trade Unions Ordinance and the Industrial Dispute Act defines strike as the cessation of work by a body of persons employed in any trade or industry acting in combination, or a concerted refusal, or a refusal under a common understanding of any number of persons who are, or have been so employed, to continue to work or to accept employment.

Industrial Dispute is any dispute or difference between employers and workmen or between workmen and workmen connected with the employment or non-employment, or the terms of employment, or with the conditions of labour, of any person.

Source: §32, 48 of the Industrial Disputes Act, 1950; §67 of the Factories Ordinance; §02 of the Trade Union Ordinance, 1935



# DECENT WORK QUESTIONNAIRE



## DECENTWORKCHECK.ORG

Check

Decent Work Check Sri Lanka is a product of WageIndicator.org and  
www.salary.lk



National Regulation exists



National Regulation does not exist

## 01/13 Work &amp; 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 &amp; 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 &amp; 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"/>

- |     |   |   |                          |                          |
|-----|---|---|--------------------------|--------------------------|
| 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<br><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

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- |     |  |   |                          |                          |
|-----|--|---|--------------------------|--------------------------|
| 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

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- |     |   |   |                          |                          |
|-----|---|---|--------------------------|--------------------------|
| 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

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- |     |   |   |                          |                          |
|-----|---|---|--------------------------|--------------------------|
| 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

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- |     |  |   |                          |                          |
|-----|--|---|--------------------------|--------------------------|
| 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.

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

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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

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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

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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"/>

## 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.

Sri Lanka scored 36 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.