



# DECENT WORK CHECK

## **PERU** 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.

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

# MAJOR LEGISLATION ON EMPLOYMENT AND LABOUR

1. Political Constitution of Peru, 1993
2. Legislative Decree No. 854 on Working Time and Overtime
3. Supreme Decree No. 007-2012-TR
4. Law on Productivity and Labour Competitiveness, 1997 (No. 728)
5. Legislative Decree n° 713 on paid breaks for workers in the private sector
6. Law of Domestic Workers, Law No. 27986
7. Ley N° 29409: Ley que concede el derecho de licencia por paternidad a los trabajadores de la actividad pública y privada, 2009
8. Reglamento De La Ley De Modernización De La Seguridad Social En Salud Decreto Supremo N° 009-97-SA
9. Dictan Normas Reglamentarias De La Ley N° 28048, Ley De Protección A Favor De La Mujer Gestante Que Realiza Laboures Que Pongan En Riesgo Su Salud Y/O El Desarrollo Normal Del Embrión Y El Feto, Decreto Supremo N° 009-2004-TR
10. Health and Safety Act at Work, Law No. 29783, 2012
11. Law no. 28806 on Labour Inspection, 2006
12. Law No. 29981 on creation of the National Superintendency of Labour Inspection (SUNAFIL), 2013
13. Law on Social Security Modernization of Public Health No. 26790
14. Decree-Law 19990 for establishing the national system of social security pension
15. Decree-Law 25967, 1992
16. Ley que modifica la Ley Núm. 27942, Ley de Prevención y Sanción del Hostigamiento Sexual LEY N° 29430
17. Equal Opportunities Act between Women and Men, Law No. 28983, 2007
18. Code of Children and Adolescents, Law no. 27337, 2000
19. Penal Code, 1991
20. Decreto Supremo núm. 010-2003-TR por el que se aprueba el Texto Unico Ordenado de la Ley de Relaciones Colectivas de Trabajo

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

# 01/13 WORK & WAGES

## **ILO Conventions**

Minimum wage: Convention 131 (1970)

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

**Peru has not ratified the above-mentioned Conventions.**

### ***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:

- Political Constitution of Peru, 1993
- Legislative Decree No. 854 on Working Time and Overtime
- Supreme Decree No. 007-2012-TR
- Law on Productivity and Labour Competitiveness, 1997 (No. 728)

## Minimum Wage

In accordance with the Peruvian Constitution, every worker is entitled to a fair and adequate remuneration to seek him and his family material and spiritual welfare. Minimum wage rate is determined according to the needs of workers and their families. Other factors that are considered while fixing the minimum wage include cost of living, economic development in the country, productivity, capacity of the employer and the inflation rate.

The minimum wage in Peru is set by the National Labour and Employment Promotion Council (a tripartite plus institution composed of worker, employer and government representatives) which after consultation with the workers' and employers' organizations determines the minimum wage. If no agreement is reached on minimum wage in the Council, this is determined through a Presidential Decree. Wages can also be determined by collective agreement. However, the legislation does not clearly specify that the wages set by collective agreement can be lower than the minimum wage rate. Different wage rates are determined for different occupations and sectors.

Compliance with labour laws including minimum wage regulations is ensured by the Labour Inspection service which is part of the Ministry of Labour & Social

Promotion. Failure to comply with minimum wage regulations results in fines calculated on the basis of tax unit reference index for the year when the offence took place. The maximum fine ranges between 5-20 tax units depending on the degree of violation.

Source: §24 & 118 of the Political Constitution of Peru, 1993; Decreto Supremo que incrementa la Remuneración Mínima Vital de los trabajadores sujetos al régimen laboral de la actividad privada; Supreme Decree No. 004-2014-TR on Regulating the Organization and Functions of the Ministry of Labour and Promotion of Employment; §19(3) of the General Law on Work Inspection and Workers' Defence, 2001 (Legislative Decree N° 910)

## Regular Pay

Wage is the compensation in cash or in kind that a worker receives for services rendered. There is no specific provision in labour law regarding regular payment of wages to workers however a worker may terminate an employment contract without any obligation if the employer is not paying remuneration in a timely manner. Employers are also required to keep wage records and pay slips under the Supreme Decree No. 001-98-TR of 20 January 1998 regulating the obligation of the employers to maintain wage records. Legislative Decree No. 1310 stipulates that, for all legal purposes, employers are obliged to keep documents and proof of payment of economic labour obligations only up to five (5) years after the payment is made. The decree further provides that where the payment of economic labour obligations is deposited in an account through banking system, the employer can substitute the printing and physical delivery of the pay slips or proof of payment for the provision

of said documents through the use of information and communication technologies.

Source: §66 of the Productivity and Labour Competitiveness Law No. 728

# 02/13 COMPENSATION

## ILO Conventions

Compensation overtime: Convention 01 (1919)

Night work: Convention 171 (1990)

**Peru has ratified the Convention 01 only.**

### *Summary of Provisions under ILO Conventions*

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

- Political Constitution of Peru, 1993
- Legislative Decree No. 854 on Working Time and Overtime
- Supreme Decree No. 007-2012-TR
- Law on Productivity and Labour Competitiveness, 1997 (No. 728)

## Overtime Compensation

In accordance with the Political Constitution, the normal working hours are 8 hours a day and 48 hours per week. The normal working hours limit is not applicable to managers or employees who are not subject to direct supervision, those who perform intermittent work or security and custodial work. The 8 hour daily limit can be exceeded on some days provided that the average hours worked in a week do not exceed the 48 hour weekly limit. There is no defined limit to the maximum working hours after including overtime hours. Overtime work is totally voluntary, both in their execution and in its provision. A worker cannot be forced to work overtime except in justified cases when work is essential as a result of a fortuitous event or force majeure that can put in imminent danger persons or property of the establishment or the continuity of the productive activity.

Work exceeding the ordinary daily or weekly working time is considered as overtime, and it is remunerated with an additional sum. 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 at the following rates:

- 125% of normal hourly rate for the first 2 hours of overtime
- 135% of normal hourly rate for the subsequent hours of overtime

- 200% of the normal hourly rate if worker was forced to do overtime work hours

Employer may display in a conspicuous place in his establishment a notice showing the starting and finishing hours of the working day and the times of breaks for meals. It is the employer's competency to fix the working time, which is the time workers come and leave work. The rest periods during working hours are not regarded as working time.

Source: §25 of the Political Constitution of Peru, 1993; §6-10 of the Legislative Decree No. 854 on Working Time and Overtime; §1 & 2 of the Supreme Decree No. 008-2002-TR, Regulating Legal Decree n° 27671 on Working time, Schedule and overtime

## Night Work Compensation

Work done during 20:00 and 06:00 of following day is considered night work. It is paid at the premium rate of 130% of the normal hourly salary paid during the day.

Source: §08 of the Legislative Decree No. 854 on Working Time and Overtime

## Compensatory Holidays / Rest Days

In extraordinary circumstances, workers may perform work on weekly rest days and public holidays. Instead of getting higher wages for working on public holiday, workers get a compensatory day off in lieu of the holiday. There is no provision for compensatory holiday for workers working on weekly rest day.

Source: §03 of the Legislative Decree No. 713 on paid breaks for workers in the private sector

## Weekend / Public Holiday Work Compensation

Workers may be required to work on weekly rest days and public holidays. In such circumstances, hours of work on weekly rest day and public holiday are considered overtime work and are paid at a premium rate of 200% of normal hourly wage rate. If domestic workers are made to work on a public holiday, they are paid at a premium rate of 150% of normal hourly wage rate.

Source: §3 of the Legislative Decree No. 713 on paid breaks for workers in the private sector; §11 of the Domestic Workers Law No. 27986

# 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.

**Peru has ratified the Conventions 14 and 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:

- Legislative Decree n° 713 on paid breaks for workers in the private sector
- Law of Domestic Workers, Law No. 27986

## Paid Vacation / Annual Leave

The Legislative Decree No. 713 provides for annual leave to all workers on completion of one year of continuous service with the same employer. An employee is entitled to 30 calendar days paid annual leave. This required year of service is calculated from the date on which the employee entered the service with the employer. There is no provision in law which shows that annual leave increases with the length of service.

A worker is entitled to his normal wages in the duration of his/her annual leave. The payment has to be made before leave is taken. Annual leave are scheduled by mutual agreement between the employer and the worker, taking into account the operational requirements of the company and the interests of the worker.

A worker is entitled to uninterrupted annual leave. In general cases, the law does not allow splitting of leave. However a request may be made in writing by the employee to the employer to split the leave in shorter durations. However, no such duration may be less than 07 days. The law also allows the workers to receive compensation for half (15 days) or full leave (one month) in place of taking leave.

In case of discontinuous or seasonal work whose duration is less than one year but not less than one month, the worker receives

one twelfth of the remuneration for each monthly holiday full of effective work. Annual leave can also be accrued up to two consecutive rests, provided that at least after one year of continuous service enjoyment a break of seven calendar days.

If the employment contract expires before a worker could acquire the right to annual leave, compensation for leave is made in proportion to the number of months and numbers of hours worked in a week.

Source: §10-23 of the Legislative Decree No. 713 on paid breaks for workers in the private sector

## Pay on Public Holidays

Workers are entitled to paid holidays during Festival (public and religious) holidays. These are usually 12 in number.

Public holidays in Peru include New Year's Day (January 01), Holy Thursday (April 17), Good Friday (April 18), Labour Day (May 01), St. Peter and St. Paul's Day (June 29), Independence Day (July 28 & 29), Battle of Angamos Day (October 08) All Saints Day (November 01), Immaculate Conception Day (December 08) and Christmas Day (December 25).

Source: §5-8 of the Legislative Decree No. 713 on paid breaks for workers in the private sector

## 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. If required, the employer can establish alternative or cumulative schemes of working hours and

rest days by designating another day as a rest day or substitute another rest days for workers to enjoy individually or collectively.

Source: §1 of the Legislative Decree No. 713 on paid breaks for workers in the private sector

# 04/13 EMPLOYMENT SECURITY

## **ILO Conventions**

Convention 158 (1982) on employment termination

**Peru 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:

- Law on Productivity and Labour Competitiveness, 1997 (No. 728)

## Written Employment Particulars

Employment contract may be for an indefinite duration, for a fixed term or for certain work. Employment contract must be in writing and should determinants of recruitment and other conditions of employment. An employer is required to create it in triplicate, one copy for each party and third copy is submitted to the Labour Administrative Authority within 15 days of its inclusion.

An employer is required to provide a copy of employment contract to a worker within 3 days of its submission to the Authority. Indefinite term contracts may be executed either orally or in writing. Contracts subject to special conditions must be executed in writing. Part-time contracts must be executed in writing and may be either for an indefinite term or subject to conditions. Employers must provide written information about recommendations on health and safety at work, information on pension schemes, and Internal Work Regulations.

Source: §4-5 & 72-73 of the Productivity and Labour Competitiveness Law No. 728

## Fixed Term Contracts

Peruvian Labour Law prohibits hiring fixed term contract workers for tasks of permanent nature. The Law on Productivity and Labour Competitiveness lists the valid reasons for use of fixed term contracts and divides these in three categories.

Temporary reasons: commencement of new activity (maximum duration: 3 years); increase in market demand (maximum duration: 5 years); restructuring of enterprise due to technological change (maximum duration: 2 years) Incidental reasons: temporary needs (maximum duration: 06 months in a year); replacement of a worker (maximum duration: 5 years); and unforeseen event and force majeure (maximum duration: 5 years) Specific piece of work or service: performance of specific work or service (maximum duration: 5 years; intermittent service contract (maximum duration: 5 years); and seasonal contract (maximum duration: 5 years) Maximum duration of a fixed term contract including renewals is 5 years. Law does not limit on the number of successive fixed term contracts as long as the total duration of a fixed term contract does not exceed 5 years.

Source: §53-74 of the Productivity and Labour Competitiveness Law No. 728

## Probation Period

Law on Productivity and Labour Competitiveness specifies that the duration of probation/trial period is 3 months. On mutual agreement, the duration of probationary period can be extended in case the work to be undertaken requires a period of training and adaptation or where the nature of the work or responsibility entailing such extension may be justified. The extension must be established in writing and may not exceed:

- 6 months in total for skilled workers and persons in position of trust; and
- 1 year for managerial personnel.

Source: §10 of the Productivity and Labour Competitiveness Law No. 728

## Notice Requirement

An employment contract may terminate due to death of the worker or employer; resignation or voluntary retirement of the employee; the completion of the work or service, fulfillment of conditions; the mutual consent of the parties; the permanent total disability; retirement; the dismissal, in cases and forms permitted by law; or dismissal due to objective causes. Dismissal must be communicated in writing, by letter, stating the reason given for the action. The employer may not subsequently invoke grounds other than those referred to in the letter of dismissal. For the dismissal of a worker employed for four or more hours daily for the same employer, there must be a valid reason prescribed by law and duly substantiated which may be connected with his or her capacity or conduct. The Law on Productivity and Labour Competitiveness provides a list of reasons justifying dismissal.

Productivity and Labour Competitiveness Law requires an employer to provide written dismissal notice to an employee before terminating his/her employment contract. The duration of notice period depends on the reason for dismissal. This is:

- (i) 6 days if a worker is dismissed for misconduct;
- (ii) 30 days if a worker is dismissed for lack of capacity to perform work.

Notice period is not provided in case of serious misconduct. There is no provision for payment in lieu of notice.

Source: §16, 22-24 & 31-32 of the Productivity and Labour Competitiveness Law No. 728

## Severance Pay

A worker is entitled to severance pay which is provided as compensation when a worker is arbitrarily dismissed, without following the procedures. In that case, an employee is entitled to one month's pay for one year of service up to a maximum of 12 monthly salaries. There is no provision for severance pay in the case of employment termination due to worker's capacity or conduct or collective dismissal.

Source: §34 & 38 of the Productivity and Labour Competitiveness Law No. 728

# 05/13 FAMILY RESPONSIBILITIES

## **ILO Conventions**

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

**Peru 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:

- Ley N° 29409: Ley que concede el derecho de licencia por paternidad a los trabajadores de la actividad pública y privada, 2009

## Paternity Leave

The paternity leave law has been amended by Law No. 30807 of 2018 which raises the paternity leave from 4 days to 10 consecutive calendar days.

The following provisions are also found in the law:

- a. 20 consecutive calendar days for premature and multiple births;
- b. 30 consecutive calendar days for birth with terminal congenital disease or severe disability;
- c. 30 consecutive calendar days due to serious complications in mother's health

Paternity leave can start from the date of birth of child, from the date of mother and/or child's discharge from the hospital, and from third day prior to the probable date of delivery. A worker wishing to take paternity leave must inform the employer at least 15 days before the probable date of delivery.

Prior to this reform, law provides for 4 days paid paternity leave on the birth of a child. The paternity leave benefit is paid on any day between the days of confinement and the day mother and/or child are discharged from the medical centre.

Source: §02 of the Law No. 29409 of 2009 amended by Law No. 30807 of 2018

## 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.

**Peru has not ratified the Convention 183 only.**

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

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

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

The total maternity leave should last at least 14 weeks.

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

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

Workers have the right to return to 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:

- Reglamento De La Ley De Modernización De La Seguridad Social En Salud Decreto Supremo N° 009-97-SA
- Dictan Normas Reglamentarias De La Ley N° 28048, Ley De Protección A Favor De La Mujer Gestante Que Realiza Laboures Que Pongan En Riesgo Su Salud Y/O El Desarrollo Normal Del Embrión Y El Feto, Decreto Supremo N° 009-2004-TR

## Free Medical Care

In accordance with the law, the pregnant woman and the new born baby are entitled to complete medical care during pre-natal, confinement and post-natal period.

Source: §12 of the Supreme Decree n° 009-97

## No Harmful Work

A pregnant woman worker is not allowed to perform work that endangers her health or the normal development of embryo and fetus. Employer is also required to assign pregnant workers to tasks that don't endanger their health or that of the embryo or fetus. An employer may transfer the employee to any other convenient job for some time retaining her in the same occupational category.

Source: §1-9 of the Supreme Decree No. 009-2004-TR

## Maternity Leave

Female employees were earlier entitled to a maximum of 90 days of paid maternity

leave, including 45 days of pre-natal and 45 days of post-natal leave. In case birth takes place on a date later than expected, the additional days are considered as sick leave for temporary illness.

In October 2015, the Government, through Act No. 26644, decided to extend the period of maternity leave from 90 to 98 days: 49 days of prenatal leave and 49 days of postnatal leave. Workers may decide to take all maternity leave at the post-natal stage, or arrange these days as they like. Similarly, in the case of multiple births or babies with disabilities, postnatal rest extends for an additional 30 calendar days.

Maternity leave may be extended up to 120 days in the case of multiple births. The 49 day post-natal leave is obligatory; however if a woman so desires prenatal leave can be deferred, either totally or partially, and added to the post-natal leave. The employee must provide a medical certificate indicating that postponing the prenatal leave might not affect the mother or the child.

In case of adoption, leave of thirty calendar day's id provided to the worker if the child is under 12 years old. If the couples (workers) who are applying to adopt a child are married, the woman is entitled to take the leave.

Source: §1-3 of the Law No. 26644 of the Extent of the Right to Prenatal and Postnatal Leave for Pregnant Workers; §1 of the Act No. 27409 of Granting Leave from Work for Adoption; Law no.30367 of November 24, 2015

## Income

Maternity leave is fully paid for the insured worker with at least three consecutive

months or four non-consecutive months of contribution during six months before confinement. Social Security is responsible to pay the maternity leave benefit to the worker during the term of maternity leave.

Law No. 28239 of 2004, amending the Law on Modernization of Social Security in Health provides for additional 30 days of the maternity allowance and the recognition of an additional allowance for each child, in cases of multiple births.

Source: §8-12 of Law No. 26790 of the Modernising Social Security for Health

## Protection from Dismissals

In accordance with the Law on Productivity & Labour Competitiveness, a women worker cannot be dismissed during the period of her pregnancy or maternity leave (90 days after delivery). Any kind of dismissal due to pregnancy is considered null and void.

A new Law (No. 30709), enacted in 2017, prohibits employers from dismissing or not renewing the contract of employment for reasons related to the condition that the workers are pregnant or breastfeeding. The new provisions are effective from July 2019.

A dismissal for the following reasons is null and void: pregnancy, birth and its consequences or breastfeeding, if the dismissal occurs at any time during the gestation period or within 90 (ninety) days after delivery, is null and void. Dismissal is presumed to be on the grounds of pregnancy, birth and its consequences or breastfeeding if the employer does not prove in these cases the existence of just cause for dismissal. Under a 2021 amendment, the above protections are

now applicable to probationary workers and part-time workers. In addition, the employer must have been notified of the pregnancy through a medical certificate. However, the above prohibition does not impair the employer's right to dismiss for a just cause.

Source: §29(e) of the Law on Productivity & Labour Competitiveness, No. 728; Law No. 30709

## Right to Return to Same Position

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

Source: §29(e) of the Productivity & Labour Competitiveness Law No. 728

## Breastfeeding

Female workers are entitled to fully paid nursing breaks of one hour duration on daily basis, for new mothers to breastfeed their child(ren) until a child is twelve (12) months old. The breast-feeding/nursing breaks are in addition to the normal breaks an employee receives during the working day.

Source: §01 of the Act No. 27140 of granting Permission for Women to Nurse their Babies

# 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)

**Peru has ratified the Convention 81 only.**

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

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

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

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

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

## Regulations on health and safety:

- Health and Safety Act at Work, Law No. 29783, 2012
- Law no. 28806 on Labour Inspection, 2006
- Law No. 29981 on creation of the National Superintendency of Labour Inspection (SUNAFIL), 2013

## Employer Cares

An employer is required to take necessary action to ensure health and safety of workers in the performance of all aspects of work, in the workplace or in the course of it.

The employer must ensure compliance with current legislation on safety and health at work; the design, implementation and evaluation of an occupational safety and health management system is provided; appropriate measures are taken to prevent occupational risks for all workers on site; insurance contracts are verified according to the regulations made by each employer during job execution.

Employers must carry out periodic medical examination of workers after every two years. The cost of the medical examination is borne by the employer. In case workers are employed in hazardous conditions, the employer is obliged to organize pre-employment, periodical and post-employment (at the end of the employment relationship) medical examinations. Workplace risk assessment must be carried out at least once a year.

Employers must organise a safety and health service whose responsibility is to organise the first aid and urgent proceedings at workplace and monitor environmental factors and work practices

that can affect worker's health, including sanitary facilities, canteens and housing when these facilities are provided by the employer.

The employer must ensure that workers and their representatives are consulted, informed and trained in all aspects of health and safety related to their work, including provisions for emergency situations. The employer must also assess, monitor and control the safety and health at work including internal and external procedures of the company, allowing regular evaluation of the results achieved in terms of safety and health at work.

Law No 31246 has amended articles 49 and 60 of the Occupational Safety and Health Law, Act No. 29783, in June 2021. Article 49 of the OSH law now requires mandatory medical examinations of workers every two years at the expense of employers. In the case of workers who perform high-risk activities, the employer must get the workers medically examined before, during and at the end of the employment relationship. In addition, in the case of a health emergency declaration, employers must exercise epidemiological surveillance and health intelligence regarding their workers to control the spread of infectious diseases, carrying out the necessary screening tests of staff at the workplace, without generating a cost or wage deduction of any kind to the workers.

Source: §24, 35-40, 49, 68 & Principle IX of the Law No. 29783

## Free Protection

In accordance with the Law, it is the responsibility of the employer to provide free personal protective equipment to

workers according to the type of work and specific risks present in performance of their duties. The employer must ensure that the work clothing or personal protective equipment does not expose workers to danger.

The employer is also obliged to ensure the effective usage of personal protective equipment's by worker.

Law No 31246 has amended articles 49 and 60 of the Occupational Safety and Health Law, Act No. 29783, in June 2021. Article 60 requires employers to provide personal protective equipment to the workers, according to the Peruvian technical standards. Employers must bear the cost of PPE without burdening the worker or withholding their wages. The amended law further requires that workers performing remote work must also receive personal protective equipment as necessary for the performance of their duties.

Source: §60-62 of the Law No. 29783

## Training

An employer is obliged to organize training for workers on health and safety as part of the working day so as to achieve and maintain the required qualifications. Workers and their representatives must be consulted, informed and trained on all aspects of health and safety related to their work, including provisions for emergency situations.

Source: §19-27, 49 & Principle IV of the Law No. 29783

## Labour Inspection System

Labour inspection system is provided

under the Law No. 28806 on Labour Inspection. A National Superintendence of Labour Inspection (SUNAFIL) has been created under Law No. 29981 (2013) to follow the provisions of Convention 81. The Labour Inspection System, provided by the Ministry of Labour and Employment Promotion, is responsible for the proper implementation of laws and regulations relating to safety and health at work and risk prevention. The labour inspectorate supervises the compliance with safety and health at work, demand administrative responsibilities as appropriate; guide and provide technical advice, and apply the penalties provided by Law No. 28806, General Law on Labour Inspection.

The national legislation provides inspectors the power to investigate, examine or test what they deem necessary to ensure that health and safety laws are properly observed; take or remove samples of materials and substances used or handled, get pictures, videos and record images; seek and obtain relevant information and data; and issue recommendations and suggest measures to comply with OSH laws.

Labour inspectors are also authorized to require the inspected persons to take the necessary measures related to facilities, work equipment or working methods to ensure compliance with OSH provisions; and to initiate an infringement procedure by applying sanctions. The inspector may require stoppage of work involving serious and imminent risk to safety and health of workers.

In case of violation, a person is liable to fine of 28,500 PEN to 74,000 PEN or imprisonment from 1 to 4 years.

A new law (No. 30814), enacted in July 2018,

temporarily assigns the labour inspection functions of the regional governments to the National Superintendence of Labour Inspection.

Source: §19-27, 49 & Principle IV of the Law No. 29783; Law No. 30814

# 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

**Peru has ratified the Convention 102 only.**

### ***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:

- Law on Social Security Modernization of Public Health No. 26790
- Law on Productivity and Labour Competitiveness, 1997 (No. 728)

## Income

In accordance with the Law No. 26790, an employee is entitled to 20 days are paid sick leave. If sickness continues after 120 days then the employee has to apply for the subsidy to be granted for the duration of the worker's disability, to a maximum of 11 months and 10 consecutive days. This period has later been raised to 18 months.

This grant is administered by ESSALUD and is equal to the daily average of the salaries of four months immediately preceding the commencement of temporary disability, multiplied by the number of days to enjoy the benefit.

In accordance with the Law no 30119, employers (in both public and private sectors) must grant workers the right to leave for up to fifty-six alternate or consecutive hours annually for medical assistance and rehabilitation therapy required by worker's minor children with disability, adults with disabilities in a condition of dependence or subject to its curatorship. If both parents work for the same employer, this leave is enjoyed by one of the parents.

Source: §12 of the Law on Social Security Modernization of Public Health No. 26790; ISSA Country Profile; Law no 30119

## Medical Care

Insured workers are entitled to medical benefits, including medical and surgical care, hospitalization, medicine, appliances and rehabilitation until full recovery or certification of permanent disability.

Source: ISSA Country Profile

## Job Security

Employment of a worker is secure during the period of sick leave. The employment contract is suspended (not terminated) for absence due to illness and the employer is obliged to pay the respective wages, without the loss of employment.

Source: §11, 12 & Chapter III of the Law No. 728

## 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 (greater than 65%), pension is 80% of insured's average earnings. In case of partial disability, pension depends on the assessed degree of disability as follows:

- Assessed degree of disability of 40% to 65%, a reduced pension is paid according to the degree of disability; and
- Assessed degree of disability is less than 40%, a lump-sum of 2 years pension is paid.

In the case of temporary disability, 100% of insured worker's covered earnings are paid

after a 20-day waiting period for up to 340 days.

Maximum duration of temporary disability benefit cannot exceed 18 months in a 3-year period.

In the case of fatal injury, 50% of pension a deceased worker received or would have been entitled to receive is paid to a widow or dependent widower aged 60 or older. 50% of deceased worker's pension is paid to orphans and 20% of pension is paid to a dependent parent.

Total survivors' benefits cannot exceed 100% of monthly pension a deceased worker received or would have been entitled to receive.

Source: ISSA Country Profile

# 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).

**Peru has ratified the Convention 102 only.**

### ***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:

- Decree-Law 19990 for establishing the national system of social security pension
- Decree-Law 25967, 1992

## Pension Rights

Law provides for full and early old-age pension. For full pension, a worker must have attained 65 years of age (same for women) with at least 20 years of contributions. For early pension, the minimum age is 55 years with at least 30 years of contributions (for men) and 50 years with at least 25 years of contributions.

There are different formulae of full pension for those born during 1932 to 1946 and those born after December 31, 1946. Early pension is reduced by 4% that each year pension is taken before the normal pensionable age of 65 years.

Source: §1 of the Decree Law No. 25967; ISSA Country Profile

## Dependents' / Survivors' Benefit

The above laws provide for survivor benefit to the dependents including widow, widower, children and parents). The deceased must be receiving or should be entitled to receive a pension at the time of death.

50% of pension a deceased worker received or would have been entitled to receive is paid to a widow or dependent widower aged 60 or older. 20% of deceased worker's pension is paid to orphans, 40% to full orphans and 20% of pension is paid to a dependent parent. Total survivors' benefits can't exceed 100% of monthly pension a

deceased worker received or would have been entitled to receive.

Source: §54-59 & 62 of the Decree Law No. 19990; ISSA Country Profile

## Unemployment Benefits

There is no provision for unemployment benefit under Peruvian labour laws.

## Invalidity Benefits

The above law provides for invalidity benefit in the case of non-occupational accident/injury/disease resulting into permanent invalidity. The insured worker must be assessed with a loss of at least 66.7% of earning capacity and was employed when the disability began and had at least 36 months of contributions, including at least 18 in the last 36 months, 50% of a worker's reference salary (average earnings in the last 12 months) plus 1% for each year of contributions exceeding 3 years.

Source: §27 of the Decree Law No. 19990; ISSA Country Profile

# 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.

**Peru 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:

- Political Constitution of Peru, 1993
- Ley que modifica la Ley Núm. 27942, Ley de Prevención y Sanción del Hostigamiento Sexual LEY N° 29430
- Equal Opportunities Act between Women and Men, Law No. 28983, 2007

## Equal Pay

The Peruvian Political Constitution states that the worker is entitled to adequate and fair compensation that ensures both for himself and his family material and spiritual well-being.

In accordance with the law, the principle of equal remuneration for work of equal value between workers applies for all workers without any discrimination on the basis of sex.

A new Law (No. 30709), enacted in 2017, requires remunerative equality between men and women workers.

Source: §24 of the Political Constitution 1993; §6(F) of the Equal Opportunities Act between Women and Men, Law No. 28983 of 2007

## Sexual Harassment

Law prohibits sexual harassment of women at workplace however it is not only a labour rights violation but a criminal offence. If an employee is harassed, the victim may decide to terminate the contract and the due compensation is paid to him/her if the harassment was perpetrated by the owner, employer or administration. If the harassment was committed by another

employee, he/she may be fined in accordance with the gravity of act in accordance with article 35 of the Law No. 728.

Source: §35 of the Productivity & Labour Competitiveness Law No. 728; §8 of the Law No. 29430

## Non-Discrimination

The Peruvian Constitution protects individuals against acts of discrimination on the ground of origin, race, gender/sex, ethnicity, social status, language, religion, opinion, disability and union activity. Law No. 26772 prohibits discrimination on the following grounds: race, sex, religion, opinion, social origin, economic condition, marital status, age or of any other ground.

Productivity & Labour Competitiveness Law No. 728 also prohibits discrimination on the basis of sex, race, religion and language and considers any dismissal on above grounds as void. Discrimination on the ground of disability in employment or wages is prohibited under a 2012 law. The employment quota for persons with disabilities is set as 10% in the public sector and 3% in the private sector (in firms engaging more than 50 workers). Employer is required to make reasonable accommodation in the working environment unless it causes an excessive financial burden.

A newly enacted law (No. 30687) specifies that people of short heights/midgets cannot be subjected to any discriminatory treatment due to their height.

A new Law (No. 30709), enacted in 2017, requires employers to treat male and

female workers equally in imparting professional training and labour skills development plans. The employer has to provide a dignified treatment, a work environment based on respect and non-discrimination, along with compatibility of personal, family and work life. The new provisions are effective from July 2019.

Source: §2 & 26 of the Political Constitution 1993; §29 & 03 of the Productivity & Labour Competitiveness Law No. 728; §45-53 of the Law on Persons with Disability 2012 (No. 29973); law No. 26772; Law No. 30709

## Equal Choice of Profession

Women can work in the same industries men as no restrictive provision could be located in the law.

# 11/13 MINORS & YOUTH

## **ILO Conventions**

Minimum Age: Convention 138 (1973)

Worst Forms of Child labour: Convention 182 (1999)

**Peru 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:

- Political Constitution of Peru, 1993
- Code of Children and Adolescents, Law no. 27337, 2000

## Minimum Age for Employment

The general minimum age for employment is 14 years. However, minimum age for employment varies for different employment sectors. The minimum age is 15 years for employment in nonindustrial agricultural work; 16 years for work in the industrial, commercial, and surface mining sectors; and 17 years for work in the industrial fishing sector.

Adolescents are authorized to work only after prior authorization by parents or guardian and if it does not disturb their regular school attendance. Medical certificate, issued by the medical services of the Health Sector or Social Security, attesting the physical, mental and emotional wellbeing of a teenager to perform work is also mandatory.

The institutions responsible for authorizing work of adolescents keep a special register which contains the following information: full name of the adolescent; name of parent, guardian or responsible; date of birth; address and place of residence; labour played; compensation; hours of work; school of attendance and study schedule; and number of medical certificate.

Working hours for adolescents between twelve to fourteen years of age must not exceed four hours per day and twenty-four hours per week; and for adolescents between fifteen to seventeen years of age must not exceed six hours per day and thirty

six hours per week. Night work (between 19:00 and 07:00) is prohibited for adolescents unless authorized by the judge for the workers between fifteen to eighteen years of age. Working hours at night must not exceed four hours.

Free public education is guaranteed under the Constitution while the compulsory education age is 17 years.

Source: §17 of the Political Constitution 1993; §12 & 36 of the General Education Law, 2003; §51-57 of the Code of Children and Adolescents Law No. 27337 of 2000

## Minimum Age for Hazardous Work

Minimum Age for Hazardous Work is set as 18 years. A list of activities dangerous/noxious to the health and morals of adolescents has also been approved in 2010. The List of Hazardous Occupations for Children under Age 18 prohibits minors from working in 29 types of hazardous activities. These hazardous activities include domestic work, work in fireworks production, public transportation, garbage dumps, manufacturing, and street work. The list also prohibits minors from engaging in hazardous activities in fishing, mining, and agriculture, such as carrying heavy loads, working underwater or underground, and handling pesticides or sharp tools.

Source: §58 of the Code of Children and Adolescents Law No. 27337 of 2000; Supreme Decree No. 003-2010-MIMDES

# 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.

**Peru 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:

- Political Constitution of Peru, 1993
- Law on Productivity and Labour Competitiveness, 1997 (No. 728)
- Penal Code, 1991

## Prohibition on Forced and Compulsory Labour

Forced Labour is prohibited under the Constitution. The Constitution states that working relation cannot limit the exercise of constitutional rights, nor disavow or disrespect the dignity of workers and no one can be forced to work without pay or without their consent. Forced labour is prohibited under the Penal Code and is punished with imprisonment for a term ranging between one to twelve years and a fine ranging between one to two hundred days. Trafficking in persons for the purpose of slavery, sexual or economic exploitation is punishable with imprisonment for a term ranging between 8-15 years. Making a person work without remuneration is similarly punishable for imprisonment for a maximum term of two years.

Source: §23 of the Political Constitution 1993; §128-129, 153 & 168 of Penal Code, 1991; Law no. 30924, of March 28, 2019

## Freedom to Change Jobs and Right to Quit

The constitution of Peru guarantees freedom to work. Workers have the right to change jobs after serving due notice on their employer.

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

Source: §60 of the Political Constitution 1993; §31 of the Productivity & Labour Competitiveness Law No. 728

## Inhumane Working Conditions

Working time may be extended beyond normal working hours of forty-eight hours per week and eight hours a day. There is no defined limit to the maximum working hours after including overtime hours. Overtime work is totally voluntary.

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

Source: §25 of the Political Constitution 1993; §1 & 9 of the Legislative Decree No. 854 on Working Time and Overtime

# 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)

**Peru 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:

- Political Constitution of Peru, 1993
- Decreto Supremo núm. 010-2003-TR por el que se aprueba el Texto Unico Ordenado de la Ley de Relaciones Colectivas de Trabajo
- Penal Code, 1991

## 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. In accordance with the Supreme Decree 010-2003-TR, workers have a right to form a union and, without distinction and prior authorization, to develop and protect their economic and moral interests. Workers are free to join the unions voluntarily. It is not allowed to compel or prevent workers from joining a union. It cannot be made conditional for employment of a worker.

Union members are free to elect their representatives, draw up their own statutes and administrative regulations, as long as these are not contrary to laws and regulations governing them. Workers conduct a meeting where the bylaws are approved and the executive council is elected.

A union must get registered before the Labour Authority in order to confer its legal personality for the purposes intended by the law. A union in a company requires at least 20 workers for its incorporation and in case of unions of another nature at least 50 workers are required.

The State, employers and its representatives must refrain from constraining, restricting or undermining in any way the worker's right to organize or

interfere in the creation, administration or maintenance of trade union organizations that they constitute. Employer may deduct union dues from the wages of the members only after their written consent. Discriminatory behaviour is prohibited for the employer on the basis of union affiliation or participation in union activities. Prohibiting a worker from joining (or forcing a worker to join) a union is punishable with imprisonment for a maximum term of two years.

Source: §28 of the Political Constitution 1993; Title II of Supreme Decree 010-2003-TR; §168 of Penal Code, 1991

## Freedom of Collective Bargaining

Right to collective bargaining is recognized by the constitution and regulated by labour code.

Collective labour agreement is the agreement to regulate wages, working conditions, productivity and other matters concerning the relations between workers and employers.

Only the companies who have served at least one (01) year of operation are obliged to negotiate collectively.

A CBA usually provides better benefits to the workers than those provided in the law. If a CBA has provisions which are less favourable than those provided under the law, it cannot be enforced. A CBA may be concluded for definite or indefinite time period. The duration of a CBA is signed for definite time period is 01 year unless agreed differently between the parties. The CBA is valid until expiration of its term, in case of merger, transfer, sale, exchange of business and other similar situations.

A CBA must be written in triplicate. One copy for each party and the third is submitted to the workplace authority for registration and archiving. It is applicable from the day following the expiry of the previous convention or at the date of registration unless stated otherwise.

A CBA binds the parties who adopted it as well as workers who join the undertaking afterwards. Collective agreements also specify their scope of application. This can be an enterprise, a group of enterprises, an industry or branch of industry, or one or several sectors of economic activities.

Peru has a National Labour and Employment Promotion Council which is a tripartite plus institution composed of worker, employer, social organizations working in labour issues and government representatives. The Council is a mechanism of social dialogue and coordination of policies on labour, employment promotion and job training and social protection for national and regional development. The Council participates in fixing and regulation of the minimum wage. The Council expresses its opinion on draft legislation within its area of competence and issue opinions on relevant matters. It has 19 titular members (10 employer representatives; 8 worker representatives; and Minister for Labour and Employment Promotion). There are also six representatives of social organizations however they do not have the right to vote.

Source: §28 of the Political Constitution 1993; § Title III of Supreme Decree 010-2003-TR; Decreto Supremo N° 001-2005-TR

## Right to Strike

Right to strike is enshrined in the Constitution. However, the possibility to replace striking workers even during the lawful strike action and power of authorities to unilaterally prohibit or limit strike action eventually frustrates the right to strike.

Strike is the collective suspension of work mostly agreed and conducted voluntarily and in a peaceful way to defend the rights and socio-economic and professional interests of the workers with abandonment of the workplace.

Peaceful strike is allowed only after all the methods of dispute resolution (negotiation, conciliation and arbitration) have failed. Members of union must inform the employer and the Ministry at least 05 working days prior to the proposed date of strike or 10 working days with respect to essential public services, accompanied with a copy of the minutes of voting.

Strike is prohibited for the workers of the companies whose suspension would endanger the people's safety or preservation of property or prevent the immediate resumption of activity once on strike. Strike ends by the agreement of the parties in conflict or by decision of the workers. Strike also ends if it is declared illegal.

The employment contract suspends during the period of strike and the employer is not obliged to pay wages to the strikers during this period.

Source: §28 of the Political Constitution 1993; § Title IV of Supreme Decree 010-2003-TR

# TEMPORARY REFORMS DURING COVID 19

Various temporary measures were taken in order to prevent and contain the spread of COVID-19. Emergency Decree No. 038-2020 was established to take extraordinary measures to mitigate the economic and financial effects caused to workers and employers of the private sector as a result of the social isolation and restrictive measures adopted due to the Sanitary Emergency declared by Decree Supreme Court No. 008-2020-SA and the State of National Emergency declared by Supreme Decree No.044-2020-PCM, given the spread of COVID-19, as well as for the preservation of the jobs of the said workers. As per Supreme decree No. 010-2020-TR, provisions were made in order to facilitate the implementation of remote work in the private sector, as to avoid the spread of COVID-19.

Source: Decreto de Urgencia núm. 038-2020, de 14 de abril; Decreto Supremo núm. 010-2020-TR; Decreto de Urgencia núm. 026-2020

# QUESTIONNAIRE

## DECENTWORKCHECK.ORG

## Check

Decent Work Check Peru is a product of WageIndicator.org and  
www.tusalario.org/Peru



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.

	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.

Peru scored 40 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.