



# DECENT WORK CHECK

## **EL SALVADOR** 2023

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

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

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## Bibliographical information

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# INTRODUCTION

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

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

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

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

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

Decent Work Checks are available for 108. In 2023, the team aims to include at least 12 more countries, thus taking the number of countries with a Decent Work Check to 120!

*The text in this document was last updated in June 2023. For the most recent and updated text on Employment & Labour Legislation in El Salvador in Spanish, please refer to: <https://tusalarario.org/elsalvador/>*

# MAJOR LEGISLATION ON EMPLOYMENT AND LABOUR

1. The Constitution of El Salvador, 1987 (Decree No. 38)
2. Law No. 1263 promulgating the Social Insurance Act
3. Decretónúm. 15 de 31 de Julio de 1972, Código de Trabajo, last amended in 2019
4. General Law of Health and Safety in the workplace, 2010 (Legislative Decree no. 254)
5. Decretónúm. 1263 por el que se dicta la Ley del Seguro Social
6. Decretónúm. 927, Ley del sistema de ahorroparapensiones
7. Decretónúm. 926, por el que se dicta la Ley Orgánica de la Superintendencia de Pensiones

# 01/13 WORK & WAGES

## **ILO Conventions**

Minimum wage: Convention 131 (1970)

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

**El Salvador has ratified the Convention 131 only.**

### ***Summary of Provisions under ILO Conventions***

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

## Regulations on work and wages:

- Decretónúm. 15 de 31 de Julio de 1972, Código de Trabajo, last amended in 2019

## Minimum Wage

Minimum wage means the minimum salary sufficient to cover the material, moral and cultural needs of the worker and his family.

Government determines the minimum wage rate according to the proposal made by the National Minimum Wage Council. Minimum wage rates can also be set by collective agreement, provided that the rates are not lower than minimum wages fixed by legal authority. Every worker has the right to earn a minimum wage, which must meet the moral, cultural and material needs of a household. Other factors that are considered while determining the minimum wage include cost of living, economic situation of the country, level of employment, different systems of remuneration and the different areas of production.

In accordance with the Constitution of El Salvador, workers are entitled to minimum wage rates adjusted periodically for the sectors including commerce, services, industry, textile, clothing, agriculture, coffee and sugarcane industry.

Different wage rates are determined for different sectors and for specific categories of workers (Trainees, domestic workers, piece-rate workers and others). Minimum wage rates are fixed periodically for a maximum period of 3 years.

In El Salvador the Constitution imposes on the State the duty of maintaining a

technical inspection to ensure the strict compliance with the legal norms of work, attendance, welfare and social security (Art.44). The constitutional obligation is compiled by the Ministry of Labour and Social Welfare which is responsible for the labour inspection procedure (art.11.de the Law on the Organization and Functions of Labour and Social Sector). The Inspectorate of Labour imposes fines applying the provisions of art. 628-631 of the Labour Code and the provisions of the Law on the Organization and Functions of Labour and Social Sector.

On noting a violation, the law gives the employer an opportunity to present his view before the labour inspector award of fine. The amount of fine is dependent on the seriousness of the offence, enterprise capacity to pay fine and the number of times the perpetrator has violated the minimum wage provisions.

Source: §38(2) & 44 of the Constitution of El Salvador; § 144-159 of the Labour Code 1972, last amended in 2019

The current minimum wage rates can be found in Minimum Wage Section.

## Regular Pay

Wage is the compensation in cash that the employer pays to the worker for services rendered according to a labour contract. It includes everything that a worker receives in cash (basic wage, bonuses, allowances, overtime, remuneration for work on weekly rest days or day off, profit sharing) as a payment of his/her services

Labour Code requires timely payment of full wages in legal tender to the worker or any other authorized person at the workplace or any other mutually agreed

place. Payment in the form of alcoholic beverages is forbidden. Payment of salary is made per unit of time (on weekly, fortnightly, monthly basis or immediately preceding business day), by unit of work, mixed system, by task, as a commission, and piece rate basis. Wage payment generally must be made within two days at the end of a wage period and at least fortnightly payments should be made for the payments stipulated by the commission.

Deduction from wages is generally not allowed. Deductions can be made after employee's written consent only in case of loans. The deductions from pay must not exceed 20% to cover maintenance obligations, union dues, contributions to social security and taxes.

An employer should provide pay slips to all employees on each payday or payment receipts that reflect the calculation of wages along with items, the ordinary and extraordinary hours worked during day or night shifts, and any working days, holidays, and days of rest that the employee worked. These documents also must include commissions and any other amounts paid to the employee.

In accordance with amended article 198 of the Labour Code, the Aguinaldo (extra month's pay at Christmas) is paid at the following rates:

- 15 days' salary for a worker with one but less than three years of service
- 19 days' salary for a worker with three but less than ten years of service
- 21 days' salary for a worker with ten or more years of service

Source: §119-136 and 198 of the Labour Code 1972, last amended in 2019



# 02/13 COMPENSATION

## ILO Conventions

Compensation overtime: Convention 01 (1919)

Night work: Convention 171 (1990)

**El Salvador has not ratified the Conventions 01 and 171.**

### *Summary of Provisions under ILO Conventions*

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

- Decretónúm. 15 de 31 de Julio de 1972, Código de Trabajo, last amended in 2019

## Overtime Compensation

In accordance with the Labour Code, normal working hours are 8 hours per day and 44 hours per week. Working time is the number of hours the employee remains at the employer's disposal, as well as those rest periods, lunch time, or any other time to satisfy physiological needs within the working day. Normal working hours are reduced to 7 hours per day and 39 hours per week in case of hazardous or arduous working conditions. Working hours for night work are 7 hours per day 39 hours per week and 36 hours in case of dangerous working conditions. For young workers, working hours are 6 hours a day and 34 hours a week; and for agricultural workers, the hours limit is 8 hours per day and 44 per week. Limitation of working hours is not applicable to domestic workers.

Workers may be required to work overtime occasionally when unforeseen, special or necessary circumstances arise and so demand it. If a worker works beyond the stipulated working hours, i.e., 8 hours a day and 44 hours a week, he/she is entitled to an overtime pay that is 100% over and above the rate of his ordinary pay (200% of the normal wage rate for overtime hours). The maximum working hours (normal + overtime) have not been defined in the Labour Code. Overtime work carried out in cases of force majeure such as fires, earthquakes or similar reasons, is remunerated with the normal salary.

Workers may have rest of two consecutive

days (Saturday and Sunday) by working an hour of daily extra time on weekdays to compensate for the work that should have otherwise been done on Saturday. Overtime working hours are not imposed by the employer but mutually agreed between the parties.

Source: § 161-176 of the Labour Code 1972, last amended in 2019

## Night Work Compensation

Night work is the work performed between 07 p.m. and 06 a.m. Hours of work for night workers and those involved in dangerous and unhealthy work are 07 hours a day and 39 hours (36 hours for dangerous and unhealthy work performed at night) for night workers and workers involved in dangerous and unhealthy work. A worker working more than four hours during night-time is considered to be employed in night work for the purposes of the number of hours worked.

Labour Code requires an employer to make premium payment at the rate of 125% of the ordinary wage rate (for hours worked at night) to the night workers.

Source: §161,162 & 168 of the Labour Code 1972, last amended in 2019

## Compensatory Holidays / Rest Days

In extraordinary circumstances, workers may perform work on weekly rest days and public holidays. If workers are required to work on a weekly rest day, a compensatory weekly rest day with full pay is provided. However, no provision could be identified in laws to require an employer to provide compensatory rest day for working on a public holiday.

Source: §176 of the Labour Code 1972, last amended in 2019

## **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 on official holidays, they are entitled to receive wages at a premium rate of 200% of the normal hourly wage rate. If workers have to work overtime on the weekly rest day, the overtime rate will be calculated on the already enhanced rate of 200% of normal wage rate (400% of normal wage rate).

Workers working on weekly rest days are entitled to premium pay at the rate of 150% of the normal wage rate. If workers have to work overtime on the weekly rest day, the overtime rate will be calculated on the already enhanced rate of 150% of normal wage rate (225% of normal wage rate).

Source: §175 & 192 of the Labour Code 1972, last amended in 2019

# 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.

**El Salvador has not ratified the above-mentioned Conventions.**

### ***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:

- Decretónúm. 15 de 31 de Julio de 1972, Código de Trabajo, last amended in 2019

## Paid Vacation / Annual Leave

The Labour Code provides for annual leave to all workers on completion of one year of continuous service in the same undertaking or establishment. An employee is entitled to 15 days of paid annual leave on completion of 12 months of continuous service. Labour law does not indicate whether paid annual leave increases with the length of service.

The remuneration for annual leave is 15 calendar days' wages plus 30% of the wages for 15 days, which has to be paid to the worker before the commencement of annual leave. Amount of payment for annual leave is calculated for the total of the days falling between the date of his departure and the date of return to work. To qualify for annual leave, a worker must have worked at least 200 days in a year. Labour Code allows for splitting of annual leave in two or more terms. It is not permitted to divide or accumulate the periods of annual leave. It is an obligation for the employer to grant such leave and for the worker to take it. Compensation in lieu of annual leave is prohibited except in the case of termination of employment contract before a worker could enjoy his/her annual leave.

Source: § 177-189 of the Labour Code 1972, last amended in 2019

## Pay on Public Holidays

Workers are entitled to paid days off during Festival (public and religious) holidays. These include memorial holidays and religious holidays.

Public holidays in El Salvador are usually 11 in number. These days are New Year's Day (January 01), Holy Thursday (April 17), Good Friday (April 18), Easter Saturday (April 19), Easter Sunday (April 20), Labour Day (May 01), Father's Day (June 17), Feast of San Salvador (August 03-06), Independence Day (September 15), All Souls' Day (November 02), Christmas Day (December 25).

Source: §190 of the Labour Code 1972, last amended in 2019

## 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 employees. The employers of undertakings in which the work is performed continuously or which renders public services may schedule another day of weekly rest, following the authorization of the Directorate of Labour.

The Labour Code provides for rest breaks of 30 minutes during working hours for rest and food. These breaks are considered part of working time. There is also provision for daily rest periods which cannot be less than 8 hours.

The domestic workers have rest breaks of two hours per day and 10 hours of daily rest period. They are also entitled to 24 hours of weekly rest.

Source: §80, 166, 167 and 171-173 of the Labour Code 1972, last amended in 2019

# 04/13 EMPLOYMENT SECURITY

## **ILO Conventions**

Convention 158 (1982) on employment termination

**El Salvador has not ratified the Convention 158.**

### ***Summary of Provisions under ILO Convention***

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

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

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

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

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

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

## Regulations on employment security:

- Decretónúm. 15 de 31 de Julio de 1972, Código de Trabajo, last amended in 2019

## Written Employment Particulars

Employment contract is a contract by virtue of which a person is obliged to perform any work or provide a service to an employer for a wage.

Employment contract may be concluded for definite or indefinite period. Employment contracts must be written in triplicate, one copy for each party and third copy to be submitted to the General Labour Office within eight days following its execution. Following information must be present in an employment contract: date and place of the contract; identification of the parties, including the employee's sex, marital status, nationality and date of birth; nature of the job; place where the work must be done; salary and payment terms; working hours; and the term of the contract, etc.

The written contract is a guarantee in favour of the employee, and its lack is attributable to the employer. It is obligatory for an employer to provide employment contract to the worker within 8 days of commencement of employment.

Source: §17-23 of the Labour Code 1972, last amended in 2019

## Fixed Term Contracts

El Salvadoran labour Law prohibits hiring fixed term contract workers for tasks of permanent nature. At the same time, however, it does not place any limit on

maximum term (including renewals) of the fixed term contracts. An employment contract is considered a fixed term contract if it fulfils certain requirements. The reasons for executing the agreement must reflect that the task to be performed by the employee can be qualified as transitory, temporal, or eventual; and the circumstances or events to terminate the agreement must have been included in the contract or already considered.

Source: §25-27 of the Labour Code 1972, last amended in 2019

## Probation Period

In accordance with the Labour Code, probation/trial period cannot exceed 30 days for contracts of indefinite duration. During this period, either party may terminate the contract without cause.

Source: §28 of the Labour Code 1972, last amended in 2019

## Notice Requirement

The contract of employment terminates by mutual agreement, resignation of the employee, death of the employee, expiration of the term agreed to in the contract, the conclusion of the task or work for which the employee was hired, and by acts of God (force majeure). The employer can also terminate the employment contract because of economic needs of the company.

Justified grounds for dismissals relate mainly to the worker's conduct and capacity. Employer can legally terminate (without notice) the contract on certain grounds of dismissal, including incompetence in the execution of work,

frequent absences or tardiness, lack of discipline at work, intoxication or other sort of inappropriate behaviour at the workplace, and disrespect toward an employer or a fellow employee, among others.

Labour Code requires an employer to serve a contract termination notice to the employees or pay in lieu of notice. For work that lasts more than two weeks, the employer is obliged to give notice of at least seven days and must be in writing. The dismissal must also be communicated to the employee in writing.

Source: §26 & 49-57 of the Labour Code 1972, last amended in 2019

## Severance Pay

The Constitution of El Salvador guarantees severance pay however it states that the law determines under which conditions employers are obligated to pay their permanent workers, who resign from their work, an economic compensation (prestación), the amount of which is fixed in relation to their salaries and time of service.

In accordance with the Labour Code, an employee can be dismissed with or without a just cause. There is no severance payment in the case of dismissal for just cause. If an employee is dismissed without just cause, he/she is entitled to a severance payment of one month's salary per year of work (or 15 days' pay at minimum), plus proportional vacation and year-end bonus payments. If a fixed term contract worker is dismissed without just cause before the expiration of the contract, the employer has to pay compensation equal to the wages the worker would have been entitled to until the expiry of the contract.

Severance pay is not provided in case of end of employment due to mutual agreement, resignation of the employee, death of the employee, expiration of the term agreed to in the contract, the conclusion of the task or work for which the employee was hired, and by acts of God.

Source: §38 of the Constitution of El Salvador; §58 & 59 of the Labour Code 1972, last amended in 2019



# 05/13 FAMILY RESPONSIBILITIES

## **ILO Conventions**

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

**El Salvador has ratified the Convention 156.**

### ***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:

- Decretónúm. 15 de 23 junio de 1972, Código de Trabajo

## Paternity Leave

There is no clear provision in the law on paid or unpaid paternity leave. However, labour code provides leave (2 days in a month and 15 days in a calendar year) for family obligations which workers can use as paternity leave. Decree 376 adds a provision on paternity leave for fathers on birth or adoption of a child. Worker is required to submit a birth certificate or judgment of adoption to the employer for granting this leave. Employer has to pay workers regular wages during the paternity leave.

According to the 2018 amendment in the Labour Code (through Decree No. 900), worker is entitled to have 3 days leave in case of paternity by birth or adoption. The leave is available within 15 days of childbirth or adoption. Employer is required to pay full wages during paternity leave.

Source: §29 (6b & d) of the Labour Code 1972, last amended in 2019; Decree No. 376 of 2015

## Parental Leave

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

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

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

# 06/13 MATERNITY & WORK

## **ILO Conventions**

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

**El Salvador has not ratified the Conventions 103 and 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:

- Decretónúm. 15 de 23 junio de 1972, Código de Trabajo
- Law No. 1263 promulgating the Social Insurance Act

## Free Medical Care

Insured workers are entitled to the medical benefits including complete medical and maternity care, hospitalization, medicine, auxiliary services for diagnosis and treatment, and dental care are provided to the insured workers. Pregnant insured workers receive maternity related (pre-natal, confinement and post-natal) care.

Source: §59 (a) of the Law No. 1263

## No Harmful Work

Labour Code requires an employer to provide pregnant workers with the work that is compatible with their condition and does not require considerable physical effort. Any task that requires physical exertion is considered incompatible with their condition especially after the fourth month of pregnancy.

Source: §110 of the Labour Code 1972, last amended in 2019

## Maternity Leave

Both the Constitution and the Labour Code provide fully paid maternity leave before and after childbirth. Maternity leave of 16 weeks is granted to the pregnant workers including ten weeks after confinement, provided that the worker must provide a medical certificate specifying her pregnancy and the expected date of

delivery. If confinement takes place after the expected date, the maternity leave is extended to the actual date of confinement, and the amount of benefits for compulsory postnatal leave remains the same. The maternity leave was earlier 12 weeks, which has been raised to 16 weeks in 2015 through a Decree. The maternity leave for public service employees is also 16 weeks.

In the case of illness, which, according to a medical certificate, has occurred as a result of pregnancy, the worker is entitled to supplementary prenatal leave, the length of which is determined by regulations. If, after the period of maternity leave has expired, the worker provides a medical certificate stating that she is not able to return to work, then further leave necessary for her recovery is granted to her, during which the employer maintains her job.

Source: §42 of the Constitution of El Salvador; §309 & 312 of the Labour Code 1972, last amended in 2019; Decree no. 143 of 8 October 2015; Decree No. 174 of 2015

## Income

Maternity cash benefits are provided to a worker after six months of employment with the same employer and 12 weeks of paid contribution before the expected date of delivery. An employer is required to pay 75% of the basic wages in advance to a pregnant worker for the entire duration of maternity leave. If an employer is contributing to the Social Security System, this payment is made by Government.

Source: §309(6b) & 311 of the Labour Code 1972, last amended in 2019; §100 of Law No. 1263; §25-26 of the Executive Decree No. 37 issuing regulations for applying the social security system

## Protection from Dismissals

In accordance with the Constitution and the Labour Code, employment of a female worker is secure during pregnancy and maternity leave. It is illegal for an employer to dismiss a female employee during the term of her pregnancy or maternity leave. An employer cannot dismiss a pregnant worker by way of de facto dismissal or dismissal following a court's decision during the entire period of pregnancy and until the end of the maternity leave, unless the alleged cause for dismissal relates to facts that took place prior to the beginning of pregnancy. In such case, the dismissal is effective immediately after the end of the maternity leave.

Source: §42 of the Constitution of El Salvador; §113 of the Labour Code 1972, last amended in 2019

## Right to Return to Same Position

The constitution of El Salvador guarantees the conservation of employment of a female worker during pregnancy and maternity leave.

Labour Code also provides the right to return to same position after availing maternity leave and their employment is preserved during the period of leave.

Source: §42 of the Constitution of El Salvador; §312 of the Labour Code 1972, last amended in 2019

## Breastfeeding

Female workers are entitled to paid nursing breaks, of one-hour duration, for new mothers to breastfeed their child(ren) until

a child is six (06) months old. These breaks can be divided into two 30-minute breaks, if requested by the worker. Time of nursing break is considered as working time. Constitution also requires employers to maintain nurseries for care of workers' children.

The 2019 Special Law for the Regulation and Establishment of Nurseries for the Children of Workers regulates the establishment of child nurseries (cribs/cradle rooms) for workers' children under the age of three years. The law is applicable to only those enterprises which have more than 100 workers. Such child nurseries can be established outside the enterprise and some employers may jointly establish a nursery as well. A contract can also be awarded to an already established nursery. However, in all these cases, the nursery must be in the same geographic area as the enterprise.

Source: §43 of the Constitution of El Salvador; §35 of the Decree No. 404; Ley Especial para la Regulación e Instalación de Salas Cunas para los Hijos de los Trabajadores 2019

# 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)

**El Salvador has ratified both the Conventions 81 and 155.**

### ***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:

- Decree no. 15 de 23 junio de 1972, Código de Trabajo
- General Law of Health and Safety in the workplace, 2010 (Legislative Decree no. 254)

## Employer Cares

In accordance with the Law on Safety and Health at Work, provides that every employer shall adopt and implement, in the workplace, adequate safety measures and hygiene to protect life, health and bodily integrity of its employees.

The Directorate General of Social Welfare and the Directorate General for Labour Inspection is responsible to ensure the enforcement of OSH legislation, to monitor the application of OSH legislation, to provide technical advice in OSH, and to verify the compliance with OSH legislation in the workplace.

The employers must adopt and implement appropriate security measures and hygiene in the workplace, to protect the life, health and bodily integrity of their workers, particularly related to operations and work processes; the provision, use and maintenance of personal protective equipment; the buildings, facilities and environmental conditions; and placement and maintenance of safeguards and protections that isolate or prevent the dangers from the machines and of all genre of facilities.

All employers are obliged to implement the adequate safety and hygiene measures in order to protect the life, health and physical integrity of workers. They must arrange regular medical examinations for the

workers to verify their state of health and fitness for work.

Workers are also required by law to comply with OSH legislation and the employers' instructions in order to protect health and safety at workplace.

Source: §31 (11), 314 & 315 of the Law on Safety and Health at Work, 2010

## Free Protection

It is an employer's obligation to provide each worker personal protective equipment, work clothing, special tools and technical means of collective protection as necessary to perform the work and physical and physiological conditions who use them, as well as ensure the proper use and maintenance of the protective equipment, without implying any financial burden on the employee.

Source: §38 of the Law on Safety and Health at Work, 2010

## Training

Companies with more than 15 employees are required to create Committees that are responsible for participating in the training, evaluation, monitoring, advocacy, outreach and counselling for the prevention of occupational hazards. Workers should be trained prior to their use of some machinery. It is considered a serious violation on the part of employer not to train workers about workplace hazards, which can damage their integrity and health.

Source: §13, 39, 52 & 79 of the Law on Safety and Health at Work, 2010

## Labour Inspection System

The Directorate General of Labour Inspection is responsible to ensure compliance with occupational health and safety standards at workplaces. General Law on Health and Safety in the Workplace provide for labour inspection system to ensure safety and health of workers in the workplace.

Labour Inspectors are authorized to interrogate witnesses, the employer and employees of the company and union officials on any matter concerning the application of laws, require the submission of forms, receipts and other documents related to the employment relationship and to obtain copies or extracts thereof, conduct any inquiry considered necessary, in order to better accomplish with the purposes of the inspection and to use the most appropriate means for a true perception of the facts of evidence.

The national legislation provides inspectors the power to enter the work premises at any time during working hours, issue improvement or prohibition notices until elimination of risk or its reduction to a suitable level and the execution of immediate measures in cases of serious risk to the health and safety of workers.

In case of non-compliance with the recommendations issued by the inspector, employer is liable to financial penalty ranging in the amount equal to 4-28 minimum wages.

Source: §74-76 of the General Law of Health & Safety; §38 & 86 of the Decree n.º 682, de la Asamblea Legislativa, por el que se dicta la Ley de Organización y Funciones del Sector Trabajo y Previsión Social; §82 of the

Decreto Legislativo n.º 254 que dicta la Ley General de Prevención de Riesgos en los lugares de trabajo



# 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

**El Salvador has not ratified the Conventions 102, 121 and 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:

- Decretónúm. 15 de 23 junio de 1972, Código de Trabajo
- Decretónúm. 1263 por el que se dicta la Ley del Seguro Social

## Income

In accordance with the Labour Code, the individual employment contract suspends due to non-occupational sickness or accident of a worker. Paid sick leave is provided in the following manner:

- Employees with one or more year of service are entitled to 60 days of paid sick leave at the rate of 75% of basic salary;
- Employees with at least 5 months but less than 1 year of service are entitled to 40 days of paid sick leave at the rate of 75% of basic salary; and
- Employees with at least 1 month but less than 5 months of service are entitled to 20 days of paid sick leave at the rate of 75% of basic

Source: §307 of the Labour Code 1972, last amended in 2019

## Medical Care

Medical benefits are available for insured workers and these include general medical care, specialist care, medicine, hospitalization, maternity care, and transportation.

Source: §59 (a) of the Law No. 1263

## Job Security

In accordance with the Labour Code, employer must pay the employee for the duration of the disease and to the employee's restoration. Thus, employment of a worker during his/her illness is secure during sick leave. The duration of sick leave varies according to the length of service.

In accordance with the new reform in labour code which enters into force on June 19, 2020, an employee cannot be fired because of his health condition after being diagnosed with a chronic illness. This guarantee begins after the diagnosis has been issued and is extended three months after the conclusion of the medical treatment.

Source: §38-A and 307 of the Labour Code 1972, last amended in 2019

## 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, if the assessed degree of disability is greater than 66%, permanent disability benefit is 70% of the insured worker's average earnings in the last year.

In the case of permanent partial disability, amount of compensation depends on the assessed degree of disability (35-66%) and a percentage of full pension is accordingly paid.

In the case of temporary disability, 75% of average wages (in the first 3 of last 4 months) are paid up to 52 weeks.

In the case of fatal injury, dependents receive survivors' pension. The survivors' pension is 60% of the deceased's pension is paid to a spouse while 30% of the deceased's pension is paid to a child. Total survivors' benefits cannot exceed 100% of a deceased worker's pension.

Source: ISSA Country Profile for El Salvador

# 09/13 SOCIAL SECURITY

## **ILO Conventions**

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

Employment Injury Benefits: Conventions 121 (1964),

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

Medical Care and Sickness Benefits: Convention 130 (1969)

Unemployment Benefits: Convention 168 (1988).

**El Salvador has not ratified the above-mentioned Conventions.**

### ***Summary of Provisions under ILO Conventions***

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

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

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

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

## Regulations on social security:

- Decreto núm. 927, Ley del sistema de ahorro para pensiones
- Decreto núm. 926, por el que se dicta la Ley Orgánica de la Superintendencia de Pensiones

## Pension Rights

For full pension, a worker must have attained 60 years of age (55 years for women) with at least 25 years of contributions (or any age with 30 years of contributions). The pension is 30% of the base salary for the first three years of contributions plus 1.5% for each additional year.

Source: §104 of Law No. 927; ISSA Country Profile for El Salvador

## Dependents' / Survivors' Benefit

The laws provide for survivor benefit for the dependents including widow, widower, children and parents. Survivors' benefit is 50% of the deceased's pension and is paid to a widow/widower. 60% of the deceased's pension is paid if there are no eligible children. 25% of the pension the deceased received or was entitled to receive is paid to each eligible child. Parents are entitled to 20% of the pension the deceased received or was entitled to receive; 30% of deceased's pension is paid if there is only one surviving parent. Combined survivors' benefits cannot exceed 100% of the deceased workers' old age pension.

Source: §106-108 of Law No. 927; ISSA Country Profile for El Salvador

## Unemployment Benefits

There is no provision for unemployment benefit under El Salvadoran labour laws. However, unemployed persons receive medical benefits for one year.

Source: ISSA Country Profile for El Salvador

## Invalidity Benefits

Law 927 provides for invalidity benefit in the case of non-occupational accident/injury/disease resulting into permanent invalidity. Worker must be assessed with a disability, be younger than age 60 (men) or age 55 (women), and have at least 36 months of contributions, including at least 18 months in the 36 months before the disability began. Invalidity pension for permanent disability is 70% of the worker's average earnings and 50% for partial disability of 50-65%.

Source: §105 of Law No. 927, ISSA Country Profile for El Salvador

# 10/13 FAIR TREATMENT

## ILO Conventions

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

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

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

**El Salvador has ratified the Conventions 100 and 111.**

### *Summary of Provisions under ILO Conventions*

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

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

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

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

## Regulations on fair treatment:

- The Constitution of El Salvador, 1987 (Decree No. 38)
- Decretónúm. 15 de 23 junio de 1972, Código de Trabajo

## Equal Pay

In accordance with the Constitution and the Labour Code, the principle of equal remuneration for work of equal value between workers has to be respected and there can't be any discrimination on the basis of sex, age, race, colour, nationality, political opinion or religious belief.

Labour Code, amended by Decree No. 407 of 2019, requires employers to ensure equal pay for men, women and people with disabilities engaged in identical activities. It further stipulates that workers who work in the same company or establishment in identical circumstances doing equal work should receive the same compensation regardless of gender, age, race, colour, disability status, nationality, political opinion or religious belief.

Source: §38(1) of the Constitution of El Salvador; §29(11 & 12) and 123 of the Labour Code 1972, last amended in 2019

## Sexual Harassment

Sexual harassment is a criminal offence in El Salvador and is punishable with an imprisonment term of 3-5 years. The imprisonment term may extend to four to eight years if the victim is a minor, i.e., under age of 15 years. Employers are required to make policies, awareness programs and take preventive measures on

violence against women and sexual harassment.

Source: §8 of the Law of Health & Safety at Workplace, 2010; §165 of the Penal Code

## Non-Discrimination

In accordance with the article 123 of the Labour Code, there cannot be any discrimination on grounds of sex, age, race, colour, nationality, political opinion or religious belief. Other prohibited grounds for discrimination are union membership and disability. In accordance with article 03 of the Constitution, "all persons are equal before the law. For the enjoyment of civil rights, no restrictions shall be established that are based on differences of nationality, race, sex or religion". The other relevant law promoting equality between men and women is Decree No. 645 dictating equality, equity and eradication of discrimination against women.

Employers are prohibited from using credit history of a worker as a requirement for hiring or as grounds for justified dismissal.

In accordance with the amendment in Labour Code (through Decree No. 900 of 2018), the provisions of Labour Code must be interpreted and applied in line with the Special Integrated Law for a Life Free of Violence for Women 2011, the Law of Equality, Equity, and Eradication of Discrimination Against Women 2011, and other applicable legislation, which protect the human rights of women.

The Labour Code (by amendment through Decree No. 900) requires the employers to keep due regard of the women workers and refrain from abusive speech at workplace,

sexual harassment, workplace harassment and other types of violence contemplated in Special Integrated Law for a Life Free of Violence for Women 2011 and the Law of Equality, Equity and Eradication of Discrimination Against Women 2011. The General Law of Risk Prevention in the Workplaces refers to sexual harassment, violence against women and work schedules incompatible with family responsibilities as psychosocial risks.

The Law of Equality, Equity, and Eradication of Discrimination Against Women 2011 prohibits discrimination against women at workplace in access to employment, promotion, job related training and other employment related matters.

The Law of Equality, Equity, and Eradication of Discrimination Against Women 2011 requires equal pay for work of equal value between male and female workers.

The Special Integrated Law for a Life Free of Violence for Women 2011 prohibits workplace harassment against women workers through damaging the person's reputation, discredit the work or disturb or hinder the exercise of work.

Article 30 of the Labour Code establishes that employers are prohibited from requiring women who apply for employment to undergo prior examinations to check if they are in a state of pregnancy as a hiring requirement. Similar prohibitions are applicable in the case of HIV or other chronic illness that a worker is going through.

Decree No. 900 provides for different kinds of leave.

On 1 January 2021, the Law on the Inclusion of People with Disabilities came into force

in El Salvador. The law recognises the rights of persons with disabilities under equal conditions in an inclusive environment. The law sets an employment quota of 5% (hiring one person with a disability for every 20 workers) for persons with disabilities in both the public and private sectors. Enterprises with less than 20 workers do not fall under the jurisdiction of this law.

Source: §1A, 03, 29-30 of the Constitution of El Salvador; §123 of the Labour Code 1972, last amended in 2019; Decree No 227 of 2015; §25 of the Law of Equality, Equity, and Eradication of Discrimination Against Women 2011; §8 of the Special Integrated Law for a Life Free of Violence for Women 2011

## Equal Choice of Profession

Women can work in the same industries as men. No restriction could be located in the labour laws.



# 11/13 MINORS & YOUTH

## **ILO Conventions**

Minimum Age: Convention 138 (1973)

Worst Forms of Child labour: Convention 182 (1999)

**El Salvador has ratified the Conventions 138 and 182.**

### ***Summary of Provisions under ILO Conventions***

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

- The Constitution of El Salvador, 1987 (Decree No. 38)
- Decretónúm. 15 de 23 junio de 1972, Código de Trabajo

## Minimum Age for Employment

Minimum age for employment is 14 years. In accordance with the Constitution of El Salvador and the Labour Code, children under fourteen years of age, and those who have reached this age but who still have to finish compulsory education, may not be employed in any type of work. Their employment is authorized when it is considered indispensable for their subsistence or that of their family, provided that this does not prevent compliance with compulsory education. The workday for those less than sixteen years cannot be more than six hours a day and thirty-four hours a week, in any kind of work. The Law for Comprehensive Protection of Children and Adolescents 2009 also sets the minimum age for admission to work as 14 years. The National Council for Childhood and Adolescence establishes policies to progressively raise the minimum age for admission to work for securing the complete physical and mental development of adolescents.

Minors of twelve years of age may be employed for light work that may not harm their health or development and does not conflict with their attendance at school. A worker under 18 years of age must not be employed without medical examination and the employer must keep a record of the workers, the date of birth, and the kind of agreed work, agreed working hours and wages.

Under article 56 of the Constitution, all inhabitants of the Republic have the right and duty to receive a simple and basic education that will train them to perform as useful citizens. The State shall promote the formation of special education centres. When imparted by the State, simple, basic secondary and special education shall be free. The Law for Comprehensive Protection of Children and Adolescents also guarantees free and compulsory education. The education starts at the age of 4 and is given freely by the state for 12 years till the age of 16. Thus, the compulsory education age is 16 years. These provisions are found in General Education Law of 1996.

Source: §38 and 56 of the Constitution of El Salvador; §114-117 of the Labour Code 1972, last amended in 2019; §59 and 82 of the Law for Comprehensive Protection of Children and Adolescents 2009; §5, 18 and 20 of the General Education Law 1996

## Minimum Age for Hazardous Work

Minimum Age for Hazardous Work is set as 18 years. In accordance with the Constitution of El Salvador, unhealthy or dangerous work is prohibited for persons less than eighteen years of age. Night work is also prohibited for persons under eighteen years old. The law defines dangerous and unhealthful work which includes oiling, cleaning or repairing moving machinery; underground or underwater work; work in mines or quarries; construction or demolition work; loading and unloading on docks and working with toxic and flammable substances.

The Law for the Protection of Children and Adolescents establishes the minimum age for domestic service as 16 years. Accord No.

241 of 2011 prohibits children from working in specific activities within 29 occupational categories such as agriculture, fishing, construction, mining, manufacturing, and street work. It bans children younger than age 16 from making construction materials such as bricks, cement, tiles, and tubes. The list authorizes adolescents older than age 16 to perform non-hazardous activities related to coffee and sugar production and artisanal fishing; as long as they receive occupational safety and health, training and their rights are protected.

Prohibitions and restrictions on the employment of minors do not apply to work done in schools for general vocational or technical education or in other training Institutions.

Source: 38 of the Constitution of El Salvador; §104-109 & 116 of the Labour Code 1972, last amended in 2019; Accord 241 of 2011

# 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.

**El Salvador 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 El Salvador, 1987 (Decree No. 38)
- Decretónúm. 15 de 31 de Julio de 1972, Código de Trabajo, last amended in 2019

to an overtime pay.

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

Source: §161 & 176 of the Labour Code 1972, last amended in 2019

## Prohibition on Forced and Compulsory Labour

Article 9 of the Constitution and article 13 of Labour Code prohibit forced/compulsory labour. In accordance with the Labour Code, forced labour is any work or service exacted under the menace of any penalty and for which the worker has not volunteered.

Source: §09 of the Constitution of El Salvador; §13 of the Labour Code 1972, last amended in 2019

## Freedom to Change Jobs and Right to Quit

Workers have the right to change jobs. For more information on this, please refer to the section on employment security.

Source: §26 of the Labour Code 1972, last amended in 2019

## Inhumane Working Conditions

Working time may be extended beyond normal working hours of forty-four hours per week and eight hours a day. Workers may be required to work overtime occasionally when unforeseen, special or necessary circumstances arise and so demand it. If a worker works beyond the stipulated working hours, he/she is entitled

# 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)

**El Salvador has ratified both Conventions 87 & 98.**

### ***Summary of Provisions under ILO Conventions***

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

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

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

## Regulations on trade unions:

- The Constitution of El Salvador, 1987 (Decree No. 38)
- Decretónúm. 15 de 23 junio de 1972, Código de Trabajo

## 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 have the right to associate freely to defend their economic and common social interests, forming professional associations or unions, irrespective of nationality, sex, race, creed and political ideologies.

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 and public order. The statutes must state the following information: type, name, and objectives of the registered Union; conditions to be met by its members; and obligations and rights of its members.

The union representative submits a copy of duly certified union's founding act and 02 copies of the Union bylaws, certified by the minutes of the meeting or meetings at which they were developed, to the Ministry of Labour and Social Welfare within 05 days of its presentation. The Ministry forwards it to the employer of the establishment. A trade union is considered registered if the employer does not reply within 05 days after receipt of the required documents. Filing of registration form has to be done again in case of any change in statutes and

administration.

Source: §7 & 47 of the Constitution of El Salvador; §204-219 of the Labour Code 1972, last amended in 2019

## Freedom of Collective Bargaining

Right to collective bargaining is recognized under the Constitution and regulated by Labour Code. The collective labour contract and collective labour agreement are intended to regulate the conditions governing individual employment contracts of the companies or establishments in question; and the rights and obligations of the contracting parties. The collective labour agreement concluded between one or more trade unions, on the one hand, and an employer, on the other.

All collective bargaining agreement must contain place and date of agreement; the date of enforcement and its duration; the overall working conditions governing contracts individually or held in the company or establishment; clause to determine the rights and obligations of the contracting parties; and other provisions agreed upon by the contracting parties.

A CBA may be concluded for definite or indefinite period. The duration of a CBA signed for definite time period may not be less than one year or more than 3 years. It automatically extends for one year if none of the party claims the suspension or review of the contract. A CBA of indefinite term may be cancelled by giving a cancellation notice.

The collective labour agreement must be in writing with one copy each for the contracting parties and one extra copy for submission to the Ministry of Labour and

Social Welfare within 30 days.

The Economic and Social Council in El Salvador, a bipartite plus body, is a consultative body with the following objectives: (a) encourage plurality and free discussion of public economic and social policies formulated by the Executive Branch and (b) promote civil society participation in the process of decision-making in economic and social matters. The Council was established in 2009. The Council has following mandate: analyse and discuss the government proposals on public policies in terms of economic and social matters, issue reports and recommendations to the Executive Organ, present periodic reports to the citizens on economic and social evolution, and provide follow up to the economic and social policies and evaluate their level of execution.

The Council is composed of sixty full members who are eligible to vote: 20 members from social sector; 20 members from trade union movement; 20 members from business sector. Other than these there are nine members from academic sector and one member from executive branch. Members are elected for a two-year term with a possibility of renewal.

Source: §39 of the Constitution of El Salvador; §268-287 of the Labour Code 1972, last amended in 2019; Presidential Decree No. 64 of 2009

## Right to Strike

Right to strike is provided under the constitution however, excessive legal barriers and restrictions are placed on the right to strike, eventually frustrating this fundamental right. In accordance with the

Constitution, workers have the right to strike and employers have the right to suspend work (lock out). To exercise these rights, no previous approval shall be necessary.

Strike is the collective suspension of work, arranged by workers, with the purpose of obtaining a particular purpose. The purpose of the strike is the signing or revision of the collective work contract; the signing or revision of collective work settlement; and the defence of common professional interests of workers.

Members of union must approve strike by secret ballot. The strike will cannot start before four days have elapsed from the date of the notification and no later than thirty days of that notification.

Within 07 days of commencement of strike, the Director General of Labour, at the request of a party, determines the number, type of workers in the company, the suspension of whose works would seriously impair the normal work or the safety or preservation of the enterprise.

Strikers must not threaten non-strikers. Strikers cannot stop other employees who want to go to work during a strike from doing so and they are not allowed to force other workers to participate in strike. Employment contract of the strikers suspends during the strike and the employers are not obliged to pay the workers on strike. The Labour Law requires employers not to punish the striking workers and prohibits hiring of replacement workers.

Source: §48 of the Constitution of El Salvador; §527-538 of the Labour Code 1972, last amended in 2019



# QUESTIONNAIRE

## DECENTWORKCHECK.ORG

## Check

Decent Work Check El Salvador is a product of WageIndicator.org and  
www.tusalarario.org/elsalvador/Portada



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".





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

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









## 08/13 Sick Leave & Employment Injury Benefits

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

## 09/13 Social Security













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

## 10/13 Fair Treatment



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

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




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





## 11/13 Minors & Youth

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

## 12/13 Forced Labour

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

## 13/13 Trade Union Rights

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

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## Results

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



is your amount of "YES" accumulated.

El Salvador scored 44 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.