



COLOMBIA

Decent Work Check 2019

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WageIndicator Foundation - www.wageindicator.org

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

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INTRODUCTION

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

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

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

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

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

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

Major Legislation on Employment and Labour

1. Constitution of Colombia 1991
2. Substantive Labour Code (Codigo del Trabajo), Law 2663 of 1950, amended in 2017
3. Law No. 278, the Permanent Commission on the Harmonization of Wage and Labour Policies, 1996
4. Decree relating to the Operation and Structure of the Ministry of Labour, 2003 (No. 205)
5. Law no. 100 (Establishment of Comprehensive Social Security System), 1993
6. Law No. 1823 of 2017
7. Decree No. 16 of 1997
8. Resolution 2013 of 1986
9. Ley núm. 9 del 24 de enero de 1979 por la que se dictan Medidas Sanitarias
10. Decree 1295 of 1994
11. Decree No. 614 of 1984
12. Law 776 of 2002 (Enacting rules on General System of Occupational Hazards)
13. Ley 1636 De 2013
14. Penal Code (Law 599 of 2000)
15. Resoluciones 652 y 1356 de 2012
16. Law 1010, 2006
17. Code for Children and Adolescents, Law 1098, 2006
18. Decisión C-376/10 del Tribunal Constitucional de Colombia
19. Decree 4807 of 2011
20. Law regarding Permanent Commission on the Harmonization of Wage and Labour Policies, 1996 (No. 278)
21. Decree No 4834 of 2010

01/13 WORK & WAGES

ILO Conventions

Minimum wage: Convention 131 (1970)

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

Colombia has ratified the Convention 95 only.

Summary of Provisions under ILO Conventions

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

Regulations on work and wages:

- Constitution of Colombia 1991
- Substantive Labour Code (Codigo del Trabajo), Law 2663 of 1950, amended in 2017
- Law No. 278, the Permanent Commission on the Harmonization of Wage and Labour Policies, 1996
- Decree relating to the Operation and Structure of the Ministry of Labour, 2003 (No. 205)

Minimum Wage

The Political Constitution of Colombia provides for equal opportunities for minimum wage. Labour Code also provides for minimum wage. In accordance with the Labour Code, minimum wage is the minimum remuneration that all workers are entitled to receive to ensure them and their families a decent quality of life in the material, moral and cultural level.

The Permanent Commission on the Harmonization of Wage and Labour Policies sets the monthly minimum wage. The Permanent Commission is a tripartite body with five representatives each from worker, employer and government groups. The Commission is constituted under article 56 of the Colombian Constitution, which requires establishment of a permanent commission, composed of the government, the representatives of employers, and of workers, to promote sound labour relations, contribute to the settlement of collective labour disputes, and coordinate wage and labour policies. A tripartite departmental Subcommittee on Wage and Labour Policy is constituted under the Commission, which works on minimum wage setting. The first date for agreement on minimum wages expires on 15 December. Those who do not agree with proposed minimum wage rate must explain their reservations within 48 hours. The parties are obliged to study these reservations and establish their position within the next 48 hours. The final agreement must be reached on or before 30 December. If the Commission cannot reach a consensus by December 30 of each year, the national government fixes the monthly minimum wage through a decree. The legislation provides that minimum wage can also be determined by collective agreement provided that it cannot be lower than legal minimum wage.

Minimum wage rate is adjusted to ensure decent quality of life for the worker and his/her family in the material, moral and cultural level. Other factors that are taken into account while determining the minimum wage include the cost of living of each region, contribution of wages to the GDP, economic capacity of the undertakings and employers, the inflation rate, and the conditions of each region and activity. Minimum wage for farm workers should take into account facilities the employer provides its employees in regard to accommodation, crops (food), fuel and similar circumstances that reduce the cost of living.

Minimum wage rate is applicable to all without any discrimination on the basis of occupation, or sector or religion. It is adjusted on yearly basis. Compliance with labour

laws (both in public and private sector) including minimum wage ensured through labour inspection system. The Special Unit for Labour Inspection, Vigilance and Control, working under the Ministry of Labour, executes measures of prevention, inspection, monitoring and control in the country. Failure to comply with labour legislation may result in fine ranging between one and one hundred times the current minimum wage rate depending on the seriousness of the offence.

Source: §53 of the Constitution of Colombia 1991; §1, 4, 145-148 & 486 of the Substantive Labour Code 1950, amended in 2017; §1-8 of the Law No. 278 of the Permanent Commission on the Harmonization of Wage and Labour Policies 1996; Decree relating to the Operation and Structure of the Ministry of Labour, 2003 (No. 205)

Regular Pay

In accordance with the Labour Code, wage does not only mean the ordinary remuneration, but all that the worker receives in cash or in kind as a direct compensation for the service rendered.

Article 134 of the Labour Code requires that wage period must not be greater than a week for daily workers and that the monthly workers must be paid once in a month. Wages must be paid in legal tender at the workplace during working hours or immediately after work. Wages are paid directly to the worker or to a person authorized (in writing) by the worker.

Payment of wages in kind, wholly or partially, is permitted as a part of the remuneration and it may consist of food, accommodation or garments to the worker or his/her family. The employment contract expressly provides these allowances however these may not exceed 30% of the minimum wage.

The employer is not allowed to deduct, withhold or offset any amount of salary without worker's consent. The employer is authorised to deduct wages for discounts, union dues, legally authorized savings cooperatives, contribution to compulsory social security, and disciplinary sanctions imposed pursuant to approved Regulation. The employer and employee may agree in writing to grant loans, advances, deductions, withholding of wages or compensation, indicating the deadline for the gradual repayment of debt.

According to the Labour Code, failure in compliance with labour legislation is a criminal offence and leads to fines of between one and one hundred times the current minimum wage rate depending on the seriousness of the offence.

Source: §134-140 & 149-153 of the Substantive Labour Code 1950, amended in 2017

02/13 COMPENSATION

ILO Conventions

Compensation overtime: Convention 01 (1919)

Night work: Convention 171 (1990)

Colombia has ratified Convention 01 only.

Summary of Provisions under ILO Conventions

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

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

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

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

Regulations on compensation:

- Substantive Labour Code (Codigo del Trabajo), Law 2663 of 1950, amended in 2017
- Law No. 278, the Permanent Commission on the Harmonization of Wage and Labour Policies, 1996

Overtime Compensation

Normal working hours are 8 hours per day and 48 hours per week. Other working hours limit or flexible working hours limit can be established by mutual agreement. This normal working hour's limit does not apply on managerial and supervisory workers, intermittent work, domestic workers, in case of hazardous work and emergency situations. Flexible working hours are established in a way that daily working hours are averaged in a week. Minimum of 4 hours per day and maximum of 10 hours per day are distributed over a period of six days per week.

In case of shift work, where nature of activity requires shift work instead of continuous activity, working hours are arranged in a manner so that average working hours for a period of three weeks must not exceed 8 hours per day and 48 hours per week.

In accordance with the Labour Code, overtime work may not exceed 2 hours per day and 12 hours per week. If the daily working hours are scheduled as 10 hours in any day, the performance of overtime work is not permitted in such a day. If a worker works beyond the stipulated working hours, i.e., 8 hours a day and 48 hours a week, he/she is entitled to an overtime pay according to the following schedule:

- 125% of normal hourly rate for overtime work during day hours;
- 175% of normal hourly rate for overtime work performed during night hours.

Source: §161-168 of the Substantive Labour Code 1950, amended in 2017

Night Work Compensation

In accordance with the Labour Code, night work is the work performed between 22:00 to 06:00 of the following day.

Labour Code requires employers to make premium payments to the night workers. A worker employed during night hours, i.e., between 10 pm and 6 am, is paid at a premium rate of 135% of the normal hourly salary paid during weekday except for continuous shift work (36-hours week). In this case, the worker is not entitled to the additional payment for night work. If the night work is performed as overtime, it is paid at the premium rate of 175% of the normal wage rate during the day.

Under the 2017 Labour Code reform, the night surcharge starts from 09 pm instead of 10 pm. The night work is defined as work performed between 21:00 to 06:00 of the following day.

Source: §160 & 168 of the Substantive Labour Code 1950, amended in 2017

Compensatory Holidays / Rest Days

Labour Code has provisions with regard to working on a weekly rest day and a public holiday. If a worker is engaged in work on a weekly rest day or a public holiday, he/she is given the option of a paid compensatory rest and cash compensation. A worker may choose to have a compensatory rest day instead of cash compensation. A compensatory rest can be provided in the following way: in another workday of the following week, to all the personnel of an establishment, or in turns or from noon or 01 p.m. of Sunday to noon or to the 01 p.m. of Monday.

Source: §180, 181 & 183 of the Substantive Labour Code 1950, amended in 2017

Weekend / Public Holiday Work Compensation

Workers may be required to work on weekly rest days and public holidays. In such circumstances when employees have to work during daytime on Public holidays or Sundays, they are entitled to receive wages at a premium rate of 175% of the normal hourly wage rate. A worker may choose between cash compensation and a paid compensatory rest day.

Source: §180 & 181 of the Substantive Labour Code 1950, amended in 2017

03/13 ANNUAL LEAVE & HOLIDAYS

ILO Conventions

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

Colombia has ratified the Conventions 14 & 106 only.

Summary of Provisions under ILO Conventions

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

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

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

Regulations on annual leave and holidays:

- Substantive Labour Code (Codigo del Trabajo), Law 2663 of 1950, amended in 2017

Paid Vacation / Annual Leave

Labour Law provides 15 consecutive working days of paid annual leave (one and two-thirds of a day for every month of service), after completion of 12 months of continuous service. Professional and assistants working in private establishments engaged in the fight against tuberculosis, and those employed in the application of X-rays, are entitled to fifteen (15) days of paid vacation for every six months services (30 days for one year of service). Labour Code does not indicate whether paid annual leave increases with longer service. Amount of benefit during annual leave is equal to the basic salary that he/she was earning the day on which the annual leave started. Payment for annual leave for workers with variable salary is calculated as an average wage earned in a year immediately preceding to the year in which annual leave commences.

Annual leave has to be given to the worker within the year of its entitlement. The employer, in consensus with the employee, determines the schedule of leave with the aim of preserving the effectiveness of worker's rest and of the enterprise's operations. Employer and employee may agree, in writing, on the request of employee to pay holiday allowance to the worker in cash up to the middle of holidays. If a justified interruption in annual leave occurs, the worker loses the right to resume these holidays. Labour Code allows for both accumulation and splitting of annual leave. A worker must enjoy annually 6 working days of annual leave. The parties may agree to accumulate the remaining days of vacation for up to two years (extendable to four years for technicians, skilled workers, management and foreigner workers serving in places different from the family residence). Employers are required to keep a record of workers taking annual leave and the remuneration received by these workers.

Workers are informed at least fifteen days prior to beginning of their annual leave. There is no provision regarding compensation in lieu of annual leave or renouncing or waiving the right to paid annual leave while the worker is still in service.

Source: §186 -192 of the Substantive Labour Code 1950, amended in 2017

Pay on Public Holidays

Workers are entitled to paid holidays during Festival (public and religious) holidays. These are 18 in number. Twelve of these are religious (catholic) holidays while the remaining six are civic holidays.

These days are New Year's Day (January 01), Epiphany (January 06), Saint Joseph's Day (March 24), Palm Sunday (April 13), Holy Thursday (April 17), Good Friday (April 18), Labour Day (May 01), Ascension Day (June 02), Corpus Christi (June 23), Feast of the Sacred Heart/ St. Peter & Paul's Day (June 30), Independence Day (July 20), Battle of Boyacá (August 07), Assumption Day (August 18), Dia de la Raza/Columbus Day (October 13), All Saints' Day (November 03), Independence of Cartagena (November 11), Immaculate Conception Day (December 08) and Christmas (December 25).

However, the holidays of January 06, March 19, June 20, August 15, October 12, November 01, Ascension, Corpus Christi, and Sacred Heart of Jesus are moved to the following Monday if they don't fall on a Monday. If these days fall on Sunday, these are moved to the next working day, i.e., Monday.

Source: §177 of the Substantive Labour Code 1950, amended in 2017

Weekly Rest Days

Workers are entitled to 24 consecutive hours of rest per week. Labour Law requires that weekly rest day, in principle, should be Sunday for all the employees but the employer and the worker may agree to fix the Saturday as the weekly rest day. If a worker has to work on weekly holiday, he/she is entitled to the wages at a premium rate of 175% of the normal wage rate.

Source: §179 of the Substantive Labour Code 1950, amended in 2017

04/13 EMPLOYMENT SECURITY

Regulations on employment security:

- Substantive Labour Code (Codigo del Trabajo), Law 2663 of 1950, amended in 2017 Law No. 50 of 1990

Written Employment Particulars

The employment contract is a contract by which an individual is obliged to provide services to another under the continued dependency or subordination of the latter and for remuneration.

Individual employment contract may be of definite or indefinite period and may be concluded in writing or orally. However, the contract of definite term employment must be provided in writing. A labour relationship is construed to exist in presence of three elements of labour relationships. These elements are personal rendering of services, payment of a compensation, and subordination to the employer.

The written employment contract must include the following: identities of contracting parties, job specification, level and form of compensation and duration of contract. Even when the employment contract is verbal, the employer and the worker must agree at least to the aforementioned points.

The following must be clearly specified in the written form: duration of a fixed term contract, comprehensive salary agreement (including benefits for workers getting ten statutory minimum salaries or more), agreed salary payable in-kind, probation period, and the reasonable conduct expected of a worker and specification of serious misconduct. Language of a contract is not clearly specified under the Colombia legislation however a contract of employment must be concluded in a language understood by workers.

Contracts of employment may be made for a fixed term, piece-work, an indefinite period or for periodical, casual or temporary work.

Source: §22, 37-39, 45 & 49 of the Substantive Labour Code 1950, amended in 2017

Fixed Term Contracts

Colombian Labour Code allows hiring fixed term contract workers for tasks of permanent nature. Fixed term employment contract is always concluded in writing. Maximum length of a fixed term contract is 3 years (36 months). However, the contract can be renewed for indefinite number of times. The duration of a definite term contract can be less than one year only in case of casual or temporary work, to temporarily replace staff on paid vacation or on other leave, to meet the increased production, transportation or sales, or other similar activities. If before the expiration date of the period stipulated, neither party notifies in writing to the other party of its decision not to extend the contract with a notice of at least thirty (30) days, it is deemed renewed for a period equal to the initially agreed. However, if the fixed term is less than one year, it

The text in this document was last updated in January 2019. For the most recent and updated text on Employment & Labour Legislation in Colombia in Spanish, please refer to: <https://tusalarario.org/colombia/>

may only be extended on the contract up to three equal to or less periods, after which the renewal term cannot be less than one year.

Source: §46 of the Substantive Labour Code 1950, amended in 2017

Probation Period

Probation period is the trial period of the employment contract with the objective to appreciate the skills of the worker by the employer and the worker may know completely about the working conditions at workplace. The maximum duration of probationary period as specified by the law is:

- 15 days for domestic workers; and
- 2 months for all workers.

If the agreed duration of probationary period is less than the maximum specified duration, parties may renew it before expiration. During probation, employee enjoys all the benefits that are provided to the regular employees. The probation period must be clearly specified in writing.

For a fixed term employment contract with a duration of less than one-year, probationary period may not exceed one-fifth of the term initially agreed for the respective contract, but may not exceed two months.

When successive work contracts are concluded between the same employer and worker, probation/trial period is invalid except for the first contract. The trial period may be terminated unilaterally at any time without notice however; workers on probation enjoy all benefits.

Source: §76-80 of the Substantive Labour Code 1950, amended in 2017

Notice Requirement

In accordance with the labour law employment of an employee terminates due to death of the employee; or mutual consent; or expiration of the agreed terms; or completion of the work or contracted work; or liquidation or definitive shutdown of the company; suspension of activities by the employer for more than one hundred twenty (120) days or by a court's decision. A fixed term employment contract of more than 1-month duration terminates by providing a prior notice of at least 30 days. In case of just cause, the employer provides a termination notice of at least 15 days for certain grounds on which contract termination is based. The party that unilaterally terminates the employment contract, must notify the other party about the date of termination along with a valid reason of termination.

Either party may terminate the employment contract by serving a written notice or paying in lieu thereof. For terminating an indefinite term contract, the required notice period is 30 days.

The just causes are worker worker's conduct, capacity and aptitude related. An employer may terminate the employment contract of a worker if he deceived the employer by presenting false certificates of his admission in employment or for gaining some other improper advantage; an act of violence, insult, bad treatment or serious insubordination on the part of worker; an immoral or wrongful act committed by the worker; disclosure of business secrets by the worker; non-performance on the part of worker; deficient work in relation to capacity of worker; ineptitude of worker; disability or some other chronic (non-occupational) disease; etc. An employment contract may contain extra information on (job or industry specific) conduct which is prohibited for a specific job or industry and may lead to worker's dismissal.

An employee may also terminate an employment contract if he/she has suffered deception by the employer regarding working conditions; any act of violence, threats or serious ill treatment inflicted by the employer against the employee or members of his family; any act of the employer or his representatives to induce the employee to commit an unlawful act or act contrary to their political or religious convictions; etc.

Labour law requires payment in lieu of notice in case a party fails to provide the required notice period to the other party or the notice period is partially fulfilled.

Source: §47, 61 & 62 of the Substantive Labour Code 1950, amended in 2017

Severance Pay

The Labour Law provides severance pay to the employees on termination of the employment contract. In contracts of specified duration/fixed term, the compensation is equivalent to the amount of wages corresponding to the time left for the completion of the period prescribed by meeting deadline of the contract. When the time is determined by the duration of the task or work for which contract was made, the compensation should be at least 15 days' wages. For contract of indefinite duration, compensation is as follows:

- a) For employees earning less than 10 legal monthly wages in a month, severance pay is 30 days wages for the first year of service and additional 20 days wages for each completed year of service (For a person with 5 years of service: severance pay is 110 days of wages)
- b) For employees earning equal to or more than 10 legal monthly wages, severance pay is 20 days wages for the first year of service and additional 15 days wages for each completed year of service (For a person with 5 years of service: severance pay is 80 days of wages)

Collective dismissals are regulated under the Law No. 50 of 1990. In order to be considered a collective dismissal, an employer must have terminated employment contracts of a specific percentage of workers (in relation to total workers in a company) in a 6-month period. The percentage ranges between 5% (for enterprises with more than 1000 employees) and 30% (enterprises with more than 10 but less than 50 workers). Employer must request prior authorization from Ministry of Labour explaining the reasons and accompanying justifications.

Source: §64 of the Substantive Labour Code 1950, amended in 2017; §67 of the Law No. 50 of 1990

05/13 FAMILY RESPONSIBILITIES

ILO Conventions

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

Colombia has not ratified the Convention 156 & 165.

Summary of Provisions under ILO Convention

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

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

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

Regulations on family responsibilities:

- Substantive Labour Code (Codigo del Trabajo), Law 2663 of 1950, amended in 2017

Paternity Leave

Labour Code provides paid paternity leave to the father on presenting a birth certificate. Father is entitled to eight working days of paid paternity leave for children born to a spouse or partner. The birth certificate must be submitted to the EPS within 30 days of birth.

Source: §236 of the Substantive Labour Code 1950, amended in 2017

Parental Leave

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

Flexible Work Option for Parents / Work-Life Balance

No provisions could be located in the law supporting work-life balance for parents or workers with family responsibilities. Flexible working timings can only be provided in case of mutual agreement.

06/13 MATERNITY & WORK

ILO Conventions

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

Colombia has not ratified both Conventions 103 & 183.

Summary of Provisions under ILO Convention

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

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

The total maternity leave should last at least 14 weeks.

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

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

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

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

Regulations on maternity and work:

- Substantive Labour Code (Codigo del Trabajo), Law 2663 of 1950, amended in 2017
- Law no. 100 (Establishment of Comprehensive Social Security System), 1993
- Law No. 1823 of 2017

Free Medical Care

The Compulsory Health Plan for pregnant women covers health services including antenatal and post-partum check-ups and child birth without considering the number of contributions made to the system.

Source: §166 of Law no. 100 (Establishment of Comprehensive Social Security System) 1993

No Harmful Work

There is no specific provision in the Labour Code regarding working of pregnant workers in hazardous working environment. However, in accordance with the Labour Code, women (regardless of age), in general, may not be employed in underground work in mines or perform work that is hazardous, unhealthy or that require great effort.

Source: §242 of the Substantive Labour Code 1950, amended in 2017

Maternity Leave

Female employees are entitled to a maximum of eighteen weeks of maternity leave with full pay including 01 weeks of prenatal (or maximum two weeks) and 16 weeks of post-natal leave. It includes one-week compulsory pre-natal leave. Maternity leave can be extended up to 2 additional weeks in case of multiple or premature births. The maternity leave under the earlier 2011 law was 14 weeks however from 2017, the duration is raised to 18 weeks.

It is obligatory for a pregnant worker to inform the employer about her pregnancy, the presumed date of confinement and the date of commencement of maternity leave. A medical certificate must also be provided upon confinement.

In case of miscarriage and premature birth, female worker is entitled to paid leave for two to four weeks. To avail this leave, an employee must provide a medical certificate to the employer, indicating the date on which abortion or miscarriage occurred and rest time recommended by the doctor.

Source: §236-237 of the Substantive Labour Code 1950, amended in 2017

Income

The maternity leave is awarded with full pay and is paid through social security system.

Source: §236 of the Substantive Labour Code 1950, amended in 2017; §157 & 207 of Law no. 100 1993

Protection from Dismissals

It is illegal for an employer to dismiss a female employee during the term of her maternity leave and nursing period. In case of dismissal during pregnancy or within three months after delivery, without authorization of authorities (Ministry of Labour), a worker is entitled to compensation equivalent to 60 working days of wages and benefits and 18 weeks of paid rest (if not already taken).

Source: §239 of the Substantive Labour Code 1950, amended in 2017

Right to Return to Same Position

There is no explicit provision in the law that gives a female worker the right to return to same position after availing her maternity leave. However, it is mentioned that a worker cannot be demised during the term of her maternity leave, which means that right to return to work is implicitly guaranteed under the law.

Source: §239 of the Substantive Labour Code 1950, amended in 2017

Breastfeeding

Female workers are entitled to two paid nursing breaks, each of 30-minute duration, for new mothers to breastfeed their child(ren) until a child is six (06) months old.

Labour Law also requires the employer to establish a childcare facility such as nursing room or a suitable place to keep a child in an enterprise where women are employed. Public and private sector employers are further required to provide a dignified place at work where lactating women can breastfeed nursing children or extract milk and store it for feeding the infant.

Source: §238 of the Substantive Labour Code 1950, amended in 2017; Law 1823 of 2017

07/13 HEALTH & SAFETY

ILO Conventions

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

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

Labour Inspection Convention: 81 (1947)

Colombia has ratified Convention 81 only.

Summary of Provisions under ILO Conventions

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

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

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

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

Regulations on health and safety:

- The Constitution of Colombia, 1991
- Substantive Labour Code (Codigo del Trabajo), Law 2663 of 1950, amended in 2017
- Decree No. 16 of 1997
- Resolution 2013 of 1986
- Ley núm. 9 del 24 de enero de 1979 por la que se dictan Medidas Sanitarias
- Decree 1295 of 1994
- Decree No. 614 of 1984

Employer Cares

Any employer or company is obliged to provide facilities, equipment, and conditioning work to ensure the safety and health of workers. Employers are also required to get their staff medically examined and take all health and safety measures necessary for the protection of life, health and morals of the workers at his service in accordance with the regulations on the subject set by the Ministry of Labour.

An employer must maintain and improve health and safety of a worker at workplace by installing evacuation signals in open areas, entrances, exits and stairs; wide and clear stairways and corridors; permanent supervision of activities in areas where chemicals, food, flammable or hazardous materials, or combustibles, are stored or handled; monitoring the proper operation and maintenance of electrical control systems; monitoring the location, accessibility and required nature of fire extinguishers, ensuring staff are trained for their appropriate use; maintaining warning signs; and monitoring the availability and content of first aid kits. Furthermore, provision of clean drinking water, rest area, dining room and proper sanitary system is a must.

Medical examination of a worker is required at the time of hiring. After that, periodic medical examination is performed according to the type, size and frequency of exposure to risk factors and health status of the worker.

It is obligatory for an employer to implement OSH program at workplace. Employers with more than 10 permanent employees should develop and publish it in two visible places at the workplace special provisions related to protection and personal hygiene of workers; prevention of injury and illness; medical service, and health establishment. A 1997 Decree provides for and regulates OSH Committees at a national, sectional and local level OSH joint Committees at the workplace are required for companies with 10 or more workers.

Workers are under the obligation to inform the Medicine, Hygiene and Industrial Safety Committee (a bipartite Committee with equal number of worker and employer representatives) about risk situations and suggest measures to be taken in order to improve OSH conditions at the workplace.

Decree no. 1886 of 21 September 2015 has been issued which establishes the safety regulations in the mining work underground.

Employers are required to implement Safety and Health at Work System (SG-SST) with effect from June 2017. The new system considers and prevents dangers and risks that employees and contractors might face in the execution of their activities.

Source: §348-352 of the Substantive Labour Code 1950, amended in 2017; Decree No. 16 of 1997; Resolution 2013 of 1986

Free Protection

Law requires employers to provide protective equipment (PPE) for free, to workers involved in hazardous work. The type of PPE needed varies depending on the nature of work being performed. The personal protective equipment should comply with official standards and other technical and safety regulations approved by the Government.

The Ministry of Health regulates the provision, use and maintenance of personal protection equipment.

Source: §122-124 of the Ley núm. 9 del 24 de enero de 1979 por la que se dictan Medidas Sanitarias

Training

In accordance with the article 21 of Decree 1295 of 1994, it is the responsibility of an employer to provide training as is necessary to ensure health and safety at work of his employees. The Constitution of Colombia also states that it is the obligation of the State and employers to offer training and professional and technical skills to those who need it.

Employers must inform the workers about the risks they are exposed to and the preventive measures put in place. The employers should also facilitate the attendance of workers to courses and educational programs in order to train them for prevention of occupational hazards.

Source: §21 of Decree 1295 of 1994; §54 of the Constitution of Colombia 1991; §24 of the Decree No. 614 of 1984

Labour Inspection System

Labour Code provides for an independent labour inspection system in the country.

Ministry of Labour is responsible for the monitoring and enforcement of the standards of labour code and other social provisions. The inspectors or technicians of occupational health carry out inspection at the workplaces and submit its report to the head of the competent occupational health authority.

If a Labour inspector may identify anomalies and violations during the inspection, the employer is required to meet the standards and rectify the anomalies within the deadline for compliance set by the inspector. Ministry of Labour and Social Security impose fine in case of non-compliance.

Labour inspector must alert the employer if emergency situation is detected during inspection.

Source: §485-487 of the Substantive Labour Code 1950, amended in 2017; §43-45 of the Decreto núm. 614, de 14 de marzo de 1984, por el cual se determinan las bases para la organización y administración de la Salud Ocupacional en el país

08/13 SICK LEAVE & EMPLOYMENT INJURY BENEFIT

ILO Conventions

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

Colombia has not ratified the Conventions 102, 121 & 130.

Summary of Provisions under ILO Conventions

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

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

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

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

Regulations on sick leave & Employment Injury Benefits:

- Substantive Labour Code (Codigo del Trabajo), Law 2663 of 1950, amended in 2017
- Law 776 of 2002 (Enacting rules on General System of Occupational Hazards)

Income

In accordance with the Labour Code, a worker is entitled to sick leave for up to 180 days (6 months) in case of some non-occupational disease. The Labour Law provides paid sick leave as follows:

- 2/3 (66.67%) of wages during the first 90 days of sick leave; and
- 1/2 (50%) of wages during the remaining period of sick leave

The health system is responsible for the payment during non-occupational sickness leave. The benefits are paid through state social security system funded through worker (4% of monthly earnings) and employer (8.5% of payroll) contributions. Government also finances the program for low earners by contributing to the Solidarity and Guarantee Fund.

Source: §227-228 of the Substantive Labour Code 1950, amended in 2017

Medical Care

Medical benefits are available for insured workers and these include general medical care, specialist care, medicine, hospitalization, maternity care, and transportation. Statutory Law no. 1751, of 16 February 2015 guarantees the fundamental right to health, and regulates as well as establishes mechanisms for protection of this right. Healthcare services are provided by State Social Enterprises and private health institutions.

Source: §01 of the Law No. 776 of 2002

Job Security

Employment of a worker is secure during the period of sick leave, i.e., six months. An employer may dismiss the worker who is on sick leave for more than 6 months and he/she is unable to resume at the end of this period.

Source: §63 of the Substantive Labour Code 1950, amended in 2017

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.

In the case of permanent total incapacity/disability (when assessed degree of disability is over 66%), 75% of the base earnings is paid as a pension. When the disability is greater than 50% but less than 66%, 60% of the base earning is paid as a pension.

In the case of permanent partial disability, amount of compensation depends on the assessed degree of disability. For 5% to 49% of an assessed degree of disability, the amount of benefit varies from at least one up to 24 times base earnings.

In the case of temporary disability, 100% of average wages are paid until worker's full recovery or certification of permanent disability or death.

In the case of fatal injury, dependents (widow/widower/minor children/parents and disabled siblings) receive survivors' benefit. The survivors' pension is 45% of the deceased's monthly earnings plus 2% for each 50-week period of contributions exceeding 500 weeks, up to 75% of the deceased's monthly earnings. The survivors' pension cannot be less than legal minimum wage and cannot be higher than 20 times the legal minimum wage.

Compensation for work injuries is financed through contributions paid by the employer. Depending on the assessed level of risk, the contribution ranges from 0.348% to 8.7% of covered payroll. Occupational Risk Administrators/Managers administer the occupational disability benefits.

Source: §02-13 of the Law No. 776 of 2002, ISSA Country Profile for Colombia

09/13 SOCIAL SECURITY

Regulations on social security:

- Law no. 100 (Establishment of Comprehensive Social Security System), 1993
- Ley 1636 De 2013

Pension Rights

For full pension, the pensionable age has been increased by two years to 62 years (57 years for women). Moreover, the required weeks of contributions have also been raised to 1300 weeks (from 2015 onward). Special Pension is available to workers working in the hazardous occupations, aged 50-55 years, with 1200 weeks of contributions. The pension is 55% to 65% of the basic monthly wage plus 1.5% for each 50-week period of contributions, up to 80% of the basic monthly wage. Basic monthly wage is average earnings in the 10 years before retirement.

Old age pension, survivor's pension and invalidity pension is financed through contributions by worker (4% of covered earnings) and employer (12% of the covered payroll).

Source: §33-37 of the Law No. 100 of 1993; ISSA Country Profile for Colombia

Dependents' / Survivors' Benefit

Laws provide for survivor benefit (these include dependents including widow, widower, children). The pension is 45% of the deceased's monthly earnings plus 2% for each 50-week period of contributions exceeding 500 weeks, up to 75% of the deceased's monthly earnings. Minimum pension is monthly minimum wage while maximum survivors' pension is what the deceased worker would have been getting if he were alive. Orphan's pension is 20% of deceased worker's pension and 30% of pension is paid to the full orphan.

Source: §46-49 of the Law No. 100 of 1993; ISSA Country Profile for Colombia

Unemployment Benefits

Under the mandatory individual unemployment account, Unemployment Benefit is one monthly wage for each year of employment (ISSA Country Profile for Colombia). A new law (Ley 1636 De 2013) has been enacted in 2013, which provides for an unemployment benefit (social insurance). The Solidarity Fund for Employment Promotion and Protection against Unemployment pays the unemployed person's social security contributions for old-age, disability, survivors, and medical benefits for up to six months. The contribution is calculated based on the legal monthly minimum wage. The insured must have been enrolled in a family allowances fund for at least one year (at least two years for self-employed persons) in the three years prior to becoming unemployed, register with an employment service, and participate in training and vocational rehabilitation programs. Employed persons must provide a certificate of employment termination.

Source: §12-17 of Ley 1636 De 2013; §249 of the Substantive Labour Code 1950, amended in 2017

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Invalidity Benefits

The Law 100 of 1993 provides for invalidity benefit in the case of non-occupational accident/injury/disease resulting into permanent invalidity. If a worker is assessed with 66% disability, the pension is 54% of the basic monthly wage plus 2% of earnings for each 50-week period of contributions exceeding 800 weeks.

If an assessed degree of disability is 50% to 66%, the pension is 45% of the basic monthly wage plus 1.5% of earnings for each 50-week period of contributions exceeding 500 weeks.

Minimum pension is the legal minimum wage while the maximum pension is 75% of the base earnings.

Source: §38-45 of the Law No. 100 of 1993, ISSA Country Profile for Colombia

10/13 FAIR TREATMENT

ILO Conventions

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

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

Colombia has ratified both Conventions 100 & 111.

Summary of Provisions under ILO Conventions

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

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

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

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

Regulations on fair treatment:

- Constitution of Colombia, 1991
- Substantive Labour Code (Codigo del Trabajo), Law 2663 of 1950, amended in 2017
- Penal Code (Law 599 of 2000)
- Resoluciones 652 y 1356 de 2012
- Law 1010, 2006

Equal Pay

The Constitution of Colombia requires the workers be granted equal opportunities for work in all respects.

In accordance with the Labour Code, the principle of equal remuneration for work of equal value between men and women workers has to be respected and there cannot be any discrimination on the basis of sex. It also prohibits discrimination in salary on the basis of age, sex, nationality, race, religion, political or union activities. Any difference in pay is considered unjustified until an employer proves objective reasons behind such difference. Such objective reasons may include academic level, experience, productivity, physical work location and seniority of the worker in the enterprise.

Source: §53 of the Constitution of Colombia 1991; §10 & 143 of the Substantive Labour Code 1950, amended in 2017

Sexual Harassment

In accordance with the Law No. 1010 of 2006, sexual harassment of workers is prohibited by law and an employer is required to adopt both preventive and corrective measures to deal with harassment issues at the workplace. Labour harassment is defined as persistent and demonstrable conduct taken against an employee by a co-worker, superior or boss, with the purpose of generating fear, intimidation, terror and anguish, or of inducing that employee's resignation. Harassment generally includes any conduct capable of offending or threatening dignity, life, physical integrity or sexual freedom.

This Law protects certain rights, which have constitutional status: work in dignified and fair conditions, liberty, privacy, honour, and mental health of workers. The following are considered types of workplace harassment: work related abuse (violence against physical, moral or sexual integrity and liberty); work related persecution (inducing the resignation of a worker through disqualification, excessive workload or frequent change in work schedule leading to demotivation); work related discrimination (differential treatment on the basis of race, gender, age, family or national origin, religious belief and social situation); work related obstruction (concealing key information from worker), work related inequality and work related lack of protection (putting workers at risk without fulfilling the minimum safety and protection requirements).

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According to Penal code, a person who uses his superior authority, power, age, gender, employment, social or family status or property to sexually harass others is liable to imprisonment for one to three years. A worker may terminate the contract without serving notice in the case of sexual harassment. There is penalty of two to ten minimum wages for persons who perform harassment and the employer who tolerates it despite his knowledge of it. Employment contract of a perpetrator may be terminated for just cause.

The internal enterprise regulations should provide for mechanisms to prevent harassment and to establish an internal, confidential, conciliatory and effective procedure to overcome such incidents occurring in the workplace. A worker may file a complaint on workplace harassment to the labour inspector. A worker who files a workplace harassment complaint or acts as a witness in such complaint cannot be dismissed (as retaliation) during six months following the filing of complaint.

Ministerial Resolutions of 2012 require establishment of Workplace Harmony Committee in all private sector enterprises. The Committee is bipartite in nature and is composed of two representatives each from worker and employer side. One of the primary responsibilities of this Committee is to receive workplace harassment complaints and suggest penalties. Term of the Committee is two years and its meetings must be held at once every quarter.

Harassment aimed at causing physical or moral harm to a person, group of people, community or people, by reason of race, ethnicity, religion, nationality, political or philosophical ideology, sex or sexual orientation or disability and other grounds of discrimination, is punished by for a term of 1-3 years and a fine of 10-15 minimum monthly salaries. The above penalties can be increased by 33-50% if the above behavior is oriented to deny or restrict labour rights.

Source: §134B & 210 of the Penal Code (Law 599 of 2000); §1-12 of the Law No. 1010 of 2006; Resoluciones 652 y 1356 de 2012

Non-Discrimination

The Constitution prohibits any kind of discrimination on the basis of gender, race, national or family origin, language, religion, political opinion, or philosophy. Acts of racism and discrimination on the ground of a person's race, nationality, sex or sexual orientation are punished with a sentence of 12 to 36 months and fine of 10-15 existing minimum salaries.

Harassing someone based on their race, religion, ideology, political, national, ethnic or cultural background or causing a physical harm to a person because of their race, ethnicity, religion, nationality, political or philosophical belief, sex or sexual orientation is liable to imprisonment for a term of 1-3 years and a fine of 10-15 minimum monthly salaries. The above penalties can be increased by 33-50% if the above behaviour is oriented to deny or restrict labour rights.

Law prohibits discrimination on the ground of disability and incentivizes those employers that engage workers with disability. Disabled workers have increased employment protection and their contract of employment can be terminated on authorization by Ministry of Labour. Workers, who are dismissed on the ground of disability, without obtaining prior approval from concerned authorities, are entitled to compensation equivalent to 100-180 days of salary in addition to other benefits they are entitled to.

Law prohibits discrimination in employment on the ground of age. A citizen cannot be discriminated against in access to work on account of age. Age range cannot be used as a criterion for being selected in a specific job or position. However, a job may require specific years of experience in the relevant field. Similarly, there should be no discrimination in access to employment on account of age, sex, race, national or family origin, language, religion or political or philosophical opinion.

Discrimination on account of pregnancy and breastfeeding is prohibited under the Labour Code.

Source: §13 of the Constitution of Colombia 1991; §134A & C of the Penal Code (Law 599 of 2000); §22-34 of the Law 361 of 1997; §1-3 of Law 931 of 2004; §239 of the Substantive Labour Code 1950, amended in 2017

Equal Choice of Profession

Article 242(a) of Labour Code has been termed unconstitutional by the Constitutional Court in 1997. Therefore, in accordance with the article 26 of the Constitution and article 11 of Labour Code, women are allowed to choose the profession they like. Women, irrespective of age, still may not be employed in underground mines and, in general, for work in dangerous, unhealthy working conditions or tasks that require great efforts.

Source: §11 & 242 of the Substantive Labour Code 1950, amended in 2017; §26 of the Constitution of Colombia 1991

11/13 MINORS & YOUTH

ILO Conventions

Minimum Age: Convention 138 (1973)

Worst Forms of Child labour: Convention 182 (1999)

Colombia has ratified both Conventions 138 & 182.

Summary of Provisions under ILO Conventions

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

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

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

Regulations on minors and youth:

- Constitution of Colombia, 1991
- Substantive Labour Code (Codigo del Trabajo), Law 2663 of 1950, amended in 2017
- Code for Children and Adolescents, Law 1098, 2006
- Decisión C-376/10 del Tribunal Constitucional de Colombia
- Decree 4807 of 2011

Minimum Age for Employment

Minimum age for employment is 15 years. Children younger than age 15 may perform artistic, sports, or cultural work with authorization from the labour inspectorate or local authority, and adolescents ages 15 to 17 can work only with authorization from a labour inspector or relevant local government official.

Adolescents must get trained before beginning of an employment. Education is mandatory between the ages of five and fifteen, which also includes one year of preschool and nine years of basic education. According to the Constitution, education is an individual right and it is provided free of cost to all citizens. Under a Constitutional Court judgement, the compulsory education age is raised to 18 years.

Source: §67 of the Constitution 1991; §28 & 35 of the Law No. 1098 of 2006 (Childhood & Adolescence Code); Decisión C-376/10 del Tribunal Constitucional de Colombia; Decree 4807 of 2011

Minimum Age for Hazardous Work

Minimum Age for Hazardous Work is set as 18 years. The Labour Code prohibits children younger than age 18 from work in underground mining and industrial painting (Article 242). Resolution No. 3597 of 2013 provides a comprehensive list of activities identified as the worst forms of child labour within 17 occupational categories and subcategories. These include agriculture, livestock raising, hunting and forestry, fishing, mining and quarrying, manufacturing, construction, transport and storage, health services, and defence; they also include informal-sector activities such as street vending, domestic service, and garbage scavenging and recycling. It also prohibits employing children in working conditions that may cause a risk to their health and safety. These include workplaces with high (hot or cold) temperatures, with continuous or intermittent noise, workplaces with exposure to physical, chemical or biological hazards, places with poor ventilation, etc. A new Resolution (No. 1796 of 2018) has been issued by the Ministry of Labour which repeals the earlier resolution of 2013.

Minors must be paid at least the minimum wage and applicable overtime rates established by Colombian labour law. The permitted hours of work for minors depend on his or her age and whether school is in session. The above referred resolution prohibits the following working conditions for children under 18 years: unpaid work; work without social security or labour protection; work affecting school participation;

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isolation from family; mistreatment, abuse and lack of job protection; illegal, immoral or socially inappropriate work (forced begging, labour or sexual exploitation); work duration higher than what is allowed (six hours a day and 35 hours a week for adolescents aged 15-17 years; eight hours a day and 40 hours a week for adolescents above 17 years) without rest breaks or weekly rest periods or work during night hours (after 18:00 by adolescents aged 15-17 years; after 20:00 for adolescents above 17).

Source: §242 of the Substantive Labour Code 1950, amended in 2017, §117 of the Law No. 1098 of 2006 (Childhood & Adolescence Code); Resolution 3597 of 2013

12/13 FORCED LABOUR

ILO Conventions

Forced labour: Conventions 29 (1930)

Abolition of Forced labour: Conventions 105 (1957)

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

Colombia has ratified both Conventions 29 & 105.

Summary of Provisions under ILO Conventions

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

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

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

Regulations on forced labour:

- The Constitution of Colombia, 1991
- Substantive Labour Code (Codigo del Trabajo), Law 2663 of 1950, amended in 2017
- Penal Code (Law 599 of 2000)

Prohibition on Forced and Compulsory Labour

The Constitution prohibits slavery, servitude, and human trafficking in all forms. The labour code defines compulsory labour as a work that is socially obligatory. Sexual exploitation and trafficking for purposes of sexual exploitation is prohibited under the Penal Code. Similarly trafficking of people for exploitation purposes (including forced labour, slavery, sexual exploitation, begging, organ harvesting, etc) is punishable with imprisonment for a term of 13-23 years and fine of 800-1500 minimum wage applicable.

Source: §17 of the Constitution of Colombia 1991; §07 of the Substantive Labour Code 1950, amended in 2017; §141A-C & 188A-D of the Penal Code (Law 599 of 2000)

Freedom to Change Jobs and Right to Quit

According to the Colombian constitution, every citizen has a right to choose any employment.

Labour law states that workers have the right to change jobs after serving due notice to their employers. For more information, please follow the section on employment security.

Source: §62 of the Substantive Labour Code 1950, amended in 2017

Inhumane Working Conditions

Working time may be extended beyond normal working hours of forty-eight hours per week and eight hours a day. However, total hours of work inclusive of overtime must not exceed ten hours a day. The maximum overtime hours per week are 12 hours. Maximum hours of work inclusive of overtime hours however do not exceed 60 hours per week.

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

Source: §161-168 of the Substantive Labour Code 1950, amended in 2017

13/13 TRADE UNION

ILO Conventions

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

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

Colombia has ratified both Conventions 87 & 98.

Summary of Provisions under ILO Conventions

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

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

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

Regulations on trade unions:

- Constitution of Colombia, 1991
- Substantive Labour Code (Codigo del Trabajo), Law 2663 of 1950, amended in 2017
- Law regarding Permanent Commission on the Harmonization of Wage and Labour Policies, 1996 (No. 278)
- Decree No 4834 of 2010

Freedom to Join and Form a Union

Constitution and labour law provide for freedom of association and allow workers and employers to join and form unions. This right is regulated by the labour code. Workers and employers have the right to form trade unions or associations without interference by the State. Their legal recognition occurs by the simple registration of their constituent act. The Constitution does not allow the police force to form associations.

A trade union must consist of at least 25 members. A meeting is held initially to organise the union and the name of all the members, their identification, the activity they follow and what binds them to each other and the name and purpose of the association that must be recorded in the corresponding minutes of meeting. The employer and the labour inspector must be notified about the organisation of union. The notice must indicate the names of the organisers and the members of the Board of Directors and their identifications.

The union must be registered with the Ministry of Labour and Social Security within 5 days following the date of initial meeting. A union representative must submit a written request for entry in the union register along with a copy of the charter, signed by the attendees stating their identity; a copy of election of the board, with the same requirements of the preceding paragraph; a copy of the minutes of the meeting at which the statutes were approved; a copy of the union's constitution, authenticated by the secretary of the board; list of the board, specifying nationality, profession or occupation and paper identity; list of staff members, and other important information.

The Ministry, within fifteen (15) days of receipt of the file, issues the resolution on recognition and publishes it once in the official Journal. The union becomes registered fifteen days after publication of recognition notice.

Source: §39 of the Constitution of Colombia 1991; §353-367 of the Substantive Labour Code 1950, amended in 2017

Freedom of Collective Bargaining

Right to collective bargaining is recognised by constitution and the law. The Constitution guarantees the right of collective bargaining to regulate labour relations. It is the duty of the State to promote agreement and other measures for the peaceful resolution of collective labour conflicts.

Collective labour agreement is held between one or more employers or employers' associations on the one hand and one or more trade unions or trade union federations', on the other, to set the conditions governing employment contracts during their term.

Collective agreements must be concluded in writing. The CBA is registered with the National Labour Department within 15 days of the agreement's signature, otherwise the collective agreement is not considered enforceable.

The collective agreement is applicable to those who sign the agreement or subsequently adhere to it.

Collective agreements between employers and unions in companies where the union members do not represent more than one third of the total number of employees on the payroll, are only applicable to members of the union entered into them, and those who adhere to them or enter then the union. In companies in which the collective bargaining agreement is signed with a union that has more than one third of the payroll employees of the company, this collective agreement will cover all the company employees.

The CBA is valid for 6 months unless otherwise specified in the agreement. A CBA, on its expiry, gets extended automatically for six more months. A CBA is terminated when a party or both parties separately submit written statement of termination in triplicate to the labour inspector, the mayor and officials. The CBA can be revised anytime whenever there are unpredictable and serious changes in economic normality.

Permanent Commission on the Harmonization of Wage and Labour Policies, established under a specialized law, has following functions: promote harmonious industrial relations; contribute to the resolution of collective labour disputes; establish minimum wage in a concerted way; set labour policy in a concerted manner; prepare draft legislation on labour and employment matters; and hold consultations on government replies to ILO Questionnaires on ratified and unratified conventions. The members of the Commission include the following: five government members (Minister for Labour and Social Security; Minister for Finance; Minister for Economic Development; Minister for Agriculture; and Director of the National Planning Department); five employer members (Association of Banking and Financial Institutions of Colombia (ASOBANCARIA), National Business Association of Colombia (ANDI), National Retail Federation (FENALCO),

Colombian Association of Micro, Small and Medium Enterprises (ACOPI) and Agricultural Society of Colombia (SAC)) and five worker members (Central Confederation of Workers (CUT), Confederation of Workers Colombia (CTC), General Labour Confederation (GTC), Pensioners Association of Colombia (CPC) and one representative for the unemployed). Term of the Commission is four years and is renewable.

Source: §55 of the Constitution of Colombia 1991; §467-480 of the Substantive Labour Code 1950, amended in 2017; Law regarding Permanent Commission on the Harmonization of Wage and Labour Policies, 1996 (No. 278); Decree No 4834 of 2010

Right to Strike

Right to strike is provided under the Constitution however, the long list of essential services frustrates the right to strike.

A strike is the temporary collective and peaceful suspension of work, carried out by the workers of an establishment for economic purposes. The Constitution prohibits strike in essential services (e.g., Water, health, transportation). Strikes for reasons not related to employment conditions (e.g., politically motivated strikes) are not allowed.

Peaceful strike is allowed only after all the methods of dispute resolution (negotiation, conciliation and arbitration) fail. Members of union must approve strike by secret ballot and inform the authorities at least 5 days prior to the proposed date of strike.

Strikers have the right to return to work without any punishment once the strike is over. The employment contract suspends during the strike, Employers are not allowed to replace striking workers.

In accordance with the Constitution, a permanent commission composed of the government, the representatives of employers, and of workers promote sound labour relations, contribute to the settlement of collective labour disputes, and coordinate wage and labour policies.

Source: §56 of the Constitution of Colombia 1991; §429-449 of the Substantive Labour Code 1950, amended in 2017



DECENT WORK QUESTIONNAIRE

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Check

DecentWorkCheck Colombia is a product of
WageIndicator.org and www.tusalario.org/colombia



National Regulation exists



National Regulation does not exist

01/13 Work & Wages

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

02/13 Compensation

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

03/13 Annual Leave & Holidays

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

04/13 Employment Security

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





05/13 Family Responsibilities

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





06/13 Maternity & Work

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





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

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





07/13 Health & Safety

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









08/13 Sick Leave & Employment Injury Benefits

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













09/13 Social Security

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



10/13 Fair Treatment

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




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

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





11/13 Minors & Youth

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

12/13 Forced Labour

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

13/13 Trade Union Rights

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

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Results

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



is your amount of "YES" accumulated.

Colombia scored 45 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.