

## DECENTWORKCHECK.ORG

Check

Decent Work Check Chile is a product of WageIndicator.org and

www.tusalario.org/chile



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"/>

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

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

Chile scored 41 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.

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## 01/13 Work &amp; Wages

**Regulations on work and wages:**

Labour Code, 2002 (last amended in 2017)

**Minimum Wage**

The Chilean Constitution allows the President to legislate on determining the minimum wage and its increases for the private sector workers. In accordance with the labour code, minimum wage is the lowest monthly amount a worker may receive for his/her work. For part time workers, their wages must be proportional to the minimum wage. Wages may be determined per unit of time (hour, day, week, fortnight or a month) or by piece or work. Wages can also be determined through collective bargaining agreements but they cannot be less than the national minimum wage rates. Minimum wage is set by the Chilean government through a Decree. However, in practice, the government decision is based on the recommendations of a Committee composed of worker, employer and government representatives. The minimum wage in Chile differs on the basis of age and paid or unpaid remunerative activity. There is no sectoral, occupational or regional minimum wage in Chile. Labour code or Constitution does not specify the criteria that should be taken into account while determining minimum wage rates.

Remuneration for apprentices is freely organized by the parties and may be fixed as an amount under the minimum wage rate.

Compliance with minimum wage along with other provisions of Labour Code is ensured by the Labour Inspectorate, part of the Labour Directorate, which works under the Ministry of Labour and Social Welfare. A labour inspector may impose fines on infringement of labour code provisions including minimum wages.

Source: §65(4) of the Constitution of Chile 1980 with amendments through 2014; §41-44 & 81 of the Labour Code 2002; §1 of the Law No. 20.689 on Resetting the Monthly Minimum Wage

**Regular Pay**

Wages means the consideration in cash and in kind to be paid to the employee by the employer according to the employment contract, excluding meal, transportation and travel allowances, family benefits, etc. It may constitute the following:

- a) Salary, or basic salary;
- b) bonus, which consists of the remuneration of overtime work;
- c) commission, which is the percentage of the sales or purchase price, or the amount for other operations, the employer conducted in collaboration with the worker;
- d) participation, which is the share in the profits of a particular business or enterprise or just the one or more sections or branches thereof; and
- e) gratification, paid by the employer to the worker for good work

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The remuneration may be fixed per unit of time, day, week, fortnight or month or by the piece, measure or work. In any case, the unit of time may not exceed one month (payment interval). The monthly amount of the salary may not be lower than the minimum wage rate established by the law. For part time workers, their wages must not be less than the minimum when calculated proportionally.

Salaries must be paid in legal tender either by cheque or bank deposit. However, expatriate employees may be paid in foreign currency. The employer must provide payment slip to the worker which states the amount paid in the manner as determined and deductions made. Remuneration must be paid on a working day, from Monday to Friday, in the place where the worker provides services and within one hour of completion of the work. The parties may agree on other days or hours of payment.

In kind allowances are permitted but only as an increase of the remuneration in cash.

Source: §41-45, 54-56 & 151 of the Labour Code 2002

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## 02/13 Compensation

### Regulations on compensation:

Labour Code, 2002 (last amended in 2017)

### Overtime Compensation

Normal working hours are 45 hours per week (distributed over a five or six-day week). Hours worked in excess are paid as overtime. Overtime is the work that exceeds the limits of normal working hours, i.e., 45 hours or the work which exceeds the time agreed between the parties. Overtime may only be agreed to meet temporary needs or situations of the company including force majeure, avoiding of injury or accident, prevention and control of imminent accidents, and machinery repair. Such agreements are made in writing and have a transitional validity not exceeding three months, and may be renewed by agreement of the parties. However, even in the absence of such agreement, hours worked in excess of normal working hours are considered overtime work. In the tasks which, by their nature, do not harm the health of workers, overtime may be agreed upon up to 2 hours per day. Law does not define weekly or quarterly or yearly limits on overtime work.

The overtime is paid at the premium rate of 150% of the salary agreed upon for the normal working day and shall be settled and paid together with the ordinary remuneration of the respective period. On agreement between the parties, workers can opt for a compensatory leave instead of extra compensation for overtime.

Source: §22 & 29-32 of the Labour Code 2002

### Night Work Compensation

Night work is the work performed between 22:00 and 07:00 of the next day. Normal salary is paid for night work as no statutory night work related salary benefits are identified.

Source: §18 of the Labour Code 2002

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## Compensatory Holidays/rest days

In extraordinary circumstances, workers may perform work on weekly rest days and public holidays. The employees working on Sundays and public holidays get a compensatory day off in lieu of the rest day during the following week. However, the labour code states that at least two rest days per month should be enjoyed on Sunday.

The rest periods may be granted to the whole staff or in shifts. It is also relevant to mention here that January 01, May 01, September 18 & 19 and December 25 are mandatory holidays and no worker may be asked to work during these days. There are certain exemptions however and workers employed in Clubs and restaurants; establishment of entertainment such as cinemas, live entertainment, nightclubs, pubs, cabarets, casinos and other gambling venues legally authorized and sale of fuel, pharmacies and emergency pharmacies may be required to work on these days. These establishments must comply with the shifts set by the health authority.

Source: §38 of the Labour Code 2002

## Weekend/Public Holiday Work Compensation

Earlier there used to be no compensation for working on a weekly rest day. However, with an amendment in Labour Code in 2015, the law now provides for a premium rate of 130% of normal hourly rate for hours worked on a weekly rest day. There is no provision of premium pay for working on public holidays.

Source: §38 of the Labour Code 2002



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**03/13 Annual Leave & Holidays****Regulations on annual leave and holidays:**

Labour Code, 2002 (last amended in 2017)

**Paid Vacation/Annual Leave**

The Labour Law provides for annual leave to all workers on completion of one year of service. Workers are entitled to a fully paid annual holiday of fifteen (15) working days. Workers who provide services in the XII Region of Magellan and Antarctic Chile, in the Eleventh Region of Aysen del General Carlos Ibanez del Campo, and in the Province of Palena, are entitled to an annual holiday of twenty working days.

The annual leave is granted preferably in spring or summer, considering the requirements of work. Length of annual leave increases with the length of service. Every worker with ten years of work, for one or more employers, continuous or not, is entitled to an additional day of holiday for every three years of service, and this excess leave can be negotiated individually or through collective bargaining. For annual leave purposes, Saturday is considered part of annual leave.

The holiday must be continuous, but the excess of ten working days may be split by mutual agreement. Compensation in lieu of annual leave is considered null and void. If the employment contract expires before a worker could acquire the right to annual leave, compensation for leave is made in proportion to the number of months and numbers of hours worked in a week. Annual Leave may be accumulated and may be enjoyed continuously up to two consecutive periods. Splitting of annual leave is allowed however one period must not be less than 10 working days. During the annual leave, workers with fixed remuneration are paid their full wages. Workers with variable remuneration receive an average of the gains in the last three months worked. If workers are paid with salary and variable allowances, annual leave benefit consists of the sum of the former and the average remaining.

Source: §67-73 of the Labour Code 2002

**Pay on Public Holidays**

Public holidays are paid rest days, and generally same rules are applicable on them as on weekly rest days. These are both religious (of Christian origin) and memorial in nature.

The public holidays in Chile are usually 15 in number. Public Holidays in Chile are January 1st (New Year's Day), April 22nd and 23rd (Good Friday, Holy Saturday), May 1st (Labour Day), May 21st (Navy Day), June 29th (Saints Peter and Paul's Day Holiday), July 16th (Lady of Carmen Day), August 15th (Assumption Day), September 18th (Independence Day), September 19th (Army Day), October 12th (Día del Descubrimiento de los Mundos), October 31st (Reformation Day), November 1st (All Saint's Day), December 8th (Immaculate Conception Day), December 25th (Christmas Day) and the day of elaboration of the official census.

Source: §35 of the Labour Code 2002; Law No. 2,977; Law No. 3,810; Law No. 18,432; Law No. 19,790; Law No. 19,668; Law No. 19,973; Law No. 20,148; Law No. 20,299; Law No. 20,629

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## Weekly Rest Day

The Sunday (one day) is considered as the weekly rest day which begins at 9 pm of the Saturday and finish at 6 am of the Monday. Cases of force majeure and workers employed in the following activities are not covered by the provisions relative to the weekly rest:

1. work to repair Cases of force majeure and workers employed in the following activities are not covered by the provisions relative to the weekly rest: 1.work to repair damages caused by force majeure as long as the repair cannot be postponed;
2. work in exploitations that, due to the nature of the processes, technical reasons, or to avoid any detriments against public interest or the industry, require continuity;
3. works that, due to their nature, cannot be performed except in that season or during specific periods;
4. works that cannot be postponed in the interest of the undertaking;
5. in ships;
6. in dock work;
7. in shops and services that work directly with the public,
8. professional athletes.

Source: §35-38 of the Labour Code 2002

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## 04/13 Employment Security

### Regulations on employment security:

Labour Code, 2002 (last amended in 2017)

### Written Employment Particulars

The individual employment contract is an agreement where the employer and employee are mutually obliged; the employee to render personal services as a dependent and subordinate, and the employer to pay a salary for such services. Any service rendered under such circumstances makes the existence of an employment contract presumable.

The employment contract may be individual (between an employer and a worker) or collective (between one or more employers with one or more unions or workers). It can be concluded verbally or in writing, but a written contract must always be signed within 15 days of commencement of employment or within five days, if the employee was hired for a specific task, work or job that takes less than 30 days. In case of the absence of a written contract, terms and condition shall be determined by the employee declaration and a fine against the employer can be applied. The contract must be put in writing, as evidence, within a specified period, to be signed by both parties, and extended in two copies, each being held by a party. Violation of these rules is punishable by a fine.

The employment contract must contain the following information: place and date of its conclusion, the identification of the parties, their nationality, date of birth and of admission of the worker, the nature of and place or city in which the services will be provided, in addition to the amount, form and time of payment of the agreed remuneration, duration and distribution of working hours, term of the contract and all other covenants. Any Modifications of the employment contract should be in writing and signed by both parties on the back of the copies of the same document or attached.

Source: §6-11 of the Labour Code 2002

### Fixed Term Contracts

An employment contract may be concluded for an indefinite term, for a fixed term and for a specific project. Duration of employment contract depends on the duration of project for those workers who engaged for a specific project. Fixed term contracts are not prohibited for tasks of permanent nature. Fixed term contracts may be made for a maximum duration of one year. One renewal is possible, provided that the maximum cumulative duration does not exceed 1 year. For manager or individuals with professional or technical degree, the maximum duration of fixed term contract is two years. If a worker is employed intermittently for 12 months or more under 2 or more FTC within a period of 15 months, there will be a legal presumption of an open ended contract, starting from the first appointment of the worker. A second renewal of fixed term contracts also converts a fixed term contract into an indefinite term contract.

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An employer who engages more than 25 workers must engage 85% of its workforce who are of Chilean nationality.

Source: §19 & 159 of the Labour Code 2002

### Probation Period

There is no provision for probation/trial period in the Labour Code for workers. However, for domestic workers, the first two weeks of work are estimated as probation and during that period the contract may be terminated at will by either party provided they give a notice at least three days in advance, and pay for the time served.

Source: §147 of the Labour Code 2002

### Notice Requirement

Employment of an employee can be terminated by mutual agreement, by resignation of the employee, by the death of the employee, expiration of the term agreed in the contract, the conclusion of the task or work for which he/she was hired and by acts of God. The employer may unilaterally terminate the contracts of executive and senior officers. It can also terminate other employees with justified cause provided in labour code. Just cause may either relates to worker's conduct (engaging in immoral activities at workplace, sexual harassment and bullying) or based on the requirements of the undertaking.

In accordance with the Labour Code, the employer may dismiss without cause (*desahucio*) the domestic staff, person occupying positions of trust and the employer's representatives such as managers, assistant managers, agents or other types of representatives, provided that they have general administrative competence. Dismissal without cause must be carried out in writing, 30 days in advance except if the employer pays the worker cash compensation equivalent to the last monthly remuneration earned. Copy of the notice is sent to the relevant labour inspectorate. In case of dismissal based on the requirements of the undertaking; the worker must be given notice, copied to the relevant inspectorate, at least 30 days in advance. No notice period to be observed if the employee is dismissed for conduct related reasons.

If an employee considers the dismissal to be unjustified, there are two claim procedures that he/she may follow: administrative, which takes place before the labour authority and whose objective is to ensure the payment of cash benefits that worker should have received at dismissal; the other one is the judicial procedure, through which the employee disputes the illegality of the grounds for dismissal and claims payment of benefits and allowances that apply.

Workers who are members of trade union and those who participate in collective bargaining; pregnant women and women up to one year after birth cannot be fired during immunity period. No specific provisions are provided related to redundancies or mass layoffs.

Source: §160-162 of the Labour Code 2002

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## Severance Pay

According to the Labour Code, the workers are entitled to a statutory severance pay (unless an individual or collective agreement is made with more favorable terms) upon dismissal without cause (by way of desahucio) equivalent to 30 days of the last monthly remuneration earned, for each year of service worked and fraction greater than six months. The upper limit is 330 days (11 months' wages) for workers with a contract in force for one year or more. This applies to persons occupying positions of trust and persons representing the employer having general administrative competence. However domestic workers are entitled to a different indemnity.

The same amount is payable to a worker whose contract is terminated on the basis of the requirements of the undertaking, i.e., collective dismissals/economic redundancies. Upon termination of employment, regardless of the reason for termination, domestic workers are entitled to an indemnity to be funded by the employer's contributions to an insured pension.

Dismissals based on the worker's conduct do not give right to severance pay. Similarly severance pay is not payable in the event of termination upon expiry of the agreed term of the contract or completion of the service for which the contract was made, termination due to force majeure or unforeseen event, mutual agreement, resignation or the death of the worker.

Source: §160 & 163 of the Labour Code 2002

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## 05/13 Family Responsibilities

### Regulations on family responsibilities:

Labour Code, 2002 (last amended in 2017)

### Paternity Leave

The Labour Code provides five days of paid leave to the father following the birth of the child. Paternity Leave is paid by the employer. The leave must be utilized within a month after birth.

The Labour Code also provides special leave of 7 consecutive days of paid leave in the event of death of spouse or child, regardless service time and 3 consecutive days of paid leave in the event of death of mother, father, or stillborn child. These leaves are in addition to annual holidays and may be utilized as paternity leave. In the case of marriage, every worker is entitled to five working days of continuous paid leave irrespective of length of service.

Source: §66,195 & 207 of the Labour Code 2002

### Parental Leave

In accordance with the Labour Code, female workers are entitled to the 12 weeks of fully paid parental leave after the regular postnatal period (12 weeks) has ended, with a subsidy ceiling of 66 UF with gross. Female workers may take part-time paid parental leave for up to 18 weeks, in this case they will receive 50% of maternity benefits and 50% of their wages. In order to avail part-time parental leave, a worker must notify the employer and labour inspector in writing through certified mail at least 30 days (10 days in case father is availing parental leave on mother's consent) prior to the expiry of post natal parental leave. Otherwise, full-time parental leave is granted.

Unemployed women workers may enjoy the cash benefit related to postnatal parental leave up to 36 weeks, if:

- i. they are unemployed in the sixth week before confinement;
- ii. they have been affiliated to the Social Security System for at least 12 months or more before the beginning of pregnancy;
- iii. they have paid eight or more continuous or discontinuous monthly contributions as dependent worker within the twenty four months immediately before the starting of pregnancy.

Parental leave of 12 weeks is also provided in case of adoption.

Source: §197bis of the Labour Code 2002; Law No. 20545 of 2011

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

The labour code permits the working mother to leave her work in a number of hours equivalent to 10 ordinary working days per year when the health of a child (under 18 years old) requires personal attention from their parents because of an accident with serious or terminal illness in its final stage, serious illness and likely risk of death. The leave is distributed at her choice on a full or part time work or a combination of both, all of which is counted as effective work. If both parents work, one of them, on mother's consent, can enjoy this leave.

Under a 2016 reform in the Labour Code, the trade unions may conclude agreements with the employer to provide flex-time options to workers with family responsibilities. Employers may conclude such flex-time agreements with young workers who are studying, women, persons with disabilities, or other categories of workers defined by the agreement between the employer and the union.

Source: §199bis and 376 of the Labour Code 2002

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**06/13      Maternity & Work****Regulations on maternity and work:**

Labour Code, 2002 (last amended in 2017)

**Free Medical Care**

In accordance with the law, every working woman is entitled to medical care during her pregnancy and for six months following the birth of the child. Similarly, the child is entitled to the state protection and health check-ups until the age of six years.

Medical care includes medical curative care, examinations and diagnostic and surgical procedures, hospitalization, obstetrical care, treatment, including medication and other care that is necessary at confinement. Beneficiaries may freely choose their health-care professional or the health-care establishment where these services are provided.

Source: §8-9 of the Law No. 18,469 from 1985

**No Harmful Work**

During the period of pregnancy, the female worker who is employed in harmful working conditions and usually occupied in arduous work should be transferred, without reduction in her earnings to the work that is not harmful to her pregnancy. According to the labour code, following tasks are prohibited to the pregnant employees:

- a) force to lift, drag or push heavy weights and manually loading/unloading operations;
- b) physical effort, including prolonged standing time;
- c) night work;
- d) overtime work
- e) menial loading and unloading; and
- f) any other task declares inconvenient in the state of pregnancy by the competent authorities.

Source: §202 & 211-I of the Labour Code 2002



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## Maternity Leave

Female employees are entitled to the paid maternity leave of eighteen (18) weeks duration composed of six weeks before delivery and twelve weeks after it. The father is entitled to a paid leave of five days in case of birth of a child that can be used by choice from the time of delivery. In case of multiple births, the postnatal rest period will increase by seven consecutive days for each child born from second.

Post natal maternity leave may be extended until recovery in case of illness or complication that occurs as a result of delivery and prevents return to work for a period exceeding the postnatal leave. In such case, the organization is responsible for preventive or curative health care. To avail the maternity leave, the worker shall submit a medical certificate to the head of the establishment, company or employer certifying that the pregnancy has reached the period fixed for it.

Source: §195-197 of the Labour Code 2002

## Income

Maternity leave of 18 weeks is a fully paid leave. Maternity benefits are paid to all women in the public and private sectors and to self-employed workers. In case of multiple births, the paid leave is extended by 7 more days for each child after the second one. If the mother dies during confinement or during the postnatal leave period, the father is entitled to the benefits and the leave under the same conditions as were established for the mother. The benefits are paid through the Single fund for family benefits, unemployment benefits, funding subsidies and mother's leave and are financed through a contribution tax as prescribed in the budget.

Source: §195 & 198 of the Labour Code 2002; Decree Law No. 44 and DFL N ° 150, 1981)

## Protection from Dismissals

In accordance with the Labour code, pregnant women up to one year after the end of the maternity leave get special protection against termination of employment. During this period, a woman cannot be terminated without prior authorization of the competent court. Labour code also provides protection from dismissal to the fathers who use the maternity leave of mothers who died during their confinement.

In case of termination in ignorance of a worker's pregnancy, the worker has a right to return to her post by presenting the appropriate medical or midwife's certificate, without prejudice to her entitlement to remuneration for the period during which she remained wrongfully unemployed, if during this time she was not entitled to benefits. The concerned worker must rejoin within a period of 60 working days from the date of her dismissal. These provisions are not applicable to domestic workers.

Source: §201 & 174 of the Labour Code 2002

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### Right to return to same position

There is no specific provision in the labour law regarding a worker's right to return to same position after availing her maternity leave. However, it is mentioned that a worker can't be dismissed during the term of her maternity leave which means that right to return to work is implicitly guaranteed under the law.

Source: §201 of the Labour Code 2002

### Breastfeeding

Female workers are entitled to paid nursing breaks of one (01) hour duration to breastfeed their child(ren) until a child is twenty-four (24) months old. The breast-feeding/nursing breaks are in addition to the normal breaks an employee receives during the working day. For all legal purposes, the time used shall be regarded as time spent in work. Exact timing of breast-feeding/nursing breaks is agreed between the mother and the employer. This right may be exercised by any of the methods below to agree with the employer:

- a) At any time within the working day.
- b) Dividing at her request in two parts.
- c) Postponing or advancing in half an hour, or an hour, the beginning or the end of the working day.

Labour Code further requires companies employing 20 or more workers to provide day-care or nursery services for mothers with children who are under two years. Mothers are entitled to receive payment to cover the cost of transporting their children to and from the day-care or nursery.

Source: §203 and 206 of the Labour Code 2002

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## 07/13 Health &amp; Safety

**Regulations on health and safety:**

Labour Code, 2002 (last amended in 2017)

Social Insurance Law Against Occupational Accidents and Diseases No. 16744, 1968

Decree 594, 2000 on Approving Basic Health and Environmental Conditions in the Workplace

**Employer cares**

Employers are compelled to take all necessary measures to protect effectively the life and health of all their workers by maintaining adequate conditions of hygiene and safety at workplace. Institutions in charge of management and surveillance of professional risks notify the employers about their risks.

Employer must take necessary actions to prevent accidents and occupational diseases and also provide the necessary elements to the workers in case of accident or emergency to timely access adequate medical care, hospital, and pharmaceutical.

Employers must ensure the creation of an OSH joint committees in workplaces with more than 25 workers; the establishment of a Department of Occupational Risk Prevention in workplaces with more than 100 workers; and the provision of an Internal OSH regulation at the workplace.

It is also obligatory for the employer to provide basic first-aid, adequate sanitary equipments, clean drinking water for human consumption, and eating area in the workplace should be isolated from the rest of the workplace. Employers must adopt necessary measures as to ensure hygienic conditions. Depending on the size of the workplace and the extent of the risks, the employer must hire a technician or a professional OSH Officer.

The employers must comply with the OSH measures provided by the National Health Service which can impose sanctions on non-compliance.

Source: §153-157, 184 of the Labour Code 2002; §8 & 14-20 of the Decreto núm. 40 por el cual se aprueba el reglamento sobre prevención de riesgos profesionales; §66-68 of the Law No. 16744;

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## Free protection

Employer must provide workers with safety equipments and implements the necessary protection in accordance to the working conditions, without charging its value from the workers. It is also obligatory for the employer to maintain the personal protective equipment and train workers on its usage.

Employers are punished if they do not fulfill this obligation. The National Service of Health is authorized to close the factories, workshops, mines or any place of work that means an imminent risk for the health of the workpeople or of the community.

Source: §67-68 of the Social Insurance against Occupational Accidents and Diseases; §53-54 of the Decree No. 594

## Training

Employers are required to ensure that workers have been timely provided such information, instructions and training on the risks and dangers they are exposed to in the course of their duties and the related preventive measures. Employers also have the duty to advise and instruct workers about the elements, substances and products used at work, their identification and exposure limits, health hazards, control and necessary preventive measures. Law also requires that workers are informed about the various regulations and standards on health and affray and their applicability to different occupational hazards. Employers who infringe these duties will be punished.

Source: §184 of the Labour Code 2002; §66-68 of the Social Insurance against Occupational Accidents and Diseases; §48 & 110 of the Decree No. 594

## Labour Inspection System

The Department of Labour is responsible for the compliance with the OSH rules. The department of inspection under the Department of Labour contains OSH Unit to serve the purpose.

Inspectors have the power to enter the workplace during the day or night; access all the facilities necessary to ensure inspection; access all the units or work sites; privately interview with workers and deal with the employer to solve problems; and ask for police assistance if necessary.

Inspectors are authorised to order the employer of a micro-company (from 9 to 10 workers) or small company (from 10 to 49 workers), to take measures to comply with OSH legal duties within a maximum of 5 working days, when there is no imminent risk for workers.

The inspectorate has the power to impose financial penalties and to order the immediate cessation of dangerous work that presents an imminent or serious danger to workers' life or health, or when there is work activity which violates labour law provisions. The workers must receive their salary during the closure of the workplace. In case of recidivism, inspectors have the power to close the workplace for up to 10 days.

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If acting within the scope of their powers the labour inspectors note a violation of fundamental rights, the inspector must denounce the facts to the appropriate tribunal and accompany the complaint with an audit report.

The Directorate of Labour must inform the respective Agency Manager about all the violations or deficiencies in health and safety, which are detected in the audits that companies practice. A copy of this communication is sent to the Superintendent of Social Security. The Health Services fix in every case the reforms or minimal measurements of hygiene and safety that is advisable for health of workers. For this purpose, they may arrange officials visit to respective establishments in the hours of their own choice, and specify the period within which these reforms should be carried. This visit may be motivated by a complaint made by any person to report the existence of a fact or circumstance which put serious risks to the health of workers. Grave infringements can lead to the removal of the enterprise from the Company Register.

Source: §183-184 & 190-191 of the Labour Code 2002

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**08/13 Sick Leave & Employment Injury Benefits****Regulations on sick leave & employment injury benefits:**

Labour Code, 2002 (last amended in 2017)

Social Insurance Law against Occupational Accidents and Diseases No. 16744, 1968

**Income**

In case of illness or accident, the employee is entitled to a paid leave for the period indicated in the corresponding medical certificate. Law does not define the period of sick leave. Law does not limit the number of sick days an employee can take. Sickness benefits are paid retroactively from the first day if the sick-leave period is longer than 10 days; from the fourth day if the sick-leave period is shorter than 10 days. The employer is not required to pay benefits for the first three days, unless established under a collective agreement. Sickness benefits are paid for the whole period of sick leave.

The Law provides sickness benefits to the employees with at least six months of contributions, including at least three months of contributions in the last six months. In case of contract workers, the contribution should be at least six months including at least 30 days of contributions in the last six months and for self-employed persons the contribution should be at least 12 months with at least six months of paid contributions in the last 12 months. If incapacity results from an accident, qualification conditions do not apply.

A 1984 Supreme Decree (No. 3) recognizes a worker's right to sick leave based on doctor's order. In such absence, the worker is paid his daily wage by the health insurance provider.

Source: ISSA Country Profile

**Job security**

Employment of a worker is secure during the period of sick leave. The employment contract is suspended for absence due to illness supported by a medical certificate. The employment contract remains in force, but the employer suspends payment of salary and the employee instead receives compensation from the health insurance company.

Employment contract can be terminated during sick leave period only on the basis of worker's conduct established in article 160 of the Labor Code.

Source: §161 of the Labour Code 2002

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## Medical Care

Law provides medical benefits to the insured workers. For health benefits, employees may choose between a public health system, financed by a contribution of 7% of the employee's salary; or a private system under which the employee affiliates to a private health insurance company (ISERE). The minimum contribution is similar to that of the public health system.

In public system, public or private health institutions and professionals registered with the National Health Fund provide benefits including general and specialist care, periodic medical examinations, hospitalization, medicine, dental care, and maternity care. There is no cost sharing for general care, nor for low-income persons, beneficiaries of social assistance pensions or family allowances, or persons older than age 60. In private system, the insured person signs a minimum 12-month contract with a private health institute and may choose among open, closed, or preferred doctor plans. Benefits, as well as cost sharing, vary by contract but must be at least equal to those provided by the public system.

Work accident and occupational disease benefits are financed by employers through a basic contribution equivalent to 0.95% of monthly salaries. The medical care allowance is be paid for the duration of the treatment, from the day the accident or illness is found, to cure affiliate or invalidity. The maximum duration of the grant period is 52 days, which may be extended to 52 weeks more when needed for better treatment of the victim or to meet their rehabilitation. If the victim in unable to heal or rehabilitate after 52 weeks or 104 weeks, the patient is presumed having a disability status.

Source: §181 & 209-211 of the Labour Code 2002; §31 of Social Insurance Against Occupational Accidents and Diseases; ISSA Country Profile

## 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.

There is no minimum qualifying period for access to benefits under work injuries. Accidents that occur while commuting to or from workplace to employees' home are covered.

In the case of permanent total incapacity/disability, i.e., with at least 70% of the assessed disability, the monthly pension is 70% of the base salary. The base salary is equal to average monthly earnings in the six months before the disability began. If the injured worker needs constant attendance to perform daily life functions, disability pension is increased by 30% of the base salary, i.e., 100% of the pension is paid.

In the case of permanent partial incapacity, for an assessed degree of disability of 40-69%, monthly pension is 35% of the base salary. If the assessed degree of disability is 15-39%, a lump sum of up to 15 months of salary is paid.

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In the case of temporary disability, workers receive temporary disability benefit is equal to average monthly earnings in the three months before the disability began. The temporary disability benefit is paid for 12 months (may be extended to 24 months)

In the case of fatal injury, survivors' benefits are paid to the dependents (spouse, children younger than 18 years/24 years for students, no age limit for disabled children). 50% of the permanent disability pension the deceased received or was entitled to receive is paid to the widow older than 44 years (not age limit if disabled or caring for a child) or to a widower (with a disability). The amount of spousal benefit rises to 60% if there are no eligible children. This benefit ceases on remarriage and a lump sum of two years of benefit is paid.

The orphan's pension is 20% of the permanent disability pension the deceased person received or was entitled to receive. The benefit is payable to children younger than 18 years (age limit is 24 years for students and no age limit for disabled children). The combined survivors' benefits (spousal and orphan) must not exceed 100% of the disability pension the deceased person received or was entitled to receive.

There is also provision for funeral grant which is up to three times monthly non-remuneration minimum wage, as determined under the law.

Source: §34-41 of Social Insurance against Occupational Accidents and Diseases; ISSA Country Profile



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## 09/13 Social Security

**Regulations on social security:**

Labour Code, 2002 (last amended in 2017)

Unemployment Insurance Law No. 19, 728

Social Insurance Law Against Occupational Accidents and Diseases

**Pension Rights**

Law provides for both full pension and early pension. Full pension is entitled to the workers of age 65 (for men) and 60 (for women). The normal retirement age for insured persons with at least 20 years of contributions is reduced by one to two years for each 5 years of work under arduous working conditions depending on the occupation up to 10 years.

Early retirement is possible if the individual account balance is sufficient to provide a pension of at least 70% of the insured's average wage in the last 10 years or 80% of the PMAS (pensión máxima con aporte solidario). The PMAS is the lowest value of the old-age pension before qualifying for the old-age social security top-up benefit. The PMAS from July 2017 is 309,231 pesos a month.

Employees must finance their retirement pension through the contribution of the 10% of their monthly salary which is to be retained by the employer. Contributions are made to pension funds managed by private entities (AFP), subject to control by government superintendence. All the social security benefits are withheld by employers from employees' salary and paid to the corresponding entities. Such contributions are a tax deduction for employees and are calculated against a salary that is limited to 66 UF (Unidades de Fomento). However, the employee can agree to deposit an amount above the legal limit.

The value of pension depends on the insured worker's contributions plus accrued interest. Under the Social Insurance, worker must be 65 years or older with at least 1020 weeks of contributions (60 years with at least 520 weeks of work for women). Under the social insurance system, workers receive a monthly pension of 50% of the base wage plus 1% of the wages for each 50-week period of contributions exceeding 500 weeks. Minimum pension is guaranteed by the government under the social assistance program. Under the Social Assistance Program, a basic old age solidarity pension (Pensión básica solidaria de vejez) of 104.646 pesos a month is paid from July 2017.

Source: ISSA Country Profile

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### Dependent's/Survivors' Benefit

Social Insurance law provides for survivors' benefit to the dependents including widow/widower (married to the insured person for at least six months or at least three years if the insured person was a pensioner), the mother of the deceased's extramarital children, children under the age of 18 years/ 24 years if students (no age limit if disabled), and parents (if there are no other eligible survivors). A survivors' pension is payable provided that the deceased worker was a pensioner or had qualified for a disability pension or an old age pension.

A monthly survivors' benefit of 50% of the deceased worker's old age or disability pension is paid to the widow older than age 55 or a widower with a disability. If there are no eligible children, the pension increases to 60% of the deceased worker's pension. The widower can get pension only if he is disabled and his pension is 60% of the disabled pension. The survivors' benefit for the widow ceases on remarriage. A widow younger than 55 years receives a lump sum of two years of pension. 20% of the deceased worker's pension is paid to each orphan until age 18 years (24 years for students and no age limit if disabled). This percentage rises to 50% in the case of full orphans. There is also a provision of funeral grant of up to three times the minimum monthly non-remuneration wage is paid to the relative arranging the funeral of the deceased worker.

Source: §43-49 of the Social Insurance Law Against Occupational Accidents and Diseases; ISSA Country Profile

### Unemployment Benefit

There are two unemployment benefits systems in Chile. Employment related system funded by the Government through the Unified Family Allowances and Unemployment Fund and mandatory individual severance account system, started in 2002, with contributions for the worker (0.6% of the monthly earnings) and employer (2.4% of the payroll of which 1.6% goes to the insured worker's individual account and 0.8% to the Solidarity Severance Fund).

In general terms, in case of indefinite labor contracts, the insurance contribution is shared by employee and employer. For contracts where a fixed-term is agreed, the contribution must be borne by the employer only. This insurance is applicable to workers employed under employment contract and the worker must be subject to the Labor Code. The insurance does not apply to the servants working in a private residence, employees hired under an apprenticeship agreement, employees under 18 years of age, independent workers and pensioners receiving a total disability or old age pension.

The employer must communicate the commencement or termination of the employee's services to the Corporation Manager of the Unemployment Insurance within 15 days of the occurrence. For employment related benefits, worker must be involuntarily unemployed with at least 12 months of contributions in the last two years. For individual severance account system, worker must be involuntarily unemployed with at least 12 months of contribution (6 months for fixed term contract workers).

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The unemployment benefit under the employment related system is paid for the period of one year. Its amount is 17,338 pesos per month (for first 90 days), 11,560 pesos per month (from 91 to 180 days) and 8,669 pesos per month (from 181 to 360 days). Beneficiaries continue to receive family allowances, maternity benefits, and medical benefits during unemployment period. Under the individual severance account system, the unemployment benefit is paid for the first five months of unemployment. The calculated monthly benefit is paid at 100% during the first month reducing to 90%, 80% and 70% in the following 3 months. In the fifth month, the remaining balance of individual account is paid to the worker.

Source: §94 & 177 of the Labour Code 2002; ISSA Country Profile

### Invalidity Benefits

Disability pension is paid for permanent total disability (loss of at least 66% of normal earnings capacity) if the disability is caused by a non-work related illness/accident. For partial disability, a worker must be assessed with a loss of at between 50-65% of earning capacity. Coverage is extended for up to 12 months after employment ceases if the insured has six months of contributions in the last year of employment. The invalidity pension is equal to 70% of the average income over the past 10 years for contributing employees. The partial disability income is 50% of the average income over the past 10 years for contributing employees.

Under the Social Insurance System, a worker must be assessed with total (loss in the earnings capacity of at least 70%) or partial disability (loss in the earning capacity from 30-69%). The worker must also have 50 weeks of contributions to avail benefits under this system. For total invalidity, worker receives a monthly pension of 50% of the base wage plus 1% of wages for every 50-week period of contributions exceeding 500 weeks. For a partial disability, 50% of the total disability pension is paid.

A basic disability solidarity pension of 104.646 pesos per month is also paid under the social assistance system for Chilean residents of age 18 to 64 years who are ineligible for pension.

Source: ISSA Country Profile 2015

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## 10/13 Fair Treatment

**Regulations on fair treatment:**

Labour Code, 2002 (last amended in 2017)

**Equal pay**

The Constitution supports the principle of equal pay for equal work for all the workers without any discrimination on the basis of gender. In accordance with the Labour Code, the employer must comply with the principle of equal pay between men and women who do the same job. The exception may exist provided difference in their skills, qualifications, suitability, accountability or productivity.

Source: §19(16) of the Constitution 1980 with amendments through 2014; §62bis of the Labour Code 2002

**Sexual Harassment**

Labor relations must always be based on a treatment consistent with the dignity of the person. Sexual harassment is an improper behaviour, by any means, requirements of a sexual nature, without consent by the recipient and that threatens or impairs their employment situation or their employment opportunities. Labour harassment or mobbing is also defined as any conduct that constitutes harassment or repeated aggression exercised by the employer or by one or more workers, against one or more other employees, by any means, and that results for those affected or their impairment, abuse or humiliation, or that threaten or harm their employment status or employment opportunities.

The employer incurring in mobbing behaviors entitles the employee to sue his constructive dismissal before the Courts of Justice. In case of sexual harassment, the affected person has to make his claim in writing to the address of the company, establishment or service or to the respective Labour Inspectorate. After receiving the complaint, the employer takes the necessary safeguard measures regarding those who involved, such as the separation of the physical spaces or redistribution day time, considering the seriousness of the charges and the opportunities arising from working conditions.

If a worker is forced to terminate the employment contract due to the abuse of power (constructive dismissal) as provided under art. 171 of Labour Code, the employee may submit the matter before labour court to receive the severance pay from employer at an increased rate (150% of the normal rate) together with compensation for moral damages and loss of earnings. An offender who commits sexual harassment can be fired without right to any severance pay.

Source: §02, 160, 171 & 211(A-E) of the Labour Code 2002

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## Non-discrimination

Labour Code strictly prohibits acts of discrimination including distinctions, exclusions or preferences based on of race or ethnicity, nationality, socio-economic status, language, ideology or political opinion, religion or belief, unionization or participation in trade union organizations or lack thereof Sex, sexual orientation, gender identity, marital status, age, affiliation, personal appearance and illness or disability, which have the effect of nullifying or impairing equality of opportunity or treatment in employment and occupation. However, distinctions, exclusions or preferences based on the inherent requirements of a particular job are not considered as discrimination. Article 194 of the Labour Code prohibits discrimination on the grounds of pregnancy. Another law prohibits discrimination on the ground of HIV-AIDS.

The Constitution also forbids any form of discrimination and establishes that all people are equal before the law.

Moreover, the law on inclusion of persons with disabilities in the world of work requires that public and private sector institutions employing 100 or more workers should engage 1% of their workforce from persons with disabilities.

Source: §19 of the Constitution 1980 with amendments through 2014; §02 & 194 of the Labour Code 2002; Law No.20.422

## Equal Choice of Profession

Women can work in the same industries as men as no restrictive provisions could be located in the laws. But special care must be taken in manual handling of load. Women with less than 18 years of age cannot carry, transport, upload, drag or manually push weight over 20 kg without mechanical aid.

Source: §211(J) of the Labour Code 2002

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## 11/13 Minors & Youth

### Regulations on minors and youth:

Labour Code, 2002 (last amended in 2017)

### Minimum Age for Employment

Minimum age for employment is 15 years. All children under 18 years of age and over 15 years of age may conclude labor contracts only for light work that does not harm their health and development, provided they have express permission of a parent or guardian. They should have completed their compulsory education or be currently enrolled in this. Work and participation in educational or training programs must not hinder their regular school attendance. A Labour Inspector may inform the appropriate family court if the job is too hard for the minor.

All children under eighteen who are currently completing her basic education may not perform work for more than thirty hours per week during the school year and in no case they may work more than eight hours a day. Companies hiring services under eighteen must register such contracts in the respective District Labour Inspectorate. The compulsory education age is 18 years under the General Education Law.

Children below 18 years of age are also restricted from working in cabarets and other similar establishments presenting live shows, as well as those who dispense alcoholic beverages for consumption on site.

Source: §13-15 of the Labour Code 2002; §4 , 25 & 27 of the General Education Law No. 20.370 of 2009

### Minimum Age for Hazardous Work

Minimum Age for Hazardous Work is set as 18 years. Minors under 18 may not be engaged in work that requires excessive force, night work (20:00 - 07:00) or activities that may be hazardous to their health, safety or morality. Also, work is prohibited for minors in cabarets and other similar places that provide live entertainment, as well as in selling alcoholic beverages that are to be consumed in the same establishment.

Minimum age for underground mining is set to be 21 years after going through an aptitude test. Otherwise, a fine from three to eight tax units per months is incurred on the employer and it doubles for repeat offenders.

A 2007 Decree (No. 50) issued under article 13 of the Labour Code has a list of hazardous activities prohibited for children under 18. Generally, it prohibits employment of children in underground work, mining work, underwater work, work in extreme temperature conditions, work at heights (higher than 2 meters from ground), work in establishments dealing with sale and/or consumption of alcohol, and work where the safety of others is the responsibility of the minor.

Source: §14, 15 & 18 of the Labour Code 2002; Decree No. 50 of 2007

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## 12/13 Forced Labour

### Regulations on forced labour:

Labour Code, 2002 (last amended in 2017)

### Prohibition on Forced and Compulsory Labor

Constitution guarantees that "any person has the right to freely contract [for] and to the free choice [of] work, with a just compensation".

Labour Code recognizes the social role that complies with the work and the freedom of individuals to recruit and devote their effort to the lawful work they chose.

Source: §19(16) of the Constitution 1980 with amendments through 2014; §02 of the Labour Code 2002

### Freedom to change jobs and Right to quit

According to the Chilean constitution, every citizen has a right to choose any employment of their choice. If a worker decides to terminate the employment, he/she may resign by giving notice to the employer at least thirty days in advance. For more information on this, please refer to the section on employment security.

Source: §19(16) of the Constitution 1980 with amendments through 2014; §159 of the Labour Code 2002

### Inhumane Working Conditions

Working time may be extended beyond normal working hours of forty five (45) hours per week. However, overtime working hours must not exceed 02 hours a day.

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

Source: §22 & 30-32 of the Labour Code 2002

**Regulations on trade unions:**

Labour Code, 2002 (last amended in 2017)

**Freedom to Join and Form a Union**

The Constitution guarantees the right to unionize with one's own free will (Art. 19.19). Labour code provides for freedom of association and allows workers of private sector and state enterprises to join and form unions, without prior authorization, with the sole condition that they comply with the law.

Unions have the right to establish federations, confederations and join and resign from them. The union membership is voluntary, personal and delegated, no one may be compelled to join a union to perform a job or develop an activity. Similarly, no person may condition employment of a worker to the membership or resignation from a union.

Union members are free to elect their representatives and formulate their work program. They may draw up their own statutes and administrative regulations, as long as these are not contrary to laws in effect.

Union members deposit the original certified constitution of the union and two copies of its statutes certified by the Minister with the Labour Inspectorate, within fifteen days from the date of the initial meeting. Labour Inspection proceeds to enroll in the register of trade unions that will be the effect. The registration of the union is exempted from taxes. After registration the union acquires legal personality

Discriminatory behavior is prohibited for the employer on the basis of union affiliation or participation in union activities.

A 2016 law has created the Fund for Trade Union Training and Collaborative Labor Relations which is administered by the Ministry of Labor and Social Welfare. This fund aims to fund programs and project on union formation, promotion of social dialogue and development of collaborative labor relations between employers and workers.

Source: §19(19) of the Constitution 1980 with amendments through 2014; §212-222 of the Labour Code 2002; Law No. 20.940 of 2016



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## Freedom of collective bargaining

Right to collective bargaining is regulated under Labour Code and employers can reach agreement on various working conditions. Under the Constitution, Collective negotiation with the company for which they work is a right of workers, except in the cases in which the law expressly prohibits negotiation. The law establishes the procedures for collective negotiation and the appropriate procedures for reaching a just and peaceful resolution [by] it. The law also specifies the cases in which collective negotiation must be submitted to obligatory arbitration, which corresponds to special tribunals of experts, having the organization and attributions which are established in it.

Collective bargaining is the process through which one or more employers relate to one or more trade unions or workers to join for that purpose, or with each other, in order to establish common working conditions and remuneration for a certain time, according to the rules contained in the labour code.

The collective contract must be in writing and a copy of this contract must be sent to the Labour Inspectorate within five days following the subscription. Collective agreements must contain at least the following: accurate determination of the parties to those affected; the rules on pay, benefits and working conditions are agreed.

Collective bargaining may take place in the private sector and those in which the state has contributions, participation or representation. There is no collective bargaining in state enterprises under the Ministry National Defense or they relate to Supreme Government through this Ministry and in those in which special laws prohibiting it. Also, no collective bargaining can exist in companies or public or private institutions whose budget in any of the last two calendar years, has been financed more than 50% by the state, directly, or through fees or taxes.

The company must be in business for at least one year before getting into any collective bargaining. Collective bargaining agreements cannot last less than two and not more than four years. It becomes valid from the day following the date of expiry of the previous collective agreement or arbitration award. In case there is no previous agreement, the terms are applicable from the day following the day of subscription.

A new labour law reform bill is under discussion in Chile which brings structural changes to collective bargaining in the country. Currently, all those employees who have powers to represent the employer and are granted with general powers of administration are not entitled to collective bargaining. With the passage of reform bill, this privilege will be limited only to high management positions with explicit powers to represent the employer. The reform bill also expands the union's right to receive regular information on financial and other situation of the enterprise unless it is confidential or strategic information. The bill also incorporates the concept of "trading floor" which becomes the ground for further negotiation on the expiry of a collective bargaining agreement. The Bill also prohibits replacement of workers during strike. The Bill allows intercompany bargaining, i.e., the collective bargaining of a union with many employer once certain conditions are met. The Bill further limits the extent of collective agreements from four years to three years. The minimum term for collective agreements is two years. The above referred bill was finally approved in September 2016 and is now part of the Labour Code.

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A 2016 law created a Superior Labour Council which is tripartite and consultative in nature. The mission of the Council is to collaborate in the formulation of proposals and recommendations of public policies to strengthen and promote social dialogue and a culture of just, modern and collaborative labor relations in the country. The Council has the functions to develop, analyse and discuss proposals and policy recommendations on labour relations and labour market; and propose initiatives to encourage job creation, increase productivity and enhance labour force participation of women, youth, persons with disabilities and other vulnerable workers. The Council has nine members with three members each from government, employer and worker side. Worker and employer members are nominated by their representative organizations. Term of Council is 4 years. The Council is ordinarily required to meet at least once a month.

Source: §19 of the Constitution 1980 with amendments through 2014; §303-344 of the Labour Code 2002; Law No. 20.940 of 2016

### Right to strike

Right to strike is provided under the Labour code. The strike must be approved by an absolute majority of workers respective company involved in the negotiation. It is illegal to declare strike for workers whose stoppage of work may cause serious harm to health, to the supply of utilities for the population, the country's economy or national security. Under the Constitution, "Neither the functionaries of the State nor of the municipalities can declare a strike. Nor can persons working in corporations or enterprises do so, regardless of their nature, objectives or functions, which provide services of public utility or the paralysis of which [would] cause grave damage to health, to the economy of the country, to the provision [of] the population, or to the national security. The law establishes the procedures to determine the corporations or enterprises whose workers will be subject to the prohibition that this paragraph establishes".

Strike is prohibited to the workers of companies that attend public utility, or whose suspension by their nature cause serious harm to the population, the economy or national security.

The employment contract of the workers suspends during the strike due to which worker are not obliged to provide the services or the employer to pay the wages, benefits and royalties to the employees. Workers are allowed to carry out temporary jobs outside the company and may voluntarily make pension contribution or social security in the respective agencies.

Under a 2016 reform in the Labour Code, replacing of striking workers is prohibited. Excessive civil or penal sanctions for workers and unions involved in non-authorized strike actions.

Source: §19 of the Constitution 1980 with amendments through 2014; §345-363 of the Labour Code 2002

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## 01/13 Work &amp; Wages

**ILO Conventions on Work and Wages**

Minimum wage: Convention 131 (1970)

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

***Chile has ratified the Convention 131 only.***

**Minimum wage**

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.

**Regular Pay**

Wages must be paid regularly on a daily, weekly, fortnightly or monthly basis.

## 02/13 Compensation

**ILO Conventions on Compensation**

Compensation overtime: Convention 01 (1919); Night work: Convention 171 (1990)

***Chile has ratified Convention 01 only.***

**Overtime Compensation**

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 Compensation**

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.

**Compensatory Holidays/Rest Days**

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

**Weekend/Public Holiday work Compensation**

If you have to work during the weekend, you 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 you have to work on a public holiday, you 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 your right to a holiday/ rest.

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**03/13 Annual Leave & Holidays****ILO Conventions on weekly rest days and paid annual leave**

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.

***Chile has ratified the Convention 14 only.***

**Paid Vacation/Annual Leave**

An employee is entitled to at least 21 consecutive 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.

**Pay on Public Holidays**

You should be entitled to paid leave during national and officially recognized public holidays.

**Weekly Rest Day**

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

**04/13 Employment Security****ILO Conventions on employment termination**

Convention 158 (1982) on employment termination

***Chile has not ratified the Convention 158.***

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.

**Written Employment Particulars**

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 Contracts**

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

**Probation Period**

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

**Notice Requirement**

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

**Severance Pay**

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).

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## 05/13 Family Responsibilities

**ILO Conventions on family responsibilities**

Convention 156: Workers with Family Responsibilities Convention (1981)

Recommendation 165: Workers with Family Responsibilities (1981)

*Chile has ratified the Convention 156 only.*

**Paternity Leave**

This is for the new fathers around the time of child birth and is usually of shorter duration.

**Parental Leave**

The accompanying recommendation (No. 165) to ILO Convention on Family Responsibilities 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 for looking into measures for improving general working conditions through flexible work arrangements.

## 06/13 Maternity and Work

**ILO Conventions on maternity and work**

An earlier Convention (103 from 1952) prescribed at least 12 weeks maternity leave, 6 weeks before and 6 weeks after. 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.

*Chile has ratified Convention 103 only.*

**Free medical care**

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

**No harmful work**

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

**Maternity leave**

Your maternity leave should last at least 14 weeks.

**Income**

During maternity leave, your income should amount to at least two thirds of your preceding salary.

**Protection from Dismissals**

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

**Right to return to same position**

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

**Breastfeeding/Nursing Breaks**

After child birth and your rejoining your organization, you must be allowed paid nursing breaks for breastfeeding your child.

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## 07/13 Health &amp; Safety

**ILO Conventions on Health and Safety**

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)

***Chile has not ratified the Conventions 81 and 155.***

**Employer cares**

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

**Free protection**

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

**Training**

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

**Labour Inspection System**

You and your colleagues should receive training in all work related safety and health aspects and you should have been shown the emergency exits.

## 08/13 Sick Leave &amp; Employment Injury Benefits

**ILO Conventions on Sickness and Employment Injury**

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

***Chile has ratified the Conventions 121 only.***

**Income/Paid Sick Leave**

Your 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 you 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). You should be entitled to paid sick leave.

**Medical Care**

During illness, you 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.

**Job security**

During the first 6 months of your illness, you should not be fired.

**Disability/Work Injury Benefit**

Whenever you are disabled due to an occupational disease or accident, you ought to 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.

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## 09/13 Social Security

**ILO Conventions on Social Security**

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).

***Chile has ratified the Convention 121 only.***

**Pension Rights**

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.

**Dependent's/Survivors' Benefit**

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.

**Unemployment Benefit**

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 Benefits**

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.

## 10/13 Fair Treatment

**ILO Conventions on Fair Treatment**

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

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

***Chile has ratified both Conventions 100 & 111.***

**Equal Pay**

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.

**Sexual Harassment**

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

**Non-Discrimination**

Your 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)

**Equal Choice of Profession**

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

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**11/13**      **Minors & Youth****ILO Conventions on Minors & Youth**

Minimum Age: Convention 138 (1973)

Worst Forms of Child labour: Convention 182 (1999)

***Chile has ratified both Conventions 138 & 182.***

**Minimum Age for Employment**

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

**Minimum Age for Hazardous Work**

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.

**12/13**      **Forced Labour****ILO Conventions on Forced/Bonded labour**

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.

***Chile has ratified both Conventions 29 & 105.***

**Prohibition on Forced and Compulsory labour**

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

**Freedom to change jobs and Right to quit**

Employers have to allow you to look for work elsewhere. If you do, you should not be shortened on wages or threatened with dismissal. (In the reverse cases, international law considers this as forced labour).

**Inhumane Working Conditions**

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



**13/13 Trade Union****ILO Conventions on Trade Union Rights**

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

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

***Chile has ratified both Conventions 87 & 98.***

**Freedom to join and form a union**

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.

**Freedom of Collective Bargaining**

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).

**Right to Strike**

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.

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## About Decent Work and Decent Work Check

Compare your own situation with the international labour standards and how they are applied in Chile. At the end of the checklist you will see how things stand for you. You may be better off than what the international standards prescribe, but you should not be worse off. Behind every answer, you can find a short explanation of what your rights are; nationally and internationally. So you see right away if you can improve your situation.

The Decent Work Check makes the pretty abstract Conventions and legal texts tangible. Because, in the end, you want to know what your rights on the job mean in practice, what you may claim and what protection you are entitled to in case something unexpectedly does go wrong. The Decent Work Check employs double comparison system. It first compares national laws with international labour standards and gives a score to the national situation (happy or sad face). It allows workers to compare their real situation with national regulations in the country. Workers then compare their own score both at national and international levels. The Decent Work Check is based on de jure labour provisions, as found in the labour legislation. The real practice is informed by the employees themselves. This Check is different from other indices like World Bank's Doing Business Indicators or even ISSA's Social Security Programs throughout the World as it is not only descriptive in nature (bereft of any subjective opinions) but also that it covers a lot of different variables. The Revised Decent Work Check is also designed while taking into account upcoming Decent Work Indicators. While Decent Work Indicators focus more on statistics, our priority is informing workers about their rights through this Decent Work Check. 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 labour inspectors don't even know 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). As soon as you complete the DecentWorkCheck, you see which issues need improvement in your work life.

This is exactly the strategy chosen in the debates in many WageIndicator countries. In the debates with roughly 20-30 people around the table from all sides, the decent Work Check has soon the effect of a mini social dialogue. The people who run the dialogue are equally well informed.

The international labour standards are laid down in ILO-Conventions. ILO is the specialised body of the United Nations working on labour issues and was founded in 1919. In the ILO, negotiations are always going on between governments of the member states, national trade unions and employers associations regarding work related issues like rights at work and social protection. These negotiations may take years, but eventually lead to so called Conventions or Recommendations. In Conventions, minimum standards are laid down. Conventions are not the law, but the intention is that member states subscribe to the standard in question. The proper way to do that is to have these Conventions ratified by parliament and then make national laws (Some countries may follow the system of self-executing treaties). National law can be enforced. ILO-Conventions are usually accompanied by Recommendations on how to implement the standards.

Since 1999, the ILO works according to the so called Decent Work Agenda. In the meantime, the Decent Work Agenda has been widely accepted as an important strategy to fight poverty and foster development. The Agenda has been incorporated in the Millennium Development Goals of the United Nations. In short, the idea behind Decent Work is first of all an income which allows the working individual a good life. Moreover, at work, everybody has an equal chance to develop themselves; working conditions are safe; there is no instance of child and forced/bonded labour; and discrimination does not occur. Trade unions are allowed a real say in work related matters and the state has created a social safety net for all especially for the sick, weak, elderly and expecting women.

**WageIndicator.org and Iftikhar Ahmad**

**18 July, 2017.**