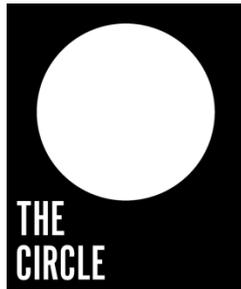


FASHION FOCUS : THE FUNDAMENTAL RIGHT TO A LIVING WAGE

MAY 2017





The Circle is a registered NGO, founded by singer, songwriter and activist Annie Lennox to challenge and change the injustices faced by women and girls across the globe. The Circle is driven by its members who come together to inspire and inform each other and take action to affect change. Where members have a shared connection they come together in our individual Circles so that they can focus on particular issues and together utilise their skills, experiences and networks to best effect positive change for disempowered women. The Lawyers Circle is one such Circle and founded by Melanie Hall QC and Miriam Gonzalez comprises of women who work at all levels of the legal profession.

www.thecircle.ngo

We would like to acknowledge the following partners for their efforts in collaborating on this report:



Clean Clothes Campaign is a global alliance dedicated to improving working conditions and empowering workers in the global garment and sportswear industries.

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GLOSSARY

AA – Apprentices Act, 1961	EPF Act – Employees’ Provident Funds and Miscellaneous Provisions Act
ATC – Agreement on Textiles and Clothing	EPZ – Export Processing Zones
ACFTU – All-China Federation of Trade Unions	ERA – Equal Remuneration Act, 1976
AmCham – American Chamber of Commerce in Haiti p6	ESI – Employee’s State Insurance Act, 1948
AMO – Assurance Maladie Obligatoire	FDI – Foreign Direct Investment
ASEAN – Association of South East Asian Nations	FDC – Fixed-duration contract
ASPEK – Labour Union Association of Indonesia	FLA – Fair Labor Association
BDT – Bangladeshi taka	FTC – Fixed-term contracts
BMI – Body Mass Index	FWF – Fair Wear Foundation
Board - Board of Conciliation	FY – Fiscal year
BPJS – Badan Penyelenggara Jaminan Sosial	GATT – General Agreement on Tariffs and Trade
CBA – Collective Bargaining Agreement	GDP – Gross Domestic Product
CEACR – Convention of Experts on the Application of Conventions and Recommendations	GSP+ – Generalized System of Preferences Plus
CLPRA – <i>Child Labour (Prohibition and Regulation) Act, 1986</i>	GMAC – Garment Manufacturers Association in Cambodia
CLA - Contract Labour (Regulation and Abolition) Act	GRC – Grievance Redressal Committee
CLC – Labour Contract Law of China	GSP – Generalized System of Preferences
CLPRA - Child Labour (Prohibition and Regulation) Act, 1986	HOPE - Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006
CNOHA - Centrale National des Ouvriers Haïtiens	ICC – Internal Complaints Committee
CNSS - Caisse Nationale de Sécurité Sociale (Social Security Fund)	ICESCR – International Covenant on Economic, Social and Cultural Rights
KSPSI – Confederation of All Indonesia Workers’ Union	IDA – Industrial Disputes Act, 1947
CEDAW – Convention on the Elimination of All Forms of Discrimination Against Women	IDR – Indonesian Rupiah
CMT – “Cut, make and trim”	IFC – International Finance Corporation
EC – Employee Councils	IFPRI – International Food Policy Research Institute
EBA – Everything but Arms	IIT – Individual Income Tax
CLA – enterprise agreement	ILO - International Labour Organisation
	IMF - International Monetary Fund
	SNI – Indonesian National Standard
	KBLI – Indonesian Standard Industrial Classification

INR – Indian Rupees	PF Act – Employees’ Provident Fund and Miscellaneous Provisions Act, 1952
ICC – Internal Complaints Committee	PJD - Party for Justice and Development
ILRF – International Labor Rights Forum	PRC – People’s Republic of China
ITGLWF – International Textile, Garment and Leather Workers Federation	RAMED - Régime d’Assistance Médicale
ITUC - International Trade Union Confederation	RMG – Readymade garment industry
KHR – Cambodian riel	RGC – Royal Government of Cambodia
KPK - Corruption Eradication Commission	RMB – Chinese renminbi
LAC – Labour Advisory Committee	S&E Acts – Shops and Establishments Act
LDC – less developed countries	SACOM – Students and Scholars Against Corporate Misbehaviour
LGBTQIA – Lesbian, Gay, Transgender, Queer, Intersex, Asexual/Ally	SEZ – Special Economic Zones
LKR – Sri Lankan rupees	SME – small and medium-sized enterprises
LLC – Labour Law of China	SMIG – Salaire Minimum Interprofessionnel Garanti (Interprofessional Guaranteed Minimum Wage)
MBA – Maternity Benefit Act, 1961	BOI – Sri Lankan Board of Investment
MFA – Multi-Fibre Agreement	TCLF – textile, clothes, leather and footwear
MGMA - Myanmar Garment Manufacturers Association	TI – Transparency International
MLVT – Minister of Labour and Vocational Training	TPA – Trade Promotion Authority
MMK – Myanmar kyat	TRY – Turkish lira
MRS (union) – Most-representative status (union)	UAE –United Arab Emirates
MW – Minimum wage	UDC – undetermined-duration contract
MWA – <i>Minimum Wages Act, 1948</i>	UN – United Nations
NAALC – North American Agreement on Labor Cooperation	UNDP – United Nations Development Programme
NAFTA –North American Free Trade Agreement	US CBP – US Customs and Border Protection
NCRL – National Commission on Rural Labour	VCCI - Vietnam Chamber of Commerce and Industry
NGO – Non-governmental Organisation	VGCL - Vietnam General Confederation of Labour
NPWP – Indonesian Taxpayer Registration Number	VINATEX -Vietnam National Textile and Garment Group
NSSF – National Social Security Fund	VND – Vietnamese dong
OECD – Organisation for Economic Co-operation and Development	WJP – World Justice Project
ONA- Office National d’Assurance Vieillesse	WTO – World Trade Organisation
PEMEX- Petróleos Mexicanos	

FOREWORD I

What struck me most profoundly when I first saw the film *The True Cost*, executive produced by Livia Firth and Lucy Siegle, was the unnecessary nature of the harm and suffering caused by the fast fashion industry. This was not an insurmountable problem analogous, for example, to climate change. It was essentially a simple problem concerning the conditions and price paid for the labour used to make our clothes, something that we have for decades now regulated without difficulty within our own countries.

Despite numerous conversations with individuals who related the seemingly unsolvable systemic issues involved, it is ultimately nothing more than a failure of will in the face of the promise of larger profits. It is something that law is there to tackle and there to solve. But whilst at an international level countries have co-operated to agree laws that prevent companies rigging the market so as to protect consumers from higher prices and have even been willing to impose criminal sanctions on directors, there has been no such drive to protect the rights of workers outside the jurisdiction of the consumer in the developed world. Poorer countries, where our clothes are produced, compete against each other for investment, selling the labour of their people at a price that cannot sustain decent lives, let alone create and grow individual wealth, the very purpose and function of work as a human endeavour. In the globalised fast fashion industry, human labour is being bought and sold as if it were a mere commodity.

But labour is not a commodity – it is not produced for sale, it cannot be stored or mobilised, it is “a name for human activity that goes with life itself”.¹ The abolition of slavery involved a recognition of that fact; we accept as a moral imperative that no man, woman or child may be bought and sold, just as we must accept that their labour cannot be bought and sold at the lowest possible price irrespective of the consequences for the people affected. We expect and respect that in the European Union. And we would not contemplate it being lawful to make products within the EU using workers paid at rates insufficient to provide for even the most basic standard of living. But in the globalised economy of today, we have gone full circle to return to the times when cheap labour could be bought and shipped to the place of production. Today, instead of moving the labour, as producers used to do, the production is moved to where the labour is cheapest. And there is no possibility of regulating the labour rules in those places of production. In contrast to the position at the time of the abolition of slavery, when Britain had a vast empire and was able therefore to exert legal jurisdiction globally, no single country can now exert legal power beyond its borders in that way. The only means of exerting control is to take action in relation to those who sell within our jurisdiction. This, I predict, is how the change will come.

This Report is aimed essentially at that question, the payment of a living wage globally. It concludes that a living wage is a fundamental human right, which all States are obliged to guarantee. This report considers labour laws and minimum wages in producer states, in particular whether they provide that guarantee, and finds that very rarely does the minimum wage come anywhere close to a living wage. Companies that claim therefore to pay the minimum wage in those states are accepting that they are not paying a living wage. This in itself we consider is likely to be in breach of the UN Guiding Principles on Business and Human Rights.

Numerous people helped bring this project together. I am very grateful to them all. Particular thanks must go to the law firms and individuals from all the countries considered in this report for providing us with the necessary information, to Trust Law for giving us access to them and to the Clean Clothes Campaign and particularly Sam Maher for her advice and support. Thanks also to the lawyers at Milbank, Katherine Soanes and her team, those at Olswangs, Selina Potter, Rebecca Platt, Cathryn Hopkins as well as Joanne Cash and Alicia Vidon. Huge thanks to Sioned Jones and Clare Crosland, who made the report happen and finally, of course, to Lucy Siegle and Livia Firth for their inspirational energy and commitment to bringing an end to this cruelty.

Jessica Simor QC, The Lawyers Circle.

FOREWORD II

Back in 2011, the lectern at the UN climate change conference was given to a 21-year-old student from Maine University to speak on behalf of her nation's youth. She did not waste her opportunity. "You have been negotiating all my life!" said Anjali Appadurai with feeling, to an audience of world leaders who had failed to protect the most essential of human rights.

Anybody who has been involved in trying to secure the implementation of basic social and environmental justice tenets in the fashion industry will recognise Appadurai's frustration and final rousing call to "Get. It. Done!"

For over two decades the predominant fast fashion system of manufacturing, distributing and retailing clothing has reigned supreme. Even a disaster of the magnitude of the collapse of the Rana Plaza complex on 24 April 2013 failed to shift the dial on the fundamental injustices inherent in this system. Indeed, when it comes to a living wage—a vital component of real change—despite multiple reports, criticisms, pledges, voluntary actions on behalf of implicated multinational brands and impassioned civil society campaigns there has been little to no progress.

In effect, we have been left with a curriculum for change that is set by multinational fashion brands. This emphasis and purview has a tendency to lead fashion justice advocacy down dead-end alleys. A recent report from New York University's Stern Centre for Business & Human Rights concludes that too much emphasis is put on transparency (self-declared by brands) rather than outcomes.² Overall, as Sarah Labowitz (co-author of the above report who has researched the apparel supply chain) warns that current fashion advocacy and stakeholder programmes display undue deference to multinational companies, allowing them in effect to define the scope for human rights reforms (not least by relying on the industry data they supply).³

To return to the quote from Appadurai's speech, garment workers—like the climate change activists in 2011—would surely like to know, "what does it take to get a stake in this game?"

Well, in 2015 a group of over eight hundred Dutch citizens decided to find out. They sued their government on the grounds that it had knowingly contributed to a breach of the 2C maximum target for global warming. The Hague ruled in their favour, ordering the Dutch government to take action to cut greenhouse gas emissions by a quarter within five years. For the first time a court had ordered a state to protect its citizens from climate change.

Now that was quite some victory. At the time James Thornton, CEO of the environmental law organization ClientEarth described the use of the principles of tort law as "remarkable". "A major sophisticated European court has broken through a political and psychological threshold", he said.

Influenced by the successes achieved by climate change activists and mindful of the way they broadened the advocacy base, we have long been in search of a similar breakthrough around labour rights injustice in the global garment industry.

Suffice to say, as members of the The Circle (Livia is a founding member) when we had the opportunity to put this issue in front of The Lawyers Circle – our fellow members who use their skills from their legal professions to progress social justice – we grabbed it with both hands.

They did not disappoint. The Lawyers Circle member Jessica Simor QC, one of the UK's leading specialists in human rights and public law created a team to join the dots between international law, the fashion industry and human rights. Together they created a substantive research project taking evidence from 14 major garment producing states across the globe, via a network of legal professionals based in those countries. Using this evidence, and working with industry experts and committed campaign organisations they make the legal argument that the living wage is a fundamental right.

This report by highly experienced legal professionals is crucial in order to drive real, substantive change. It represents a clear-sighted and thorough contribution to this industry,

providing long-awaited legal framework to the living wage debate and delivers the type of ambitious advocacy we've been waiting for.

Livia Firth and Lucy Siegle, The Circle



FASHION FOCUS: THE FUNDAMENTAL RIGHT TO A LIVING WAGE

Context and Background to this Report

Almost every research project such as this, arises from the need to solve a problem. In this case, the issue of labour rights, and more specifically failure to ensure that employers pay no less than a living wage remains a stubborn and persistent problem for the global fashion industry. It impacts, of course, on the reputation of the industry; at this stage, there is no doubt that the global garment industry is known for exploitative practices. But our driving motivation here is not the reputation of the fashion industry; it is the fact that a failure to guarantee a living wage has resulted in millions of workers being condemned to work only to survive, without sufficient income to pay for a basic, decent life. And this, despite the fact that over the past century an international consensus has developed that abusing individuals in this way, namely as “workers” paid less than necessary to support a decent life, is impermissible.

Engineering a breakthrough and making this internationally accepted fundamental principle a reality is crucial within the garment industry. To date, efforts to prevent labour exploitation have tended to focus on non-binding measures, in other words voluntary codes and initiatives designed, implemented and monitored by the retail companies that control the supply chain, and normally developed in response to negative publicity generated by investigations carried out by NGOs or the media. To put it bluntly, this strategy is not working. It has had a limited impact on labour conditions in general and virtually zero success in improving wages.

Broader Advocacy and a Legal Perspective

Broader advocacy is a must. This initial report brings together information about living wages and co-ordinates with industry experts and established campaigners. The latter group in particular should be credited with creating advocacy that has continued to attract public attention. Thanks to them we know that citizens expect more and will not brook excuses indefinitely. But in this work we add a component: high profile legal firms and the input of experienced legal experts in order to set the debate on living wages in the garment industry within a clear legal framework.

This report, underpinned by a substantive research project, is based on bringing together campaigners and grassroots activists, supported by industry experts with high profile legal firms and well-respected legal professionals working across the world, including in so-called “hot spot” textile importing countries.

Participants in this Process

The Circle is an NGO founded by Annie Lennox, the acclaimed singer, songwriter, human rights and social justice campaigner and philanthropist. A women’s rights organisation, it exists to empower the most marginalised women who are unable to realise their rights. Campaigners for fashion industry reform Livia Firth (founder member) and Lucy Siegle are members of The Circle.

Within The Circle is The Lawyers Circle, a collective of members who work within the legal profession, which was founded by Melanie Hall, QC and Miriam Gonzalez. Members of The Lawyers Circle lend their skills, network and resources to support and promote the rights of disempowered women worldwide.

Given the aims of The Circle, it was entirely fitting that The Lawyers Circle would lend its expertise in an effort to help clean up the industry. Because above all this story of a vast globalised workforce stretching through some of the lowest wage economies on earth, is a story about women and their status in the globalised economic system. Out of the 60-75 million people involved in the global garment industry, 85% are women.

The lion's share of the international market is occupied by brands and retailers producing clothing via a rapid-response system of outsourced production that has come to be known as "fast fashion". The social justice and environmental fallout of this system are well known. In the documentary *The True Cost*, these issues are explored in the aftermath of the horrific collapse of the Rana Plaza complex in Savar, Bangladesh. The film is produced by Livia Firth and Lucy Siegle and attracted the attention of fellow Circle member, Jessica Simor QC, one of the UK's leading specialists in human rights, EU and regulatory law.

The Clean Clothes Campaign (CCC) is a global alliance of organisations which campaigns to promote and protect the fundamental rights of garment workers worldwide. A key objective is to secure living wages for garment workers. Together with the CCC, Jessica Simor began to explore how The Lawyers Circle might strengthen advocacy for justice in the global garment industry, focusing on a living wage.

The Scope of the Research Project

The aim of this report is to set the debate on living wages in the garment industry within a clear, legal framework. To that end, the report sets out the legal basis for a living wage being recognised as a fundamental human right and describes the duties of actors along the supply chain to fulfil and uphold that right.

To arrive at this point, participants needed an accurate snapshot of the current state of law in jurisdictions important to the global garment supply chain (importing countries known as textile "hot spots"). The research project underpinning the findings of this report gathered detailed summaries from 14 countries where garment exports to the USA and to the EU create a major reliance on the industry for export earnings and employment.

In order to achieve these important summaries from each of our 14 countries, 14 law firms in each of the countries responded to a detailed questionnaire put out by the Lawyers Circle, with the assistance of CCC and Trust Law.

Results from 14 Major Garment Producing Countries

The resulting country reports provide a summary of the current law on wages, benefits, social security (and other labour laws likely to impact on wages), look at wage setting mechanisms and the legal mechanisms available to workers to enforce the legal obligations of the state. In addition, trade zones within the jurisdictions have been examined to see how they might affect wage legislation.

Specifically, from each we collected country-specific data in order to determine whether the minimum wage legislation in those states provided for a living wage. The conclusions from each allow us to consider whether these states come anywhere close to guaranteeing the fundamental right to a minimum wage, meaning a "living wage"

(Each of the 14 country reports can be found at the end of this report.)

Outcomes and Next Steps

It is our intention that the report will inform advocacy at both a national and an international level. We are hopeful that its existence and content can provide an important tool in pushing for concrete and effective action, as well as a resource for those working in the fashion industry and using labour in the countries concerned.

We are aware of course that legislation to protect wages and labour rights is only half the story; ensuring that enforcement is adequate and effective is another significant hurdle (we

touch briefly on that question in relation to each country covered).⁴ This report represents a first step.

But it should now be used to highlight best practices, to identify weakness in wage setting mechanisms, to lobby for stronger national laws and to define responsibilities for enabling living wages along the supply chain and to help develop policy for using international mechanisms, including potentially trade agreements, to ensure that states guarantee garment workers the right to receive a living wage and retailers and manufacturers themselves comply with that obligation.

A Timely Intervention

There are now strong grounds for arguing that countries which fail to ensure that workers within their jurisdiction are paid a minimum living wage and are legally protected from abuse and exploitation, act unlawfully as matter of international law. That illegality may have trade consequences; importing states may take protective measures (both for moral and competitive reasons; labour standards constituting “social dumping”). Indeed, it is increasingly likely that there will be legislative responses by importing countries with prejudicial consequences for a producer state’s ability to attract investment. For example, recently the EU adopted a resolution put forward by Spanish MEP Lola Sánchez Caldentey asking for the EU to use its powers to set common rules that establish mandatory human rights obligations on partner countries in relation to the garment supply chain.⁵

It would be premature to suggest that the net is closing in comprehensively on those who fail to guarantee and implement labour rights. However, it is notable that the European Commission (EC) recently issued a letter to Bangladesh warning of the temporary withdrawal of GSP benefit should the country fail to demonstrate to the European Parliament, Council of Minister and to civil society that it is taking concrete and lasting measures to ensure the respect of labour rights.⁶

Another sign that legislators are increasingly willing to step in is the recent French corporate “duty of vigilance law”, which, despite limitations, shows that respect for human rights and the environment can be legally mandated into business activities. Adopted by the French Parliament in February 2017, it establishes a legally binding obligation for parent companies to identify and prevent adverse human rights and environmental impacts resulting from their own activities, from activities of companies they control, and from activities of their subcontractors and suppliers, with whom they have an established commercial relationship.⁷

The Fashion Industry Cannot Be a Special Case

Some critics of such measures suggest that the fashion industry should be seen as a special case; one with an offering so popular with the consumer (and so profitable) that an exemption from labour rights might be seen as a trade-off. Similarly, it is sometimes said that the characteristics of the system, which conspire to create a so-called “race to the bottom,” are built-in and unavoidable. We do not accept either of these two arguments. There is nothing inherent or “built-in” about paying wages insufficient to support a basic livelihood. And it is that payment of below basic living standard wages, which itself creates the race to the bottom, that is, the movement of capital in search of ever-cheaper labour. Labour is treated as equivalent to any other commodity; water, fuel, power. And it is that fundamental error in approach that needs to be recognised and corrected, in particular within this sector.

There can be no exemptions or deals to be done regarding wages and labour rights. There is an urgent need to develop proposals to ensure minimum international standards that set a floor on this race to the bottom.⁸

EXECUTIVE SUMMARY

A Moral Truth: Labour Is Not a Commodity

We shall soon mark the centenary of the end of WWI. Among one hundred years of memory, the fact that this marks an important international agreement regarding labour law might go unnoticed (perhaps understandably the ancestral sources of labour laws do not often get top billing).

But in 1919 the idea that there was a relationship between poverty and peace had major traction. Indeed when 32 countries met in Paris to broker the peace that delegates hoped (against hope, as it transpired) would “end all wars”, the protection of wages and the status of labour represented a critical issue. Here we see the founding of the International Labour Organisation (ILO), advancing a just relationship between workers and employees and based on the moral principle that “labour should not be regarded merely as a commodity or as an article of commerce”.

That same principal was incorporated in Article 427 of the Treaty of Versailles. And as the complex conference progressed, a delegation from Paraguay drew on this absolute rejection of labour commodification to propose the setting of minimum wages.

This backdrop is not just a historical footnote, it serves to remind us that for more than a century international law has recognised the right to wages sufficient to support the basic needs of a family. These are known as “living wages”,⁹ or, put another way, an “adequate minimum wage”. Numerous states have recognised this right through their domestic legislation and in some instances, even by way of constitutional guarantees.¹⁰

Introducing the Race to the Bottom

How is it then that we find ourselves at a point where we are experiencing a revival of the sort of exploitation that those states participating in the 1919 peace conference agreed to consign to history? Indeed, at a point where this exploitation has become a part of the global economic model.

The ILO estimates that more than USD 150 billion of profits derive from slavery and forced labour and that more than 40% of the world’s population lives on less than USD 2.50 a day.¹¹

“In an increasingly globalised world, companies source goods from factories where people work in conditions and for wages that would be illegal, and likely criminal, in the main market places for those goods.”

The Global Slavery Index defines “modern slavery” as referring to situations of exploitation that a person cannot leave because of threats, violence, coercion, abuse of power or deception. In the RMG (ready-made garment) industry, dominated by outsourced production for fast-fashion, modern slavery undoubtedly exists. Indeed, it is notable that guidance for consumer companies on the UK Modern Slavery Act from multinational asset management company Shroders warns “apparel firms are also susceptible to the risk of modern slavery through their sourcing of cotton, leather and ready-made garments”, placing apparel alongside risk-laden sectors such as tobacco.¹²

But this report does not attempt to establish the “slavery footprint” of the RMG industry. Rather, we have concerned ourselves with the failure in the RMG industry to pay wages sufficient to guarantee a basic decent livelihood. Focusing in particular on employment protection legislation, we have looked specifically at the failure of states through legislation and enforcement to **guarantee a living wage**.

The Global Apparel Industry: Spectacular Profits and Low Wages

In many ways, the readymade garment industry stands as the poster child for this system. The industry is eye-wateringly remunerative with global revenues of USD 3000,000,000,000,000 (3,000 billion or three trillion).¹³ It is an industry that has a tendency to dazzle, and later in this report we consider the dominant fast fashion system of garment production in more depth, but it is worth taking a quick look behind the curtain here too.

Our wardrobes, fashion-purchasing patterns and the industry that produces our garments are almost unrecognisable from 20 years ago. Add to this the vast global expansion of the garment industry that has occurred since the phasing out of quotas in 2005 and you can see we have undergone something akin to a fashion revolution. But the power is not distributed equally. Transnational fashion corporations hold most of the cards. They can quickly move their production to the lowest wage states. Meanwhile, the economies of producer countries have become highly dependent on the sector. In short, a mobility of capital and immobility of labour has created a so-called **race to the bottom**.

One of the key characteristics in offending value and supply chains is the payment of wages to workers for long hours of intense labour that come nowhere close to being sufficient for the most basic requirements of a decent life.

How intense is this work? Well, in the global garment industry the intensity of labour almost has to be felt at a gut level to be believed. (No wonder some of the most effective awareness-raising has come courtesy of experiential TV documentaries such as the *Sweatshop: Dead Cheap Fashion* series, commissioned by Norway's Aftenposten newspaper who sent teenagers to work in Cambodian RMG facilities).

Campaigning NGO the Clean Clothes Campaign reminds us that the rewards for this intense labour are, by and large, pitiful, and that the failure of the RMG industry to provide living wages for millions of workers has resulted in many developing "coping strategies, despite poverty wages".¹⁴ Reviewing the effect on "poverty wages" of garment workers in Eastern Europe and Turkey (acknowledging, as we do in this study, that wages aren't just an issue in South Asia), the CCC found female garment workers employing a number of such survival strategies: taking out high-interest loans to pay for school books for children or utility bills and avoiding the expense of necessary medical treatment.¹⁵

However, some effects are harder to conceal than others, namely malnourishment. In surveying for the 2013 report *Shop 'Til They Drop*, campaigning organisation Labour Behind the Label found that female garment workers could only afford to eat half of the calories needed to sustain 10 hours of industrial work^{16, 17} and as a result would frequently faint at work. It is difficult for anyone to describe this as "decent work".

The lack of implementation of anything approaching a living wage in the industry directly fuels long hours, another characteristic of the RMG industry. As the basic salary of most garment workers is not a living wage, they are obliged to accept as much overtime as possible, even avoiding mandated breaks (required by codes of conducts). According to a 2015 survey, again of Cambodian workers, "[n]early all (87 per cent) of the workers needed to do over-time job in order to get extra income to support their everyday living conditions".¹⁸

The Truth about Women's Work

As we have already acknowledged, this workforce is predominantly female. Between 60-75 million people work in the textile, clothing and footwear sector worldwide. Near to three quarters of them are female.¹⁹

In theory, this should constitute an opportunity and should represent a shift toward gender parity and the harnessing of women's full potential. If that were the case, in South Asia alone—the site of some of the important RMG producer countries—it would result in an increase in GDP of more than half by 2025,²⁰ which is quite some prize!

But as academic Beth English puts it, “women's labour within the textile and garment industries is particularly suited to the dynamics of production along the global assembly line [...]. It is cheap both in terms of prevailing wage levels and in terms of the unhealthy and unsafe conditions under which women often work”.²¹

Plenty of Noise but Little Progress

When it comes to the implementation of a living wage by fashion brands, if success were measured by the number of reports, initiatives, roadmaps and pilot projects, then we would be substantially further along than we are today.

Campaign organisations advocating better conditions and wages are often unimpressed by pilot projects set up by brands to support factory owners in developing pay structures that enable a fair living wage.²² Meanwhile, as we note in our conclusions below, living wage commitments by brands often contain a temporal disclaimer, implying that they are something that will be achieved “eventually”, “in the future” or when various benchmarks or agreements have been reached or worked out; a lack of consensus on how to calculate or what actually constitutes living wage is often cited as a reason for these delays.²³

It is widely accepted, that as stated by our NGO partners: poor labour conditions and wages well below that necessary for a decent life persist and we are not convinced that there is any sign of them diminishing without the right intervention.



A SUMMARY OF KEY FINDINGS

Against this backdrop, we have worked to produce this report and its conclusions. Part of our findings have been based on the surveying of 14 countries that have large garment manufacturing industries (using Trust Law's network of lawyers based in those host countries). In each we collected country-specific data in order to ask the question of whether minimum wage legislation in those states provides for a living wage. The conclusions from each allow us to consider whether, as a matter of international law, states comply with the obligation to guarantee the fundamental right to a minimum wage, meaning a living wage".

This report considers that a minimum wage, meaning a "living wage", now constitutes a fundamental right accepted at an international level, which states are accordingly obliged to guarantee. In the light of that, we consider that, as recognised by the second pillar of the UN Guiding Principles on Business and Human Rights (UNGPs),²⁴ where companies choose to produce or source their goods from states where that fundamental right is not guaranteed, as a matter of law or practice, they must, as a minimum, themselves take steps to ensure that the people who make those goods are guaranteed this right.²⁵ That is a responsibility that falls on the relevant company, it being aware that the state does not ensure the right.

If the commitment from fashion brands is real, the change can and must be made now. A large number of companies have already made a commitment to pay a living wage. However, they have generally done so only in relation to the future.²⁶ This report concludes that that is not enough.

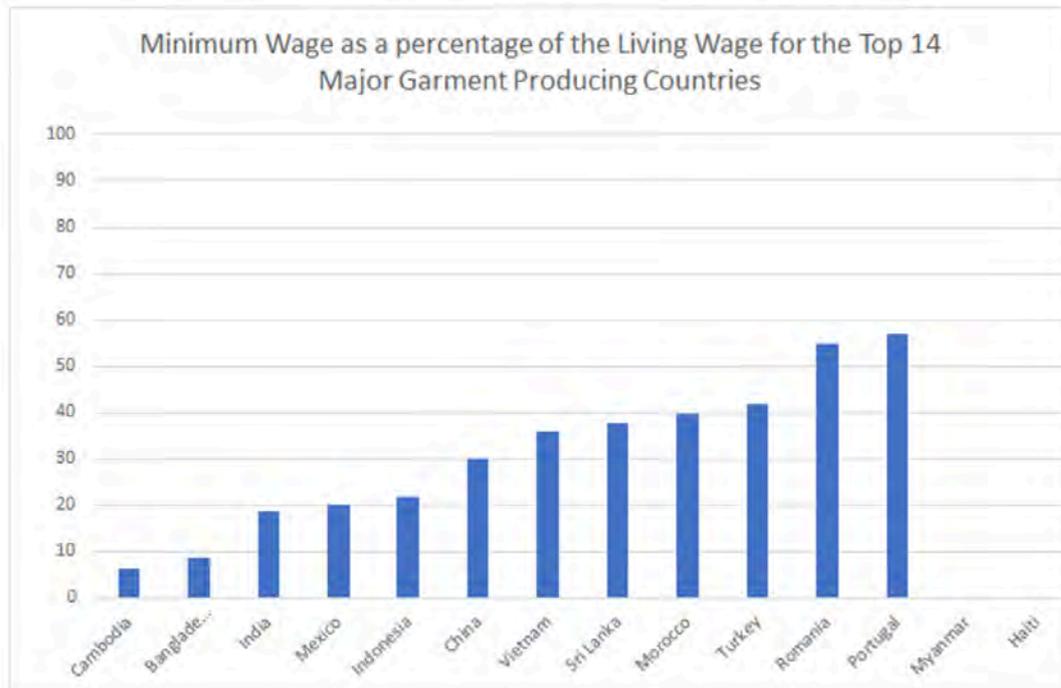
In that regard, we note that very large companies with enormous turnovers and profits frequently state in their published codes of conduct/due diligence and sustainability reporting that they pay the "national minimum wage". In the context of garment manufacturing in the main RGM countries, they do this knowing that that the minimum wage comes nowhere close to a living wage. Such companies are therefore fully aware that their goods are produced in breach of fundamental rights and established international labour standards; that they are the product of exploitation. Far, therefore, from the payment of minimum wage being an answer by companies to a claim that they do not comply with international standards, in relation to many RMG producer countries, it provides confirmation of non-compliance. Any company that claims it satisfies human rights and international labour standards by paying the minimum wage in a country where that wage comes nowhere close to a living wage has necessarily therefore failed in its duties to ensure such compliance. Put simply, it is aware of its non-compliance.

This report does not accept the argument by companies that it is not practically possible for them to ensure that a living wage is paid. **Paying the legal minimum wage cannot be a legitimate excuse for failure to ensure that such a wage is at least arguably a "living wage"**. It is clearly open to large companies either to source their goods only from states that ensure that their legal minimum wage is a living wage (and provide for enforcement), exercising sufficient due diligence to prevent sub-contracting. Or, alternatively, to open up their own production units in countries where the legislation provides inadequate protection, and thereby ensure that they are able to pay the people who make their goods a living wage.

It is also important to develop the policies and institutions that will place them in the best conditions to do so. On the garment producers' level, it is essential to promote pay systems that would better link wages to skills and performance, and also promote social dialogue mechanisms that will lead to regular wage adjustments negotiated/discussed with workers' representatives. On the companies' side, it is also essential to promote purchasing practices - including on prices - that will lead to a better redistribution of the value added along the global supply chains.

Lack of clarity or consensus on precisely how a living wage should be calculated cannot be a legitimate justification for paying wages that on no calculation could be said to constitute a living wage. We do not accept the arguments made that as it is not possible to agree precisely how a living wage should be calculated this is justification not to pay a living wage. We note that there are numerous studies that have dealt with this issue on a country by country basis and that these studies have been published for decades.²⁷ This study looks in particular at the vast difference between "minimum wages guaranteed in the domestic law of States and what on any

scale of measures could be said to constitute a “living wage”. Of the countries analysed the lowest minimum wage²⁸ is just 6% of the living wage with the best, Portugal, at just 57%.



Accordingly, by highlighting the vast difference in most RGM countries between the legal minimum wage and a living wage, this Report concludes:

First, that it is not good enough for manufacturers or retailers simply to say that those who produce their products are paid “the minimum wage” guaranteed in the relevant country. Where the “minimum wage” does not come close to a “living wage”, such a claim is an admission that the company’s goods are produced in breach of fundamental rights and international labour standards.

Secondly, in the near future, some enforcement/control mechanism is needed to ensure that producers/retailers who choose to use labour in countries where the minimum wage is in no sense a living wage take all reasonable steps to ensure that the workers who produce the goods that they sell are paid a living wage. While self-regulation should be enough, in reality it has manifestly proved ineffective.

Ending the Race to the Bottom

As we have acknowledged here, one of the reasons that the right to a living wage has never become a reality for millions of garment workers across the globe is that states compete for inward investment, that is, the use of production capacity by foreign companies. This competition for cheap labour currently disincentives states from ensuring proper labour standards and regulating wages effectively; states are aware that by legislating for higher minimum wages they potentially lose investment from producers and retailers who move to other (less regulated, lower wage) countries for their supplies. This defines the so-called race to the bottom.

We consider that requiring companies to take responsibility for a decision to make or source their goods from states where the legal minimum wage is not a living wage has the potential to change state conduct.

If companies are themselves obliged to act to ensure that the people who produce the goods they sell are paid a living wage, this will in turn incentivise states to ensure that their minimum wage legislation provides for a minimum “living wage”.

If companies are themselves obliged to act to ensure that the people who produce the goods they sell are paid a living wage, this will in turn incentivise states to ensure that their minimum wage legislation provides for a minimum “living wage”.

A new architecture is needed for the global garment industry. Compliance with the UN Guiding Principles, by reference to the fundamental right to a living wage and principles of international labour law established nearly a century ago can put an end to the race to the bottom, stopping states from selling their people’s labour at less than the price of a decent life.





CHAPTER 1

Fast Fashion

The Rise and Rise of Fast Fashion

Over the last 25 years there has been nothing short of a revolution in our wardrobes. As many commentators have observed, the way we get dressed today has little in common with the way previous generations acquired clothing. Global clothing production doubled between 2000 and 2014²⁹ and at the same time we have experienced extraordinary deflation in clothing prices. Between 2003 and 2007, for UK consumers the retail cost of clothing fell by an average of 10% in real terms.³⁰

Since then, there has been a slight uplift in price—typically caused by fluctuation in currency valuation and an increase in raw material prices—and the era of super cheap clothing is widely thought to be over. However low cost, high trend apparel—responsive to an increasing consumer appetite for Instagram-ready fashion—continues to dominate. As many commentators have stressed, it is now completely possible to buy on-trend fashion pieces at the same price you would purchase a coffee and a panini.

Behind the scenes, there has been an immense re-ordering of manufacturing to facilitate this shift.³¹ This adds up to **fast fashion**, a business strategy that is hyper-globalised and focused on logistics. A particularly concise and pointed definition is provided by the Chairman of retail analysts Change Capital, John Thornbeck, “Fast fashion is the rapid translation of design trends into multi-channel volume”.³²

Although fast fashion is only a subset of the fashion industry, it is the pre-eminent force. As the name suggests, speed to market is everything and so the entire supply chain is engineered to ensure as small a time lapse as possible between the design stage and final production. Fast fashion supply chains are not only more complex than traditional apparel retail chains, but they rely on “postponement strategy”, where raw materials are only transformed into final garments at the last possible minute.³³

This flexibility allows multinational brands to be hyper-responsive to fashion trends and other factors such as weather. No retailers want to be left holding unsellable stock. The fast fashion system in effect shifts risk on to other parts of the supply chain, primarily on to the “cut, make and trim” (CMT) phase of assembly.

In short, a process that once took months is now condensed into a matter of days. Among all the fast fashion corporations, Inditex, owner of the Zara brand, is famed for contracting this process into 10-15 days,³⁴ setting the industry standard that other multinational brands must increasingly compete with.

Where Did it All Begin?

As fashion knows too well, all trends originate somewhere. The shift towards faster and more flexible production and lower prices (now commonly known as “fast fashion”) was accelerated by the phase-out of the Multifibre Arrangement (MFA) and then the Agreement on Textiles and Clothing (ATC), which ended all quotas in this sector in 2005,³⁵ bringing the retail garment sector under the normal WTO regime.³⁶ The end of the quota system that had governed trade since 1974 exposed the industry to global competition, and to greater rivalry for foreign investment and employment generation opportunities among production countries.³⁷

The Age of Outsourcing

Some 60-75 million people now work in the global garment supply chain³⁸ and the cut, make and trim phase (CMT) of production in the readymade garment industry (RMG) commands the majority of this workforce. For the fast fashion business model to work, this RMG workforce must be similarly low cost, flexible and reactive.

To achieve this the RMG industry has been aggressively outsourced. Indeed, vertically integrated factories—where all or most of the processes are kept within the company—have become increasingly rare. Instead they have been replaced by a decentralised network of production, comprising thousands of independent factories (contract manufacturers), spun out across the globe. Despite diverse geographical locations, they have something in common: they offer some of the lowest wage rates and worst labour conditions on earth.

It is at this point in the fashion supply chain that the pressures of huge volume orders (on the part of western brands) and the demand for speed and low cost conflate to produce working conditions that are frequently described as “dismal” and, in some circumstances, have become downright unsafe. It cannot be forgotten that the worst industrial accident happened in this industry: on 24 April 2013, the Rana Plaza complex collapsed in Savar, the garment district of Dhaka, Bangladesh, killing 1,334 garment workers. Many commentators saw this catastrophe, and similarly the Tazreen fire disaster of 2012, which killed 117 workers, as inevitable given failures inherent in these supply chains.³⁹

Women’s Work

It is notable that sometimes the fast fashion supply chain is talked of in language reminiscent of the development and NGO sectors, particularly in terms of increasing female participation. And it is true: young women comprise a high share of employees in the clothing industry, which is often one of the few accepted forms of contractual labour for women in many developing countries.⁴⁰ Taking major RMG producing hotspot Bangladesh as an example, Dr Maximilian Martin, founder of Impact Economy, who has researched the global garment industry notes:⁴¹

[...] there are 4 million garment workers in Bangladesh alone (out of a total labor force of 47.3 million), representing more than 90 percent of the country’s labor force in manufacturing. Women constitute over 3.2 million or 80 percent of this labor force. [...] The average household size in Bangladesh is 4.8 people. This means that the livelihood of 15.5 million people depends substantially on women working in the garment sector, or roughly 10 percent of the country’s population.

But as Martin also notes, while the work could potentially provide a source of female empowerment, it fails to deliver:

[...] women remain easy targets for exploitation and discrimination. Often unmarried and with poor education or training, women enter urban employment with a comparative disadvantage in terms of pay, working conditions and the possibilities of promotion.

Indeed, study upon study confirms that, far from empowering women, the fast fashion supply chain conspires to exploit them. Concentrated in the lowest stages of production, there is a significant wage and opportunity gap between women and men in the RMG industry. Women might be preferable hires but that is often because they are considered more expendable (and cheaper) than male counterparts. They are considered less likely to agitate for their rights (including being paid on time and in full) and less likely to organise and join a union. They are often subjected to humiliation, intimidation, sexual assault and violence.⁴² Despite making up just between two to three per cent of the population of Dhaka, the capital of Bangladesh, 11% of rape cases involved female garment workers.⁴³

In reality, a “career” in fast fashion for a young woman in Bangladesh will probably last no longer than a five-year stint in Dhaka (often being forced to leave children behind in the village of origin to be looked after by relatives). After five years toiling in dismal working conditions a woman will be let go and replaced by a younger, more compliant, less exhausted model.

Amplified Risk

Although this report is primarily concerned with wages in the RMG sector, the making of garments is a complex business not least because fashion is a full spectrum industry, taking in all parts of the production chain from the growing of the cotton boll (one-third of the world’s textile fibre use is cotton⁴⁴). Therefore, the industry involves intrinsic risks at all subcontracting levels: child labour in cotton fields and workshops (Uzbekistan), forced labour, hidden labour, non-compliance with the principle of decent wages, prohibition or restriction of trade union

freedom and freedom of association, over-exploitation of workers, non-payment of overtime, endangering workers' health (use of banned chemicals in dyeing textiles).

The reality of those risks is unacceptable both legally and morally. Developed countries have long prohibited such labour conditions in their own territories. There can be no justification then for companies being allowed to exploit foreign labour in a way that would be criminal in their home states and to be able to sell those goods to consumers at home.

Moreover, countries that do provide proper protection for workers, increasingly see states that do not protect their population from labour exploitation as unfair competition, resulting in jobs being moved away from their population. Countries should not be put in a position where they have to choose between "economic growth" and decent labour standards; competition between countries for the lowest standards of labour protection and the lowest wages must be brought to an end.

The Spoils of Fast Fashion

At the retail end of the global garment industry, concentrated into the hands of the transnational retail brands and sourcing groups, the numbers are eye-popping for different reasons. Overall the fashion industry enjoys global revenues of USD 3000,000,000,000,000 (3 thousand billion or 3 trillion).⁴⁵

Unsurprisingly, fast fashion brands make up a large slice of this profit pie. By the end of January 2017, H&M operated 4,351 stores in 64 markets and Inditex (owner of Zara) operated 7,292 stores across 93 markets worldwide. The latter recorded same-store sales growth of 10% in FY16 (ended Jan 2017), representing the fastest rate in 14 years, with total sales reaching EUR 23.3 billion over the same period.

Fast fashion, a compelling proposition for consumers, is also the powerhouse for the retail economies of developed countries. In terms of consumption, more than half the world's clothing retail is concentrated in North America and Europe. North America represents 25%; Western Europe, 27%; Eastern Europe and Turkey, 10%, and Japan and the Republic of Korea 13%. The rest of the world represents 25% of the total.⁴⁶

And yet, despite this wealth, the industry is dogged by an inability to provide decent working conditions and living wages. According to Bangladesh activist Nazma Akter (a former child garment worker) prices offered by buyers placing orders for western brands in Bangladesh have dropped by 20% over the last decade.⁴⁷ Unsurprisingly this has led campaigners and activists to call for these immense profits to be disgorged for the benefit of garment workers.

Where Will Fashion Go Next?

It is notable that the global garment industry shows no signs of slowing down. Multinational fashion brands must necessarily jostle for market share given that their business models are predicated on expansion. Recent industry-analysis from BMI Research suggests that "**fast-fashion** retailers will continue to be the major source of growth in the global apparel market, stealing market share from department stores and traditional mid-market rivals".⁴⁸

Since the opening up of Myanmar, many top international apparel brands including Adidas Group (Germany), Gap (USA), H&M (Sweden), Marks & Spencer (UK) and Primark (UK) now source their products from factories there.⁴⁹ This should also be instructive: lower labour costs act as an inducement to producers to move their production.

However, it is not easy to predict where fast fashion will go next. In search of Inditex's "double-digit growth",⁵⁰ there is also pressure on other major fast fashion brands to follow suit and switch to a "dual sourcing" model to ensure even greater speed—Inditex produces around 50% of its inventory close to Spanish distribution points, utilising bases closer to Europe.⁵¹ This could prompt a copy-cat shift from brands who predominantly source in Asia looking for bases closer to retail markets.

While location is difficult to predict, labour competition (brought about by the vast expansion in trade in this sector since 2005) has resulted in a reduction in clothing prices. For instance, in China prices were reduced by 30% from the period prior to the end of the MFA, and the average price of garments imported by the United States from China in 2013 was lower than in 2008.

Garment prices in Bangladesh decreased by 40% in mid-2000. Similar price reductions have also been reported in other countries.⁵²

The Urgent Need for Change

The revolution in fashion consumerism and manufacturing has not been matched by a revolution in standards on wages and working conditions. While a few individuals continue to argue that the current human suffering is a necessary phase in development and that it would be economically harmful to end it (just as was argued by the anti-abolitionists), it is generally recognised that there is no need for it; neither cheap clothes nor corporate profits provide a reason for it or a justification. So why isn't there a huge shift? As the ILO notes, the fact that the textile, clothes, leather and footwear (TCLF) sector is shaped predominantly by large companies that decide what is produced, where and by whom, with production moved quickly from one country or region to another, means that public policies are important; governments can create an environment conducive to TCLF growth, while ensuring a social framework that combines appropriate regulation, law enforcement and capacity building for local companies.⁵³

But what are the Current Obligations by Stakeholders in the Fast Fashion Industry?

The ILO estimates that more than USD 150 billion of profits derive from slavery and forced labour. In 2016, the Global Slavery Index estimated that 45.8 million people were trapped in modern slavery; subject to forced labour, poor working conditions and other bonded forms of labour. Substantial parts of the clothing industry are implicated in the use of such labour, and, in particular, the fast fashion industry. However, a vastly larger number of people within the RMG sector are paid wages well below that necessary to pay for a basic decent life and deprived of essential labour rights, including collective bargaining and safe working conditions.

The UK Parliament enacted the Modern Slavery Act of 2015 which provides for a requirement that companies over a certain threshold (GBP 36 million) produce a "slavery and human trafficking statement", setting out the steps it has taken during the financial year to ensure that slavery and human trafficking is not taking place (i) in any of its supply chains, and (ii) in any part of its own business, or (b) a statement that the organisation has taken no such steps, which must be published on its website.⁵⁴ Such legislation puts the onus on companies to check and inform the public about their supply chains. The potential benefit of this is that consumers will at the very least be able to see what a company claims to have done to check its supply chain. Any false information or claims will give rise to breaches of the Unfair Consumer practices legislation, which in the UK could amount to a criminal offence.

On 21 February 2017, the French Parliament (the Assemblée Nationale) adopted a more rigorous piece of legislation defining a duty of vigilance for parent companies and their subcontractors. It was passed by the Constitutional Court and came into force in March 2017. The law, which applies to large companies operating in France, requires them to establish mechanisms to prevent human rights violations and environmental damages throughout their supply chain. Companies subject to the legislation must establish and effectively implement a vigilance plan, which shall include reasonable vigilance measures seeking to identify and prevent human rights violations, breaches of fundamental freedoms, violations of health and safety rights of people, as well as environmental damages. The plan should cover the parent company, companies under its control, as well as the suppliers and subcontractors with whom the parent company or any of its subsidiaries have established a commercial relationship. The content of this plan may also be specified by a judicial decree. If the company does not prepare the vigilance plan and fails to comply with the formal judicial notice, it may be sanctioned with a civil fine of up to EUR 10 million. The amount of this fine may reach up to EUR 30 million if failure to develop a plan leads to injuries that could have otherwise be prevented.

At the EU level, by a 2011 Communication, the Commission set out the EU strategy for corporate social responsibility.⁵⁵ This led to Directive 2014/95/EU amending Directive 2013/34/EU regarding the disclosure of non-financial and diversity information by certain large undertakings and groups, which imposes reporting requirements on enterprises having more than 500 staff. On 26 April 2017, the Commission published a *Staff Working Document on Sustainable Garment Value Chains* through EU Development Action, which sets out its ongoing interrelated strategies.⁵⁶

In the US, supply chain responsibility is largely imposed through trade rules. In February 2015 President Obama signed in the Trade Facilitation and Trade Enforcement Act (H.R. 644), section 910 of which strengthened restrictions on the import of goods into the United States produced with forced labour, closing a loophole that existed in the Tariff Act of 1930 which allowed import of such goods if the product was not made in high enough quantities domestically to meet the US demand. Under the Trade Enforcement Act, the US Customs authority can issue “withhold release” orders, which prevent goods from entering the country because of suspicions that they were made using forced labour.⁵⁷ According to Customs and Border Protection Commissioner Kerlikowske: “CBP will do its part to ensure that products entering the United States were not made by exploiting those forced to work against their will, and to ensure that American businesses and workers do not have to compete with businesses profiting from forced labour.” Effective enforcement of this provision potentially provides incentives to business to protect their supply chains from forced labour to guarantee all of their imports are cleared for entry into the United States.⁵⁸

The OECD is in the process of adopting Guidelines addressed specifically at due diligence requirements in garment sector.⁵⁹

Nevertheless, despite the obligations of companies contained in the UK, French and US legislation, the legal position remains insufficient to ensure that clothes sold in the EU and US are made by workers paid at a minimum living wage and provided with decent working conditions. Laws on supply chain transparency alone cannot counter companies’ interests in maximizing profits through squeezing labour costs. In the absence of clear prohibitions backed by sanctions for labour exploitation, these measures will remain inadequate. Therefore, while a useful first step, supply chain accountability is insufficient; it does not and could not discharge both companies and states from their obligations to ensure protection of individual fundamental rights.



CHAPTER 2

The International Obligation to Ensure a Minimum Living Wage and Decent Labour Conditions

As long ago as 28 June 1919, Article 427 of the Treaty of Versailles (the Covenant of the League of Nations) provided not only for the fundamental right of association but also for the “the payment to the employed of a wage adequate to maintain a reasonable standard of life as this is understood in their time and country”; a “living wage”. Indeed, in accordance with the Treaty of Versailles, the preamble to the 1919 Constitution of the **International Labour Office (ILO)** specifically referred to such an obligation:

“Whereas universal and lasting peace can be established only if it is based upon social justice;

And whereas conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of those conditions is urgently required; as, for example, by the regulation of the hours of work, including the establishment of a maximum working day and week, the regulation of the labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of equal remuneration for work of equal value, recognition of the principle of freedom of association, the organization of vocational and technical education and other measures [...]”

In 1944, the **Declaration concerning the aims and purposes of the International Labour Organisation** (the Declaration of Philadelphia), which forms an integral part of the ILO constitution, referred to the importance of “a minimum living wage to all employed and in need of such protection” (Part III(d)). In its **1945 Resolution**, the International Labour Conference recommended “the establishment of appropriate minimum wage standards, adequate for satisfying reasonable human needs” in order to “assist the progressive raising of the standard of living of all workers”.⁶⁰ In the same year, it adopted a Resolution concerning the protection of children and young workers, which provided that all necessary measures be taken “to assure the material well-being of children and young persons by[...] the provision of a living wage for all persons sufficient to maintain the family at an adequate standard of living” (paragraph 5(b)).

That fundamental principle of a right to an adequate living wage applies to all signatory states to the United Nations (of which the ILO forms a part), irrespective of whether they are signatories to the later additional ILO Conventions and Recommendations that further expound the right to an adequate wage and which are considered further below. The Covenant of the League of Nations provided for the creation of a Permanent International Labour Office as part of the League of Nations⁶¹ to adopt Conventions governing labour conditions, which the signatory states were obliged to apply to their colonies and protectorates—at that time a very large part of the globe.⁶²

The ILO Declaration on Fundamental Principles and Rights at Work and its follow up⁶³ adopted on 18 June 1998 (Annex revised 15 June 2010) reiterated the obligations of member states in relation to the guarantee of fundamental principles and rights at work so as to enable “persons concerned to claim freely and on the basis of equality of opportunity their fair share of the wealth which they have helped to generate, and to achieve fully their human potential.” The Declaration committed Member States to respect and promote principles and rights in four categories, whether or not they had ratified the relevant Conventions: freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of child labour and the elimination of discrimination in respect of employment and occupation.

The ILO Declaration on Social Justice for a Fair Globalization, 2008⁶⁴ was unanimously adopted on 10 June 2008 as the third major statement of principles and policies adopted by the International Labour Conference since the ILO's Constitution of 1919, and builds on the Philadelphia Declaration of 1944 and the Declaration on Fundamental Principles and Rights at Work of 1998. The preamble provides that the International Labour Conference:

“affirms that labour is not a commodity and that poverty anywhere constitutes a danger to prosperity everywhere [and] recognizes that the ILO has the solemn obligation to further among the nations of the world programmes which will achieve the objectives of full employment and the raising of standards of living, a minimum living wage ...along with all the other objectives set out in the Declaration of Philadelphia...

“In a world of growing interdependence and complexity and the internationalization of production:

- the fundamental values of freedom, human dignity, social justice, security and non-discrimination are essential for sustainable economic and social development and efficiency;
- social dialogue and the practice of tripartism between governments and the representative organizations of workers and employers within and across borders are now more relevant to achieving solutions and to building up social cohesion and the rule of law through, among other means, international labour standards.”

The Director General describes it in its introduction as “the most important renewal of the Organization since the Declaration of Philadelphia” and as being an opportunity to “forge an effective convergence of national and international policies that lead to a fair globalization and to greater access to decent work for women and men everywhere.” He notes that the Declaration “builds on the values and principles embodied in the ILO Constitution and reinforces them to meet the challenges of the 21st century.” In this regard, the Declaration makes clear that one of the four strategic objectives of the ILO is the “developing and enhancing measures of labour protection” specifically including “policies in regard to wages and earnings, hours and other conditions of work, designed to ensure a just share of the fruits of progress to all and a minimum living wage to all employed and in need of such protection”.⁶⁵ The 2008 Declaration is said to express “the contemporary vision of the ILO's mandate in the era of globalization”, in the wake of the Report of the World Commission on the Social Dimension of Globalization. The Director General states that:

“By adopting this text, the representatives of governments, employers' and workers' organizations from 182 member States emphasize the key role of our tripartite Organization in helping to achieve progress and social justice in the context of globalization. Together, they commit to enhance the ILO's capacity to advance these goals, through the Decent Work Agenda. The Declaration institutionalizes the Decent Work concept developed by the ILO since 1999, placing it at the core of the Organization's policies to reach its constitutional objectives. The Declaration comes at a crucial political moment, reflecting the wide consensus on the need for a strong social dimension to globalization in achieving improved and fair outcomes for all. It constitutes a compass for the promotion of a fair globalization based on Decent Work, as well as a practical tool to accelerate progress in the implementation of the Decent Work Agenda at the country level.”⁶⁶

The Universal Declaration of Human Rights (UDHR), proclaimed by the United Nations General Assembly in Paris on 10 December 1948 General Assembly resolution 217(III)A as a common standard of achievements for all peoples and all nations, set out, for the first time, fundamental human rights to be universally protected. These rights include the right to decent wages and decent labour conditions: Article 23 stating that everyone who works has the right “to just and favourable conditions of work” and “to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection”.⁶⁷ Further, social security and an adequate standard of living are human rights recognized in the UDHR, particularly in Articles 22 and 25.

The United Nations **International Covenant on Economic, Social and Cultural Rights (ICCPR)** of 19 December 1966 guarantees the right of everyone “to the enjoyment of just and favourable conditions of work which ensure, in particular: (a) Remuneration which provides all workers, as a minimum, with: (i) Fair wages and equal remuneration for work of equal value without distinction of any kind [...]; (ii) A decent living for themselves and their families in

accordance with the provisions of the present Covenant”: Article 7. In its monitoring of the implementation of the Covenant, the Committee on Economic, Social and Cultural Rights has commented on the minimum wages in force in the States parties under examination and has noted that the minimum wage in force does not allow workers and their families to live in dignity.⁶⁸

In addition to the international Conventions referred to above, regional human rights instruments also guarantee adequate wages.

The American Declaration of the Rights and Duties of Man, adopted by the Ninth International Conference of American States in 1948, provides in Article XIV for every person who works to have “the right to receive such remuneration as will, in proportion to his capacity and skill, assure him a standard of living suitable for himself and for his family”. Article 7(a) of the **Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (the San Salvador Protocol)**, adopted in 1988 and entering into force in 199, provides that everyone shall enjoy the right to work under just and equitable conditions, which State parties undertake to provide for by way of internal legislation that ensures remuneration sufficient to guarantee “as a minimum, to all workers dignified and decent living conditions for them and their families and fair and equal wages for equal work without distinction”.

The European Social Charter, adopted in 1961 (and as revised in 1996), provides at Article 4 for the right of workers to fair remuneration, specifically, to remuneration sufficient to ensure for them and their families a decent standard of living. The European Committee of Social Rights has stated that for wages to be “fair” they must in any event be above the poverty line, that is, between 50-50% of the national average wage. Where the minimum wage does not meet this requirement, States are asked to demonstrate that the minimum wage is sufficient for a decent standard of living, for example by providing details of the cost of living.⁶⁹

The Community Charter of the Fundamental Social Rights of Workers (9 December 1989), which applies specifically to the workforce in the European Union,⁷⁰ provides at Article 5 that “[a]ll employment shall be fairly remunerated” and that “in accordance with arrangements applying in each country: workers shall be [...] a wage sufficient to enable them to have a decent standard of living”. This includes for “workers subject to terms of employment other than an open-ended full-time contract...an equitable reference wage”.

The African Charter on Human and Peoples’ Rights (also known as the Banjul Charter), which entered into force in 1986, provides that every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work: Article 15. This comprises the right of: “access to equitable and decent work, which respects the fundamental rights of the human person and the rights of workers in terms of [...] remuneration” and the obligation of the State to ensure the right of everyone to equitable and satisfactory conditions of work, including, among others, fair remuneration.⁷¹

In Asia, the **South Asian Association for Regional Cooperation (SAARC)**, with a view to developing a regional platform of action, in 2004 adopted a **SAARC Social Charter**. This provides that the States parties agree to promote the equitable distribution of income and greater access to resources through equity and equality of opportunity for all: Article II, paragraph 2(viii). Under the provisions of Article X, States parties must formulate a national plan of action or modify the existing one to give effect to the provisions of the Social Charter.

Within the framework of the Association of Southeast Asian Nations (ASEAN), on 18 November 2012 member States adopted the **ASEAN Human Rights Declaration**, paragraph 27(1) of which provides that every person has the right to enjoy just, decent and favourable conditions of work, and paragraph 28, that every person has the right to an adequate standard of living for himself or herself and his or her family.

The **Arab Charter on Human Rights**, adopted in 2004⁷² and which entered into force in 2008, provides in Article 34 that every worker has, among others, the right to enjoy just and favourable conditions of work which ensure appropriate remuneration to meet his or her essential needs and those of his or her family. In addition, Article 8 of the **Arab Labour Charter** 1965 approves joint studies to set standards on minimum wages and reduce, to the extent possible, the differences between them, thus making implicit reference to combating the unfair competition that is often associated with minimum wage policies. Moreover, **Arab Convention No. 15 concerning the determination and protection of wages**, adopted by the Arab Labour

Conference in 1983, provides for States Members of the Arab Labour Organization to adopt a minimum wage system, which must be applied to all categories of workers.

The ILO,⁷³ in addition to the core constitutional obligations set out above, which apply to all members, has drawn up further explanatory ILO Conventions, specifically applicable to those states that have ratified them.⁷⁴ Recommendation No. 135 (“the Minimum Wage Fixing Recommendation 1970”)⁷⁵ specifically provides that the purpose of a minimum wage is to serve as: “one element in a policy designed to overcome poverty and to ensure the satisfaction of the needs of all workers and their families.”⁷⁶ And the criteria for determining a living wage, set out in Article 2, crucially include “the needs of workers and their families” and “the cost of living and changes therein”. Further, Article 11 provides that minimum wage rates shall be adjusted from time to time to take account of changes in the cost of living and other economic conditions”. ILO Convention No. 131 of 29 April 1972 provides for minimum wage fixing, with special reference to developing countries and has been ratified by 52 states. Article 3 provides that in determining the level of minimum wage “the needs of workers and their families shall be taken into account”. Among the first ILO minimum wage fixing instruments, Recommendation No. 30 and Recommendation No. 89 make reference to the criteria to be used in this respect, both mentioning “the necessity of enabling the workers concerned to maintain a suitable standard of living”.

The Employment Policy Convention, 1964 (No. 122), refers in its preamble to the policies of preventing of unemployment and the provision of an adequate living wage. **The Social Policy (Basic Aims and Standards) Convention, 1962** (No. 117), calls for the fixing of minimum wages by freely negotiated collective agreements, or by other suitable arrangements based on consultations with employers’ and workers’ representatives, and also requires that workers be kept informed on the minimum wage rates applicable to them and be given the means to recover any amounts by which they have been underpaid.

In 2010, following the recurrent discussion on employment, the Conference concluded that governments of member States should design and promote policies in regard to wages and earnings, hours and other conditions of work that ensure a just share of the fruits of progress to all and a minimum living wage to all employed and in need of such protection, and consider options such as minimum wages that can reduce poverty and inequity, increase demand and contribute to economic stability. Convention No. 131 can provide guidance in this respect.⁷⁷

Principles and Guidelines that Apply Directly to Private Enterprises

The UN Guiding Principles on Business and Human Rights^{78, 79} provide as their first pillar that the State has a duty to protect against human rights abuses by third parties, including business, through appropriate policies, regulation and adjudication. This includes taking steps to prevent abuse abroad by business enterprises operating within their jurisdiction. Perhaps the most obvious and fundamental is the exploitation of workers used to supply the businesses concerned. The second pillar relates to the obligations of businesses themselves; the corporate responsibility to avoid infringing human rights and address the adverse impact on human rights that their business might involve. Whilst not strictly legally binding, in many cases they reflect existing international legal obligations, many of which are increasingly being reflected and referred to in domestic law, regulations, contracts and dispute resolution. Further, in so far as companies are subject to transparency obligations within the EU and under specific national legal regimes, compliance with the UNGP are increasingly relevant. Indeed, the UNGPs provide for their reporting framework,⁸⁰ which many large companies have adopted as a way of measuring their own compliance levels.

The OECD guidelines for multinational enterprises,⁸¹ recommend at paragraph 4. b) of Chapter V (“Employment and Industrial Relations”) that, “when multinational enterprises operate in developing countries, where comparable employers may not exist, [they should] provide the best possible wages, benefits and conditions of work, within the framework of government policies. These should be related to the economic position of the enterprise, but should be at least adequate to satisfy the basic needs of the workers and their families. On 8 February 2017, the OECD launched the *Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear sector.*⁸² This Guidance, developed through a multi-stakeholder process, supports a common understanding of due diligence and responsible supply chain management in the sector. The Guidance is a global instrument, contributing towards a level playing field for responsible business conduct. The OECD Guidelines apply to all companies operating in or

sourcing from the 46 adhering countries, but are also relevant for any company operating in their global supply chains. Thus, they are relevant for a Bangladeshi factory that sells to companies in the US, even while Bangladesh itself is not an Adherent, just as they are relevant for cotton producers in Pakistan exporting to EU markets.

The UN Global Compact⁸³ provides Ten Principles for doing business that constitute the minimum fundamental responsibilities of companies in the areas of human rights, labour, environment and anti-corruption. These Ten Principles are derived from: the Universal Declaration of Human Rights, the International Labour Organization's Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development, and the United Nations Convention against Corruption. The first two are particularly relevant to the obligation to pay a living minimum wage: Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and Principle 2: make sure that they are not complicit in human rights abuses.

ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy adopted by the Governing Body of the ILO on 16 November 1977, during its 204th Session, sets out principles in the fields of employment, training, conditions of work and life and industrial relations which multinational enterprises, as well as governments, and employers' and workers' organizations are recommended to observe. The text of the Declaration was revised in November 2000 by the Governing Body (see GB.279/12).

ILO Recommendation (No. 116) concerning Reduction of Hours of Work provides that if multinational enterprises operate in developing countries, where comparable employers may not exist, they must provide the best possible wages, benefits and conditions of work, within the framework of government policies, which should be at least adequate to satisfy basic needs of the workers and their families. On 1 January 2016, the 17 Sustainable Development Goals (SDGs) of the 2030 Agenda for Sustainable Development—adopted by world leaders in September 2015 at an historic UN Summit—officially came into force. Over the next fifteen years, with these new Goals that universally apply to all, countries will mobilize efforts to end all forms of poverty, fight inequalities and tackle climate change, while ensuring that no one is left behind.

CHAPTER 3

Trade Rules

As labour becomes increasingly globalised, industrialised nations are seeing the impact of wage differentials on their own competitiveness and their ability to maintain jobs within their territories. This has led to social considerations being included in their discussions with trade partners.^{84, 85, 86}

Within the EU, human rights clauses have been included in all new general cooperation and trade agreements negotiated since 1995 and, from 2008, have included sustainable development chapters. These contain obligations to respect labour and environmental standards, with a clear reference to core labour standards as defined by ILO conventions.

However, within the framework of the Generalised Scheme of Preferences (GSP), only the Special Incentive Arrangement for Sustainable Development and Good Governance, or "GSP+", provided for by Regulation (EU) No 978/2012, sets ratification and implementation of 15 core human and labour rights UN/ILO Conventions (plus 12 related to the environment and to governance principles) as a precondition for enjoying GSP+ advantages.⁸⁷ This is in any event of limited relevance to countries with large RGM sectors since, from 2012, tariff preferences available under Article 7 in relation to textiles and articles of apparel and clothing accessories were suspended on the basis that no such preferential treatment was required in light of how competitive those products had become.⁸⁸

When applying for GSP+, a country is required to have already ratified these 27 core international conventions (listed in Annex VIII of the GSP Regulation).⁸⁹ And to attain GSP+ status, the most recent available conclusions and recommendations of the conventions' monitoring bodies must have not identified a serious failure to effectively implement any convention. Moreover, to be eligible at all for GSP+, GSP beneficiaries must be considered "vulnerable" due to a low level of economic diversification, and a low level of integration within the international economy. Annex VII to the GSP Regulation provides two numerical criteria to determine "vulnerability". Firstly, the seven largest sections of a country's GSP imports into the EU must represent more than 75% of the value of all sections of a country's GSP imports. Secondly, that country's GSP imports into the EU must represent less than 6.5% of the value of the EU's total GSP imports from all GSP beneficiaries. GSP+ applies to a limited number of countries—at present Pakistan and the Philippines are the only ones in Asia.⁹⁰

For the purposes of the RMG sector a more important part of the EU GSP regime is the EU's "Everything but Arms" arrangement (EBA). This commenced in 2001 to give all less developed countries (LDCs) full duty free and quota-free access to the EU for all their exports with the exception of arms and armaments. By contrast with GSP+, however, it does not require beneficiary states to ensure compliance with human rights and labour standards. Of the 14 countries covered in this report, Bangladesh, Myanmar, Cambodia and Haiti all benefit from the EBA arrangement. Despite the lack of human rights and labour standards conditions, there is scope for using this hugely important trade concession as a means of putting pressure on beneficiary states. For example, in March 2017 the European Commission warned Bangladesh that it could suspend the trade preference arrangement unless it made progress with the implementation of workers' rights.^{91, 92} It is difficult to know how serious the threat is, having regard to the fact that the same threats were made in 2013 after the collapse of Rana Plaza.⁹³

The US has for many years linked trade rules to foreign labour conditions. This first occurred in the McKinley Act of 1890, which restricted imports produced by prison labour. The Tariff Act of 1930 prohibited convict-made goods. The Article XX(e) of the General Agreement on Tariffs and Trade (GATT) acknowledged the right of nations to restrict items produced by forced labour. Since then, labour standards have been incorporated into virtually every part of US trade law: the Tariff Act of 1930; the Generalized System of Preferences (GSP) in 1974; Section 301 of the Trade Act of 1974; the Caribbean Basin Economic Recovery Act (CBERA) in 1983; the Andean Trade Preference Act (ATPA) in 1992; the Overseas Private Investment Corporation (OPIC), the

Multilateral Investment Guarantee Agency (MIGA); the North American Free Trade Act (NAFTA) in 1994; and the Trade Act of 2002.

The Trade Act of 1974 created the Generalized System of Preferences (GSP) program to promote growth in developing countries. The Trade and Tariff Act 1984, which renewed the Generalized System of Preferences, encouraged developing countries that enjoy the benefit of preferential trade treatment under the GSP “to afford workers internationally recognized worker rights”, including acceptable working conditions with regard to minimum wages, working hours, and occupational health and safety.⁹⁴ For example, in 1984, Congress added a requirement that GSP participation be conditional on taking steps to afford basic labour standards (19 U.S.C. 2411(d)(3)(B)(iii)). The possibility of trade benefits being dependent on worker rights under the GSP has since 1984 resulted in 15 GSP beneficiaries being sanctioned for worker rights violations. Seven have not had their status restored. Many more have corrected problems to avoid suspension.

However, textile and apparel products are excluded from the 1,400 products that obtain duty-free treatment under the GSP program. Thus, the requirements of GSP participation that are potentially beneficial to labour standards do not apply in the apparel sector. Nevertheless, the following GSP labour requirements have set a precedent for subsequent “fast track” authority, and failure to take steps to afford these five rights can jeopardize a country’s GSP status for some or all of its products: 1. the right of association; 2. the right to organize and to bargain collectively; 3. a prohibition on the use of any form of forced or compulsory labour; 4. a minimum age for the employment of children and a prohibition on the worst forms of child labour; and 5. acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

The legislation providing the “fast track” authority under which the Uruguay Round and North American Free Trade Agreement (NAFTA) were negotiated and adopted, promote labour-related objectives. Thus, a social clause was introduced into the North American Agreement on Labor Cooperation (NAALC), concluded in 1993 between the United States, Canada and Mexico, in parallel with the adoption of the North American Free Trade Agreement. Annex 1 to the NAALC lists 11 labour principles that parties to the Agreement are committed to promoting, including the establishment of minimum employment standards, such as minimum wages and overtime pay for wage earners, including those not covered by collective agreements (sixth principle).⁹⁵ While the Agreement indicates that these principles are not intended to “establish common minimum standards for their domestic law” (Annex 1, Introduction), each party undertakes to “promote compliance with and effectively enforce its labor law through appropriate government action” (Article 3(1)). A dispute settlement mechanism is provided for in the event that one party considers that another has systematically failed to effectively enforce labour standards. This can lead to the setting up of an evaluation committee of experts and eventually to the establishment of a special arbitral panel, and, where necessary, a monetary enforcement assessment may be imposed in respect of three of the principles, including the minimum wage.⁹⁶

Since the conclusion of the NAALC, labour standards, including those on acceptable working conditions with regard to minimum wages, have been systematically included in the trade agreements negotiated by the United States.⁹⁷ The bilateral agreement concluded between the United States and Cambodia on trade in textile products linked the increase in Cambodia’s export quotas with an improvement in working conditions through the effective implementation of national legislation (including on minimum wages) and fundamental rights at work.

The framework for US trade negotiations as part of Bipartisan Trade Promotion Authority (TPA)—renewal of “fast track” authority—was established under the Trade Act of 2002. The TPA includes labour provisions in both the principal and overall trade-negotiating objectives for trade agreements, including FTAs. “Core labor standards,” as defined by the TPA, are the same workers’ rights identified in the US preferential trade programs. The specific labour provisions included within the overall negotiating objectives are as follows:

1. **To promote respect for worker rights and the rights of children consistent with core labour standards of the ILO** (as defined in the TPA (§ 2113(6)), and an understanding of the relationship between trade and worker rights (19 U.S.C. 3802(a)(6)). The core ILO standards defined in the statute (19 U.S.C.3813(6)), track the GSP program.

2. To seek provisions in FTAs in which the parties strive to ensure that they do not weaken or reduce the protections afforded in domestic labour laws as an encouragement for trade (§ 2102(a)(7)).
3. To promote universal ratification and full compliance with ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the worst forms of child labour (§ 2102(a)(9)).

Since the enactment of TPA legislation, the United States has negotiated and entered into FTAs containing workers' rights provisions with the following countries: Singapore; Chile; Australia; Morocco; Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras and Nicaragua; Bahrain; Oman; Peru and Korea. Labour issues are also a component of ongoing US FTA negotiations with Colombia; Ecuador; the United Arab Emirates (UAE); Thailand; Botswana, Lesotho, Namibia, South Africa, and Swaziland (SACU).

¹ Karl Polanyi, 1944. *The Great Transformation: The Political and Economic Origins of Our Time*.

² Labowitz, S.; O'Connor C., March 2017. *Putting the 'S' in ESG*. NYU Stern. Available at: <https://qzprod.files.wordpress.com/2017/03/0a5ac-metrics-report-final-1.pdf>

³ Labowitz, S., 16 March 2017. *So Long for now: Reflections on the business and human rights field*, NYU Stern. Available at: <http://bhr.stern.nyu.edu/blogs/so-long-for-now>

⁴ ILO, August 2016. *Cambodian Garment and Footwear Sector Bulletin*.

⁵ Sánchez Caldentey's report also asserts "responsibility for unethical practices lies equally with producers, their affiliates and subsidiaries in the downstream, and distributors and retailers in the upstream". She also demands a "legally binding institutional framework". (European Parliament News, 21 March 2017. *Textile Imports: Development MEPs Call for Rules to Curb Worker Exploitation*. Available at: <http://www.europarl.europa.eu/news/en/news-room/20170321IPR67908/textile-imports-development-meps-call-for-rules-to-curb-worker-exploitation>)

⁶ The letter is signed by EC directors and managing director Sandra Gallina, Jordi Curell and Lotte Knudsen, and warns of the need to give "a convincing roadmap/plan of action on how the issues flagged up by ILO will be meaningfully resolved". The timeline given is the follow-up meeting of the Sustainability Compact in May in Dhaka and the ILO conference in June in Geneva. This plan, the EC letter warns, is imperative so that Bangladesh remains eligible for the EBA regime.

(Ibrahim Hossain Ori, 24 March 2017. *EU Warns Bangladesh of GSP Suspension over Labour Rights*, Dhaka Tribune.)

⁷ European Coalition for Corporate Justice (ECCJ), 21 February 2017. *France adopts corporate duty of vigilance law: a first historic step towards better human rights and environmental protection*. Available at: <http://corporatejustice.org/news/405-french-corporate-duty-of-vigilance-law-frequently-asked-questions>

⁸ Just as the ILO adopted Convention 188 for the Fisheries Sector in 2006, so some equivalent global standard may well provide a means within this sector of tackling its inherent risks and countering the potentially negative consequences for states of ensuring adequate labour standards, namely the loss of investment and jobs.

⁹ For example, Australia, France, New Zealand, Norway and the USA: for history of minimum wage legislation, see: Gerald Star, ILO, 1981. *Minimum Wage Fixing*, p1-13. Available at: http://www.ilo.org/public/libdoc/ilo/1981/81B09_266_engl_1993.pdf

¹⁰ Federal Constitution of Mexico adopted in 1917. Article 123, VI, of that instrument states that—"The minimum wage to be received by a worker shall be that which is considered sufficient, according to the conditions of each region, to satisfy the normal needs of his living, education and honest pleasures, considering him as the head of a family". See also, Constitution of Costa Rica, 1949, which, apart from requiring equal pay for equal work, declares that every worker is entitled to a minimum wage that will ensure his wellbeing and a dignified existence.

¹¹ ILO, 2015. *Building Social Protection Floors for All*. Available at: <http://www.social-protection.org/gimi/gess/RessourcePDF.action?ressource.ressourceId=51737>

¹² Irving, E, Schrodgers, August 2016. *Modern Slavery: Consumer Companies exposed to increasing regulation*. Available at: <http://www.schrodgers.com/en/sysglobalassets/digital/global/modern-slavery.pdf>

¹³ Fashion United, 2016. *Global Fashion Industry Statistics: International Apparel*. Available at: <https://fashionunited.com/global-fashion-industry-statistics>

¹⁴ Luginbühl, C, Musiolek, B, Berne Declaration, Clean Clothes Campaign Switzerland, 2014. *Stitched Up: Poverty Wages for Garment Workers in Eastern Europe and Turkey*. Available at: <https://cleanclothes.org/resources/publications/stitched-up-1>

¹⁵ *ibid.*

¹⁶ McMullen, A. Labour Behind the Label, 18 September 2013. *Shop 'Til They Drop*.

¹⁷ The Asia Floor Wage (AFW) Alliance describes garment factory work as requiring moderate to heavy physical work. The Indian Labour Conference in 1957 made 2,700 calories the norm for minimum wage for an adult worker (performing moderate to heavy physical work). The Indonesian government most recently defined 3,000 calories as the intake figure for a living wage for a manufacturing worker (performing moderate to heavy physical work). The AFW Alliance has therefore adopted the Indonesian norm of 3,000 calories as its standard. (Bhattacharjee, Anannya; Roy, Ashim, International Journal of Labour Research, *Asia Floor Wage and global industrial collective bargaining*, p67.)

¹⁸ Cambodian Organization for Research & Development, American Center for International Labor Solidarity, 2015. *Consumption Expenditure of Garment and Footwear workers in Cambodia*.

¹⁹ In Export Processing Zones (EPZs) the concentration of women workers is traditionally even higher; a 2009 study found that women made up 90% of the EPZ workforce in Nicaragua, 80% in Bangladesh, and 75% in Honduras, the Philippines, and Sri Lanka. Lina Stotz & Gillian Kane, *Facts on the Global Garment Industry*, Campaign for Clean Clothes. Available at:

<https://cleanclothes.org/resources/publications/factsheets/general-factsheet-garment-industry-february-2015.pdf> ;

²⁰ McKinsey Global Institute, September 2015. *How Advancing Women's Equality Can add \$12 trillion to Global Growth*. Available at:

<http://www.mckinsey.com/global-themes/employment-and-growth/how-advancing-womens-equality-can-add-12-trillion-to-global-growth>

²¹ English, Beth, 2013. "Global Women's Work: Historical Perspectives on the textile and garment industries", *Journal of International Affairs*.

²² For instance, a September 2016 review of four of H&M's best-in-class suppliers in Cambodia found that "despite H&M's Fair Wage method project, that was initiated in 2013, and since then has been rolled out to 20 of the brand's strategic suppliers in Cambodia, the platinum suppliers are below the industry median in terms of wages". (Center for Alliance of Labor & Human Rights (CENTRAL) and Future in Our Hands, 23 September 2016. *H&M's Platinum and gold suppliers in Cambodia*. Available at: <http://www.central-cambodia.org/archives/1250>

²³ A review of three brands' CSR policies on wages by the NGO SACOM finds each "vague and unclear". It finds that GAP does not mention a living wage, Inditex has committed to pay a living wage (in its annual report of 2014) but does not give a clear benchmark for the living wage, nor a strategy or schedule, and H&M, despite promising to pay 850,000 garment workers a "fair living wage in 2018", does not give a clear figure of living wage, instead claiming that the definition depends on the opinion of workers. (SACOM, 2016. *Reality Behind Brands' CSR Hypocrisy*.)

²⁴ United Nations Human Rights, 2011. *Guiding Principles on Business and Human Rights*. Available at:

http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

²⁵ *ibid.* principles 11-15.

²⁶ See for example ASN bank's report *Garment companies and living wage*, where all garment companies in the ASN Investment Universe to have introduced a living wage by 2030. The fourteen garment companies included in the ASN Investment Universe on 1 April 2016 were: Adidas, Amer, Sports, ASICS, Asos, Esprit, Gap, Gildan Activewear, H&M, Inditex, KappAhl, Lojas Renner, Marks & Spencer, Nike and Puma. (ASN bank and Impact Centre Erasmus, November 2016. *Garment companies and living wage*.)

²⁷ This study uses "living wage" thresholds provided by the Fair Wage Network which has set up a global database on minimum wage and living wage thresholds all over the world. It has systematically collected all reliable living wage thresholds in more than 150 countries and calculated an adjusted mean after having harmonized such existing thresholds to a number of common criteria (like the year of reference and the size of households). For information on the Fair Wage Network see www.fair-wage.com. We refer also to the ASN Bank Erasmus study, which shows the manifest disparity between minimum wages and living wages (ASN bank and Impact Centre Erasmus, November 2016. *Garment companies and living wage*.) We have used the lowest minimum wage data as outlined in the country reports when comparing and benchmarking.

²⁸ Using the lowest minimum wage from www.wageindicator.org

²⁹ The Economist, 11 April 2017. *The environmental costs of creating clothes*. Available at: <http://www.economist.com/blogs/economist-explains/2017/04/economist-explains-6>

³⁰ Verdict Consulting (now Globaldata plc) figures on apparel from 2008/9 attributed this deflation to the emergence of value players, e.g. Primark.

Statistics taken from:

Felstead, A., 6 September 2009. "A heftier toll at the till", *The Financial Times*. Available at:

<https://www.ft.com/content/72320f58-9b0f-11de-a3a1-00144feabdc0>

³¹ The writer M.J. Deschamps reminds us of the old system of fashion production: "Manufacturers and suppliers in the fashion production chain used to have a fairly cut and dry job: procure a certain amount of fabrics and materials at the beginning of the season to be manufactured into a predetermined number of apparel items in specific styles, colours and sizes".

Deschamps, M.J., 2 July 2012. *Fast fashion shifts supply chain focus*.

³² John Thornbeck, Chair Chainge Capital, 2015. *Fast Fashion Decoded*. Available at:

<http://www.lesouk.co/articles/tex-style-news/fast-fashion-decoded-what-makes-zara-different>

³³ Analysis from Warren Hausman, professor of management science and engineering at California's Stanford University as quoted by:

Deschamps, M.J., 2 July 2012. *Fast fashion shifts supply chain focus*.

³⁴ BMI research. Business Monitor Online, 23 March 2017. *Inditex Winning The Fast-Fashion Battle*.

³⁵ World Trade Organisation, (n.d.). *Textiles Monitoring Body (TMB) The Agreement on Textiles and Clothing*. Available at: https://www.wto.org/english/tratop_e/texti_e/textintro_e.htm

³⁶ World Trade Organisation, (n.d.). *Textiles: back in the mainstream*. Available at:

https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm5_e.htm

³⁷ See further: European Parliament, August 2014. *Workers' conditions in the textile and clothing sector: just an Asian affair? Issues at stake after the Rana Plaza tragedy*. Available at: <http://www.europarl.europa.eu/EPRS/140841REV1-Workers-conditions-in-the-textile-and-clothing-sector-just-an-Asian-affair-FINAL.pdf>

³⁸ Lina Stotz & Gillian Kane, *Facts on the Global Garment Industry*, Campaign for Clean Clothes, CCC. <https://cleanclothes.org/resources/publications/factsheets/general-factsheet-garment-industry-february-2015.pdf>

³⁹ Industry expert and academic Doug Miller has investigated different characteristics of the fast fashion production line to identify particular stress points. In particular, he has found that buyers from major fashion brands basing high volume orders using "Standard Minute Value" calculations severely overestimate the capacity of first tier factories because these calculations are out of date and often based on 100% factory efficiency. This error alone makes subcontracting likely and at that point the CMT process becomes an unknown quantity. (Siegle, L., *We are what we wear: Unravelling fast fashion and the collapse of Rana Plaza*, Guardian e-books, 2013.)

⁴⁰ According to the UNIDO statistics for 2013, women represent on average 68% of the workforce in the clothing industry, 45% in textiles, and 46% in the leather and footwear industries. UNIDO: *International Yearbook of Industrial Statistics*, Vienna, 2013, CD-ROM. (Note: Data does not include important producers, such as Bangladesh, Pakistan, Viet Nam, Cambodia and Thailand).

⁴¹ Martin, M., 1 December 2013. *Creating Sustainable Apparel Value Chains: A Primer on Industry Transformation*, Impact Economy. Available at: http://www.impacteconomy.com/papers/IE_PRIMER_DECEMBER2013_EN.pdf

⁴² King, H, 13 July 2013. *The Worth of Women and of Workers in the Bangladesh Garment Industry*, *Labor Rights blog*. Available at: http://laborrightsblog.typepad.com/international_labor_right/2013/07/the-worth-of-women-and-of-workers-in-the-bangladesh-garment-industry.html

⁴³ Paul-Majumder, Pratima, Anwara Begum, June 2000. *The Gender Imbalances in the Export Oriented Garment Industry in Bangladesh*. Working paper no. 12. The World Bank Development Research Group/ Poverty Reduction and Economic Management Network.

⁴⁴ Cotton incorporated stat quoted by:

Chhbra, E, 3 August 2016. "The Fabric of our lives or the planet's latest threat? Fashion startups look into cotton alternatives", *Vogue*. Available at: <http://www.vogue.com/article/fashion-startups-cotton-alternatives>

⁴⁵ Fashion United, (n.d.). *Global Fashion Industry Statistics – International Apparel*. Available at: <https://fashionunited.com/global-fashion-industry-statistics>

⁴⁶ ILO, September 2014. *Wages and working hours in the textiles, clothing, leather and footwear industries*. Available at: http://www.ilo.org/wcmsp5/groups/public/@ed_dialogue/@sector/documents/publication/wcms_300463.pdf

⁴⁷ Siegle, L, *We are what we wear, unravelling fast fashion and the collapse of Rana Plaza*, Guardian e-books, 2013.

⁴⁸ BMI research. *Business Monitor Online*, 23 March 2017. *Inditex Winning The Fast-Fashion Battle*.

⁴⁹ ITUC, October 2015. *Foreign Direct Investment in Myanmar*. Available at: <http://www.ituc-csi.org/IMG/pdf/ituc-burma.pdf>

⁵⁰ *ibid.*

⁵¹ BMI research, 23 March 2017. *Business Monitor Online*, *Inditex Winning The Fast-Fashion Battle*.

⁵² ILO, September 2014. *Wages and working hours in the textiles, clothing, leather and footwear industries*.

⁵³ *ibid.*

⁵⁴ Section 54. The definitions of 'slavery and human trafficking' are provided in sections 1, 2 and 4 of the Act. It is unclear the extent to which grossly inadequate working conditions or wages incompatible with a decent life would be covered.

⁵⁵ The Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2011. *A renewed EU strategy 2011-14 for Corporate Social Responsibility*. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52011DC0681&from=EN>

⁵⁶ European Commission, 24 April 2017. *Commission Staff Working Document: Sustainable Garment Value Chains through EU Development Action*. Available at: https://ec.europa.eu/europeaid/sites/devco/files/garment-swd-2017-147_en.pdf

⁵⁷ The first order came on 29 March against imported soda ash, calcium chloride, caustic soda, and viscose/rayon fiber that was manufactured or mined by Chinese company Tangshan Sunfar Silicon. US Customs and Border Protection (US CBP) believes that these products were made by forced convict labor. The second order, on 13 April, was against imported potassium, potassium hydroxide, and potassium nitrate that is believed to be mined and manufactured by the same company using convict labor.

⁵⁸ Recently Turkmenistan News (ATN) and International Labor Rights Forum (ILRF), partners in the Cotton Campaign, filed a complaint with the US CBP concerning the import of cotton goods made using forced labor from Turkmenistan by companies, including retail giant IKEA. The government of Turkmenistan engages in a practice where annually farmers are forced to deliver cotton production quotas and thousands of citizens are required to pick cotton or are faced with a penalty. The complaint calls on US Customs to classify cotton goods, such as the IKEA products, from Turkmenistan as illicit, issue a detention order on all imports of them, and direct port managers to block their release into the United States. CBP has yet to respond.

⁵⁹ OECD, (n.d.). *Responsible Supply Chains in the Garment and Footwear Sector*. Available at: <https://mneguidelines.oecd.org/responsible-supply-chains-textile-garment-sector.htm>

⁶⁰ ILO, 31 May 2016. *Resolutions Adopted by the International Labour Conference*. Available at: <http://www.ilo.org/public/libdoc/ilo/P/09734/>

⁶¹ The Covenant of the League of Nations, 1919. Articles 388-392.

⁶² *ibid.* Article 421.

⁶³ ILO, 18 June 1998. *Declaration on Fundamental Principles and Rights at Work*. Available at: <http://www.ilo.org/declaration/lang-en/index.htm>

⁶⁴ Adopted by the International Labour Conference at its 97th Session, Geneva, 10 June 2008.

⁶⁵ In accordance with article III(d) of the Declaration of Philadelphia adopted by the International Labour Conference in 1944.

⁶⁶ It further refers to: "widespread international backing at the highest political, regional and global levels, culminating with the 2005 United Nations World Summit". On that occasion, Heads of State and Government stated: "We strongly support fair globalization and resolve to make the goals of full and productive employment and decent work for all, including for women and young people, a central objective of our relevant national and international policies as well as our national development strategies." This statement also builds on the commitments of the World Summit for Social Development of 1995.

⁶⁷ The American Declaration of the Rights and Duties of Man, adopted by the Ninth International Conference of American States in 1948, is drafted in similar terms to the Universal Declaration of Human Rights. In Article XIV, the American Declaration provides that every person who works "has the right to receive such remuneration as will, in proportion to his capacity and skill, assure him a standard of living suitable for himself and for his family". The Conference [ILO] also adopted the Inter-American Charter of Social Guarantees, which enshrines the minimum rights that workers must enjoy in the American States, Article 8 providing that "every worker has the right to earn a minimum wage, fixed periodically with the participation of the state and of workers and employers, which shall be sufficient to cover his normal home need, material, moral and cultural, taking into account the characteristics of each type of work, the special conditions of each region and each job, the cost of living, the worker's relative aptitude, and the wage systems prevalent in the enterprises. A minimum occupational wage shall also be set up for those activities in which this matter is not regulated by a collective contract or agreement". However, the impact of this Charter has been limited in view of the low level of support that it enjoyed. (ILO, 2014. *Minimum Wage Systems*. Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_235287.pdf)

In Article 7(a) of the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (the "San Salvador Protocol"), adopted in 1988 and which entered into force in 1999, the States parties recognize that the right to work presupposes that everyone shall enjoy that right under just, equitable, and satisfactory conditions, which the States parties undertake to guarantee in their internal legislation, particularly with respect to remuneration "which guarantees, as a minimum, to all workers dignified and decent living conditions for them and their families and fair and equal wages for equal work, without distinction".

⁶⁸ Over the course of the past decade, the Committee has adopted this conclusion in respect of the following states parties: Afghanistan (E/C.12/AFG/CO/2-4, para. 23); Algeria (E/C.12/DZA/CO/4, para. 10); Angola (E/C.12/AGO/CO/3, para. 21); Plurinational State of Bolivia (E/C.12/BOL/CO/2, paras 14 (b) and 27 (b)); Bulgaria (E/C.12/BGR/CO/R.4-5, para. 12); Cameroon (E/C.12/CMR/CO/2-3, para. 15); Canada (E/C.12/CAN/CO/4 – E/C.12/CAN/CO/5, paras 11(f), 18 and 47); Chile (E/C.12/1/Add.105, paras 17 and 38); Cyprus (E/C.12/CYP/CO/5, para. 17); Dominican Republic (E/C.12/DOM/CO/3, para. 16); El Salvador (E/C.12/SLV/CO/2, paras 12 and 30); Estonia (E/C.12/EST/CO/2, para. 16); Hungary (E/C.12/HUN/CO/3, paras 14 and 37); India (E/C.12/IND/CO/5, paras 22 and 62); Kenya (E/C.12/KEN/CO/1, para. 18); Latvia (E/C.12/LVA/CO/1, paras 19 and 44); Republic of Moldova (E/C.12/MDA/CO/2, para. 11); Nepal (E/C.12/NPL/CO/2, paras 11, 20 and 39); Nicaragua (E/C.12/NIC/CO/4, para. 16); Philippines (E/C.12/PHL/CO/4, para. 22); Russian Federation (E/C.12/RUS/CO/5, para. 18); Slovakia (E/C.12/SVK/CO/2, para. 15); Tajikistan (E/C.12/TJK/CO/1, paras 22 and 53); Turkey (E/C.12/TUR/CO/1, para. 17); Ukraine (E/C.12/UKR/CO/5, paras 15 and 38); Uruguay (E/C.12/URY/CO/3-4, para. 12); Uzbekistan (E/C.12/UZB/CO/1, paras 19 and 49) and Zambia (E/C.12/1/Add.106, paras 18 and 41). Furthermore, in the specific context of the global economic crisis, the Committee expressed its concern in the case of Spain that the minimum wage has been frozen since 2011 at a level that does not guarantee an acceptable standard of living (E/C.12/ESP/CO/5, para. 18).

⁶⁹ Council of Europe, 1 September 2008. *Digest of the case law of the European Committee of Social Rights*, p43.

⁷⁰ This principles-based charter is used as an interpretative aid by the Court of Justice of the European Union in construing the meaning of legislation and developing case law. It was initially drafted in 1989. All member states have adopted the text.

⁷¹ See "Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and People's Rights", paragraphs 57 and 59, adopted by the African Commission on Human and People's Rights in 2010. In addition to the Principles and Guidelines, in 1989 the African Commission also adopted guidelines for national periodic reports under the African Charter. The 1989 guidelines indicate that among the elements to be reported should be the principal methods used for fixing wages (minimum wage fixing machinery, collective bargaining, statutory regulations, etc.) in the various sectors, and numbers of workers involved, and information on the categories and numbers of workers for whom wages are not set by such methods.

⁷² This was preceded by the 1994 Charter, which, however, never entered into force.

⁷³ Minimum Wage Fixing Machinery Convention, 1928 (No. 26)

In 1928, the ILO adopted the Minimum Wage Fixing Machinery Convention, 1928 (No. 26). In line with the prevailing philosophy of the time, this Convention encouraged member States to implement minimum wages "for workers employed in certain of the trades or parts of trades (and in particular in home working trades) in which no arrangements exist for the effective regulation of wages by collective agreement or otherwise and wages are exceptionally low". Agriculture was excluded.

With more than 100 ratifications, Convention No. 26 remains to this day one of the most widely ratified ILO Conventions. It is complemented by Recommendation No. 30, which calls for the participation of women in wage-fixing bodies and for strong enforcement measures to protect law-abiding employers from unfair competition.

Agricultural workers and seafarers

In the second half of the twentieth century, the ILO participated in the extension of minimum wage protection to previously excluded categories of workers.

In 1951, the ILO adopted the Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99). By the end of 2015, Convention No. 99 had 54 ratifications. It is complemented by Recommendation No. 89.

In 1946, a minimum wage was negotiated for the first time for seafarers at the ILO – a tradition that continues to this day. The Maritime Labour Convention, 2006, provides that seafarers' wages should be no less than the amount periodically set by the joint Maritime Commission, which meets at the ILO.

Minimum Wage Fixing Convention, 1970 (No. 131)

In 1970, ILO adopted the [Minimum Wage Fixing Convention, 1971 \(No. 131\)](#), which is considered to offer broader protection than that envisaged by ILO Convention No. 26.

[Convention No. 131](#) encourages member States which ratify to establish a *system* of minimum wages which:

- offers a broad scope of application and where exclusions made are kept to a minimum;
- establishes a machinery to fix and adjust minimum wages from time to time;
- is based on the principle of full consultation with social partners;
- involves social partners, on an equal footing, as well as independent experts in the design and operation of the system;
- sets minimum wage levels that take into account the needs of workers and their families, as well as economic factors;
- includes appropriate measures to ensure the effective application of minimum wages.

The objective of a generally applicable lower limit under which wages are not permitted to fall reflects the view that all workers—as a matter of right—should receive protection against “unduly low wages”. However, [Convention No. 131](#) does not prescribe a single national minimum wage. The [Minimum Wage Fixing Recommendation, 1970 \(No. 135\)](#), which accompanies the Convention, makes clear that broad coverage can be achieved “either by fixing a single minimum wage of general application or by fixing a series of minimum wages applying to particular groups of workers”. By not seeking to impose a single model on all ILO member States, [Convention No. 131](#) allows for the existence of different national circumstances and different levels of economic and social development. By the end of 2015, [Convention No. 131](#) had been [ratified by 52 member States](#), including by 11 countries since 2000.

⁷⁴ See also: ILO; March 2017. *Tripartite Declaration of Principles concerning multi-national enterprises and social policy*.

Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_094386.pdf

⁷⁵ ILO, 1970. R135 - Minimum Wage Fixing Recommendation, 1970 (No. 135). Available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R135

⁷⁶ Recommendation No. 135 (“the Minimum Wage Fixing Recommendation 1970”. Article 1.

⁷⁷ ILO, 2014. *Minimum Wage Systems*. Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_235287.pdf

⁷⁸ Business and Human Rights Resource Centre, (n.d.). *UN Guiding Principles*. <http://business-humanrights.org/en/un-guiding-principles>

⁷⁹ See also interpretative guidance: UN Human Rights, 2012. *The Corporate Responsibility to Respect Human Rights*. Available at: <http://www.ohchr.org/Documents/Issues/Business/RtRInterpretativeGuide.pdf>

⁸⁰ UN Guiding Principles Reporting Framework, 2017. Home page. Available at: <http://www.ungpreporting.org/>

⁸¹ OECD, (n.d.). *Responsible Business Conduct*. Available at: <http://mneguidelines.oecd.org/>

⁸² OECD, (n.d.). *Responsible Supply Chains in the Garment and Footwear Sector*. Available at: <https://mneguidelines.oecd.org/responsible-supply-chains-textile-garment-sector.htm>

⁸³ United Nations Global Compact, (n.d.). *The Ten Principles of the UN Global Compact*. Available at: <https://www.unglobalcompact.org/what-is-gc/mission/principles>

⁸⁴ See, for instance, S. Polaski: “Protecting labor rights through trade agreements: An analytical guide”, in *Journal of International Law and Policy* (Vol. 10, No. 1, July 2004), pp. 13–25.

⁸⁵ C. Dombia-Henry and E. Gravel: “Free trade agreements and labour rights: Recent developments”, in *International Labour Review* (2006, Vol. 145, No. 3), pp. 211–234.

⁸⁶ C. Deblock: *Les Etats-Unis, le commerce et les normes du travail: Une perspective historique* (Montreal Institute of International Studies, July 2008); Emily Reid, *Balancing human rights, environmental protection and international trade, lessons from EU experience* (Hart, studies in international Trade Law); James Harrison, *the Human Rights Impact of the World Trade Organisation* (Hart, studies in International Trade Law).

⁸⁷ While the general GSP arrangement (“Standard GSP”) generally grants tariff reductions or suspensions to developing countries on about 66% of EU tariff lines, the GSP+ offers complete duty suspensions. (For summary of position see: European Commission, January 2017. *European Union’s GSP+ Scheme*. Available at:

http://trade.ec.europa.eu/doclib/docs/2017/january/tradoc_155235.pdf)

⁸⁸ Commission implementing Regulation No. 1213/2012.

⁸⁹ These are the core human and labour rights UN/ILO Conventions: 1. Convention on the Prevention and Punishment of the Crime of Genocide (1948); 2. International Convention on the Elimination of All Forms of Racial Discrimination (1965); 3. International Covenant on Civil and Political Rights (1966); 4. International Covenant on Economic Social and Cultural Rights (1966); 5. Convention on the Elimination of All Forms of Discrimination Against Women (1979); 6. Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984); 7. Convention on the Rights of the Child (1989); 8. Convention concerning Forced or Compulsory Labour, No 29 (1930); 9. Convention concerning Freedom of Association and Protection of the Right to Organise, No 87 (1948); 10. Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, No 98; (1949); 11. Convention concerning Equal Remuneration of Men and Women Workers for Work of Equal Value, No 100 (1951); 12. Convention concerning the Abolition of Forced Labour, No 105 (1957); 13. Convention concerning Discrimination in Respect of Employment and Occupation, No 111 (1958); 14. Convention concerning Minimum Age for Admission to Employment, No 138 (1973); 15. Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, No 182 (1999)

⁹⁰ Currently the following countries have GSP+ status: Armenia, Bolivia, Cape Verde, Kyrgyzstan, Mongolia, Pakistan, Paraguay and the Philippines. Sri Lanka applied for GSP+ beneficiary status in July 2016 and on 11 January 2017 the Commission adopted a delegated act proposing to grant that status to Sri Lanka. The act is currently being considered by the European Parliament and the Council.

⁹¹ Ibrahim Hossain Ovi, 24 March 2017. “EU Warns Bangladesh of GSP Suspension over Labour Rights”, *Dhaka Tribune*. Available at: <http://www.dhakatribune.com/bangladesh/2017/03/24/eu-warns-bangladesh-gsp-suspension-labour-rights/>

⁹² For significance of trade with EU to Bangladesh, particularly in textiles see: European Commission, 2017. *Trade: Bangladesh*. Available at: http://ec.europa.eu/trade/policy/countries-and-regions/countries/bangladesh/index_en.htm

⁹³ Ethan Bilby, 1 May 2013. "Europe Trade Action against Bangladesh Would Have Big Impact", *Reuters*. Available at: <http://www.reuters.com/article/us-eu-bangladesh-trade-idUSBRE9400JQ20130501>

⁹⁴ Generalized System of Preferences Renewal Act 1984, section 2467, Article 503. The GSP established by the European Union provides for more favourable measures (GSP plus) for some countries that have ratified 27 international instruments on human rights and workers' rights. See Article 9 and Annex I of Regulation (EU) No. 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalized tariff preferences and repealing Council Regulation (EC) No. 732/2008. 58 A cooperation.

⁹⁵ 11 labor rights (NAALC, annex 1): 1. The freedom of association and protection of the right to organize; 2. The right to bargain collectively; 3. The right to strike; 4. The prohibition of forced labor; 5. Labor protections for children and young people; 6. Minimum employment standards, including minimum wage; 7. The elimination of employment discrimination; 8. Equal pay for women and men; 9. The prevention of occupational injuries and illnesses; 10. Compensation for occupational injuries and illnesses; and 11. Protection of migrant workers.

Only three of these principles were made enforceable by sanctions if a country does not self-enforce: labor protections for children; minimum employment standards; and the prevention of occupational injuries and illnesses. The agreement (part II, article 3) required each party to "promote compliance and effectively enforce its labor law through appropriate government action." The NAALC further outlined procedures for consultation, the resolution of disputes and penalties for violation of the agreement.

To date, 34 complaints have been submitted through the NAALC. Twenty-one were filed with the U.S. administrative system, of which 19 involved allegations against Mexico and two against Canada. Eight were filed with the Mexican National Administrative Office (NAO) within the Labor Ministry. These eight involved allegations against the United States while another five submissions have been filed in Canada, three raising allegations against Mexico and two against the United States. Nineteen of these submissions have undergone complete review, and 14 have resulted in Ministerial-level consultation (Bureau of International Labor Affairs).

⁹⁶ Articles 27–41 of the NAALC; in total, 41 complaints have so far been filed under the NAALC. As of June 2013, no case had reached the stage of an evaluation committee of experts; see ILS: Social dimensions of free trade agreements, Geneva, ILO, 2013, pp. 42–45.

⁹⁷ For a list of these agreements, see the website of the United States Department of Labor. The scope of obligations of the parties to these agreements is, however, limited, as shown by Article 18.8 of the free trade agreement with Chile, which provides that the setting of standards and levels in respect of minimum wages by each party shall not be subject to obligations under that chapter. Each party's obligations pertain to enforcing the level of the general minimum wage established by that party.



COUNTRY REPORTS

14 MAJOR GARMENT
PRODUCING COUNTRIES

BANGLADESH

Bangladesh is one of the most densely populated countries in the world. Over the past decade, it has seen a significant improvement in human development indicators¹ and its economy has grown by nearly 6% per year. Poverty fell by nearly a third with more than 15 million Bangladeshis moving out of poverty since 1992.² Statistics on life expectancy, literacy, and per capita food intake have all increased and, in July 2015, the country was upgraded from low- to lower-middle-income status.³

However, Bangladesh's story is not entirely positive. Approximately 47 million people are still living below the poverty line and many more are at risk of falling back into poverty.⁴ Although primary school enrolment has increased, the quality of school education remains low.⁵ In most schools there are about 80 children per classroom and students only attend for three hours a day. 27% of children drop out between enrolment and grade five.⁶

The garment industry has played a vital role in Bangladesh's recent growth, contributing more than 10% of its GDP⁷ and accounting for more than 80% of its total export earnings. During 2014 and 2015 Europe dominated its export market, accounting for 60% of its exports. The USA accounted for 20% and other locations the remaining amount.⁸ In 2014-2015 the garment industry in Bangladesh employed four million workers in 4292 registered factories.⁹ 80% of the workforce is female.¹⁰

Source	Statistic	Result	Year calculated
World Bank	Population	160,995,642	2015
World Bank	GDP in USD	195.079	2015
World Bank	GDP growth		2015
UNDP	Life expectancy	71.6	2014
UNDP	Infant mortality (per 1000 live births)	33.2	2014
Transparency Int.	Corruption Index – Score out of 100 - Rank	25 139/168	2015
IFPRI	Global Hunger Index	27.3 serious	2015
UNDP	Human Development Index	0.57 medium	2014
UNDP	Expected years of schooling	10	2014
Wage Indicator	Minimum wage – lowest per month (BDT)	1,500	2017
Wage Indicator	Minimum wage – highest per month (BDT)	5,300	2017
Fair Wage Network	Living wage – per family of two adults and two children	16,935	2016

Wages and Working Conditions

The minimum wage in Bangladesh is notoriously low. The minimum wage was last increased in 2013, when it rose from BDT 3,000 per month to BDT 5,300. This amount falls well below all available estimates of a living wage (see fig 1)¹¹ and falls below even international poverty lines defined by the World Bank. Bangladesh workers are earning just 18% of the proposed Asia Floor Wage of BDT 29,442.¹²

Even with the minimum wage set so low, employers have found ways to pay workers even less. The Fair Wear Foundation (FWF) found that 38% of the 415 factories it audited in 2015 did not pay minimum wages to workers.¹³ A report by Action Aid revealed that, following an increase in the minimum wage, employers cut the number of workers on the factory floor, meaning that workers had to produce more garments and often ended up working longer hours.¹⁴

Rehana Uddin is about 45 years old and has been working in garment factories for 20 years. She has married-off her two daughters and her three sons make their own living. At this stage of her life she should be doing relatively well. But she tells us she has to make one sack of rice last for two months and never eats fish or meat. Her husband has a heart disease but they cannot afford his medication.

Given the low wages it is perhaps not surprising that excessive overtime and a failure to pay the legal overtime premium continues to be a common problem in Bangladesh.¹⁵ Excessive overtime practices were found in 97% of the 36 factories audited by the FWF between 2012 and 2015. Workers were generally working two hours of overtime per day and 60 working hours per week were common. Overtime was rarely voluntary, with workers fearing punishment or expulsion if they refused.¹⁶

Young women are often preferred by employers because they are seen to have fewer care responsibilities and are able to put in long hours of overtime. Rather than provide benefits like paid maternity leave and childcare, garment factories tend to lay women off when they get married and have children, and replace them with younger women. Young women are also employed to carry out tasks that are detailed and repetitive, requiring manual dexterity. Employers define this work as coming “naturally” to women rather than them requiring learning and training, and use this to justify the low wages paid.¹⁷

Mistreatment of women in the workplace is widespread, with 60% of factory workers having experienced some type of harassment at work, including verbal or physical abuse.¹⁸ Female workers are blackmailed by managers to keep sexual harassment claims quiet; they are told that if they report it, factories will be shut and they will lose their jobs.¹⁹

“If there is a man and a woman, they will give less salary to the woman. They will harass and abuse the woman, make her toil more for free, not pay her overtime. When they can’t prevail with the man, they abuse the woman and also beat her. They say, ‘you will stay after recess and submit this work and then you will leave.’” – Sadia Mirza, sewing machine operator, 34 years old.

Bangladesh is infamous for poor health and safety practices. Between 1990 and 2013 at least 2,200 workers were killed in garment factories.²⁰ Most known is the collapse of the Rana Plaza building in April 2013. Which killed at least 1,134 workers and injured hundreds. It came less than six months after the Tazreen factory fire in which 112 workers died. Although the work of the Bangladesh Accord, an agreement between European and North America buyers and the Global Unions signed in the aftermath of Rana Plaza, has gone some way to improving building safety, the industry still has much to do to address the endemic and systematic failures that led to the disaster.²¹

The use of child workers has decreased significantly, at least in the first-tier factories supplying directly to big brands. However, there is evidence that child labour remains a persistent problem at sub-contracting factories. According to the US Department of Labor, more than 10% of the population aged between 5 and 14 are working children and 18.5% of these are working in garment factories. The FWF suggests that up to 20% of factories may be recruiting children, and in 31% of factories they audited no proper age verification system was in place and therefore employees were unable to ascertain the correct age.²²

Political Freedom and the Rule of Law

Bangladesh is notorious for its level of corruption and for the weakness of its state institutions. Bangladeshi politics is dominated by two bitterly oppositional political parties, which represent the elites who emerged following Bangladesh's War of Independence. State institutions tend to be politicised, including the judiciary and civil service. Further, political parties and the legislature are increasingly subject to powerful business interests.²³

Bangladesh is ranked 139 out of 168 countries on Transparency International's transparency survey, awarded a score of 25 on the Corruption Perception Index.²⁴

Although the Constitution and country's laws guarantee certain rights, including freedom of association, they are neither sufficiently clear nor sufficiently implemented to ensure full protection of workers' rights. Further, the judicial system is extremely inefficient; with only seven labour courts, cases against employers can take many years to be heard and it is estimated that the seven labour courts have a backlog of 16,000 cases.²⁵

The labour laws, even following their revision in 2015, fall short of providing the protections required to comply with ILO Conventions 87 and 98 on freedom of association and collective bargaining respectively.²⁶ For workers employed in Bangladesh's Export Processing Zones, the right to form or join a trade union is entirely prohibited by law, although this may change in the near future.²⁷

In June 2013, the US government suspended its Generalized System of Preferences (GSP) agreement with Bangladesh based on chronic and severe labour rights violations.²⁸ In the same year the European Union's Trade Commissioner launched a Global Sustainability Compact, described as a "joint initiative for improving conditions for workers in Bangladeshi garment factories". The Compact is supposed to link progress to the review of trade preferences granted to Bangladesh due to its Least-Developed Country status.²⁹ In June 2016 the ILO's Committee on the Application of Standards included a special paragraph on Bangladesh, highlighting the extent to which the right to freedom of association is being violated in the country.³⁰

Fewer than 2% of garment workers are unionised, and few factories have a trade union present. Numerous legal restrictions or administrative barriers make the legal registration of unions extremely difficult.³¹ Unions can be refused registration on highly arbitrary grounds, aspiring unions face high membership thresholds, and the lists of union members are often passed to employers prior to union registration, which subjects the members to possible harassment.³²

Although the space for unions to organise did appear to increase in the months following Rana Plaza, when international attention on labour rights in garment factories was at its height, the number of unions in garment factories is again declining, with the ILO reporting a drop from 437 unions in March 2015 down to 408 in July 2016.³³

The International Trade Union Confederation (ITUC) has documented over 100 cases of discrimination against those joining unions during the period of the EU Compact.³⁴ Discriminatory practices include workers being laid off and being publicly named and shamed. Their pictures are posted outside factories and circulated on social media, preventing them from getting a job elsewhere.³⁵ Workers who attempt to organise also face violence from both employers and the state, with numerous union leaders being physically assaulted and/or imprisoned.

Legal Section

Wages

Minimum Wage

The Government of Bangladesh has enacted a circular which sets minimum wages for workers, effective from December 1, 2013 (“the Circular”). This includes specific rates for workers in the garment sector as well as those in the Export Processing Zones.

Minimum Wage Levels

The level of minimum wage payable is dependent on the grade of the employee and the category into which they fall.

In the Export Processing Zones, the minimum wages for workers engaged in the following industries are as set out below – garments, garment accessories, shoes, shoe accessories, leather products, caps/hats and related industries. These rates also apply to garment sector industries outside the Export Processing Zones:

Grade	Minimum monthly wage, 2013				
	Basic wage	Rate of yearly increment on basic	House rent 40% on basic	Medical allowance (fixed)	Gross wage
High skilled	7,600	10%	3,040	560	BDT 11,200 (USD 140.00)
Sr. Operator	4,800	10%	1,920	560	BDT 7,280 (USD 91.00)
Operator	4,500	10%	1,800	560	BDT 6,860 (USD 85.75)
Jr. Operator	4,200	10%	1,680	560	BDT 6,440 (USD 80.50)
Helper	3,600	10%	1,440	560	BDT 5,600 (USD 70.00)
Apprentice	2,800	10%	1,120	560	BDT 4,480 (USD 56.00)

The above USD conversion rates are official conversion rates as of 24 December 2013, which are stated to remain unchanged until further revision by the Bangladesh Export Processing Zones Authority (and are, in fact, close to the general exchange rate applicable in September 2016).

Also in the case of Export Processing Zones (EPZ) and the garment industry, workers employed in producing textiles, sweaters and other piece-rated industries, should, whether paid as salaried workers or as piece-rated workers (working for the usual hours of work as laid down in the relevant labour laws), be paid the following minimum wage:

Grade	Minimum monthly wage, 2013				
	Basic wage	Rate of yearly increment on basic	House rent 40% on basic	Medical allowance (fixed)	Gross wage
Piece-rate Worker	3,880	10%	1,552	560	BDT 5,992 (USD 74.90)

Minimum Wage Grades

There are eight grades provided for workers and five grades provided for employees.

Probation Period Wages

The Circular provides for probationary wages; in the case of the EPZ these are at a total rate of BDT 4,480 (USD 56.00).

Basic/Additional Amounts

The minimum wage is made up of a basic rate, along with a house rate, medical allowance, transport and food allowances. The Labour Act, 2006 (“the Labour Act”) also provides for two “festival bonuses” per year to be paid to the worker. The maximum limit of each bonus is equal to the basic pay of the worker.

Minimum Wage Review

The minimum wage is generally reviewed every four to five years. However, the Circular provides for an annual increase of 5% on the basic rate.

The Labour Act provides for the periodic formation of a minimum wage board. Under the Labour Act, when making its recommendations the wage board shall take into account the following factors:

- cost/standard of living;
- cost of production;
- productivity;
- price of products;
- business capability;
- economic and social conditions of the country and of the locality concerned; and
- other relevant factors.

Traditionally the minimum wage board considers inflation and finalises the rate based on negotiation between industrial partners. Once the rate has been finalised and a minimum wage circular published in the Gazette, that circular is binding on the relevant industry.

Payment of Wages

Employers are free to fix wage periods, but such wage periods cannot exceed one month. Wages must be paid by the end of the seventh day following the end of the wage period.³⁶

Employers are required to keep a record of wage payments for each interval, and must provide a payslip to each worker. The payslip must include the stamp of the Revenue and the employee's signature.

Deductions from Wages

Employers are allowed to make the following deductions from the wages of employees (such deductions must be shown on the payslips):

- fines imposed;
- deductions for absence from duty;
- deductions for damage to or loss of goods expressly entrusted to the custody of the worker, or for the loss of money for which the employee is required to account (only where such damage or loss is directly attributable to the neglect or default of the employee);
- deductions for accommodation supplied by the employer;
- deductions for such amenities and services (other than tolls and raw materials required for the purpose of employment) supplied by the employer as the Government may, by general or special order, authorise;
- deductions for the recovery of advances or loans of whatever nature, or the adjustment of overpayments of wages;
- deductions of income-tax payable by the worker;
- deductions required to be made by order of a court or other authority competent to make such order;
- deductions for subscriptions to, and for repayment of advances from, any recognised provident fund (as defined in the Income-Tax Ordinance, 1984 (XXXVI of 1984)), or any provident fund approved for such purposes by the Government (for so long as such approval remains in force);
- deductions for payments to any co-operative societies approved by the Government, or to any scheme of insurance maintained by any Government Insurance Company or Bangladesh Postal Department;
- deductions (made with the written authorisation of the workers) for contributions to any fund or scheme constituted by the employer (with the approval of the Government), for the welfare of the workers or members of their families or both; and
- deductions of subscriptions for the Collective Bargaining Agreement (CBA) union through the check-off system.

Working Hours

Normal Working Time

The statutory working week is 48 hours per week, over a six-day period.³⁷

Overtime

The total working hours of an adult shall not exceed 60 hours per week (including overtime) and an average fifty-six hours per week in any year.

Whilst the normal working day is eight hours long, the total daily work hours cannot exceed 10 hours (including overtime).

Overtime Rates

Overtime rates of pay are calculated as follows:

Overtime hours x 2 x (base salary + dearness allowances + adhoc or ad interim pay)/208

In addition, workers working at weekends are also entitled to one day's compensatory leave.

Night Work

There are no mandatory premiums for night or weekend work.

However, if such work is performed as overtime then overtime rates are payable.

Rest Time

If a person is required to work for over six hours, he or she must be provided with at least one hour's rest. If a person is required to work for over five hours, he or she must be provided with at least half an hour's rest.³⁸

Paid Holiday

Workers in the garment industry are entitled to one day's holiday per week. Generally wages are fixed on a monthly basis and this one day off in each week is covered within the monthly wages. Apart from that there are no paid holiday entitlements, save as set out below.

Under the Labour Act, workers who have worked for one year or more are entitled to one day's paid annual leave in the subsequent year for every 18 days of work performed during the previous calendar year. Accordingly, if a worker has worked 52 weeks at 6 days per week in the previous year, he or she will be entitled to 17 days leave in the following year, assuming that the "11 festival holidays" set out below are treated as working days.

The Government may (in the official Gazette) declare certain days as public holidays. Employees' entitlement to these public holidays is not subject to any conditions.

Workers are entitled to 11 days of paid "festival holidays".

Liability and Contracts

Liability and Duties

No express provision of law, rules, policy or regulation acknowledging an employer's liability or duty in respect of its employees has been identified.

Likewise, no such reference has been located in case law which acknowledges an employer's liability or duty in respect of its employees in tort.

Contract of Employment

Employers are not obliged to provide a legal contract to employees, but a letter of appointment must be provided. The letter of appointment will typically state the conditions of employment, job roles, title etc., although this is not a statutory requirement, and there is no specific form prescribed in law for the letter of appointment.

Probation Period

The mandated probation period is three months, which is extendable by up to six months. Such an extension is only permitted when the standard of work performed by such probationer cannot be reasonably ascertained.

The probation period is paid at the rate referred to in the Circular (a total rate of BDT 4,480 (USD 56.00), as stated above). Repeated probation periods are not permitted.

Types of Contract and Restrictions

There are no legal restrictions on the use of short term contracts (or "zero hour", fixed-duration or day contracts).

Short Term Contracts

Employees on short-term contracts are not entitled to provident fund benefits, have shorter notice periods for termination, and are not entitled to certain incentives (such as gratuity).

There is no limit on the number of times a short-term contract can be renewed before a worker gains the same rights and status as a permanent employee.

In regard to wages, in the case of employees employed on a piece-rate basis, the piece rate has to be set in accordance with the Circular, to ensure the employee's wage is not below the specified minimum wage.

Severance Allowance

Workers are entitled to redundancy/severance pay at the rates set out below, if they are rendered unemployed for any of the following reasons:

- Termination without cause/retranchment/discharge/resignation of a permanent worker: Employees are entitled to severance pay at the rate of 30 days' wages for every completed year of service.
- Employees found guilty of serious misconduct: Employees are entitled to severance pay at the rate of 14 days' wages for every completed year of service (unless dismissed for theft, fraud, or dishonesty in connection with the employer's business or property, in which case no severance is payable).

Termination

Employers are obliged to follow specific grievance or disciplinary measures if they wish to terminate the contract of an employee on disciplinary grounds.

The minimum notice period is 120 days for employers (applicable for permanent employees) and 60 days for permanent employees. For fixed-term employees the period is 30 days for both employer and employee. The notice period given by the employer cannot be less than the minimum period, but subject to this condition, the employer and employee may choose an adequate notice period between them. The dismissal process typically takes around two to three months. The process usually reaches an end (rather than a settlement), but is challenged in labour tribunals in many cases.

Dismissal

Summary dismissal (without notice) is permitted only where the employee is convicted of a criminal offence.

In other circumstances, where the worker is considered to have engaged in misconduct, the employer must first issue a charge sheet clearly defining and specifically mentioning the nature of the commission or omission on the part of the employee. The employee has seven days to provide a suitable explanation or reason for his or her actions. Failure to provide such a suitable explanation results in an employer inquiry and a determination of the validity of the charge(s).

The employee must be given the opportunity to defend himself or herself before a hearing. Upon conclusion of the inquiry (by a committee consisting of equal members from the employer and the employee), the employer is required to consider the inquiry report and decide whether the employee is guilty of the alleged misconduct (for which the employer bears the burden of proof) and, if so, when punishment should be given.

Gender and Age

Equal Pay

The Constitution of Bangladesh prohibits discrimination in public appointments on the grounds of religion, race, caste, gender, or place of birth (except for certain reservations for scheduled castes and scheduled tribes).

The Labour Act stipulates that the principle of equal wages for male and female workers for work of equal nature or value shall be followed, and no discrimination shall be made in this respect on the grounds of sex.³⁹

Pregnancy

There are no specific statutory protections for pregnant women prior to maternity leave. In particular, there is no prohibition on dismissing women during or after pregnancy. However, if the termination falls within six months prior to, or eight weeks after the delivery date, then the employee shall be entitled to maternity benefits, albeit that she can still be dismissed (see “Right to Return” section below).

Maternity Leave

No woman shall work in any establishment during the eight-week period immediately following the day of her delivery. Employees with at least six months of service by the due date are entitled to 16 weeks of paid maternity leave (beginning eight weeks prior to the due date and extending to eight weeks after delivery, at the option of the employee).

However, the leave is paid only for the first two children of a mother. Expectant mothers with two or more children are still entitled to leave, but it is unpaid.

Maternity Pay

Employees entitled to the maternity leave detailed above are entitled to be paid their monthly salary at the usual rate during their period of leave.

Other than the paid maternity leave, no statutory maternity pay is available.

Right to Return

There is no statutory right for employees to return to their original place of work after maternity leave. However, if any notice or order of discharge, dismissal, removal or termination of employment is given by an employer to a woman within the period of six months prior to and eight weeks after her delivery (and such notice or order is given without sufficient cause), she will not be deprived of any maternity benefits to which she would have otherwise become entitled.

New Parents

There are no measures in place to ensure freedom from discrimination as a new parent.

Paternity Leave

There are no provisions for paternity leave.

Childcare

Employers are not obliged to provide childcare for employees with young children. However, in every establishment where 40 or more workers are ordinarily employed, a suitable room or rooms must be provided and maintained for the use of employees' children under the age of six.

Sexual Harassment

There is no specific law on sexual harassment in the workplace. However, the Labour Act stipulates that female workers should not be treated in any way that may be perceived to be indecent or repugnant to their modesty or honour. Harassment may also extend to matters of a non-sexual nature and may be constituted as either discrimination or bullying.

Minimum Working Age

The appointment of children in the formal sector is prohibited. The Labour Act also envisages that the Government will, from time to time, publish (through Gazette notifications) a list of hazardous occupations which would come within the ambit of the prohibitory clause. However, the Labour Act does include provision for engaging a child or an adolescent (see below) in light work, under special circumstances, for specific working hours, and subject to certification by a physician.

The Labour Act⁴⁰ deals with the employment of children and adolescents as workers, and defines “child” and “adolescent” on the basis of age:⁴¹

- An “adolescent” is a person who has attained the age of 14 but is below the age of 18.⁴²
- A “child” is a person under the age of 14.⁴³

There is no separate minimum wage for adolescents.

Any employer employing a child or adolescent (or permitting any child or adolescent to work in contravention of any provision of the Labour Act) is liable to be punished with a fine of up to BDT 5,000 (USD 64).⁴⁴

Any parent or guardian of a child who makes any such employment agreement in respect of such a child shall be liable to be punished with a fine of up to BDT 1,000 (USD 13).⁴⁵

Social Security/Healthcare

Clinics

Employers are required to maintain a clinical room with ample doctors and nurses, for use by employees without charge.⁴⁶ The law does not state the hours for which the clinic must be open, but it is usual to keep the clinic open for the standard operating hours of the industry.

Free Healthcare

The Government of Bangladesh does not have a free healthcare program, nor are employers under any obligation to arrange employee health checks.

Social Security Payments

There are no provisions for social security for workers not receiving a living wage.

Occupational Injury

If an employee is unable to work due to an occupational injury, the employer is required to pay a one-off compensation payment for any such accident (under the Labour Act). There are no specific statutory limits (minimum or maximum) set for this compensation.

There are no other schemes adopted by the industry or the Government.

Health Insurance/Retirement Pension/Social Insurance

There is no universal program of contribution paid schemes for the payment of health insurance or retirement pensions. Industries with 100 or more permanent employees are required to provide group insurance for employees. Employees are also entitled to provident fund benefits upon formal application by two thirds of the employees, and under such circumstances 7% is the minimum contribution both from the employer and employee.

Trade Union Rights

Workers are entitled to join a trade union in the workplace, and there are no exceptions to this right, save in Export Processing Zones, where it is prohibited for workers to join a trade union. In order to register a trade union in a workplace, 30% of the workers need to be organised. Up to three registered unions are permitted in each workplace.

Employers are not obliged to provide facilities for trade unions and their elected officials in the workplace (e.g. noticeboards, authorised leave, check off systems, office space, etc.).

There are particular protections against trade union discrimination, as set out below.⁴⁷

No employer (or trade union of employers) and no person acting on their behalf shall:

- impose any condition in a contract of employment which seeks to restrain the right of a person who is a party to such contract to join a trade union or continue his membership of a trade union;
- refuse to employ, or refuse to continue to employ, any person on the grounds that such person is, or is not, a member or officer of a trade union;
- discriminate against any person with regards to any employment, promotion, condition of employment or working condition on the ground that such person is, or is not, a member or officer of a trade union;
- dismiss, discharge, remove from employment, or threaten to dismiss, discharge or remove from employment a worker, or injure or threaten to injure a worker in respect of his or her employment by reason that the worker is, or proposes to become, or seeks to persuade any other person to become, a member or officer of a trade union, or participate in the promotion;
- induce any person to refrain from becoming or to cease to be a member or officer of a trade union by conferring or offering to confer any advantage on, or by procuring or offering to procure any advantage for, such person or any other person;
- compel, or attempt to compel, any officer of a collective bargaining agent to sign a memorandum of settlement or arrive at a settlement by using intimidation, coercion, pressure, threats, confinement to a place, physical injury, disconnection of water, power and telephone facilities or other such methods.

Employers employing 50 or more workers must establish participation committees to promote dialogue and good relations between management and employees. Employees and management should be equally represented on the committee (and although employee representation can exceed management representation, the number of management representatives cannot be greater than the number of employee representatives). Where there is no trade union, the participation committee can act as the representative of the employees to negotiate issues with the employer.

The Right to Strike

Workers have the right to strike through their trade union, under a formal strike process regulated by the Labour Act. If there is no trade union, then the workers cannot strike.

Even in instances where there is a trade union, the ability of the workforce to go on strike is limited. Unions may only call for a strike in an industrial dispute for a specific time frame and with the consent of at least three quarters of the workforce.

Employers can engage in full or partial lockouts, in order to compel workers to accept the terms and conditions of employment offered. If a strike lasts for more than 30 days, then the Government can declare any further strike action illegal, meaning a formal dispute resolution process is initiated.

Collective Bargaining

Employers are obliged to engage in collective bargaining with trade unions. If there is more than one union in a workplace, then one union will be declared as the collective bargaining agent (by way of an election).

If an employer does not comply with this obligation, then the employees can:

- go on strike; and/or
- initiate a formal industrial dispute resolution process, by way of notification to the statutory authorities.

Enforcement/Implementation Mechanisms

Disputes

If workers believe their employer has breached any of the labour standards described above, they have the right to take their case to the Labour Court to rectify or seek relief on any issue (within six months).

The following institutions are available to workers to ensure enforcement of labour laws:

- Department of Inspection for Factories and Establishments (which is the executive branch of Ministry of Labour and Employment);
- Child Labour Unit;
- labour court;
- Labour Appellate Tribunal; and
- Supreme Court of Bangladesh (for appeals).

Institutions or individuals responsible for representing workers (such as trade unions), are not bound by any rules preventing them from taking certain positions in government or having other associations which might constitute a conflict of interest.

Victimisation

There are no specific legal remedies available for victimisation of employees who seek to assert labour rights, other than the rescinding of the act or compensation (granted under the Labour Act).

Employers are also potentially subject to various penalties (as outlined in the Labour Act).

Sanctions

The Labour Act provides for a number of potential civil sanctions on businesses that do not follow labour standards. Such penalties are as set out below:

Non-compliance with an order of a labour court.

Criminal sanction: Imprisonment for up to three months, and/or a fine of up to DBT 5,000 (USD 64).

Employment of a child or adolescent.

Criminal sanction: A fine of up to DBT 5,000 (USD 64).

A parent or guardian making an agreement in respect of such child.⁴⁸

Criminal sanction: A fine of up to DBT 1,000 (USD 13).

Contravention by an employer of the maternity benefit provisions.

Criminal sanction: A fine of up to DBT 5,000 (USD 64), plus compensation to the woman concerned (for any loss or damage caused to her by the contravention for which the fine has been imposed).

The sale, letting or hiring of any power machinery for use in an establishment which does not comply with safety measures.

Criminal sanction: Imprisonment of up to three months and/or a fine of up to DBT 1,000 (USD 13).

Payment of wages at a rate below the minimum wage rate.

Criminal sanction: Imprisonment of up to one year and/or a fine of up to DBT 5,000 (USD 64). Where the court imposes such a penalty, it may also pass an order requiring the employer to also pay to the worker concerned such sum as represents the differences between the amount actually paid to the worker, and the amount which should have been paid to him or her had there been no such contravention of minimum wage laws.

Failure to give notice of accidents.

Criminal sanction: A fine of up to BDT 1,000 (USD 13) (if such failure results in serious bodily injury), or imprisonment of up to six months and/or a fine of up to BDT 3,000 (USD 38) (if such failure results in loss of life).

Unfair labour practices, i.e. any provisions relating to discrimination on the grounds of trade union membership.

Criminal sanction: Imprisonment for up to two years and/or a fine of up to BDT 10,000 (USD 128).

Committing a breach of any binding settlement, award or decision.

Criminal sanction: Imprisonment for up to one year and/or a fine of up to (USD 128).

Wilfully failing to implement the terms of any settlement, award or decision.

Criminal sanction: Imprisonment for up to two years and/or a fine of up to BDT 10,000 ten thousand taka (USD 128).

An employer commencing, continuing or acting in furtherance of an illegal lock-out.

Criminal sanction: Imprisonment of up to one year and/or a fine of up to BDT 5,000 (USD 64).

Instigating or inciting an illegal strike or lockout, or expending or supplying money or otherwise acting in furtherance or support of an illegal strike or lockout.

Criminal sanction: Imprisonment for up to one year and/or a fine of up to BDT 5,000 (USD 64).

Contravening unchanged employment term requirements during an industrial dispute resolution process.

Criminal sanction: Imprisonment for up to one year and/or a fine of up to BDT 5,000 (USD 64).

Contravening, or failing to comply with, any of the provisions of the Labour Act or the Labour Rules, 2015, or other regulations or schemes (if no penalty is provided by the relevant act, rules, regulation or scheme).

Criminal sanction: Imprisonment for up to three months and/or a fine of up to BDT 1,000 (USD 13).

Contravening the same provision for which a person has already been convicted.

Criminal sanction: The punishment shall be double that provided for such offence (provided that for these purposes no cognisance shall be taken of any conviction more than two years before the commission of the subsequent offence).

Contravening any act, rule, regulation or scheme with dangerous results.

Criminal sanction: Imprisonment of up to four years and/or a fine of up to BDT 100,000 (USD 1,275) (if such contravention results in loss of life); or imprisonment of up to two years and/or a fine of up to BDT 10,000 (USD 128) (if such contravention results in serious bodily injury); or imprisonment of up to six months and/or a fine of up to BDT 2,000 (USD 25) (if such contravention otherwise causes injury or danger to workers or other persons in an establishment).

Generally labour disputes do not reach court. It has been known for employers to be charged with violating labour standards, but, as the penalties are low, the sanctions are easy to discharge. Sentences of imprisonment are rarely imposed.

Impact of Fines on Compliance

In practice, the sanctions are inadequate. For example, the sanction for a violation of the general provisions of the Labour Act is a fine of BDT 25,000 (USD 318). Such a small fine does not act as a sufficient disincentive for employers.

Incentives

There are no incentives provided to businesses to maintain a high quality of treatment of their employees.

Realistic Opportunities for Reform

After the Labour (Amendment) Act, 2013, the Government recently introduced the Labour Rules, 2015. No further imminent reforms in the area of employee rights are envisaged.

Living Wage Considerations

The local living wage required for an employee's basic needs to be met has been estimated in a 2013 research paper⁴⁹ to be as follows:

Model	Wage
Poverty line	BDT 5,223 (USD 67)
Living Wage	BDT 8,216 (USD 105)
Model diet	BDT 14,856 (USD 189)

This local living wage takes into account costs such as accommodation, food and health supplies, travel to the workplace, childcare, and other associated costs.

Set out below is an estimated summary of the discrepancy between the legal minimum wage and the living wage:

	Minimum Wage	Poverty Line Delta	Living Wage Delta	Balanced Diet Delta
Grade 1	13,000.00	7,777.00	4,784.00	(1,856.00)
Grade 2	10,900.00	5,677.00	2,684.00	(3,956.00)
Grade 3	6,805.00	1,582.00	(1,411.00)	(8,051.00)
Grade 4	6,420.00	1,197.00	(1,796.00)	(8,436.00)
Grade 5	6,042.00	819.00	(2,174.00)	(8,814.00)
Grade 6	5,678.00	455.00	(2,538.00)	(9,178.00)
Grade 7	5,300.00	77.00	(2,916.00)	(9,556.00)

There are no current initiatives in the country to strengthen workers' rights to a living wage, although the Minimum Wage Board reviews the minimum wages approximately every three years.

Enforcement of Workers' Rights in Practice

The practical limitations on the ability of workers to enforce their legal rights are the high cost of instructing a lawyer in labour tribunal cases, delays before that tribunal, risks of victimisation and the potential implications for their future job prospects.

The Chief Inspector of Factories and Establishment has the power to supervise workplaces to ensure employers' compliance with labour laws. However, the ability to exercise this power is limited, due to inadequate manpower provided. The government has however also empowered two private/public consortiums to carry out such audits for the garment industries in Bangladesh (after the Rana Plaza incident).

In practice, institutions/individuals who are responsible for representing workers (such as trade unions) do not generally adequately represent the rights of employees/workers.

Special Trade Zones

Bangladesh has eight Export Processing Zones (EPZ) established under the Bangladesh Export Processing Zone Authority, which are substantially outside of the application of the Labour Act. The government has the power to exclude the application of a range of legislation from EPZs.⁵⁰ In particular, the right to freedom of association and the formation of unions is prohibited in these zones. However, a draft law is proposed that would give those working in EPZs the right to form trade unions.⁵¹

¹ World Bank, 2017. *Bangladesh: Overview*. Available at: <http://www.worldbank.org/en/country/bangladesh/overview>.

² *ibid.*

³ ActionAid, 2015. *Diversify and Conquer: Transforming Bangladesh into an Industrialised Country*, p4. Available at: <https://www.actionaid.org.uk/sites/default/files/publications/diversify-and-conquer-transforming-bangladesh-into-an-industrialised-country.pdf>.

⁴ World Bank, 2017. *Bangladesh: Overview*.

⁵ USAid, 2017. *Bangladesh: Education*. Available at: <https://www.usaid.gov/bangladesh/education>.

⁶ Kar, A. 2015. Where there's a will, there's a way. Available at: <http://www.thedailystar.net/op-ed/where-theres-will-theres-way-156226>.

⁷ ActionAid, 2015. *Diversify and Conquer: Transforming Bangladesh into an Industrialised Country*, p4.

⁸ Fair Wear Foundation, 2015. *Bangladesh: Country Study 2015*, p17.

⁹ *ibid.*, p4.

¹⁰ *ibid.*, p17.

¹¹ Fair Labour Association, August 2016. *Toward Fair Compensation in Global Supply Chains: Factory Pay Assessments In 21 Countries*.

¹² Labour Behind the Label, (n.d.). *Living Wage*. Available at: <http://labourbehindthelabel.org/campaigns/living-wage>.

¹³ Fair Wear Foundation, 2016. *Country Plan Bangladesh 2016*. Available at: <https://www.fairwear.org/ul/cms/fck-uploaded/documents/countrystudies/CountryplanBangladesh2016.pdf>.

¹⁴ ActionAid, 2015. *Diversify and Conquer: Transforming Bangladesh into an Industrialised Country*, p5.

¹⁵ Fair Wear Foundation, 2016. *Country Plan Bangladesh 2016*.

¹⁶ Fair Wear Foundation, *Bangladesh: Country Study 2015*, p29-31.

¹⁷ ActionAid, 2015. *Diversify and Conquer: Transforming Bangladesh into an Industrialised Country*, p5.

¹⁸ Fair Wear Foundation, *Bangladesh: Country Study 2015*, p23.

¹⁹ ActionAid, 2015. *Diversify and Conquer: Transforming Bangladesh into an Industrialised Country*, p8.

²⁰ Clean Clothes Campaign, ILRF, 2013. *Still Waiting: Six months after history's deadliest apparel industry disaster, workers continue to fight for compensation*. Available at: http://www.laborrights.org/sites/default/files/publications-and-resources/Still_Waiting_web_res.pdf.

²¹ Clean Clothes Campaign, ILRF, 2016. *Rana Plaza 3 Years on Compensation, Justice, Workers' Safety*. Available at: <https://cleanclothes.org/resources/publications/rana-plaza-three-years-on-compensation-justice-and-workers-safety-full-report>.

²² Fair Wear Foundation, 2015. *Bangladesh Country Study 2015*, p24.

²³ Transparency International, 2012. *Overview of Corruption and Anti-Corruption in Bangladesh*. Available at: http://www.transparency.org/files/content/corruptionqas/353_Overview_of_Corruption_in_Bangladesh.pdf.

²⁴ Transparency International, (n.d.). *Bangladesh*. Available at: <http://www.transparency.org/country/BGD>.

²⁵ Alamgir, M. 2016. "Labour Courts Buried under 16,000 Cases", *New Age*. Available at:

<http://newagebd.net/228454/labour-courts-buried-16000-cases/>.

²⁶ ILO, 2016. *Strengthening Workplace Safety and Labour Rights in the Bangladesh Ready-Made Garment Sector*, p26.

²⁷ Bangladesh Awami League, *Cabinet approves the draft of the 'Bangladesh EPZ Labour Law 2016'*, Available at: <http://www.albd.org/index.php/en/updates/news/3470-cabinet-approves-the-draft-of-the-bangladesh-epz-labour-law,-2016>.

²⁸ Solidarity Center, (n.d.). *Bangladesh*. Available at: <http://www.solidaritycenter.org/where-we-work/asia/bangladesh>.

²⁹ European Commission, July 2013. *EU Trade Commissioner De Gucht launches Global Sustainability Compact in response to Bangladesh tragedy*. Available at: http://europa.eu/rapid/press-release_IP-13-667_en.htm.

³⁰ International Labour Conference, 105th Session, Geneva, 2016. *Report of the Committee of Standards*. P22-27.

³¹ Clean Clothes Campaign, April 2016. *Rana Plaza Three years on: Compensation, Justice and Workers' Safety*.

³² *ibid*.

³³ ILO, 2016. *Strengthening Workplace Safety and Labour Rights in the Bangladesh Ready-Made Garment Sector*, p29.

³⁴ ITUC, IndustriAll, and Global Union, July 2014. *An Evaluation of the Bangladesh Sustainability Compact*.

³⁵ ActionAid, 2015. *Diversify and Conquer: Transforming Bangladesh into an Industrialised Country*, p8.

³⁶ Section 123 of the Labour Act, 2006.

³⁷ Labour Act, 2006.

³⁸ Labour Act, 2006.

³⁹ Section 345 of the Labour Act, 2006.

⁴⁰ Sections 34-44 of Chapter 3, Act XLII, 2006.

⁴¹ Act XLII, 2006.

⁴² Section 2(8) of the Labour Act, 2006.

⁴³ Section 2(63) of the Labour Act, 2006.

⁴⁴ Section 284 of the Labour Act, 2006.

⁴⁵ Section 285 of the Labour Act, 2006.

⁴⁶ Rule 77 of the Labour Rules, 2015.

⁴⁷ Section 195 of the Labour Act, 2006.

⁴⁸ In contravention of section 35, Labour Act

⁴⁹ Berenschot., Centre for Policy Dialogue., 2013. *Estimating a Living Minimum Wage for the Ready Made Garment Sector in Bangladesh*. Available at:

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⁵⁰ Section 11A of Bangladesh Export Processing Zones Authority Act, 1980.

⁵¹ Bangladesh Awami League, February 2016. *Cabinet Approves the Draft of the 'Bangladesh EPZ Labour Law, 2016'*.

Available at: <http://www.aibd.org/index.php/en/updates/news/3470-cabinet-approves-the-draft-of-the-bangladesh-epz-labour-law,-2016>.

CAMBODIA

Following two decades of strong economic growth, Cambodia attained a lower-middle-income status in 2015. The garment sector, construction and services have been the main drivers of economic growth. Poverty continues to fall but at a slower rate than previously. Although the poverty rate has declined, around 8.1 million people are close to the poverty line and are only escaping poverty by a small margin.¹

Social indicators remain low. Cambodia's education indicators are among the lowest in Asia. Although the primary school net enrolment rate is 96%, the rate for lower secondary education is 34% and for upper secondary it is only 21%. Due to high rates of poverty in the rural areas, poor quality of education, and an insufficient number of classrooms and teachers, school dropout rates in Cambodia remain high.² In regard to health facilities, the many years of conflict destroyed many of them and Cambodia is still in the process of reconstructing the public health system with the assistance of donors and NGOs.³ The quality of care provided by government facilities remains poor, particularly in rural and remote areas. When Cambodians fall sick, the majority first seek care from the private sector, due to the high cost, poor quality and lack of accessibility of the public sector.⁴

The garment industry has played an important role in Cambodia's growth; in 2015 clothing and footwear accounted for 78% of the country's total merchandise exports and generated a total of USD 6.3 billion.⁵ During 2015 the EU continued to represent the largest market share, receiving 46% of Cambodia's garment and footwear exports. The US accounted for 30%, whilst the remaining 24% was destined for other markets, mainly Canada and Japan.⁶

The number of garment and footwear factories is growing steadily and reached 699 at the end of 2015.⁷ The majority are situated in the capital, Phnom Penh, but also exist in other areas, notably the adjoining Kandal province. Factories range from those with more than 8,000 workers with export licenses that directly supply international apparel buyers to small, unmarked factories with fewer than 100 workers that subcontract for larger factories.⁸

Women make up approximately 90% of the industry's estimated 700,000 factory workers; many other women are engaged in seasonal homebased garment work.⁹



Source	Statistic	Result	Year calculated
World Bank	Population	15,557,899	2015
World Bank	GDP in USD	18.05 billion	2015
World Bank	GDP growth	7	2016
CIA Fact book	Inflation	2.8	2016
World Bank	Life expectancy	68.212	2014
CIA Fact book	Infant mortality (per 1000 live births)	48.7	2016
Transparency Int.	Corruption Index - Score - Rank	21 156/176	2016
IFPRI	Global Hunger Index	21.7	2016
UNDP	Human Development Index	0.563	2016
CIA Factbook	Expected years of schooling	11	2008
Wage Indicator	Minimum wage – lowest per month (KHR)	120,000	2017
Wage Indicator	Minimum wage – highest per month (KHR)	612,000	2017
Fair Wage Network	Living wage – per family of two adults and two children (KHR)	1,874,693	2016

Wages and Working Conditions

Cambodia's garment workers currently earn a minimum wage of USD 140 per month following a 10% increase at the start of 2016.¹⁰ In September 2016 the new minimum wage was announced to be USD 153, with effect from 1 January 2017. Garment workers have been calling for a minimum wage of USD 177 since late 2013. The trade unions initially demanded 179.80 USD, and reduced it to USD 171 in the course of the negotiations. The employer's association, GMAC, wanted a meagre USD 148. The government recommended USD 148, topped up by USD 5 by the Prime Minister.^{11, 12, 13, 14}

In 2013, a tripartite task force, made up of representatives of government, industry and trade unions and set up to make recommendations for a reasonable minimum wage, stated that it should be set between USD 157 and USD 177 in order to support a worker and their family. Trade unions, supported by human rights organisations internationally, campaigned for the new minimum to be set at USD 177.¹⁵ Living wage estimates for Cambodia are, however, significantly higher than even those proposed by the taskforce or the unions. The Asia Floor wage estimates that the current minimum represents just 34% of what is needed to cover the basic needs of a family of four.¹⁶

According to data collected by the Fair Labor Association (FLA), the average take-home pay of workers is close to USD 177.¹⁷ Despite this the FLA describes the "purchasing power" of wages in Cambodia as weak.¹⁸ Moreover, this calculation includes cash and benefits in kind such as attendance bonuses and productivity bonuses. These bonuses are vital for workers struggling to cover basic needs, but are discretionary and easily used by employers to increase pressure on workers. For example, workers are entitled to an attendance bonus of USD 10 if they complete a full work month of six days per week, eight hours a day without absence.¹⁹ In reality, however,

these are often not provided according to the law, or arbitrarily deducted if a worker is absent, late or ill.^{20, 21}

The tendency for workers to be paid at piece-rates also makes it harder for workers to earn a wage that covers basic needs. Better Work Cambodia found that 28% of the 381 factories it inspected were setting production rates too high, and piece-rates too low, thus preventing workers from being able to earn a minimum wage in normal hours.²²

Unsurprisingly these low wages have a significant impact on the health of women workers. According to the ILO, 43.2% of garment workers surveyed suffer from anaemia and 15.7% of workers are underweight according to the Asian Body Mass Index (BMI).²³ In 2015 the Ministry of Labour recorded 1,806 incidents of mass fainting in garment factories, with a lack of sufficient food often cited as one of the significant contributing factors.²⁴

Low pay is also accompanied by stress and overwork, which also contributes to the health problems experienced by Cambodia's women garment workers. The majority of factories ignore the legal limit of two hours of overtime per day.²⁵ Workers generally prefer some overtime work to supplement their incomes; however, it is rarely voluntary and workers fear retaliation if they refuse to do it.²⁶

"Workers who live [far away] find it very hard to go home. They won't reach home till ten or eleven at night." Workers were called separately to the factory administrative office and told not return to work, she said. Other workers with similar concerns were warned: "If you don't want to work here till 8 p.m. stay at home. You don't have to come from tomorrow."²⁷

The use of fixed-term contracts (FTCs) across the garment industry effectively prevents workers from refusing overtime, demanding wage increases or resisting any other kind of abuse. Workers are increasingly employed on short contracts, which then need to be renewed at regular intervals. This leaves workers in a permanent state of insecurity and prevents them from exercising their rights at work.

"We don't take breaks. It doesn't matter whether you are pregnant or not, whether you are sick or not, you have to sit and work. If you take a break, the work piles up on the machine and the supervisor will come and shout. Eight workers—one male and the rest women—were told their contracts will not be renewed. They don't issue warnings. They just call you and tell you your contract will not be renewed." Po Pov (pseudonym), in her thirties, works in the sewing division at a factory.²⁸

Cambodian labour law sets a two-year limit on the use of FTCs, but this is widely ignored. Better Work found that over a quarter of the factories were not complying with this time frame.²⁹

"First I had a two-month contract [probation]. Now I have a four-month contract (...) All they say to me when they call me: "If you want to continue working, put your thumbprint here." Every four months they ask me to thumbprint. I have been working here for three years [on the FDC]." – Sren Seang, factory worker.³⁰

Use by factories of FTCs also prevents workers from accumulating one year's uninterrupted service, required for them to be eligible for maternity pay.³¹ Even where workers do have permanent contracts there are reports of employers firing pregnant workers to avoid paying them maternity benefits, or women being harassed into resigning for being slow and unproductive.³²

"If [a pregnant] worker is seen as working 'slowly' then her contract will not be renewed. It has happened to workers I've been working with this year." – Po Pov.³³

Female factory workers report being subject to sexual comments and advances, inappropriate touching, pinching, and bodily contact, from both managers and male co-workers

"The managers say things with sexual connotations— 'I want to kiss you. I want to sleep with you for just one night.' Sometimes even male workers at our level speak to us like this. They will touch our hair, hands, or other parts of our body. If we say anything they will laugh and say 'Oh, we just touched you a little bit—why do you mind?'" – Pung Mom, factory worker.³⁴

Cambodia's Labour Law prohibits sexual harassment but does not define it. Nor does it outline complaints procedures or create channels for workers to secure a safe working environment.³⁵

Political Freedom and the Rule of Law

Corruption remains prominent at all levels and across all sectors in Cambodia,³⁶ which scores 21/100 on TI's (Transparency International) Transparency Index and ranks 150 out of 168 countries surveyed. This is viewed as a serious obstacle to Cambodia's economic development and social stability.³⁷

The judiciary is marred by inefficiency, corruption and a lack of independence. There is a severe shortage of lawyers, and the system's poorly-trained judges are subject to political pressure.³⁸

The authorities' tolerance for freedom of association and assembly has declined over the past few years, with violence against activists increasing since 2012.³⁹ In January 2014 police opened fire on garment workers demonstrating for an increased minimum wage, killing four.⁴⁰ Repression of human rights defenders increased dramatically in May 2015, with labour activists targeted for arrest and prosecution,⁴¹ along with land, human rights and community activists.⁴² In July 2016 Kem Ley, a Cambodian political analyst and ally of the labour movement, was assassinated after linking Cambodia's Prime Minister to corruption.⁴³

Corruption seriously affects the credibility of the labour inspectorate in garment factories; an "envelope system," where factory managers thrust an envelope with money to visiting inspectors in exchange for favourable reports, is reported to be in operation.⁴⁴ Where factories have violated labour law regulations, the labour inspectorate is ineffective or unwilling to take action. In 2013 the relevant ministry had found that at least 295 factories (not all garment factories) had violated the Labour Law. Yet official data shows that between 2009 and December 2013, labour authorities imposed fines on only 10 factories and initiated legal proceedings against seven factories.⁴⁵

Workers are also unable to rely on an independent legal system to protect their rights. Despite promises going back to 1997, Cambodia has still failed to establish a labour court for settling employment disputes and there is an acute lack of labour lawyers available to represent workers.⁴⁶ Labour disputes are normally taken to the arbitration council for resolution, but its findings are often ignored by employers.

Given the corruption, lack of an independent legal system and attacks on human rights defenders, it is not surprising that Cambodia is listed by the ITUC as one of the 10 worst countries in terms of labour rights.⁴⁷ This will be exacerbated by the introduction of a new Trade Union Law in 2016, which among other things imposes new limits on the right to strike, facilitates government intervention in internal union affairs, permits third parties to seek the dissolution of trade unions and imposes very low penalties on employers for unfair labour practices.⁴⁸

On the surface, Cambodia appears to have a high union density, particular compared to its closest competitors. Over 60% of the garment industry workforce is, on paper at least, unionised. However, of the 78 union federations in Cambodia, 90% of which represent garment workers, most are inactive and only a small share of the federations can be considered independent.⁴⁹

Several national federations have close ties to the government and as a result they rarely, if ever, get involved in collective actions with other social movements that fight for higher wages, improved rights and social justice. Companies try to prevent the emergence of genuine worker representation in the factories by pressuring workers to join unions close to the government.⁵⁰

Workers seeking to join genuinely independent unions run the risk of being harassed or dismissed, a threat exacerbated by the increasing use of FTCs⁵¹. The government also employs delaying tactics in approving independent union applications. Union representatives awaiting these certificates risk further retaliation from factory management in the interim.⁵²

"In practice the government will check each application and tell us if there are any errors (...) For example, there will be a spelling mistake in the word 'provincial' and they will return the application. Or we won't know that they have reclassified a province as a city—and they won't change it, they will tell us to make the change ourselves and file again. Sometimes they do this repeatedly and we lose three or four months just in this cycle of changing and refiling the application again and again. One independent union has had this

happen for eight months.” – V.S., representative from an independent trade union federation.⁵³

Collective bargaining agreements (CBA) are rare and it is estimated that there are fewer than 10 CBAs in place within the garment industry.⁵⁴ The process for receiving the “most-representative” status, which allows unions to negotiate collectively, requires government approval, making it near impossible for independent unions to negotiate binding agreements.



Legal section

Wages

Minimum Wage

The Cambodian Labour Law provides for a guaranteed minimum wage to ensure a decent standard of living with human dignity. Any written agreement for a lower wage would be null and void.⁵⁵ However, to date, no minimum wage has been determined except in respect of the textile, garment and footwear industries.

Minimum Wage Levels

The minimum wage in the textile, garment and footwear sectors has been set for the year 2016 at USD 140 per month, and USD 135 per month for employees in their probationary period.⁵⁶

The relevant regulation does not provide for any minimum working hours per month for a worker to qualify for this minimum wage. However, the maximum working hours and working days per week under the Labour Law are 48 hours and six days per week. The employer and employee may agree to fewer hours or days.

If the employee does not work for the maximum legal hours, or for such lesser hours as are agreed by contractual arrangement, various arbitral awards have decided that the wage should be pro rata, based on the Labour Law as well as the Civil Code (which requires an employer to pay an employee for the work performed).

Minimum Wage Grades

With the exception of the probationary period rate, the minimum wage applies equally to all, regardless of skills or experience, hazardous conditions, age or other factors. However, the minimum wage may not be applicable to apprentices, although the law is not clear on this point.

Piece-rate employees should receive their wage based on the actual quantities produced, and employers are required to supplement this as necessary to make the wage equal to the minimum wage in the event that such quantities produced are lower than the minimum wage. However, the labour Arbitration Council has decided in various of its arbitral awards that the employer is not obliged to supplement the wage if the employees deliberately produce quantities lower than minimum wage amounts, or in some other way are responsible for the reduced amounts. In practice that is likely to be decided by the factory owner.

Probation Period Wages

The probation period rate is USD 135 per month. See below for probation period.

Basic/Additional Amounts

The textile, garment and footwear minimum wage is a basic rate. Other benefits –transportation allowance, attendance bonus, seniority bonus and a daily meal for voluntary overtime– are provided in addition to the minimum wage under separate regulations.

Minimum Wage Review

In recent years, the minimum wage has been reviewed annually. There is no statutory process for reviewing and increasing the minimum wage. The current practice is as follows: The Labour Advisory Committee (LAC) forms a tripartite technical team made up of a number of representatives of employers, employees and the Royal Government of Cambodia (RCG) to discuss the determination of the minimum wage for the following year. After the discussion, the minimum wage is determined by way of a secret ballot on the proposed figures and the result of the secret ballot is to be submitted to the Minister of Labour and Vocational Training (MLVT) and the Prime Minister for final review, revision (if any) and approval.⁵⁷

Payment of Wages

Wages must be paid as follows:⁵⁸

- Labourers' wages must be paid at least twice per month, at a maximum interval of 16 days.
- Employees' wages must be paid at least once per month.
- Commissions due to sale agents or commercial representatives must be paid at least every three months.
- For all task-work or piecework that is to be executed for longer than 15 days, the dates of payment can be fixed by agreement, but the employee must receive partial payments (the calculation of such partial payments is not specified by the law) every 15 days and be paid in full in the week following the delivery of the work.

The law does not specify a date for the payment of wages. As a matter of practice, most companies pay its employees on the last working day of the month. Provision of a wage slip is not compulsory under the Labour Law.

The employer may opt to pay its employees by way of bank transfer or in person. If the payment of wages is done in person, the employer is required to record such payment in the payroll ledger and have it signed by the employees each time wages are paid. The Labour Law and related regulations do not list an exhaustive list of information to be contained in the payroll ledger. A sample payroll ledger provided by the MLVT includes but is not limited to the following: name of the employee, nationality, date of commencement of work, occupation/function, family situation, salary, other benefits, overtime payment, withholding amount, total amount to be paid and signature of the employee.

Deductions from Wages

Employers are allowed to make deductions from wages in the following circumstances:⁵⁹

- A claim by the employer in respect of supplies but only:
 - Tools and equipment required for the work and that are not returned by the worker upon his or her departure;
 - other items and materials under the control and usage of the worker;
 - amounts advanced to acquire the said items;
 - amounts owed to the company's store.
- A cash advance (other than the amount advanced for the purchase of tools, equipment, items and materials that the workers/employees takes charge of and uses), but this can be reimbursed only by a series of gradual deductions which do not exceed the transferable or attachable portion of the wage.
- Partial payment and partial wage payments made before the normal deadline for finished work can be fully deducted from the following pay cheque.
- Workers/employees can authorize the employer to deduct their wage for the trade union contribution fee.
- However, the total amount deducted from wages cannot reduce the wages below those deemed necessary to provide the basic living cost for the worker and his family, which is not a concept defined in the law.

Working Hours

Normal Working Time

"Normal working time" must not exceed eight hours per day or 48 hours per week, not including over-time.⁶⁰ The normal working week is six days, Monday to Saturday. In order to provide a rest period on Saturday afternoons (or another rest period), a different schedule can be agreed so long as the extra hours do not exceed one hour per day of the ordinary schedule, and no more than nine hours a day are worked.⁶¹ Some additional flexibility is allowed: the employer and employee can use a 12-week consecutive period during which the average working week does not exceed 48 hours but the daily hours can be up to ten hours.⁶²

Overtime

A maximum of two hours' overtime is allowed per day, provided no more than ten hours per day are worked.⁶³ No overtime can be arranged until the employer has prior approval from the MLVT. No employee can be forced to work overtime.

Overtime Rates

The overtime rate is a rate 50% higher than the normal rate. Overtime performed between 10 p.m. and 5 a.m. during the weekly rest period or on a public holiday is paid at twice the normal rate.

Night Work

Night time is defined as a period of time of at least 11 consecutive hours including the period from 10 p.m. to 5 a.m.⁶⁴ A regular night-time shift (as opposed to night-time overtime) is paid at a rate 30% higher than the ordinary rate.

Rest Time

There is no provision in the Labour Law for rest-time or meal-time. In practice, meal and rest times are provided in the internal regulations of each enterprise and vary between thirty minutes and two hours.

Paid Holiday / Annual Leave

An employee is entitled to 1.5 days of paid annual leave per working month; 18 days per year. The paid annual leave is increased by one day per year after each three consecutive years of service with the employer (for example, an employee would be entitled to 19 days of annual leave on the fourth year working for the same entity).

In addition, Employees are given paid leave for public holidays based on Prakas issued annually by the Ministry in charge of Labor such as International New Year (January 1), Victory Day (January 7), Women's Day (March 8), Khmer New Year (3 days in mid April), International Labor Day (1 May), King's Birthday (3 days in May), Visaka Bochea Festival (1 day), King's Mother Birthday (1 day in June), King's father Birthday (1 day in October), Constitution Day (24 September), Phchum Ben day (1 day in September), National Water Festival (3 days in November) etc. In case the public holiday coincides with a Sunday, workers will have the following day off.⁶⁵

Liability and Contracts

Liability and Duties

Employers are not under an explicit duty of care to its employees. However, the law requires the employer to have health and safety measures in the workplace to guarantee the hygiene and safety of workers, including but not limited to the following:⁶⁶

- maintaining hygiene and sanitation within the workplace;
- machinery, mechanisms, transmission apparatus, tools, equipment and machines must be installed and maintained in the best possible safety conditions;
- setting up of measures regarding risks of falling, moving heavy objects, protection from dangerous machines and apparatus, preventive measures to be taken for work in confined areas or for work done in an isolated environment, risks of liquids spilling, fire prevention;
- providing primary healthcare to workers/employees; and
- providing water to workers/employees and making sure that the water is not dangerous to the workers/employees' health.

In addition, any enterprise employing at least eight employees is required to be registered with the National Social Security Fund (NSSF) in order to assure that any work-related accidents and illnesses are covered by insurance. In 2016, the NSSF initiated another scheme related to

healthcare for employees. However, subsequent regulations are required to be put in place in order for this scheme to be implemented.

Contract of Employment

A contract can be verbal or written,⁶⁷ and there is no requirement to provide a copy of the contract to the employee.

Probation Period

The probation period must not exceed three months for regular employees, two months for specialised workers and one month for non-specialised workers. These terms are not defined by law. In practice, “regular employees” refers to office based and non-labouring employees, a “specialised worker” is a skilled worker and a “non-specialised worker” is a labourer.

Types of Contract and Restrictions

There are two types of employment contract provided by the Labour Law, the fixed-duration contract (FDC) and the undetermined-duration contract (UDC). Workers under an FDC and a UDC generally have the same rights, except for termination compensation (see “Severance Allowance” section below).

The use of the FDC is not restricted under the Labour Law but it must be in writing and contain a precise starting and ending date. Its duration may vary depending on need, from one day to two years. It can be renewed as many times as desired so long as its total duration does not exceed two years. Any violation of these rules will result in the FDC becoming a UDC.⁶⁸ However, exceptions apply,⁶⁹ including the following:

- a temporary replacement for an absent employee, where the contract continues until the return of the absent employee;
- seasonal work; and
- occasional periods of extra work or a non-customary activity of the enterprise.

These contracts are considered to be FDCs even though they are not for a specified period.

The Labour Law does not include the concept of a zero-hours contract.

A UDC does not have a precise term and is commonly used for periods longer than an FDC, although in practice its duration may be shorter than those of FDC as it can be terminated by either party at any time.⁷⁰

Severance Allowance

FDC: The termination or expiration of an FDC will entitle an employee to a severance pay of 5% of the total wages received during the length of the contract, unless otherwise stated in the collective bargaining agreement⁷¹.

UDC: On termination of a UDC by the employer, the employee is entitled to indemnity for dismissal, except in the case of serious misconduct committed by the employee. This indemnity varies according to the length of the contract as follows:

- seven days of wage and benefits if the employee’s length of continuous service at the enterprise is between six and 12 months;
- 15 days of wage and benefits for each year of service if the employee’s length of continuous service at the enterprise is more than 12 months. The maximum indemnity shall not exceed six months of wage and fringe benefits. If the employee’s length of service is longer than one year, time fractions of service of six months or more shall be counted as an entire year.

The employee is also entitled to this indemnity if he or she is laid off for reason of health.⁷²

Termination

Termination of a worker/employee varies according to the type of employment contract.

FDC: The parties may terminate an FDC prematurely if there is an agreement by both parties and such agreement is in writing and signed before the Labour Inspector. If there is no such agreement, an FDC can be terminated before term when there is a serious misconduct⁷³ of one of the parties or when it is due to “Acts of God”.⁷⁴ For an employer to terminate an FDC employee for serious misconduct, the action must be taken within seven days of becoming aware of such serious misconduct. Failing to take action within these seven days is considered as an abandonment of the right to dismiss the employee.⁷⁵ The Labour Law does not stipulate the prior notice period in relation to termination of an FDC before term.

UDC: A UDC can be terminated by either party to the contract. An employee may terminate the contract for any reason while an employer may only terminate the contract based on a valid reason as follows, which must be provided in writing to the employee:

- aptitude or qualification of the employee;
- behaviour of the employee; or
- based on the requirements of the operation of the enterprise.⁷⁶
- The terminating party must give prior notice to the terminated party as follows:⁷⁷
- seven days’ notice, if the employee’s length of continuous service is less than six months;
- 15 days’ notice, if the employee’s length of continuous service is from six months to two years;
- one month’s notice, if the employee’s length of continuous service is longer than two years and under five years;
- two months, if the employee’s length of continuous service is longer than five years and up to 10 years; or
- three months, if the employee’s length of continuous service is longer than 10 years.
- Such prior notice is not required in the case of:
- an employee during the probationary period, or an intern as stated in their contract;
- serious misconduct on the part of the terminating party; or
- “Acts of God”.

The employer who terminates a UDC without providing prior notice or without complying with the notice period must pay compensation in lieu of notice. The compensation must be equal to the wages and all benefits that the employee would have received during the notice period.⁷⁸

Throughout the notice period, each party must perform their contractual duties until the end of the contract. During the notice period, the employee is entitled to two days of paid leave per week to look for new employment. In addition to the above, if the employee is the employee representative or union leader, the employer must seek and obtain permission from labour inspector to terminate/dismiss such employee.

An employer is not obliged to conduct meetings or negotiation before the dismissal.

Gender and Age

Equal Pay

Cambodia has ratified many international treaties and protocols dealing with equal pay, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Charter of the United Nations, the ratification of which requires Cambodia to ensure the equal pay for women and men.

A non-exhaustive list of the national legal provisions concerning the same is as follows:

- Articles 36 and 45 of the Constitution of the Kingdom of Cambodia (“the Constitution”) state respectively that Khmer citizens of both sexes shall receive equal pay for equal work and that all forms of discrimination against women shall be abolished.

- Article 12 of the Labour Law, on “Non-discrimination”, provides that no employer shall consider the sex of their employees in order to make any decision on provision of remuneration.
- The same law provides in its Article 106 that work of equal conditions, professional skill and output must receive the same wage regardless of employee’s origin, sex or age.

Pregnancy

Article 46 of the Constitution prohibits the termination of employment of pregnant employees.

There is no requirement to provide time off for pre-natal appointments.

There are no special provisions under the law for pregnant employees with regard to hours worked or transferring to lighter duties.

Maternity Leave

Female employee are entitled to maternity leave of 90 calendar days.⁷⁹

Maternity Pay

During maternity leave, female employees are entitled to half of their wages, including their perquisites, to be paid by the employer. However, such maternity leave benefits are granted only to female employees with a minimum of one year of uninterrupted service in the enterprise.⁸⁰

Right to Return

The employer cannot terminate the employment of female employees during delivery and maternity leave even with prior notice.

New Parents

During the first two months after the employee returns to work from maternity leave, the employer must give light work to the employee.

Paternity Leave

Paternity leave is not specifically provided for under the Labour Law. However, employees have seven days of special leave, which is a type of leave that can be used in circumstances/events that directly affect the employees such as personal marriage, child delivery, funeral of spouse, etc. Therefore, male employees can apply for this.⁸¹ Special leave will be deducted from the remaining annual leave of the employee. If the employee has exhausted all the annual leave or has not sufficient annual leave to be deducted as special leave, he or she shall make up the work for employer (in the amount of the special leave not deducted from annual leave).

Childcare

Employers employing a minimum of one 100 female employees must establish a nursing room and a day-care centre within or near their enterprise. In the event that the employers are not able to set up a day-care centre for children over 18 months of age, female employees can use any day-care centre and the employer must pay the charges.

Sexual Harassment

The Labour Law prohibits all forms of sexual violation/harassment without specifically limiting this to children and women.⁸² There is no specific definition of sexual harassment given by the Labour Law.

Under the Criminal Code of Cambodia, sexual harassment is punishable by an imprisonment of between six days and three months and a fine of between KHR 100,000 and KHR 500,000 (approximately between USD 25 and USD 120).

Minimum Working Age

The minimum age for employment is set at 15 years of age.⁸³ However, there are exceptions to this statutory minimum age, including but not limited to hazardous work (usually age 18),⁸⁴ night work (usually age 18)⁸⁵ and light work for minors aged from 12 to 15.⁸⁶

Those employing staff younger than the minimum age are liable to a fine of 30 to 120 days of the base daily wage.⁸⁷

Social Security/Healthcare

Clinics

Enterprises and establishments must provide primary healthcare to their employees. These labour health services can be provided by each enterprise or jointly by several enterprises. However, any enterprise employing at least 50 employees must set up a permanent infirmary in their establishment⁸⁸ for the use of their employees without charge.

Free Healthcare

In addition to the above, a recently issued sub-decree⁸⁹ aims to provide healthcare to the persons defined by the provisions of the Labour Law and members of the NSSF, together with their spouse and children. This scheme has been implemented from 1 May 2016.

Social Security Payments

There are no further social security schemes.

Occupational Injury

The scheme for the compensation of those unable to work due to occupational injury is the National Social Security Scheme on Occupational Risk. Any employer employing at least eight employees is required to register and pay monthly contributions for their employees to the NSSF.⁹⁰ Payments for injuries vary from case to case.

Health Insurance

There are no further health insurance schemes

Retirement Pension/Social Insurance

A regulation introducing pensions has been adopted⁹¹; however, it has yet to be implemented for the private sector.

Trade Union Rights

Workers are legally entitled to join a trade union of their choice regardless of their sex, age or nationality.⁹² Employers are not allowed to take into consideration union affiliation or participation in union activities when making decisions concerning recruitment, management and assignment of work, promotion, remuneration and granting of benefits, disciplinary measures and dismissal.⁹³ Any acts of interferences into the creation, support or control of worker organisations are also forbidden.

In addition to the above, candidates running for union leader positions,⁹⁴ candidates failing to be elected,⁹⁵ and union leaders are entitled to protection against termination of their employment, with employers required to obtain permission from the Labour Inspector in order to terminate the protected employees.⁹⁶ This protection is also extended to union delegates.⁹⁷

There are no requirements for employers to provide facilities to trade union representatives.

Irrespective of whether a trade union is established, the law requires the appointment of a worker representative or shop steward for any employer employing eight or more employees.⁹⁸

The Right to Strike

The right to strike is recognized by the Constitution and guaranteed under the Labour law. It may be exercised in accordance with the applicable laws⁹⁹ in the circumstances below:¹⁰⁰

- rejecting the arbitral award;
- when the Arbitration Council has not rendered or informed of its arbitration decision within the prescribed time periods;
- when the union representing the workers deems that it has to exert this right to enforce compliance with a CBA or with the law;
- to defend the economic and socio-occupational interests of workers.
- Although the right to strike is guaranteed by law, for it to be legal it must follow the terms and conditions below:
- All peaceful methods for settling the dispute must have been exhausted.¹⁰¹
- The strike shall be declared according to the procedures set out in the union's statutes, which must state, in the articles, that the decision to strike is adopted by secret ballot.¹⁰²
- The strike shall be preceded by prior notice of at least seven working days. This notice must be filed with the enterprise or establishment and be sent to the MLVT. If the strike affects an essential service (an interruption of such service would endanger or be harmful to the life, safety or health of all or some citizens), the prior notice is increased to 15 working days.¹⁰³
- The freedom for non-strikers to work must be protected against all forms of coercion or threat.

Collective Bargaining

Employers are obliged to negotiate with unions in respect of collective bargaining agreements (CBA).¹⁰⁴

In order to be a legitimate negotiating or signing party to a CBA,¹⁰⁵ the union must have the "most-representative" status, which means the union's members must comprise the majority of the employees in the enterprise ("MRS union"). The MLVT determines whether a union is or is not a MRS union. The CBA signed by the employer and the MRS union is applicable to all employees in the enterprise.

In the event that there is no MRS union in the enterprise, all unions or a number of unions, the members of which must comprise the majority of the employees of the enterprise, can negotiate the CBA with the employer. In this case, the CBA is also applicable to all employees in the enterprise.

All unions or a number of unions, the members of which do not comprise the majority of the employees of the enterprise, can negotiate the CBA with the employer. In that case, the CBA will only apply to members of those unions.

If there is no union in a workplace, employees' representative may negotiate a CBA with the employer; however, the term of such CBA shall not exceed one year.¹⁰⁶

New Trade Union Law

The Law on Trade Union was promulgated by the Royal Kram NS/RKM/0516/0007 dated 17 May 2016. This law is regarded by labour groups, human rights advocates and opposition politicians as weakening the labour movement. Amongst other issues:

- It excludes civil servants, teachers and domestic and household workers.
- Age, residency, criminal conviction record and literacy requirements are included for prospective union leaders.
- There is a burdensome financial reporting requirement.
- The provisions on strike action will make strike action very difficult.
- It only allows one collective bargaining agreement for each enterprise or establishment.

The Office of the United Nations High Commissioner for Human Rights in Cambodia has released a detailed study of the law with recommendations for improvement. The ILO has noted¹⁰⁷ that the law raises “several key concerns and gaps”.¹⁰⁸

Enforcement/Implementation Mechanisms

Dispute resolution mechanisms provided under the Labour Law vary depending on the type of dispute.

Individual Disputes

An individual dispute is one that arises between the employer and one or more workers/employees or apprentices individually, and relates to the interpretation or enforcement of the terms of an employment contract or apprenticeship contract, or the provisions of a CBA, as well as regulations or law in effect.¹⁰⁹ In an individual dispute, the parties may refer their dispute to a preliminary conciliation process before a labour inspector. The labour inspector shall inquire both parties about the nature of the dispute and shall attempt to conciliate the parties on the basis of relevant laws, regulations, CBAs or the individual employment contract. The hearing shall take place within three weeks of receipt of the complaint. Successful or not, the result of the conciliation shall be contained in an official report signed by both parties recognising the accuracy of the report.¹¹⁰

If no conciliation is reached, the interested party may file a complaint to a court of competent jurisdiction within two months; otherwise the right to file the complaint will lapse.¹¹¹ As a matter of practice, preliminary conciliation in the domain of labour disputes is preferable to lodging a complaint to the court as, due to the tardiness of court procedures, it may take years to obtain a decision on a case.

Collective Disputes

A collective labour dispute is any dispute which arises between one or more employers and a certain number of their staff over working conditions, the exercise of the recognised rights of professional organisations, the recognition of professional organisations within the enterprise, and issues regarding relations between employers and workers, where such dispute could jeopardise the effective operation of the enterprise or social peace.¹¹² In the case of a collective labour dispute, if there is no settlement procedure stated in a CBA, such dispute shall be submitted to a labour inspector for conciliation.¹¹³

If conciliation fails, the dispute shall be resolved as follows:

- arbitration as stated in the CBA; or
- other dispute resolution mechanism agreed by both parties; or
- arbitration by the Labour Arbitration Council as stated in the Labour Law.¹¹⁴
- The court will be the last resort in the event that the parties seek an injunction, enforcement or a challenge to the arbitral procedure.¹¹⁵

Disputes

There are three institutions that ensure enforcement of the Labour Law:

- competent courts;
- the Labour Arbitration Council; and
- labour inspectors.

Cases in front of the Labour Arbitration Council are made available to the public, but there is no public record of other cases.

Sanctions

Legislation in relation to sanctions imposed on businesses which do not follow any of the labour standards are as follows:

- the Constitution of the Kingdom of Cambodia;
- the Civil Code of 2007;
- the Criminal Code of 2009;
- the Labour Law of 1997 and its amendment in 2007; and
- various labour regulations issued at ministerial level.
- Under the Labour Law
- Civil sanction: fine from 10 to 120 days of the base daily wage; and/or
- criminal sanction: imprisonment from six days to three months.
- Under the Criminal Code
- Civil sanction: fine from KHR 100,000 to KHR 2,000,000 (approximately from USD 25 to USD 500); and/or
- criminal sanction: imprisonment from one month to one year.

Further details are set out in the Appendix: Chapter XIV of the Labour Law.

Civil sanctions may be enforced by either labour inspectors or the competent court, while criminal sanctions can only be enforced by the competent court.

Enforcement in Practice

There is no public record of the imposition of such penalties.

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² USAID, 2 February 2017. *Cambodia: Education*. Available at: <https://www.usaid.gov/cambodia/education>

³ **The World Bank, 20 August 2013. *Cambodia: The Rural Poor are Receiving Free Health Care in Preah Vihear***. Available at: <http://www.worldbank.org/en/news/feature/2013/08/20/cambodia-the-rural-poor-are-receiving-free-health-care-in-preah-vihear>

⁴ USAID, 2 February 2017. *Cambodia: Health Systems*. Available at: <https://www.usaid.gov/health-systems>

⁵ ILO, June 2016. *Better Factories Cambodia: Garment Industry 33rd Compliance Synthesis Report*, p9.

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⁸ Human Rights Watch, 2015. *“Work Faster or Get Out”: Labor Rights Abuses in Cambodia’s Garment Industry*, p34.

⁹ *ibid.* p6.

¹⁰ BBC News, 8 October 2015. *Cambodia Raises Minimum Wage for Garment Workers*. Available at: <http://www.bbc.co.uk/news/world-asia-34474397>

¹¹ The Phnom Penh Post, 30 September 2016. *Government Sets Minimum Wage at \$153 a Month*. Available at: <http://www.phnompenhpost.com/national/breaking-minimum-wage-set-153-2017>

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¹³ Bangkok Post, 29 September 2016. *Cambodian Garment Workers’ Minimum Wage to Increase*. Available at: <http://www.bangkokpost.com/news/asia/1098296/cambodian-garment-workers-minimum-wage-to-increase>

¹⁴ Prak Chan Thul, Reuters, 29 September 2016. *Cambodia Raises 2017 Minimum Wage for Textile Industry Workers*. Available at: <http://www.reuters.com/article/cambodia-garment-idUSL3N1C51OD>

¹⁵ Joel Preston, CENTRAL, and Carin Leffler, *Future in Our Hands*, October 2016. *When “Best” is Far from Good Enough: Violations of Workers’ Rights at Four of H&M “Best-in-Class” Suppliers in Cambodia*, p15. Available at: <https://cleanclothes.org/resources/national-cccs/when-best-is-far-from-good-enough-violations-of-workers2019-rights-at-four-of-h-m-best-in-class-suppliers-in-cambodia>

¹⁶ Labour behind the Label, (n.d.). *Living Wage: A Living Wage is a Human Right*. Available at: <http://labourbehindthelabel.org/campaigns/living-wage/>

¹⁷ Fair Labor Association, 3 August 2016. *Toward Fair Compensation in Global Supply Chains: Factory Pay Assessments in 21 Countries*. Available at: <http://www.fairlabor.org/report/toward-fair-compensation-global-supply-chains-factory-pay-assessments-21-countries>

¹⁸ Fair Labor Association, August 2016. *Toward Fair Compensation in Global Supply Chains: Factory Pay Assessments in 21 Countries*, p4. Available at:

http://www.fairlabor.org/sites/default/files/documents/reports/toward_fair_compensation_in_global_supply_chains_2016_report_only_0.pdf

¹⁹ ILO, June 2016. *Better Factories Cambodia: Garment Industry 33rd Compliance Synthesis Report*, p25.

- ²⁰ <https://cleanclothes.org/resources/national-cccs/when-best-is-far-from-good-enough-violations-of-workers2019-rights-at-four-of-h-m-best-in-class-suppliers-in-cambodia>
- ²¹ ILO, June 2016. *Better Factories Cambodia: Garment Industry 33rd Compliance Synthesis Report*.
- ²² ILO, June 2016. *Better Factories Cambodia: Garment Industry 33rd Compliance Synthesis Report*, p25.
- ²³ **Better Factories Cambodia, 29 September 2014. *New Study Finds High Levels of Anemia, Food Insecurity, Among Cambodian Garment Workers*. Available at: betterfactories.org/?p=8970**
- ²⁴ Joel Preston, CENTRAL, and Carin Leffler, Future in Our Hands, October 2016. *When “Best” is Far from Good Enough: Violations of Workers’ Rights at Four of H&M “Best-in-Class” Suppliers in Cambodia*, p21-22.
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- ²⁶ Human Rights Watch, 2015. *“Work Faster or Get Out”: Labor Rights Abuses in Cambodia’s Garment Industry*, p59.
- ²⁷ *ibid.* p60.
- ²⁸ *ibid.* p63.
- ²⁹ ILO, June 2016. *Better Factories Cambodia: Garment Industry 33rd Compliance Synthesis Report*, p26.
- ³⁰ Human Rights Watch, 2015. *“Work Faster or Get Out”: Labor Rights Abuses in Cambodia’s Garment Industry*, p47.
- ³¹ Human Rights Watch, 2015. *“Work Faster or Get Out”: Labor Rights Abuses in Cambodia’s Garment Industry*, p70 and 74.
- ³² Human Rights Watch, 2015. *“Work Faster or Get Out”: Labor Rights Abuses in Cambodia’s Garment Industry*, p71.
- ³³ Human Rights Watch, 2015. *“Work Faster or Get Out”: Labor Rights Abuses in Cambodia’s Garment Industry*, p47.
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- ⁴⁴ Human Rights Watch, 2015. *“Work Faster or Get Out”: Labor Rights Abuses in Cambodia’s Garment Industry*, p16.
- ⁴⁵ *ibid.*
- ⁴⁶ Solidarity Center, (n.d.). *Cambodia: Vocal Coalition Makes Legal History*. Available at: http://www.solidaritycenter.org/wp-content/uploads/2014/11/Cambodia.English-Final.bug_.pdf
- ⁴⁷ ITUC, (n.d.). *The ITUC Global Rights Index: Cambodia*. Available at: <http://survey.ituc-csi.org/Cambodia.html>
- ⁴⁸ ITUC, 6 April 2016. *Cambodia: ITUC Deplores New Anti-Union Law*. Available at: <http://www.ituc-csi.org/cambodia-ituc-deplores-new-anti>
- ⁴⁹ Joel Preston, CENTRAL, and Carin Leffler, Future in Our Hands, October 2016. *When “Best” is Far from Good Enough: Violations of Workers’ Rights at Four of H&M “Best-in-Class” Suppliers in Cambodia*, p17.
- ⁵⁰ Joel Preston, CENTRAL, and Carin Leffler, Future in Our Hands, October 2016. *When “Best” is Far from Good Enough: Violations of Workers’ Rights at Four of H&M “Best-in-Class” Suppliers in Cambodia*, p17-19.
- ⁵¹ ILO, June 2016. *Better Factories Cambodia: Garment Industry 33rd Compliance Synthesis Report*, p26.
- ⁵² Human Rights Watch, 2015. *“Work Faster or Get Out”: Labor Rights Abuses in Cambodia’s Garment Industry*, p83.
- ⁵³ *ibid.*
- ⁵⁴ Joel Preston, CENTRAL, and Carin Leffler, Future in Our Hands, October 2016. *When “Best” is Far from Good Enough: Violations of Workers’ Rights at Four of H&M “Best-in-Class” Suppliers in Cambodia*, p17-19.
- ⁵⁵ Articles 104 and 105 of the Cambodian Labour Law (the **Labour Law**).
- ⁵⁶ The Prakas (**Ministerial Order**) No. 409/15 (8 October 2015), on Determination of Minimum Wage for Workers/Employees in the Textile, Garment and Footwear Industries for 2016 (**Prakas on Minimum Wage**).
- ⁵⁷ Declaration of the Ministry of Labour and Vocational Training dated 8 October 2015, on the Determination of Minimum Wage for Workers/Employees in the Textile, Garment and Footwear Industries for 2016.
- ⁵⁸ Article 116 of the Labour Law.
- ⁵⁹ Articles 126 to 129 of the Labour Law.
- ⁶⁰ Article 137 of the Labour Law.
- ⁶¹ Article 141 of the Labour Law and the Prakas No. 142 dated 10 June 2002, on the Allocation of Working Hours per Week in order to Have Saturday Afternoon off.

⁶² Article 141 of the Labour Law and the Prakas No. 143 dated 10 June 2002, on the Allocation of Working Hours outside or normal Working Week of an Average of 12 Consecutive Weeks.

⁶³ Notification N. 030/15 dated 27 February 2015.

⁶⁴ Article 144 of the Labour Law.

⁶⁵ Article 161 of the Labour Law.

⁶⁶ Articles 210, 212, 229, 230, 238 of the Labour Law.

⁶⁷ Article 65 of the Labour Law.

⁶⁸ Article 73 of the Labour Law.

⁶⁹ Article 67 of the Labour Law.

⁷⁰ Article 74 of the Labour Law. For the employer to terminate a UDC, he or she shall have a valid reason relating to the worker/employee's aptitude or behaviour, based on the necessity to operate the enterprise.

⁷¹ Article 73 of the Labour Law.

⁷² Article 89 of the Labour Law.

⁷³ Serious misconduct is defined under Article 83 of the Labour Law.

⁷⁴ Article 73 of the Labour Law.

⁷⁵ Article 26 of the Labour Law.

⁷⁶ Article 74 of the Labour Law.

⁷⁷ Article 75 and 78 of the Labour Law.

⁷⁸ Article 77 of the Labour Law.

⁷⁹ Article 182 of the Labour Law.

⁸⁰ Article 183 of the Labour Law.

⁸¹ Article 171 of the Labour Law and Prakas No. 267, dated 11 October 2001 on Special Leave.

⁸² Article 172 of the Labour Law.

⁸³ Article 177 of the Labour Law.

⁸⁴ Hazardous work, details of which are stated in a separate Prakas, is only allowed at the age of 18 and older. However, there are also exceptions on some particular cases where a minor aged below 18 can perform hazardous work. Please see details in Articles 173, 174 and 177 of the Labour Law, Prakas No. 145, dated 10 June 2002, on the Training of Minor for the Underground Work, and Prakas No. 106, dated 28 April 2004, on the Prohibition on the Use of Minor in a Hazardous Working Area.

⁸⁵ Minors under 18 years of age are not allowed to perform night work. However, there are also exceptions for minors aged 16 to 18 to perform night work. Please see details in Article 175 of the Labour Law and Prakas No. 144, dated 10 June 2002, on the Exception to the Prohibition of Use of Minors to Perform Night Work.

⁸⁶ Minors aged 12 to 15 are allowed to perform light work, provided that the work is not hazardous to their health or mental and physical development, and will not affect their regular school attendance, their participation in guidance programs or vocational training approved by a competent authority. Please see further details in Article 177 of the Labour Law and Prakas No. 002/08 dated 8 January 2008 on the Determination of Types of Employment and Light Work Permitted to Minors Aged 12 to 15. See further details of the minimum working age in Articles 172 to 181, under Section 8, Chapter 6 of the Labour Law.

⁸⁷ Article 374 of the Labour Law.

⁸⁸ Articles 238, 240 and 242 of the Labour Law. Please see further details in Joint Prakas No. 08 dated 19 January 1994 on the Nomination of Labour Doctor and Joint Prakas No. 330 dated 06 December 2000 on the Set up of Infirmary.

⁸⁹ Sub-Decree No. 01ANKr/BK dated 06 January 2016 on the Establishment of the Social Security Scheme in healthcare (the "Sub-Decree")

⁹⁰ Article 1 of the Prakas No. 108 dated 16 June 2008 on the Determination of Contribution Rate and Procedure of Contribution Payment for Occupational Risk.

⁹¹ Royal Kram NS/RKM/0902/018 on the Promulgation of the Law on Social Security Regime

⁹² Article 271 of the Labour Law.

⁹³ Articles 12 and 279 of the Labour Law.

⁹⁴ The protection period against termination is 45 days before and after the election date. Please see further details in Prakas No. 305 dated 22 November 2001 on the Representativeness of Professional Organizations of Workers at the Enterprise or Establishment Level and the Right to Collective Bargaining for the Conclusion of Collective Agreement at that Level.

⁹⁵ The protection period against termination is 45 days after the election date. Please see further details in Prakas No. 305 dated 22 November 2001 on the Representativeness of Professional Organizations of Workers at the Enterprise or Establishment Level and the Right to Collective Bargaining for the Conclusion of Collective Agreement at that Level.

⁹⁶ Articles 282 and 293 of the Labour Law and Prakas No. 305 dated 22 November 2001 on the Representativeness of Professional Organizations of Workers at the Enterprise or Establishment Level and the Right to Collective Bargaining for the Conclusion of Collective Agreement at that Level.

⁹⁷ Article 282 of the Labour Law.

⁹⁸ Article 283 of the Labour Law and Prakas No. 286 dated 5 November 2001 on the Employee Representative in the Enterprise.

⁹⁹ Article 37 of the Constitution; Article 319 of the Labour Law.

¹⁰⁰ Articles 319 and 320 of the Labour Law.

¹⁰¹ Article 320 of the Labour Law.

¹⁰² Article 322 of the Labour Law.

¹⁰³ Articles 324 and 327 of the Labour Law.

¹⁰⁴ Article 9 of Prakas No. 305 dated 22 November 2001 on the Representativeness of Professional Organizations of Workers at the Enterprise or Establishment Level and the Right to Collective Bargaining for the Conclusion of Collective Agreement at that Level.

¹⁰⁵ *ibid.*

¹⁰⁶ Article 96 of the Labour Law.

¹⁰⁷ **ILO, 4 April 2016. ILO's statement on Trade Unions law in Cambodia. Available at:**

http://www.ilo.org/asia/info/public/pr/WCMS_466553/lang--en/index.htm

¹⁰⁸ "These are mainly related to insufficient protection of the right of all workers and employers to freely set up organizations of their own choosing, and of the right of these organizations to decide on their internal matters without interference, as part of Cambodia's obligations under ratified ILO Conventions."

¹⁰⁹ Article 300 of the Labour Law.

¹¹⁰ *ibid.* articles 300 and 301, and Prakas No. 318, dated 29 November 2001 on the Dispute Resolution Procedure of Individual Dispute.

¹¹¹ *ibid.* article 301.

¹¹² *ibid.* article 302.

¹¹³ *ibid.* article 303.

¹¹⁴ *ibid.* article 309.

¹¹⁵ See further details of the collective labour dispute resolution in Articles 302 to 317 of the Labour Law and the Prakas No. 317, dated 29 November 2001, on the Dispute Resolution Procedure of Collective Labour Dispute.



CHINA

China is the second largest economy in the world, with a GDP of USD 10.87 trillion and a growth rate of 6.9% in 2015. However, it is still a developing country with a per capita income that is a fraction of that in advanced countries. According to China's own poverty standard, there were 70.17 million poor in rural areas in 2014.¹ The percentage of people living on less than USD 1.90 a day is 1.9%.² It has maintained a relatively low unemployment rate of 4.3% over the last decade, with women workers making up around 44% of the workforce.³

China reached all the Millennium Development Goals by 2015. However, a number of challenges remain: the population is ageing, with over 140 million of China's citizens now over 65 years old—a number that is expected to grow to 230 million in 2030; non-communicable diseases account for over 80% of the 10.3 million deaths annually⁴ and 10.6% of people suffered from malnutrition in 2014.⁵

China has a compulsory, universal education system which requires citizens to stay in school for nine years.⁶ As a result illiteracy has almost been eliminated, with China enjoying an adult literacy rate of 95.04%.⁷

Garment Industry

China is by far the largest manufacturer of textiles and garments. In 2014, textile fibre production in China accounted for 54.36% of the world share and almost 30 billion items of clothing and sportswear were produced. It exported 38% of the world's total clothing exports in 2012,⁸ including to markets in Asia (44.8%), Europe (23.3%) and North America (16.8%).⁹

Clothing and textiles is one of the country's many major industries.¹⁰ However, it appears that garment exports are no longer regarded as an important source of foreign exchange earnings nor as an area where technology, innovation or progress is likely to occur.¹¹ The growth of the textile and clothing industry is slowing—dropping from 10.4% in 2013 to 7% in 2013/14.¹² Between 1995 and 2014, the share of garment exports in the total merchandise exports of China decreased from 16% to 8%.¹³

The industry employs over 10 million people,¹⁴ over 70% of whom are women.¹⁵ 70% of garment production is still concentrated in the eastern provinces,¹⁶ but the industry is beginning to relocate to western and central areas, which now accounts for 22.5% of China's textile and apparel production.¹⁷ This change is driven in part by lower wages in the north and centre, as well as the distance from Hong Kong, from where labour groups have been supporting workers to organising and defend their rights.¹⁸

Source	Statistic	Result	Year calculated
World Bank	Population	1.371 billion	2015
World Bank	GDP in USD	11.008 trillion	2015
World Bank	GDP growth	6.7	2016
CIA Fact book	Inflation	2.3	2016
World Bank	Life expectancy	75.782	2014
CIA Fact book	Infant mortality (per 1000 live births)	12.2	2016
Transparency Int.	Corruption Index—Score —Rank	40 79/176	2016
IFPRI	Global Hunger Index	7.7	2016
UNDP	Human Development Index	0.738	2011
CIA Fact book	Expected years of schooling	14	2014
Wage Indicator	Minimum wage— lowest per month (CNY)	1,260	2017
Wage Indicator	Minimum wage— highest per month (CNY)	1,260	2017
Fair Wage Network	Living Wage – per family of two adults and two children (CNY)	4,185	2016

Wages and Working Conditions in the Garment Sector

There is no single minimum wage figure for China and wage levels vary significantly across and within provinces.¹⁹ Since 2004 minimum wages are supposed to be set at between 40% and 60% of the average wage in the region, but few places have reached that target; in most cities the minimum wage is about 30% of the average wage.²⁰ Minimum wage definitions also differ across the country. Beijing and Shanghai, for example, exclude social security payments and housing provident funds from minimum wage calculations. Other provinces include these within minimum wage calculations.²¹

In the main garment-producing clusters, minimum wages range from CNY 1,210 to 2,030 in Guangdong, from RMB 1,100 to 1,480 in Jiangsu, and from CNY 1,080 to 1,470 in Zhejiang.²² Many firms set basic minimum wages, then adjust wages of particular workers upwards depending on his or her performance.²³ There have been few studies done into what would constitute a living wage for these workers; however, the Asia Floor Wage for China (based on a figure for what should constitute an Asia-wide living wage) has been set at CNY 3,847.²⁴

Minimum wage increases have slowed considerably in recent years. For example, Guangdong announced a two-year minimum wage freeze in 2016.²⁵ The pay gap between low-paid workers, such as garment workers, and those earning the average wage (which increases on average at 10% a year) is widening.

Garment wages appear to be lower than wages in other manufacturing sectors.²⁶ Garment workers earning below or at the minimum wage are usually working in lower tiers of the supply chain and/or as homeworkers, and are more likely to be female and low-skilled.²⁷

Most garment workers are internal migrants who have moved from rural areas to industrial zones and cities for work. Often these workers won't speak the same language as locally-born workers and are unable to access social rights, including housing, education and pension rights, due to the Hukou system, which ties these rights to the individual's place of birth.²⁸

Even with high levels of overtime, the take-home pay for garment workers is only just enough to cover basic needs, and the average wage of migrant workers (who make up the majority of the garment industry's employees) is often less than half the average wage.

There have been significant numbers of wildcat strikes each year since the early 2000s—including in the garment industry—many of which have led to wage increases. However, these victories have often been won at the expense of other demands for better working conditions, including the prevention of discrimination against female and migrant workers.²⁹

Many workers are forced to work excessive overtime, are not fully compensated for overtime worked, and are not paid in full or on a regular basis.³⁰ A recent investigation by SACOM and War on Want into four garment factories in China found workers were doing between 80 and 150 hours overtime every month. They also found that these hours were being paid at the basic pay rate rather than at the legally mandated overtime rates.³¹

"I don't want to work overtime. My feet went swollen after standing for work for so long. I often tell the line leader that I don't want to work overtime. He has a bad impression of me now."—Female worker at a Chinese clothing factory.

A significant number of garment workers are informally employed (without an employment contract and/or not covered by social security). A 2010 study of six major Chinese cities found that over a third of workers were informally employed in this way—it may be even higher than these levels in the garment industry.³²

Political Freedom and the Rule of Law

The People's Republic of China (PRC) remains a one-party authoritarian state and continues to draw worldwide criticism for its abuse of human rights and fundamental freedoms.

The arrival of a new president, Xi Jinping, in 2015 has done little to improve the record of the Chinese government on human rights. The government has moved to tighten control over nongovernmental organizations, activists and the media through a slew of new laws that cast activism and peaceful criticism of the government as state security threats.³³

China is notorious for its perceived corruption, with huge amounts of wealth being channelled out of the country through financial markets. In this context the government is now in the middle of carrying out a popular anti-corruption campaign, which aims to tackle a problem that is seen to be endemic. This includes the well-known Operation Foxhunt, which has sought to locate and return corrupt officials who have fled the country.³⁴ These efforts appear to be having a limited effect: China's score of 37 on TI's 2015 Corruption Perceptions Index has hardly changed since the anti-corruption campaign began.

At the same time the anti-corruption campaign has also been accused of providing cover for the arrest and prosecution of political opponents of the regime. The use of forced confessions, closed trials and secret detentions for those accused of corruption,³⁵ along with the lack of an independent judiciary in China, has made it impossible to know whether anti-corruption arrests are being made for purely political reasons.³⁶

The right to freedom of association in China is strictly curtailed and the ITUC rates China as one of the worst countries for union rights, at '5—no guarantee of rights'.³⁷ China allows United Nations rapporteurs to visit on a highly selective basis; many, including the rapporteurs on freedom of peaceful assembly and association, continue to await a response to their requests to visit.³⁸

The only legal trade union is the All-China Federation of Trade Unions (ACFTU), under the leadership of the Communist Party. The establishment of any trade union must affiliate to the ACFTU, and higher level trade union organisations 'exercise leadership' over those at lower level. There are restrictions on the right to freely organise activities and formulate programmes, as the law empowers the All-China Federation of Trade Unions (ACFTU) to exercise financial

control over all its constituents.³⁹ This represents a total restriction of workers' rights to form and join organisations of their own choosing.

Bargaining is currently regulated by the Labour Contract Law of 2008, which allows collective bargaining to be organized at industry level. In practice, collective bargaining mainly takes place at company level and only to a limited extent at industry level. In the last decade, collective agreements have been agreed with all major foreign investors. More recently, the ACFTU shifted its priorities towards collective bargaining in small-sized and labour-intensive companies, including the garment industry. It is estimated that in the garment industry 41% to 50% of workers are covered by CBAs.⁴⁰

Given the close relationship between the government, employers and the ACFTU, it is unsurprising that workers do not consider the union, nor the collective agreements it signs, as effective in addressing violations of their labour rights. According to the ITUC, workers conducted over 2,700 strikes over violations of basic labour rights in 2015, many triggered by the non-payment of wages and social security. In most such cases, employers threatened workers for having broken company rules, government officers harassed workers, and police engaged in physical attacks on workers citing the need to maintain public security. This repression is rooted in the absence of a right to strike, allowing provincial, municipal and township governments to impose their own guidelines to handle mass incidents.⁴¹

In December 2015, a number of labour activists in Guangzhou—working with a number of labour NGOs—were arrested en masse, under different charges including embezzlement and inciting crowds.⁴² Many were released after a few days, but four were formally charged in January 2016, while two others were kept until January and then released. The location of another remained unclear.⁴³ Three of the activists stood trial at the end of September 2016.⁴⁴

Activists detained as a result of their participation in industrial action face significant difficulties in accessing a fair trial. Human rights activists and lawyers are subject to arbitrary and often secret detention and are subject to harassment and assault by local officials. Procurators and judges rarely question or challenge police conduct, and internal oversight mechanisms remain weak. According to academic sources, only a minority of criminal suspects have defence lawyers.⁴⁵

Legal Section

Wages

Minimum Wage

China operates a localised minimum wage system as follows:

“The specific standards of minimum wage shall be established by the people’s government of each province, autonomous region and municipality and shall be filed with the State Council. The wage paid by an employer to its employees shall not be lower than the local minimum wage.”⁴⁶

The minimum wage includes a minimum monthly wage and a minimum hourly wage. The minimum monthly wage applies to full-time employees, and the minimum hourly wage applies to part-time employees.⁴⁷

Minimum Wage Levels

As each province, autonomous region and municipality sets its own local minimum wage, the minimum wage across China differs from locality to locality. Set out below is the current (as of June 2016) local minimum wage in provinces and municipalities in China covering the areas where manufacturing industries (including clothing manufacturing) are concentrated. Approximately USD equivalents have been given as a guide (as of June 2016).



Each individual province is authorised to set up its own minimum wage standards and usually adopts a four-grade system for different areas within the province. The first-grade wage is the highest minimum wage and the fourth-grade wage is the lowest minimum wage within the province:

Province/municipality	Minimum monthly wage for full-time employees	Minimum hourly wage for part-time employees
Guangdong Province (effective as of 1 May 2015; ⁴⁸ except for Shenzhen City, which is effective as of 1 March 2015.)	Shenzhen City CNY 2,030 (USD 309)	CNY 18.5 (USD 2.81)
	First grade: Guangzhou City CNY 1,895 (USD 289)	CNY 18.3 (USD 2.78)
	Second grade: Zhuhai City, Foshan City, Dongguan City, Zhongshan City CNY 1,510 (USD 229)	CNY 14.4 (USD 2.19)
	Third grade: Shantou City, Huizhou City, Jiangmen City, Zhaoqing City CNY 1,350 (USD 205)	CNY 13.3 (USD 2.02)
	Fourth grade: Shaoguan City, Heyuan City, Meizhou City, Shanwei City, Yangjiang City, Zhanjiang City, Maoming City, Qingyuan City, Chaozhou City, Jieyang City, Yunfu City CNY 1,210 (USD 184)	CNY 12 (USD 2.18)
Fujian Province (effective as of 1 July 2015)	First grade: Siming District, Huli District, Haicang District, Jimei District, Tongan District, Xiang'an District CNY 1,500 (USD 228)	CNY 16 (USD 2.43)
	Second grade: Pingtan District, Gulou District, Taijiang District, Cangshan District, Jinan District, Mawei District, Fuqing City, Changle City, Minghou County, Lianjiang County, Mingqing County, Luoyuan County, Yongtai County, Xiangcheng District, Longwen District, Longhai District, Zhangpu County, Changtai County, Dongshan County and several other districts and counties CNY 1,350 (USD 205)	CNY 14.3 (USD 2.18)
	Third grade: Yunxiao County, Shanan County, Pinghe County, Nanjing County, Huaan County, Anxi County, Yongchun County, Dehua County, Sanyuan District, Meilie District and several other districts and counties CNY 1,230 (USD 187)	CNY 13 (USD 1.98)
	Fourth grade: Qingliu County, Ninghua County, Jianning County, Taining County, Mingxi County, Jiangle County, Youxi County, Datian County, Shunchang County, Guangze County, Pucheng County, Songxi County, Zhenghe County and several other districts and counties CNY 1,130 (USD 171)	CNY 12 (USD 1.83)
Zhejiang Province (effective as of 1 November 2015) ⁴⁹	First grade ⁵⁰ CNY 1,860 (USD 283)	CNY 17 (USD 2.59)
	Second grade CNY 1660 (USD 245)	CNY 15.2 (USD 2.30)

		(USD 253)	(USD 2.31)
	Third grade	CNY 1530	CNY 13.8
		(USD 233)	(USD 2.10)
	Fourth grade	CNY 1380	CNY 12.5
		(USD 209)	(USD 1.80)
Anhui Province (effective as of 1 November 2015) ⁵¹	First grade: Hefei City	CNY 1,520	CNY 16
		(USD 231)	(USD 2.43)
	Second grade: Huanbei City, Datong District, Xiejiaji District, Tongling City, Maanshan City, Wuhu City and several other districts	CNY 1,350	CNY 14
		USD 205	USD 2.13
	Third grade: Haozhou City, Suzhou City, Chuzhou City, Liuan City, Jiuan City, Anqing City, Feidong County and several other districts and cities	CNY 1250	CNY 13
		(USD 190)	(USD 1.83)
	Fourth grade: Mengcheng County, Woyang County, Lixin County, Si County, Taihe County, Tongling County and other counties	CNY 1150	CNY 12
		(USD 175)	(USD 2.84)
Beijing Municipality (effective as of 1 April 2015) ⁵²	Beijing Municipality	CNY 1,720	CNY 18.7
		(USD 262)	(USD 2.84)
Shanghai (effective as of 1 April 2015) ⁵³	Shanghai Municipality	CNY 2,020	CNY 18
		(USD 307)	(USD 2.74)

Minimum Wage Grades

There are no exceptions provided in law for payment of the minimum wage, which is the minimum compensation an employer must pay to the employee provided that the employee has provided his or her normal labour during the statutory working hours.⁵⁴ An employee is deemed to have provided normal labour during his or her statutory annual leave, marriage leave, bereavement leave, maternity leave and other statutory leave.

Probation Period Wages

Employees are entitled to the minimum wage during a probation period.⁵⁵

Basic/Additional Amounts

The minimum wage is a basic rate which does not include bonuses or payments for housing, transport, food etc. Specifically, both the Minimum Wage Regulation and the Labour Law Opinions provide that the minimum wage does not include (1) overtime payments; (2) allowances for working the middle shift (the shift from 4 p.m. to midnight), the night shift, or for working under high temperature, low temperature, or working in the well or under poisonous and hazardous and other special working environments and conditions; and (3) statutory employee benefits and welfare. The Labour Law Opinion also specifies that the minimum wage does not include housing and food allowances paid in the form of cash.

Minimum Wage Review

The minimum wage must be adjusted at least once every two years.⁵⁶ The people's government of each province, autonomous region and municipality may review and adjust the rate more frequently if they so decide.

The Minimum Wage Regulation governs the process for reviewing and increasing the minimum wage. This includes consultation between the labour bureau, trade unions and employers' confederations and, in detail, is as follows:

- The local labour bureau for each province, autonomous region and municipality must consult with the same level trade union and enterprise confederation/enterprise directors association to prepare the minimum wage adjustment plan and submit it to the Ministry of Human Resources and Social Security. The plan must include the basis for determining and adjusting the minimum wage, applicable scope, preparation standards and other explanation.
- After receiving the plan, the Ministry of Human Resources and Social Security seeks opinions from the state level federation of trade unions and state-level enterprise confederation/enterprise directors association. The Ministry of Human Resources and Social Security may raise revision opinions for the plan, and it will be deemed to agree to the plan if no revision opinions are raised within 14 days after receiving the plan.
- The local labour bureau of each province, autonomous region and municipality shall then submit the plan to the corresponding people's government of each province, autonomous region and municipality for approval.
- Within seven days after the approval, the local labour bureau shall publish the minimum wage in the local government announcement and at least one newspaper that covers the entire province, autonomous region or municipality (as applicable).
- Within 10 days after such publication, the local labour bureau of each province, autonomous region and municipality shall report the minimum wage standards to the Ministry of Human Resources and Social Security.

The Minimum Wage Regulation also provides for the factors that should be taken into account when adjusting the minimum wage, including the minimum living standards of the local employees and their dependents, the consumer price index for urban residents, social insurance and housing fund contributions made by the employees, employees' average salary, economic development and the unemployment rate. In addition, when adjusting the hourly minimum wage for part-time employees, the adjustment should also consider the difference between full-time employees and part-time employees from the perspectives of job stability, labour conditions and welfare.

Payment of Wages

Wages must be paid at least once every month. For a weekly, daily or hourly wage system, the wage can be paid on a corresponding weekly, daily or hourly basis.⁵⁷ A wage slip must be provided, although the law is silent on what information is required to be contained in the wage slip.⁵⁸

Deductions from Wages

Employers are not allowed to make any deductions from the minimum wage.

Under PRC law, an employer is obliged to withhold a part of the employee's wage for contribution to the statutory social security fund and housing fund. However, an employee's wage after these deductions must still meet the minimum wage standard.

With respect to individual income tax (IIT), the current IIT withholding threshold is CNY 3,500 per month (USD 532) and, as no minimum wage standard across China is higher than this threshold, the minimum wage is not subject to IIT deduction.

Working Hours

Normal Working Time

China implements an eight hours per day and 40 hours per week working-hour system (the standard working-hour system) for full-time employees. For full-time employees in positions of special features (see the explanation below), an employer is allowed to implement a special working-hour system after obtaining the local labour bureau's approval in advance. Such special working-hour system can be either a Comprehensive Working-Hour System or a Flexible Working-Hour System. The special working-hour system is applicable to the garment manufacturing industry. The maximum number of working hours differs between these three different working-hour systems as follows:

1. Standard Working-Hour System:

Under a Standard Working-hour System, an employee works eight hours per day and 40 hours per week. An employer may extend the working hours due to special production or operational needs, but the excessive working hours can be no more than three hours per day and 36 hours per month.⁵⁹ An employee must have at least one resting day per week.⁶⁰

2. Comprehensive Working-Hour System:

Under this system, an employee's working hours are calculated on a cumulated basis over a given period (i.e., a week, month, quarter or year) (**Comprehensive Calculation Period**).⁶¹

During the Comprehensive Calculation Period, the working hours that are beyond eight hours per day can be more than three hours, but the total excessive working hours can be no more than 36 hours per month.

An employer may apply for the Comprehensive Working-hour System for the following employees only:⁶²

- employees within transportation, railway, post, shipping, aviation and fishing industries who need to work continuously due to the special features of their work;
- employees in the geology and resources exploration, construction, salt production, sugar production, tourism and other industries that are affected by seasonal and nature conditions; and
- other employees suitable for the Comprehensive Working Hour System.

3. Flexible Working-hour System:

The number of working hours under a Flexible Working Hour System is not subject to the limit on working hours under the Standard Working Hour System.

An employer may apply for the Flexible Working-hour System for the following employees only:⁶³

- senior management, sales employees, marketing employees, certain on-duty employees and other employees whose working hours were unable to be measured according to the Standard Working-hour System;
- long-distance transportation workers, taxi drivers, cargo handling personnel at railway, port and warehouses and other employees who need to work flexible hours due to the special nature of their work; and
- other employees who are suitable for the Flexible Working-hour System due to their production features, special needs of work or scope of responsibilities.

Overtime

Overtime limits are as follows:

- **Standard Working-Hour System:** Overtime hours of no more than three hours per day and 36 hours per month.
- **Comprehensive Working-hour System:** Overtime hours of no more than 36 hours per month.
- **Flexible Working-hour System:** No statutory limit.

Overtime Rates

Overtime rates are as follows:⁶⁴

- no less than 150% of the employee's hourly rate for overtime hours during working days;
- no less than 200% of the employee's hourly rate for each hour of work during rest days, provided that the employer is unable to arrange for substitute rest days for such employee; and
- no less than 300% of the employee's hourly rate for each hour of work during statutory festival holidays.

Night Work

Night work is subject to the same overtime rates as given above. The PRC law does not provide for "ordinary night work rates." Under either the Standard Working-hour System (i.e., eight hours per day and 40 hours per week) or the special working-hour system (i.e., the Comprehensive Working-Hour System or the Flexible Working-hour System), the employer and the employee can agree to set their regular working time either on day time or at night, which will be subject to the same rules on wages and overtime.

There are some local regulations (not at national-level) of certain provinces/cities that require employers to pay night work allowances, which are in addition to overtime payments (if applicable). Such night work allowances are usually in minimal amounts. A consultation on a draft national-level law called Special Working-hour System Regulation was published on 8 May 2012 seeking public opinions. The regulation requires employers to pay night work allowances in an amount decided by the local regulation. This draft regulation has not come into force.

Below are two examples of local regulations that require payment of night work allowances:

- Under the Shanghai local regulation, the mandatory night work allowances are CNY 2.2 (approximately USD 0.34) per time for working that ends between 22:00 and 24:00, and CNY 3.4 (approximately USD 0.52) for working that ends after 24:00.
- Under the Hebei Province local regulation, the mandatory night work allowances are CNY 10 (approximately USD 1.5) per time if an employee starts working before 20:00 (inclusive) and works for four hours or for a period close to four hours between 20:00 and 24:00 ("Early Night Shift"); and CNY 12 (approximately USD 1.8) per time if an employee starts working between 24:00 and 8:00 and works for four hours or more ("Late Night Shift"); and CNY 20 (approximately USD 3) per time for working from Early Night Shift through Late Night Shift for more than 10 hours consecutively.]

Rest Time

There is no provision for a rest break, other than the hours outside the working hours discussed above. The Comprehensive Working-hour System limits the overtime hours per month without limiting the overtime hours per day. The Flexible Working-hour System does not limit working hours.

Paid Holiday

In addition to the statutory festival holiday leave which is 11 days in total per year, an employee is entitled to paid statutory annual leave as follows:⁶⁵

- if the employee has cumulative working experience of one year or more but less than 10 years, he or she is entitled to five days of statutory annual leave;
- if the employee has cumulative working experience of 10 years or more but less than 20 years, he or she is entitled to ten days of statutory annual leave; and
- if the employee has cumulative working experience of 20 years or more, he or she is entitled to fifteen days of statutory annual leave.

Cumulative working experience is not limited to the employee's length of service with the current employer but includes working experience with all previous employers.⁶⁶

Liability and Contracts

Liability and Duties

An employer will be liable for violations of labour laws and regulations against its employees as set out under the "Enforcement/Implementation Mechanisms" (section 7) below. However, an employer does not owe any duty of care in tort to its employee under PRC law. The Tort Liability Law of the People's Republic of China prescribes a duty of care for public carriers (such as hotels, banks and shopping malls) but does not extend the duty of care to an employer in respect of its employees.

Contract of Employment

A written labour contract is required when parties establish an employment relationship.⁶⁷

Probation Period

The standard probation periods for new employees are as follows:⁶⁸

- no probation period is allowed if the term of employment is less than three months;
- the probation period must not exceed one month if the term of the labour contract is more than three months but less than a year;
- the probation period must not exceed two months if the term of the labour contract is more than one year but less than three years;
- the probation period must not exceed six months if the term of the labour contract is more than three years or open-ended.

The salary during the probation period must be no lower than (i) the lowest rate paid for the same position by the same employer or (ii) 80% of the salary set forth under the employment agreement. The salary during the probation period must be no lower than the minimum wage of the administrative area where the employer is located.⁶⁹

There must be only one probation period.⁷⁰

Short-Term (Part-Time) Labour Contracts

Short-term labour refers to a form of labour under which compensation is calculated by hours and the average working hours are less than four hours a day and 24 hours a week—in other words, they are part-time contracts. An oral contract can be used. No probation period is allowed, but either party can terminate this contract at any time. The minimum hourly wage is the minimum hourly wage set by the government where the employer is located.⁷¹ Short-term labour contracts can be used in the garment manufacturing industry.

There are no further legal requirements for short-term labour contracts but the *Opinions on Several Issues on Short Term Employment* (the **Opinions**) issued by the Ministry of Labour and Social Security on 30 May 2003 contains some further detail. According to the Opinions, the worker should participate in the basic pension insurance and basic healthcare as an individual, which means that the employer has no obligation to contribute to pension insurance or healthcare insurance for its short-term employees. However, the employer must contribute to injury-at-work insurance for its short-term workers (including those in the garment industry).

There is no limit on the number of times a short-term contract can be renewed before a worker gains the same right as a permanent employee. But the employer must not treat a permanent employee as a short term employee or vice versa. If the worker works longer than the regulated

hours, they may be regarded by the court as permanent employees, instead of short-term workers.

Severance Allowance

Workers are entitled to severance pay on termination of employment in the following circumstances:⁷²

- If the employee has terminated the employment contract following a wrongful act by the employer as follows: failure to provide work conditions or protection as agreed to under the employment contract; failure to pay salary fully and on time; failure to provide social security; the employer's internal policies are unlawful and infringe upon the employee's rights and interests; the employer concludes the labour contract with the employee by fraud or coercion, or when the employee is at a disadvantaged position.
- Both parties agree that the labour contract should be terminated.
- The workers are not able to perform their duties or the contract could not be performed due to a change of circumstances.
- Layoff due to bankruptcy or operational difficulties or change of business of the employer. (This applies widely. As long as an employer terminates based on one of these reasons, he or she is required to pay severance to the terminated employees. The reason for the change of business is immaterial).
- The labour contract expires according to its term.

The amount of severance pay is based on the number of years the worker has worked for the employer and the rate of one month's wage for each year he or she has worked. Any time period no less than six months but less than a year is considered as one year. The severance pay for a worker who worked for less than six months is half of his or her monthly wage.⁷³

If the monthly wage of the worker is higher than three times the average monthly wage for the previous year, severance pay is calculated using the rate of three times the average monthly pay, and capped at 12 years.⁷⁴

The monthly wage refers to the worker's average monthly wage for the 12 months prior to the termination of the labour contract.⁷⁵

Termination

In the following circumstances ("Termination for Cause"), the employer can terminate the labour contract directly without severance pay:

- the worker is proven to be ineligible during the probation period;
- the worker seriously violates the internal policies of the employer;
- serious misconduct causes substantial losses to the employer;
- the worker also works for other employers, which seriously affects his or her ability to perform work with this employer, or he or she refuses to terminate the other arrangements after being required to do so by the employer;
- the employee concludes the labour contract with the employer by fraud or coercion, or when the employer is at a disadvantaged position; or
- the worker is criminally charged.⁷⁶

In practice, an employer will normally have detailed internal policies to clarify when the above circumstances are met. For instance, an employer will define "serious violation" of internal policies by listing several circumstances which would amount to a violation. However, in the event that the internal policies are not clear or the employer does not have solid evidence, the labour tribunal/court tends to rule in favour of the employee and order the employer to pay severance.

In the following circumstances the employer must inform the worker of his or her intent to terminate the labour contract in writing 30 days in advance, or pay an additional one month's wage in lieu of notification before it can terminate the labour contract.⁷⁷

- A worker who is sick or injured from non-work related causes and is not able to work in his or her ordinary role or any other role that the employer arranges (this does not cover maternity).

- The worker is incompetent even after training or a change in role.
- In practice, it is difficult and time-consuming for an employer to prove this. An employer must prove three elements (a) the worker is incompetent; (b) the employer has provided training or arranged a new position for the worker; and (c) the worker is still incompetent. It requires an employer to collect and produce evidence showing that the employee is incompetent both before and after the training/position change. In addition, if the employer elects to provide training, the training period should be reasonable, which is generally two to three months. If the employer elects to change a worker's position, the position should both be suitable and relevant to the previous position.
- Objective circumstances under which the contract is entered into have materially changed so that the labour contract could not be performed and both parties could not reach agreement on adjustment of the labour contract.
- The PRC law is unclear whether an employer's restructuring of its operation would qualify as material change of objective circumstances. According to an interpretation of "material change of objective circumstances" issued by the PRC labour department in 1994, such circumstances include force majeure events or other circumstances under which all or some of the terms of an employment contract cannot be carried out, for instance, the relocation of the employer, the employer's merger or acquisition, and relocation of the employer's assets. An employer's restructuring of its operation is subject to a labour arbitration tribunal's, or court's, discretion on deciding whether it qualifies as "material change of objective circumstances." Some arbitrators or judges may look into the reasons of restructuring. For example, if the restructuring is caused by deterioration of the objective economic environment, the court or tribunal may support an employer's argument that its restructuring qualifies as "material change of objective circumstances." On the other hand, if the restructuring is the employer's own decision without economic reasons, it may be harder for the employer to argue that such restructuring qualifies as "material change of objective circumstances".

The employer must pay statutory severance if the employer terminates the worker based on the above grounds.

The employer is not allowed to unilaterally terminate the employment contract in any other circumstances. In particular, the Chinese labour laws specifically prohibit an employer from unilaterally terminating an employee who:

- has lost his or her labour ability due to injury at work for such employer; or
- is ill or injured not because of work for such employer but within the medical treatment period (as defined under law).

Gender and Age

Equal Pay

Workers must not be discriminated against on the basis of ethnicity, race, sex, or religion during employment.⁷⁸ Women must be entitled to equal rights with men in employment. Employers must not use any excuses based on sex to refuse employment for women or to raise employment standards for women⁷⁹ and the employer must provide equal pay for equal work.⁸⁰

Pregnancy

Employers must not arrange for pregnant women to engage in activities classified as third level on the national classification of intensity of physical work or as not suitable during pregnancy. Employers must not make female workers who are more than seven-months pregnant work overtime or on a nightshift.⁸¹ When a woman employee is pregnant, in confinement or in the nursing period, the employer is not allowed to terminate her labour contract, unless there is any Termination For Cause.

Maternity Leave

According to Article 62 of the Labour Law of China (**LLC**), female workers are entitled to at least 90 days of maternity leave. The Special Labour Rules on Female Workers Protection promulgated on April 18, 2012 (the **Special Rules**), extend this to 98 days, and provide 15 days of leave before giving birth.⁸²

Maternity Pay

For female workers with maternity insurance, the employer must contribute to the maternity insurance funds based on the average monthly salary of that worker in the previous year.⁸³ For workers without maternity insurance, the employer must pay salary at the same rate as applied to that worker before the maternity leave.

Right to Return

The employer is not allowed to terminate the employment of an employee who is still within the nursing period –the period of one year after giving birth to her baby.

New Parents

In addition to the prohibition on termination of the contract, female workers with a baby less than one year old must not engage in activities classified as third level in the national classification of physical labour or as not suitable for breastfeeding, or work overtime or a nightshift. In addition, the Special Rules also provide that the employer must allow one hour of breastfeeding leave per day for female workers who breastfeed a baby up to a year old.⁸⁴

There are no additional protections in place.

Paternal Leave

There is no overriding law on paternal leave, but some local rules apply. For example, if the female worker is more than 24 when she gives birth to her first child, then the couple would be considered as “late in giving birth” and the husband would be entitled to three days of paternal leave in Shanghai, 30 days in Beijing (this bonus leave can be enjoyed by either of the couple), and 15 days in Guangdong. However, this may change soon.

Childcare

There is no obligation on employers to provide childcare.

Sexual Harassment

No sexual harassment is allowed against females.⁸⁵ Victims are entitled to file complaints to their employer or to related government agencies. In addition, the Special Rules also require that the employer must take precautionary measures to prevent sexual harassment in the workplace.⁸⁶

Minimum Working Age

Employers must not hire any person less than 16 years old.⁸⁷

Employers of “child labour” are subject to penalties issued by the Ministry of Labour and Social Security.⁸⁸ If the circumstances are particularly serious, the commercial administrative authority can revoke the employer’s business license.

Employers of child labour are subject to a fine of CNY 5,000 (USD 760) per month for each child.⁸⁹ If the employer fails to send the child back to his or her custodians as required by the labour authority, the labour authority will impose a fine of CNY 10,000 (USD 1,521) per child each month and at the same time the commercial administrative authority will revoke the employer’s business license.

Social Security/Healthcare

Clinics

There is no explicit provision under Chinese law requiring an employer to set up a clinic for employees. In practice, some large-sized factories have clinics on the factory site which can provide simple medical treatment to its employees.

Free Healthcare

Employees are not entitled to enjoy free healthcare under Chinese law. Both employers and employees must make contributions to medical social insurance in order for the employees to enjoy a percentage of medical cost reimbursement under the social insurance scheme. The contributions by employer and employee are made based on the employee's salary and statutory contribution ratios subject to national and local regulations.

Certain employers may choose to purchase commercial medical insurances as a supplement to social medical insurance for their employees, to cover the portion of medical costs incurred by the employees which is not eligible to be reimbursed under the social insurance scheme, so that the employees are more fully covered for their medical costs.

Social Security Payments

Mandatory social insurances in China include unemployment insurance. If the employee's social insurance account is active and has been receiving contributions according to applicable regulations, the employee will receive unemployment compensation if he or she becomes unemployed subject to and in accordance with national and local standards.

Further, the Chinese labour laws prohibit an employer from unilaterally terminating an employee who (i) has lost his or her labour ability due to injury at work for such employer or (ii) is ill or injured not because of work for such employer but within the medical treatment period (as defined under law).

Occupational Injury

Mandatory social insurances in China include an injury-at-work insurance to which the employer is required to contribute. In the case of injury at work, the employee can receive compensation for medical treatment, hospitalisation, transportation, recovery treatment, nursing, etc., subject to and in accordance with national and local standards. If the employer does not contribute to social insurance for the employee, such compensation should be paid by the employer.

The employer must also continue to pay salary and allowances to such employee as were paid before the injury (subject to a ceiling and floor according to local average salary standards) during the work suspension period, which generally should not exceed 12 months (the **Original Salary Period**). Where the injury is diagnosed and identified as severe or exceptional, subject to the Municipal Work Capability Assessment Committee's confirmation, the Original Salary Period may be extended for a period of no more than 12 months.

If the injury affects the employee's work capability permanently, an identification for the disability grade of the employee will be conducted in accordance with national standards and the employee will be entitled to disability social compensation, paid from work-related injury insurance funds and/or by the employer, subject to the grade of his or her disability and the corresponding national and local social compensation standards.

Furthermore, the law prohibits an employer from unilaterally terminating an employee who has lost his or her labour ability due to injury at work, when the employee was working for that employer.

Retirement Pension/Social Insurance

Mandatory social insurances in China include pension. If the employee's social insurance account is active and has been receiving contributions according to applicable regulations, the employee can enjoy a pension after he or she is retired in accordance with national and

local standards. The prevailing contribution rates are 20% for the employer and 8% for the employee, based on the employee's average monthly salary in the previous year subject to a ceiling of 300% and a floor of 60% of the local average salary as announced by the local government. The contribution rates and limits of income are subject to adjustment by the Chinese government according to economic factors.

Trade Union Rights

All employees or workers in enterprises, governmental institutions and authorities who take wages as their main living support have the right to participate in and form trade union organisations in accordance with laws, regardless of their nationality, race, sex, occupation, religious belief or educational background. There are no exceptions under the law excluding this right of employees. The trade union will be under the leadership of the upper level of trade union (for example, the local branch of the All-China Federation of Trade Unions).

Normally, an enterprise must have 25 or more employees in order to establish a trade union. Any enterprise with less than 25 members may establish a grassroots labour union committee either independently or jointly with the members of one or more other units, or may elect an organizer to organize the members to carry out their activities.

If an employee's right to join a trade union is obstructed, the responsible party will be ordered to take remedial action by the administrative department of labour. Where the party responsible fails to take remedial action, the administrative department of labour will submit the case to the appropriate people's government at or above the county/district level to be dealt with. Where the obstruction is in the form of violence, threats, etc., resulting in serious consequences, and constitutes a criminal offence, there will be a criminal liability in accordance with the law.

There are no requirements to provide facilities for trade unions and their elected officials. However, there is a legal requirement that the employer must allocate and provide 2% of the total income of all of its employees to the trade union to support the trade union's activities.

One employing entity usually has only one trade union.

All workers may elect worker representatives to act on their behalf, even if there is no trade union.

The Right to Strike

PRC law does not prohibit workers' right to strike. The laws governing labour unions provide that, if a strike occurs, the labour union will negotiate with the enterprise, institution or other relevant authorities on behalf of the employees, reflect the views and demands of the employees and propose a resolution. Where a labour union is not established, a grassroots labour union committee may be established independently or jointly with employees of other employers. Such committee may represent the employees to negotiate with the employers in a strike. The employees may also negotiate with the employer directly. The enterprise or institution must satisfy the reasonable demands of the employees. The labour union will assist the enterprise or institution in its work so as to allow production and work order to resume as quickly as possible.

There is no a concept of a legal strike or an illegal strike under PRC law. According to the Labour Union Law, if any party fails to engage in consultation with the employees on an equal basis without any valid reason, the appropriate people's government at or above the county level will order it to do so. In practice, relevant government authorities will interfere and assist the parties to reach an agreement.

Collective Bargaining

Employers are obliged to engage in collective bargaining with the union. Trade unions must assist and guide workers in the conclusion and performance of labour contracts with their employer, and establish a collective consultation mechanism with the employer in order to protect the lawful rights and interests of workers. For example, trade unions will, on behalf of employees, negotiate on an equal basis and sign collective contracts with enterprises. If an enterprise infringes the labour rights and interests of any of its employees in violation of any labour law or regulation, the labour union will negotiate with the enterprise or governmental institution on behalf of the employee(s) and demand that it implement remedial measures. If the

employer does not comply, the labour union may request the local people's government to handle the case according to law.

Enforcement/Implementation Mechanisms

Where a labour dispute arises, the parties may first enter into consultation. If they are not willing to consult, if the consultation fails or if a settlement agreement is reached but not performed, an application for mediation may be made to a mediation institute. Where the parties are not willing to mediate, or the mediation fails or the mediation agreement is reached but not performed, an application for arbitration may be made to the labour dispute arbitration commission.

Where there is an objection to the arbitral award, litigation may be initiated in a people's court. The employee also has right to bring a lawsuit directly against the employer regarding certain disputes without having to go through a mediation or arbitration process. Such disputes include those regarding salaries, social insurance or severance.

In addition, where a dispute arises from a collective contract and no settlement can be reached through consultation, the administrative department of labour under the local people's government may coordinate with the parties and organisations concerned in an attempt to settle the dispute.

Normally, the labour administrative department will order the employer to pay remuneration or to make up for economic losses, and it may also order it to pay compensation to the employee. Any claim submitted to the labour administrative authority relating to violation of labour laws must be responded to in writing, or, where needed, by investigating the relevant employer and the claims made by the employees.

The Ministry of Human Resources and Social Security of the PRC and its local branches regulate enforcement of labour laws. In addition, the employee can apply to the court for enforcement of an arbitration award or a judgment against the employer.

The *Labour Law of the People's Republic of China, 1995* (the **Labour Law**) and the *Labour Contract Law of the People's Republic of China, 2007* are the principle pieces of legislation setting out the liabilities of an employer who breaches labour laws. In addition, the Criminal Law of the PRC provides for criminal liabilities for an employer who compels others to work by violence, threats or methods to restrict their personal freedom, hires minors under the age of 16 to conduct labour work in certain dangerous circumstances, or refuses to pay remuneration in a relatively large amount to its employees.

Sanctions

Wrongful Termination

If an employer unilaterally terminates a labour contract in violation of the Labour Contract Law, the employee has the right to continue to work for the employer. If the employee chooses not to continue the employment, the employer must pay the employee double the amount of the applicable statutory severance.

Violation of Minimum Wage

If the wage paid by an employer to its employees is lower than the minimum wage, the labour bureau will order the employer to make up the difference. If the employer fails to make the payment within a specific time period, the labour bureau will order the employer to pay additional compensation to the employees in the amount of no less than 50% of and no more than an amount equal to the amount owed to the employee.⁹⁰

Avoidance of Remuneration

If any employer evades its obligation to pay remuneration by transferring or hiding assets, or has the capacity to pay but fails to make such payment, where the amount of remuneration in question is relatively large and the employer still fails to make payment after being ordered to do so by the relevant government authority, the employer will be sentenced to imprisonment of up to three years, sentenced to detention and concurrently be subject to fines, or just be subject to

finer. If serious consequences ensue, the employer will be sentenced to imprisonment of three to seven years and concurrently be subject to fines. If the employer is an entity, the fines apply to such entity, and the individual-in-charge of such entity and other directly responsible individuals are subject to the relevant imprisonment or detention.⁹¹

Violation of Overtime Provisions

If an employer extends its employees' working time in violation of the labour laws, rules or regulations, the labour bureau will issue warnings to the employer and order rectification within a specific time period. The bureau also has the power to impose penalties on the employer in the amount of no less than CNY 100 (USD 15.20) and no more than CNY 500 (USD 76) for each person whose rights are infringed.⁹²

If an employer arranges for its employees to undertake overtime work without making overtime payments, the labour bureau will order the employer to make the overtime payments. If the employer fails to make an overtime payment within a specific time period, the labour bureau will order the employer to pay additional compensation to the employees in the amount of no less than 50% and no more than an amount equal to the amount owed to the employees.⁹³

No Written Contract

The employer must double the monthly wage if no written contract is entered into.⁹⁴

Violation of Probation Requirements

If the employer has violated the probation period regulations, the employer must correct its behaviour and provide the worker with compensation for the excessive probation period.

Use of Child Labour

The employers of child labour are subject to a fine of CNY 5,000 (USD 760) per month for each child. If the employer fails to send the child back to his or her custodians as required by the labour authority, the labour authority will impose a fine of CNY 10,000 (USD 1,521) per person each month and at the same time the commercial administrative authority will revoke the employer's business license.

Where an employer, in violation of the laws and regulations on labour administration, hires minors under the age of 16 to conduct extremely intensive physical labour, work at high altitudes or work under the well or work under an explosive, flammable, radioactive or poisonous environment, if the circumstance is serious, the persons who are held to be directly responsible will be sentenced to up to three years of fixed-term imprisonment or criminal detention, and shall also be fined; if the circumstances are especially serious, the persons who are held to be directly responsible shall be sentenced to fixed-term imprisonment of three to seven years, and shall also be fined.

Forced Labour

A person who compels others to work by violence, threats or methods to restrict their personal freedom will be sentenced to up to three years of fixed-term imprisonment or criminal detention and be fined. In severe cases, the sentence of fixed-term imprisonment will be between three and ten years and there will also be a fine.

Violation of Maternity Leave, Light Work Provision and Breastfeeding Vacation

The employer will be instructed to correct its behaviour and each victim is entitled to compensation ranging from CNY 1,000 (USD 152) to CNY 5,000 (USD 760).

Sexual Harassment

When sexual harassment also constitutes a violation of the security administration, the violator will be subject to administrative fines and civil litigations. A violation of public security administration refers to any behaviour which is serious enough to constitute an illegal behaviour under the *Law of the People's Republic of China on Penalties for the Violation of Public Security*

Administration but not serious enough to be subject to criminal punishments. This law mainly governs actions which disturb public order, endanger public safety, infringe on the rights of person and property or hampers social administration.

Non-Compliance in Working Conditions

Where the occupational safety facilities and health conditions of an employer do not comply with the provisions of the State or where the unit fails to provide labourers with necessary labour protection articles and labour protection facilities, the administrative department of labour or other relevant departments will order it to remedy the situation and may impose a fine. If the circumstances are serious, the relevant departments will refer the matter to the people's government at or above the county level for a decision ordering the employer to stop production for consolidation. If the employer fails to take measures to prevent an accident and a serious accident occurs causing loss of life and property of employees, the persons who are held responsible will be investigated for criminal responsibility by applying (*mutatis mutandis*) the provisions of Article 187 of the Criminal Law.

Some recent examples reported on news websites are as follows:

- On 6 August 2015, the provincial labour authority of Guangdong Province announced that 60 enterprises were fined for material violation of labour laws, including failure in paying remunerations to employees and use of child labour.
- In August 2015, the municipal labour authority of Changsha City, Hunan Province issued notices of penalty to five enterprises in Changsha City for material violation of labour laws, including failure in paying social insurance contributions, avoiding payment of remunerations to immigrant workers, and withholding employees' identity certificates.
- In January 2016, the municipal labour authority of Dongguan City, Guangdong Province, announced that 10 enterprises were fined for material violation of labour laws, including failure to paying remuneration to employees and use of child labour

Generally, since the gradual development of labour protection legislation, compliance with labour laws has improved. According to the 2014 Statistic Report on Development of Human Resources and Social Security published by the Ministry of Human Resources and Social Security of the PRC on 28 May 2015, the following improvements have occurred in recent years: (i) the amount of social insurance funds has increased and the number of employees who have social insurance accounts has expanded; (ii) the number of cases of violation of labour laws has decreased, and (iii) millions of migrant workers have received their wages due to labour authority's enforcement each year.

Incentives

There are no particular incentives available to encourage businesses to maintain a high quality of treatment of their employees.

Realistic Opportunities for Reform

The Ministry of Human Resources and Social Security has been seeking public comments for the Opinions on Issues concerning the Implementation of the Regulations on Work-related Injury Insurance (II) (Draft for Comment) (the **Draft for Comment**). The period for feedback ended on 19 February 2016.

The Draft for Comment proposes that the work-related injury insurance policies should apply to employees who have reached or exceeded the statutory age for retirement but continue to work for their original employers, and that the employers should continue to pay work related injury insurance liability in accordance with the law.⁹⁵

On 17 January 2016, the General Office of the State Council issued the Opinions on the Comprehensive Regulation of Migrant Workers' Wage Arrears (the **Opinions**).

The Opinions propose (i) improvements to the systems for monitoring and guaranteeing wage payments, (ii) improvements to the monitoring mechanisms for wage payments in enterprises and wage deposit systems, (iii) establishing and perfecting the system for the administration of special accounts for migrant workers' wages (labour service fees) and (iv) putting in place the relevant responsibilities for the settlement of wage arrears.⁹⁶

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⁸⁶ Article 11

⁸⁷ Article 15 of the Labour Law.

⁸⁸ Article 94 of the Labour Law.

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⁹⁰ Article 85 of Labour Contract Law; Article 26 of Inspection Regulation.

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HAITI

Haiti^{1,2} is the poorest country in the Americas and one of the poorest in the world. Regularly battered by natural disasters and extreme weather,³ including the devastating earthquake of 2010, Haiti has struggled to improve its economy over the last decade and faces ongoing economic deceleration. Growth declined from 2.8% to 1.2% between 2015 and 2016 and is expected to have fallen to 0.8% by the end of 2016.

59% of Haitian people live in poverty and just under 25% in extreme poverty. Three quarters of Haitians live on less than USD 2 per day and half of the population earns less than USD 1 per day. Only 30% of Haitians have formal employment.⁴ Many people do not have ready access to electricity, water, sanitation or healthcare.⁵

Social development statistics are also dire. It is estimated that 40% of the population lack access to essential health and nutrition services,⁶ more than 50% is undernourished⁷ and approximately 22% of children aged under five are stunted, while 5% suffer from acute malnutrition.⁸

Primary school enrolment is roughly 75%, with an estimated 200,000 children out of school. Half of the adult population is illiterate, with the average Haitian of 25 years and older having had less than five years schooling.⁹

Source	Statistic	Result	Year calculated
World Bank	Population	10.71 million	2015
World Bank	GDP in USD	8.877 billion	2015
World Bank	GDP growth	1.7 billion	2015
UNDP	Life expectancy	62.8	2014
UNDP	Infant Mortality (out of 1000 live births)	52.20	2015
Transparency Int.	Corruption Index– Score – Rank	17/100 161/168	
IFPRI	Global Hunger Index	39.3 – rated alarming	2015
UNDP	Human Development Index	163 – rated low	
UNDP	Expected years of schooling	8.7	2014
Wage Indicator	Minimum wage lowest per month	N.D	
Fair Wage Network	Living Wage – per family of 2 adults and 2 children (HTG)	36,385	2016

Haiti's Garment Industry

The development and expansion of the Haitian garment industry was viewed by the international community as a vital step in its recovery following the 2010 earthquake, and significant amounts of post-disaster aid was spent on investing in garment production. For example, more than USD 170 million of US emergency aid money to Haiti went to finance the Caracol Industrial Park, in northern Haiti.

The garment industry is the main, if not only, export industry in Haiti, with the majority of garments produced bound for the United States, which has renewed and extended preferential access for Haitian goods.¹⁰ In 2015, total export revenues from the textile and garment industry accounted for approximately 90% of national export earnings and 10% of national GDP.¹¹ The garment industry is Haiti's largest source of formal jobs and employs approximately 40,000 workers, 65-70% of whom are women.

According to the US-based Solidarity Center, "companies that source from Haiti benefit from inexpensive labor costs, as well as lax enforcement of labor laws in an industry that is rife with worker rights abuses".

Wages and Conditions

The current minimum wage was introduced in May 2015 and provides a wage of HTG 240 per day, or a piece-rate that enables earning HTG 320 per day. In order to earn the piece-rate wage workers must meet a quota set by the factory.

Jude has worked in Port-au-Prince garment factories for 10 years, but even as an experienced worker he is not able to reach the impossibly high production quota the factories require workers to meet in order earn the minimum wage. Jude says, "this is exploitation, we are broken down, we can't continue like this. I am a young person and I have already worked in the factories for 10 years. They never give us a chance".¹²

Given the high level of unemployment in Haiti, this wage is normally used to support an entire family or extended family. In interviews with labour rights groups, workers overwhelmingly report going long periods without being able to afford more than a single meal per day for themselves and their families. Workers reported having to borrow money to pay for food and rent, often at extremely high interest rates, and thus becoming trapped in a cycle of debt. The housing that workers can afford is of very poor quality, with no running water, erratic electricity and often in unsafe neighbourhoods.

Miderline is an 18-year-old Caracol worker from Terrier Rouge, a small town outside of Caracol. Hunger is severe in Miderline's household. Despite spending the vast majority of her wages on food, her family often cannot afford even the most basic meal. "It's very difficult to say how often members of my family eat because we do not eat every day. Really sometimes we don't have anything to eat." In addition to buying food, Miderline also must pay for rent, medicine for her children, and school tuition for her children and her younger sister. Miderline says, "to meet my expenses every month I [must take out] [...] loans." She adds, "the salary is not enough [to pay] for food and any other needs."¹³

The majority of schools are privately run and require tuition fees. Along with the cost of transport, books, and the mandatory uniform, sending children to school can cost almost an entire month's pay for a garment worker.¹⁴ Medical treatment is also expensive and although some NGOs do run free health clinics many Haitians cannot afford the transport costs or time to visit them. This is especially true for those living in rural areas.¹⁵

Calculations for what a living wage should be in Haiti are limited but a study by the Solidarity Center concluded that Haitian workers would need to be paid at least HTG 1,006 per day (based on a standard 48-hour work week) to cover basic needs.¹⁶ This is more than four times the current minimum wage.

Wage Theft

As low as the minimum wage is, many garment workers are unable to earn even this as a result of wage theft committed by employers. The 2016 IFC Better Work Haiti Report, which covered the 25 factories exporting out of Haiti, showed that nearly a quarter of the factories were not paying the new minimum wage. Nearly half of the factories were failing to pay both the higher rate of pay that was required for working overtime and the higher rate of pay that was required for working on legally mandated holidays.¹⁷

Evidence from a 2015 report by Worker Rights Consortium shows that workers also work a significant amount of “off-the-clock” hours; working through their lunchbreak, and before and after regular hours. Often this is due to production rates being set too high per day and consequently the piece rate too low. This prevents a worker from earning the minimum wage within regular hours and forces them to boost their production rate with additional “off-the-clock” hours.

Employees from the Premium Factory in Port-Au-Prince reported, on average, working 5.27 hours “off the clock” on a weekly basis, a figure that amounts to 273.78 hours per year of what is, under Haitian law, unpaid overtime: the equivalent of the theft annually of 51.33 days’ wages.¹⁸

Social Security and Health Benefits

Under the Haitian Social Security Scheme, both employers and employees make Social Security payments. A review of the implementation of this law by ILO’s Better Work Haiti found very high levels of non-compliance in this area. None of the factories were collecting or forwarding worker contributions. Nor were the employers contributing 3% of the workers’ salary as required. Just under half of the factories were also failing to collect and pay workers contributions into a pension fund and just under a quarter of the factories were failing to contribute the mandated 3% of the workers’ salary for work-related accident insurance.¹⁹

According to the Haitian Labour Code, factories should provide medical personnel and facilities on site for its employers; the number of staff and extent of facilities being determined by the size of the workforce. However, over half of the factories failed to fulfil this legal requirement. Under the Labour code, workers should also receive annual medical check-ups, but only 44% of the factories provided this.

Political Freedom and the Rule of Law

Haiti scores 17/100 on the Transparency International’s Corruption Index and is ranked 161 out of 168 countries listed.

Haiti has suffered from years of political uncertainty and instability, leading to an almost entirely non-functional political system and extremely weak institutions. The judicial system is considered to be underfunded, inefficient, corrupt, and burdened by a large backlog of cases, outdated legal codes and poor facilities.²⁰

The lack of judicial and legislative frameworks in Haiti impacts severely on the ability of Haitian workers to defend their rights at work. Union leaders argue that stronger labour laws and improved social protections could go a long way to address many of the problems facing Haitian workers and their families. The current Labour Code has not been updated in more than 28 years and. Although the ILO has been assisting the Ministry of Social Affairs and Labour in revising the Labour Code since 2011, ongoing political instability has delayed the finalisation of this reform process.

A 2016 report by Better Work Haiti found nine trade unions present in 18 of the 25 factories that were manufacturing in Haiti. However, the report found evidence of discrimination against workers exercising their legal right to join a trade union.²¹ Interviews of garment workers carried out by the Solidarity Center also found that many feared the consequences of joining a union.²²

Elmerome is a member of a union, a factor he attributes to improving his working conditions. He says the Centrale Nationale des Ouvriers Haïtiens (CNOHA) union has “helped fight against discrimination, suspensions and dismissals, and “gives workers a voice”. He sees freedom of association as the most important element for Haitian workers seeking to improve their working conditions. And echoing other factory workers interviewed, he says many workers fear joining a union because of employer harassment, including the threat of being fired.²³

Legal Section

Wages

Minimum Wage

Minimum wages apply in Haiti, with several different rates determined by the industry sector in which the employee works.

The 2010 Human Rights Report from the US Department of State notes that “most citizens in Haiti worked in the informal sector and subsistence agriculture, in which minimum wage legislation does not apply, and daily wages of HTG 15 (USD 0.23) were common”. However, the textile industry is the second biggest employer (after agriculture), and a minimum wage is set for that industry.²⁴

Minimum Wage Levels

For workers in the garment industry, the legal minimum wage is divided into two rates.²⁵ This was raised in May 2015²⁶ and again in May 2016²⁷ for workers in the export industries (including the apparel sector) as follows:

- Standard minimum daily wage: raised from HTG 225 to HTG 240 to HTG 300 (approximately²⁸ USD 3.45 raised to USD 3.68, now USD 4.60).
- Piece-rate wage: requires that factories establish a rate that allows workers to realize at least HTG 300, raised to HTG 320 and now HTG 350 (USD 4.60 raised to USD 4.90, now USD 5.36) per eight-hour day.^{29, 30}

According to the Fair Labour Association, the majority of Haiti’s garment workers receive the piece-rate wage. Although the piece-rate wage law sets a target for employers, Haiti’s Ministry of Social Affairs and Labour has, in response to pressure from business owners, stated that this target “can under no circumstances be considered a minimum wage”.^{31, 32} In many cases, productivity and efficiency targets will be set too high for a worker to be able to realise the HTG 350 target without overtime.

Probation Period Wages

Workers may earn less during the three-month training period. According to the Institute for Global Labour and Human Rights, workers that were on a three-month probationary period were paid 60% of the minimum wage rate.³³

Basic/Additional Amounts

The minimum wage is a single basic rate.

Minimum Wage Review

Haitian labour law was adopted by the legislature in 1984,³⁴ and the minimum wage in Haiti is established by the Haitian government. The Superior Wage Counsel, a tripartite body, is tasked with reviewing wage rates on a yearly basis and making recommendations to the Haitian government.³⁵ Minimum wage rates are also periodically adjusted to take into account the cost of living or inflation.³⁶ In recent years, the minimum wage has been increased annually.

In order to increase the minimum wage the Haitian Congress must pass a law to this effect, which must then be signed by the President.³⁷

Payment of Wages

The timing for payment of wages is determined by mutual agreement between the worker and employer; however, “these payments will be not be spaced more than fifteen days for manual workers and one month for knowledge workers” and must be paid on a working day.³⁸ Final payments under profit-sharing arrangements must be made at least once a year. For contract work taking longer than a fortnight, the timing of payment is set by mutual agreement; however, workers must receive payment every fortnight (assuming due progress is made on the work) and be fully paid within fifteen days after final delivery of the work.³⁹

According to AmCham Haiti (the American Chamber of Commerce in Haiti), during the last week of December, a worker is entitled to an additional salary or bonus amounting to one twelfth of total compensation, which is paid between 23 and 31 December of each year.⁴⁰

Haitian law does not appear to require employers to provide wage slips to its employees.

Deductions from Wages

Payroll deductions can be made as reimbursement for loss or damage to goods or facilities of the employer only when it can be proven that the employee is responsible for such loss or damage.⁴¹ The amount of such deduction is agreed between the parties but may not exceed one sixth of the employee's monthly salary.⁴² It is unclear whether any other deductions can be taken from the minimum wage.

Working Hours

Normal Working Time

The law sets the standard workday for industrial, commercial and agricultural establishments at eight hours and the workweek at 48 hours, with 24 hours of rest (usually Sundays).^{43, 44}

Overtime

The law provides for the payment of overtime and prohibits “excessive compulsory” overtime; however, overtime laws are not effectively enforced. Moreover, there are exemptions for the industries of healthcare, lodging, food and beverage; entertainment establishments; managerial positions, and family establishments that employ only family members, and the law is silent concerning public sector employees. The Labour Directorate may grant exemptions for other employers not specifically exempted by the law.^{45, 46}

Overtime Rates

Overtime rates are 50% over regular pay.⁴⁷

Night Work

There is a special rate for night work (between 6 p.m. and 6 a.m.), which is an additional 50% of the wage for the employee's job performed during normal workdays.^{48, 49}

Rest Time

No standard rest time per day is required; however, a worker is entitled to 24 hours of rest per work week as indicated under the “Normal Working Time” section above.

Paid Holiday

The Labour Code provides for annual leave of at least 15 days per year (13 days and two Sundays). In the case of irregular employment, annual leave is calculated on the basis of the number of working days available including weekends and holidays divided by 24.

All employees are also entitled to fully paid days off on the 12 yearly public holidays. Employees who work on a holiday must be paid at time and a half, in addition to any other premiums payable to them, such as night work or overtime rate.⁵⁰

Liability and Contracts

Liability and Duties

The Haitian Labour Code of 12 September 1961 (*Code du Travail de la République d'Haïti*), as amended by Decree on 24 February 1984 and the Law of 4 June 2003 regarding child labour, sets out various fundamental principles such as:

- ensuring the well-being of workers;
- defining what is meant by work, permanent work and temporary work;
- prohibiting child and forced and compulsory labour;
- espousing equality of workers before the law; and
- guaranteeing the right to collective determination of working conditions and the right of workers to join together to defend their social and economic rights.^{51, 52}

The legal threshold set by health and safety regulations is low and, although the industrial and assembly sectors do generally observe those legal guidelines, the Ministry of Labour and Social Affairs does not enforce them and job insecurity is such that, in practice, workers do not seek to remove themselves from dangerous work situations.⁵³

Contract of Employment

There does not appear to be a requirement to provide a contract of employment.

There is evidence that Haitian employers are able to use short term contracts; for example, the company Electricité d'Haïti sometimes uses short-term contracts to cover the country's energy needs.⁵⁴

Probation Period

There is no maximum length applicable to probationary periods.⁵⁵

Severance Allowance

There is no severance pay for dismissal or redundancy dismissal.^{56, 57} Notice periods do apply but are not necessarily observed.

Termination

Unilateral Termination by Employer

An employer or employee who wishes to terminate a written employment contract must give written notice to the other party. If the employment contract is verbal, notice may be given orally in the presence of two witnesses.⁵⁸ Notice is required if the employee has given at least three months of consecutive service to the employer.⁵⁹

Individual Labour Disputes

If an employee believes they have been wrongfully terminated, they must file a complaint with the Department of Labour and look to the Labour Court for compensation.

Gender and Age

Equal Pay

There is no legislation that directly addresses equal pay.⁶⁰

Pregnancy

Dismissal of pregnant workers is prohibited.⁶¹

Maternity Leave

Women are guaranteed at least 12 weeks of maternity leave.⁶²

Maternity Pay

Women are guaranteed 100% of pay for up to six weeks of maternity leave.

Right to Return

Mothers are guaranteed equivalent positions after returning to work from maternity leave.

New Parents

As noted above, mothers are guaranteed equivalent positions after maternity leave. Nursing mothers are also entitled to nursing breaks.⁶³

Paternal Leave

Paternal leave is not available.⁶⁴

Childcare

The employer is not required to provide childcare to employees.⁶⁵

Sexual Harassment

There are no rules that specifically outlaw sexual harassment in the workplace and very little relevant data exists. However, anecdotal evidence suggests the practice is common but goes unreported.⁶⁶ In particular, Haitian factory workers who have a daily production target are significantly more likely to be subject to sexual harassment. Similarly, employees who are paid “by the piece” reported that their workplaces were more conducive to sexual extortion.⁶⁷

Minimum Working Age

The Haitian Labour Code:

- forbids children below the age of 15 from working in industrial, agricultural, or commercial enterprises;⁶⁸
- sets the minimum age for apprenticeships at 14;⁶⁹ and
- prohibits minors under the age of 18 from working under “dangerous conditions and prohibits night work in industrial enterprises.”⁷⁰

Nevertheless, there is evidence that despite these prohibitions, “children under the age of 15 commonly work in the informal sector to supplement family income.”⁷¹ This is an issue in particular for children who do not work in industrial, agricultural or commercial sectors, as only these sectors contain restrictions on child labour, as set out in the Labour Code. For example, in the domestic sector there is no minimum age restriction and a low minimum wage threshold.⁷² Accordingly, while under Article 340 of the Haitian Labour Code, a fine of HTG 3,000-5,000 (although rarely enforced) may theoretically be imposed for employing a child under the age of 15 or a child between the ages of 15 and 18 without a work permit, no such penalties exist in relation to domestic labour. The law requires employers to pay domestic workers over the age

of 15 years. However, for those under the age of 15, compensation may be merely food and shelter.⁷³

The *restavek* service system remains a serious issue in the context of child labour— there are an estimated 300,000-500,000 child slave workers in Haiti under the *restavek* system.⁷⁴ *Restavek*, which in French means “to stay with”, is a deeply entrenched tradition whereby poor families send their children to wealthier (often urban) families to work,⁷⁵ in the hope that their children will be better cared for and receive an education.⁷⁶ These hopes rarely materialise. Such children often work between 10 and 14 hours per day and neglect, abuse and sexual harassment are commonplace.⁷⁷ In June 2003, the Haitian government passed an act that banned the *restavek* system.⁷⁸ However, despite this, the practice remains widespread, as enforcement is almost non-existent.⁷⁹

Social Security/Healthcare

Clinics

Employers do not appear to be obliged to provide clinics to employees.

Free Healthcare

Article 23 of the Haiti Constitution obliges the State to ensure for all citizens “appropriate means to ensure protection, maintenance and restoration of their health by establishing hospitals, health centres and dispensaries”. Despite this, there is minimal access to healthcare in Haiti. The State recognizes the right of every citizen to decent housing, education, food and social security.

Even before the 2010 earthquake, there was a severe shortage of medical professionals. In 2005, there were only 1,949 doctors working in the entire country, leaving the country with a 3:10,000 doctor/citizen ratio.⁸⁰ With the devastation and damage to the medical workforce and infrastructure resulting from the 2010 earthquake,⁸¹ availability has been severely curtailed. Much of the healthcare is now provided by NGOs and international aid organizations.^{82, 83, 84}

Any company operating in Haiti must provide health cards to workers who have worked for three consecutive months.⁸⁵ However, there is no mandatory health insurance regime under Haitian law that would require employers to provide employees with medical insurance, nor is it common practice for employers to do so.

Social Security Payments

Article 22 of the Haiti Constitution provides that “[t]he State recognizes the right of every citizen to decent housing, education, food and social security”. However, there is no state provision to supplement the cost of living for workers not receiving a living wage or those out of work through illness or injury other than as set out in the “Occupational injury” and “Retirement Pension” sections below.

Occupational Injury

Certain industries are required to set aside portions of payroll for work-related injuries: (i) 2% of payroll for commerce, (ii) 3% of payroll for industry, construction and agriculture, and (iii) 6% of payroll for mining.⁸⁶

Permanently disabled individuals under the age of 55 receive 66.6% of their monthly earnings. Temporarily disabled individuals receive 66.6% of monthly earnings beginning after a three-day waiting period.⁸⁷

Retirement Pension/Social Insurance

There are two obligatory regulations addressing retirement in Haiti, one for private employees and one for public servants. Neither covers the self-employed.⁸⁸

Private Sector

Retirement benefit in Haiti is equal to one-third of the average salary of the employee during the last 10 years preceding retirement.⁸⁹ The primary legislation for retirement benefits is the statutory law of the Department of Social affairs of 28 August 1967, which is applicable to all private employers.⁹⁰ Private employers belong to the Office National d'Assurance Vieillesse (ONA) and contributions are 6% of base salary from each of the employer and employee.⁹¹

Public Sector

Workers in the public sector belong to the Fonds de Pension Civile de Retraite and contributions are in the amount of 8% of the salaries of all government employees and officials including the Autonomous Public Bodies not subject to a special pension scheme.⁹² Public servants who are 55 years old and have 25 years of service in the public sector are entitled to receive 60% of their average salary of the last five years of work subject to a cap.⁹³

There are very few supplemental private pensions in Haiti, partly because there is no legislation to encourage its development and partly because there is no demand.⁹⁴

Sick Pay

An employee is entitled to 15 days of fully-paid sick leave per year provided required documentation is submitted. Sick days are not cumulative so do not carry over into the next year.

Trade Union Rights

The law allows workers generally, including garment factory workers, to join unions,⁹⁵ excluding public-sector employees, employers, management and anyone who represents the interests of employers.⁹⁶ At the beginning of 2013, 50% of Haitian apparel factories had a union presence.⁹⁷

At least 10 employees are required in order to register a trade union in the workplace with the Ministry of Labour and Social Affairs. A union must register within 60 days of formation.⁹⁸

The law prohibits an employer from:

- interference with union activities (at a penalty fine of HTG 1,000-3,000 (USD 15.32-USD 45.95),⁹⁹ and
- firing a worker based on union activities.¹⁰⁰

Illegally-fired workers have the right to recoup any compensation to which they were entitled.

In practice, dismissals of trade union activists are common, particularly following demonstrations or other actions.¹⁰¹

Individual labour disputes that relate to wages or other labour-related issues are subject to mandatory mediation by the Labour Department. A claim must be brought within six months of the incident.¹⁰² Large scale labour disputes, without the help of unions, may also use mediators or resolve the issue internally.¹⁰³

The Right to Strike

The Haitian Labour Code grants a right to strike to certain workers. Managers, administrators, other heads of establishments, public utility service workers and public sector enterprise workers do not have the right to strike.¹⁰⁴

Any group planning a strike must provide 48 hours' advance notice. No strike may exceed one day.¹⁰⁵

Collective Bargaining

Unions have the right to use collective bargaining as a means of achieving their ends.¹⁰⁶ The guidelines for who can represent a group of employees are broad. Legitimate representatives include workers' organizations or "representatives of the workers concerned duly authorized by them".¹⁰⁷ The collective labour agreements must be finalised in writing and written in French. Such contract terms are automatically renewed unless otherwise stipulated.¹⁰⁸

Enforcement/Implementation Mechanisms

Labour courts exist to resolve labour-management disputes; however, such courts' judgements are rarely enforced and the authority of these courts is considered "weak and ineffective".¹⁰⁹ Employment relationships are established and regulated by special legislation of the Labour Code of 1984, and the Ministry of Social Affairs is responsible for enforcing the provisions of this legislation and maintaining a climate of trust between management and workers.^{110, 111}

If a worker believes that their employer has breached a labour standard or there is a labour dispute, the Ministry of Social Affairs and Labour, once informed, will ask the Department of Labour Inspection to conduct an investigation into the case.¹¹² As noted in the "Trade Union Rights" section above, any disputes are subject to mandatory mediation by the Labour Department and must be submitted to the Labour Department within six months of termination.¹¹³

If there is a criminal dispute, the dispute is submitted to the Department of Labour and "in the case of failure of conciliation, shall be referred to the Labour Court".¹¹⁴

Victimisation

In the event of wrongful or unlawful termination, employees may seek damages in addition to compensation for lost wages, in lieu of notice. Damages may be awarded by the Labour Court, at the request of the Labour Board. The claim for damages must be substantiated and may not under any circumstances exceed an amount equivalent to 12 months of work.¹¹⁵ However, workers who have been terminated "encounter difficulties as they seek legal remedies for violations [as] legal procedures for the [Labour] Court are obscure and proceedings are conducted in French, despite the fact that most Haitians do not speak it."¹¹⁶

Disputes

It is uncommon for employment disputes to reach the court level; in practice, Haitians have little access to justice. Both "public and private employers generally enjoy impunity for their labour and employment violations."¹¹⁷ Not only are court fees and legal representation usually too expensive but, in addition, proceedings are conducted in French, which most Haitians do not speak.¹¹⁸ Haiti generally lacks labour lawyers that are willing to represent the poor and "the judiciary generally favours employers in labour and employment disputes, and workers and union organisers struggle to find justice."¹¹⁹

The process for reaching the courts is also arduous. Labour disputes must be first investigated by the Inspectorate General from the Department of Labour, which determines whether a genuine dispute exists. If the Inspectorate General determines that a genuine dispute exists, the matter is referred to the Arbitration Service, and if conciliation is not achieved and at the request of the parties, the Arbitration Service will submit the case to the Labour Tribunal.¹²⁰

Domestic Law Sanctions

There are no official sanctions that would apply to a business that did not follow the labour standards described above. Nevertheless, the failure of a factory to comply with international labour law standards both at the local and international level (see the "Incentives" section below), could potentially prevent goods made there from being imported into the US.

International Trade Sanctions

Garment and textile factories in Haiti must comply with core international labour standards and Haitian labour law to qualify for duty-free entry into the United States.^{121, 122} In 2009, Haiti established a garment sector labour monitoring/compliance program as required under the

Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006 (**HOPE**).¹²³ In assessing factories' compliance with the labour criteria and thus ability to qualify for duty-free export, the US Government considers the factory-specific monitoring and assessments conducted by the ILO in Haiti pursuant to its Better Work program. Under Better Work, "which promotes respect for labour rights and improved working conditions in global supply chains, the ILO inspects 100% of HOPE-eligible factories for compliance with fundamental labour standards and Haitian labour laws and publishes compliance reports for individual factories on a bi-annual basis."¹²⁴

Enforcement in Practice/Impact on Compliance

As noted above, in light of the absence of sanctions and the various hurdles to employees seeking legal redress, there are in practice few incentives beyond commercial access to the United States export market to encourage compliance with labour laws in Haiti.

In regard to children, the *Act on the Prohibition and Elimination of All Forms of Abuse, Violent, Ill Treatment, or Inhuman Treatment Against Children, 2003* (the **Act**) prohibits forced labour and servitude of children.¹²⁵ However, the US Department of Labour notes that "there are no penalties established for committing abuse and violence against children through any of the crimes discussed in the Act".¹²⁶ The Ministry of Social Affairs and Labour and the Institute of Social Welfare and Research are responsible for child protection and enforcing Haitian child labour laws.¹²⁷ They are tasked with inspecting various factories; however, information on the number of inspections actually conducted is not available.¹²⁸ The Brigade for the Protection of Minors, a branch of the Haitian National Police, conducts investigations regarding forced child labour and will "refer the cases of individuals violating legal provisions on child abuse to the Haitian judiciary for prosecution [...] [However,] information about the results of such criminal investigations and any possible convictions and sentences imposed on the perpetrators related to trafficking and the worst forms of child labour, including forced labour, was not found".¹²⁹

It would seem apparent that "given the extent of child labour in Haiti's informal economy, government agencies lack sufficient resources to carry out enforcement activities adequately."¹³⁰

Incentives

A US International Trade Commission report of 2008 found that "to date, the impact of the HOPE Act on Haiti, the United States, and countries with which the United States has a free or preferential trade agreement has been minimal".¹³¹ The HOPE Act has provided some minor benefits in terms of increased exports and employment, however there has been little additional foreign investment.¹³² The reformed HOPE II programme has had some impact on job creation, but little on workers' conditions.

Realistic Opportunities for Reform

In 2013, the Minister of Trade established the first agricultural free zone in Haiti located in Trou du Nord, which was expected to "create over five years, nearly 3,000 direct jobs and 10,000 indirect jobs."¹³³ The International Monetary Fund found that Haitian free trade zones have special regimes which apply to "custom duties and customs controls, taxation, immigration, capital investment and foreign trade".¹³⁴ However, reforms to labour laws are not planned.

Living Wage Compared with the Minimum Wage

In May 2016, as in previous years, thousands of textile workers demonstrated in protest at the level of the minimum wage. They demanded a minimum wage of HTG 500 (USD 7.88) per day to better reflect the actual costs of living. This is a modest demand. In 2014, the Solidarity Center (a non-profit organisation for workers' rights based in Washington DC) found that a living wage of HTG 1,000 per day (USD 15.32) would allow workers to meet their basic needs.¹³⁵

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- ¹² Worker Rights Consortium, 15 October 2013. *stealing from the Poor: Wage Theft in the Haitian Apparel Industry*, p24.
- ¹³ *ibid.* p15.
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- ¹⁶ Solidarity Center, 9 January 2015. *Five Years after Haiti Earthquake, Workers Still Struggle with Low Wages*.
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- ¹⁸ Worker Rights Consortium, 15 October 2013. *stealing from the Poor: Wage Theft in the Haitian Apparel Industry*, p27.
- ¹⁹ IFC, Better Work Haiti, 16 April 2016. *Better Work Haiti: Garment Industry 12th Biannual Synthesis Report under the HOPE II Legislation*.
- ²⁰ The Heritage Foundation, 2017. *2017 Index of Economic Freedom*. Available at: <http://www.heritage.org/index/country/haiti>
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- ²² Solidarity Center, 9 January 2015. *Five Years after Haiti Earthquake, Workers Still Struggle with Low Wages*.
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- ²⁴ Bureau of Democracy, Human Rights, and Labor, US Department of State, 8 April 2011. *2010 Country Reports on Human Rights Practices: Haiti*. Available: <http://www.state.gov/j/drl/rls/hrrpt/2010/wha/154509.htm>
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INDIA

India is the fourth largest economy in the world, with a GDP of over USD 2 trillion.¹ It is also the fastest growing major economy and this is expected to continue with a predicted growth rate of more than 7% in 2016-17.² Manufacturing exports contribute 15% of the country's GDP; the Government of India, through its Make in India initiative, is trying to increase this to 25% of GDP.³

India is home to 1.2 billion people and is predicted to have the largest and youngest workforce in the world.⁴ Some 10 million people move to towns and cities each year in the largest rural-urban migration this century.⁵ More than 400 million people still live in poverty, representing one-third of the world's poor. Many of the people who have recently escaped poverty (53 million people between 2005 and 2010 alone) are still highly vulnerable to falling back into it.⁶

Vulnerable populations lack access to basic healthcare and more than 39 million Indians fall into poverty every year due to medical costs.⁷ Malnutrition is widespread, particularly among women and children;⁸ 40% (217 million) of the world's malnourished children are in India.⁹ Free and compulsory education is provided for as a fundamental right in the Indian Constitution, but this goal still remains elusive.¹⁰ 80 million children between six and 14 years of age are not enrolled in school and it is estimated that out of the 120 million that are enrolled only 66% actually attend.¹¹ Less than 10% of the working-age population has completed a secondary education.¹²

Textile and garment manufacturing account for more than 15% of India's merchandise exports and the industry employs 10% of the workforce, making it the second largest generator of employment.¹³ Key export markets are the USA, UK, Germany, the Netherlands, Italy and Spain,¹⁴ and many major North America and European brands have consolidated their sourcing operations and opened liaison offices in India.¹⁵

The largest readymade garment manufacturing centres, in Bangalore, Tirupur and Chennai, in South India, and the National Capital Region, in the North, have a combined workforce of well over a million women and men. There are more men employed in the National Capital Region, while women predominate in the southern centres. A large proportion of the readymade garment workers are first generation industrial workers, many of whom are internal migrants.¹⁶



Source	Statistic	Result	Year calculated
World Bank	Population	1.311 billion	2015
World Bank	GDP in USD	USD 2.095 trillion	2015
World Bank	GDP growth	7.6%	2015
World Bank	Inflation	5.9%	2015
World Bank	Life Expectancy	68.02	2014
CIA Factbook	Infant Mortality (per 1000 live births)	40.5	2016
Transparency Int.	Corruption Index - Score - Rank	40 79/176	2016
IFPRI	Global Hunger Index	28.5	2016
UNDP	Human Development Index	0.547	2011
CIA Factbook	Expected years of schooling	12	2016
Wage Indicator	Minimum Wage– lowest per month (INR)	4,160	2017
Wage Indicator	Minimum Wage– highest per month (INR)	4,160	2017
Fair Wage Network	Living Wage– per family of 2 adults and 2 children (INR)	22,296	2016
Wage Indicator	Living Wage– per individual per month highest (INR)	12,100	2017
Wage Indicator	Living Wage– per typical family per month lowest (INR)	14,400	2017
Wage Indicator	Living Wage– per typical family per month highest (INR)	19,700	2017

Wages and Working Conditions

In India, wages in the garment sector differ depending on different categories of workers and different industrial clusters.¹⁷ In the three main clusters of readymade garment production, the minimum wage is between INR 5,812.56 and INR 6,462.56 per month in Gurgaon, between INR 7,142 and INR 7,630 per month in Tiripur (although many factories have applied for a government waiver allowing them to pay wages at the previous minimum wage level: between INR 4,694.4 and INR 4,824.8 per month) and between INR 6,566 and INR 7,086 per month in Bangalore.¹⁸

Wages in all three regions fall well below calculations and demands for a living wage. The Indian trade unions are currently demanding a minimum wage of INR 15,000 per month, while the Asia Floor Wage for India is set at INR 18,727.

Despite the low level at which it is set in all regions, the minimum wage tends to operate as a ceiling rather than a floor, particularly in the most informal sectors of employment, with many workers earning less than the legal minimum.¹⁹ A recent research study by the School of Oriental and African Studies found that in all three regions unskilled workers were paid, on average, less than the minimum wage, and in Gurgaon this applied across all categories of

workers; skilled and semi-skilled workers reported receiving over 20% less than the minimum.²⁰ NGOs have described this as a widespread wage theft, which has become the norm across the Indian garment industry. Wage theft practices include “non-payment”, “underpayment”, and “late payment” of wages along with illegal deductions from wages.²¹

Informal labour, which is the predominant form of labour, is a structural element of India’s economy. In the garment sector, the phenomenon of informalisation has intensified in recent years and it has been marked by an increasing trend towards home-based production.²² This informalisation has a marked impact on working conditions. Most workers do not receive a written contract, meaning they have no proof of the terms and conditions of their employment, leaving them open to arbitrary changes in employment and with no protection under the law—even those who receive a contract rarely fully understand it.²³

“Although factory management says, ‘we are a family’ and we address things together, nothing is very well documented in writing. Workers are vulnerable because they are contract workers and can lose their jobs at any time, so they do not complain because they are scared of repercussions.”²⁴

Workers, NGOs and trade unions argue that workers are forced to work unpaid overtime. Many workers are not paid overtime at double rate, as required by law. Most workers do not take annual leave, saying either they are not entitled to it or fear of losing their jobs if they do.²⁵

“Workers can’t afford to ask for leave; it’s unpaid leave even when they get it. So if you have nothing to look forward to, you leave during festivals and for family issues. The notion of taking earned leave (...) doesn’t exist in the factories. So the only way that workers can take leave is by quitting.”— Trade union official.²⁶

An ILO report shows a widespread prevalence of verbal abuse and threats of being sacked as a “penalty” for refusing overtime or not meeting targets, which suggest a strong indication of forced labour conditions, at least for a proportion of the workforce.²⁷ Several trade unions and NGOs emphasize that migrant workers in employer-provided accommodation are subject to restricted movement. They claim that workers staying in hostels can at times be forced to stay against their will and on others be forced to leave against their will.²⁸

As a result of globalisation, female labour has intensified in the past decades in the world.²⁹ Female labour has been subject to work under less secure, lower paid and temporary conditions and reports of sexual harassment of women, physical violence and being forced to work when unwell are widespread. In the south, where more women participate in the labour force, complaints of sexual harassment are particularly prevalent amongst migrant women who stay in hostels. In the north, an NGO representative says that cases of sexual harassment are relatively rare, while complaints of verbal abuse and the “culture” of the sector that targets the self-esteem of the worker are more common.³⁰

“There is a ‘man’ problem in the garment sector, with the supervisors— they will harass the [female] workers. If a girl has a problem, she cannot tell the supervisor; if she wants a leave day, he will question her.”— A labour contractor from the south.³¹

Segregation and traditional caste-ordered social hierarchies affect the division of labour within factories. While management and line supervisors generally belong to the same upper castes and have urban middle-class backgrounds, manual workers usually belong to lower castes, the Dalit community or to indigenous people. Dalits are at the very bottom of the system and generally perform tasks that are considered unclean and polluting. Members of the lowest or lower castes, ethnic minorities or workers from indigenous communities are usually assigned to do “DDD” tasks (dirty, demeaning, and dangerous).³² Migrant workers, facing multiple cultural barriers related to language, food and climate, are also particularly subject to discrimination and poor working conditions.³³

Freedom of Association and Rule of Law

In India, corruption is widespread, involving government officials and private companies. Institutional corruption extends to all levels of the administration and key institutions, generating

an apparent lack of accountability and a breakdown in the rule of law.³⁴ TI gave India a score of 38 on their Corruption Perception Index and ranked it 76 out of 168 countries.³⁵

This extends to the garment industry itself. Indian factory owners and managers generally disregard national legislation, particularly regarding working hours, child labour and apprenticeship. They operate in the context of weak law enforcement, low government oversight and widespread corruption.³⁶ For example, despite a number of government declarations of measures being taken to address the issue of labour inspections, labour inspection bodies continue to be extremely understaffed. Labour inspectors are in some cases prevented from accessing the factories, while, at the same time, corruption and collusion with manufacturers is frequent. Labour inspection is thus largely incapable of monitoring law enforcement and of preventing the creation of new exploitative schemes.”³⁷

Since 2015 the Indian authorities have intensified their crackdown on civil society groups with an increasing number of organisations critical of government policies subject to harassment, intimidation and lawsuits.³⁸

In the ITUC Global Rights Index in 2015, India was declared one of the worst countries in the world for trade union rights and was given a 5.³⁹ Although workers are legally allowed to “establish and join unions of their own choosing without prior authorisation” many barriers are placed on this. Under the 2001 Trade Unions Act, a union has to represent a minimum of 100 workers or 10% of the workforce, whichever is less, and there is no legal obligation on employers to recognise a union or engage in collective bargaining.⁴⁰ As a result trade unions struggle to gain recognition.

“There is not a single management who has recognised our union [...]. The only focus of management is how to keep the union out, and no thinking being put into constructive solutions”.— A union officer in the north.⁴¹

There are 12 central trade union federations in India, but few organise in the informal sector. The most established trade unions are considered lacking in independence due to their affiliation with political parties, and allegations of corruption are widespread; it is not uncommon for unions to have links with factory owners, notably business ties.⁴²

In general, the level of unionisation in the Indian garment industry is very low. Many manufacturers have a hostile attitude towards unions and try to prevent unionisation. Employers have largely contributed to preventing trade union access at the factory level. They prefer existing workers committees, whose members are frequently selected by management or under its control, as satisfactory substitutes for unions. In cases where trade unions do have access to factories, manufacturers generally do not recognise them or refuse to negotiate with them.⁴³ It is also common for workers attempting to form a trade union to face sackings, harassment, intimidation and violence.

“[At the] company [...] the majority of workers are union members. We wrote a letter [for recognition of the union] but there was no response. The company started creating a lot of problems for the union members—hiring, firing, harassment, unfair promotion, discrimination, gundas— and eventually broke the union [...]. We have taken the issue to the brand level.”— A union officer in the south.⁴⁴

Legal Section

Wages

Minimum Wage

There is no fixed or uniform minimum wage for the entire country or for each sector. However, the *Minimum Wages Act, 1948* (MWA), provides for a minimum wage in certain jobs.

The MWA provides for minimum wages to be set for certain specific employment categories only. These categories are listed in the schedule to the MWA. Types of Employment outside of this list are not within the purview of the minimum wage legislation. India has a federal structure, and consists of twenty nine states. The Union Government is also called the Central Government, whilst each state has its own respective State Government. Under the MWA, both the State Government and the Central Government have been empowered to set minimum wages. Their respective domains are:

- **Central Government:** establishments run by the Central Government's authority, railway administration, mines, oilfields, major ports or corporations established by the Central Government.
- **State Government:** all other categories of employment fall within the purview of the respective State Government. State Governments also have the power to add items to the list of employment categories contained in the MWA, for the purposes of that state only. Thus there may be certain categories of employment which fall within the purview of the minimum wage regime in one state, whilst the same employment may not form part of the list in another Indian state.

One result of such disparities between states is that garment manufacturing and allied industries have been included in the schedule of "minimum wage" employments in some states, but not in others. For example, the following states have decreed that the minimum wage shall apply in the following industries:

- Andhra Pradesh– garments and allied industry;
- Goa– readymade garments manufactory;
- Gujarat– readymade garments and tailoring establishments;
- Haryana– readymade garments and tailoring establishments;
- Kerala– garment making;
- Mizoram– all employments;
- Odisha– readymade garments industry;
- Punjab– tailors and readymade garments manufacturers;
- Rajasthan– tailoring and garments industry;
- Uttarkhand– readymade garments;
- Uttar Pradesh– readymade garments;
- Daman and Diu– readymade garments; and
- Delhi– readymade garments.

Tailoring, cotton weaving, handloom, hosiery, etc. are other related categories which are covered by other states.

With a view to introducing a uniform wage structure, the National Floor Level Minimum Wage was introduced in 1991, based on the recommendations of the National Commission on Rural Labour (NCRL). This is a non-statutory measure, which encourages State Governments to set minimum wages at a level above the National Floor Level Minimum Wage. The aim of this is to address disparities across the country and between states.

As of 1 July 2015, the National Floor Level Minimum Wage was increased to INR 160 per day (approximately USD 2.38).^{45, 46} It is reviewed approximately every two years. As it is a non-statutory measure, there are no sanctions or penalties for non-compliance, nor is there any definitive data on whether the various State Governments fix the wages above the national floor level. Some news reports suggest that five states have wages in certain employments fixed below the national floor level.

Minimum Wage Levels

The MWA does not provide for any exceptions to the minimum wage *per se*. However, the Central and State Governments are empowered under the MWA to create some exceptions (for example, disabled employees). The governments can exempt certain categories of employment on the MWA list from compliance with certain provisions of the MWA, by providing special reasons for this.⁴⁷ The governments can also exclude certain localities from the application of the legislation; no particular criteria for this are set out in the rules (in the absence of any such criteria, any decision must be reasonable, and should not be arbitrary).

The law provides that if there are less than 1,000 people working in an employment in a particular state, then the minimum wage need not be fixed in respect of such an employment.

The law also envisages that different rates of minimum wages may be fixed for different classes of work within the same employment, for adults, adolescents, children and apprentices etc. This makes it clear that all categories of employees would be covered by the minimum wage legislation irrespective of whether they are apprentices, on probation, or are temporarily employed.

Minimum Wage Grades

Different minimum wage rates may be fixed for:

- different categories of employment listed in the MWA schedule;
- different classes of work in the same category of employment;
- adults, adolescents, children and apprentices; and
- different localities.

Probation Period Wages

The law envisages that different rates of minimum wage may be fixed for different classes of work within the same category of employment; this makes it clear that all categories of employees would be covered irrespective of whether they are on probation.

Basic/Additional Amounts

The term “wages” under the MWA consists of all remuneration payable to the employee on fulfilment of their terms of employment (which may be express or implied). Wages include house rent allowance, but do not include:

- the value of any house accommodation, supply of light, water or medical attendance;
- any contribution paid by the employer to any pension fund or provident fund or any scheme of social insurance;
- any travel allowance, or the value of any travel concession;
- any sum paid to the employee to defray special expenses incurred by the nature of his or her employment; or
- any gratuity payable on discharge.
- Under the MWA, the minimum wage may consist of:
 - a basic rate of wages and an allowance (called the “cost of living allowance”); or
 - a basic rate of wage, with or without the cost of living allowance, and the cash value of concessions like supplies of essential commodities at concessional rates⁴⁸; or
 - an all-inclusive rate comprising of the basic rate, cost of living allowance, and the value of concessions (if any).

Minimum Wage Review

The minimum wage rates are required to be reviewed and, if necessary, revised by the government at intervals not exceeding five years.

The appropriate government is granted discretionary power to determine the minimum wage rates, and to that effect may either⁴⁹:

- a. appoint committees or sub-committees to hold enquires and advise it as necessary (and an advisory board to supervise their functioning); or
- b. by notification publish its proposals and consult with the stakeholders likely to be affected thereby.

Any committee or advisory board appointed under (a) should consist of persons (nominated by the appropriate government), who (i) represent employers and employees in the categories of employment listed in the MWA schedule, who are equal in number, and (ii) independent persons not exceeding one third of the total number of members. One of such independent persons will be appointed as Chairman by the appropriate government.⁵⁰ Specific provisions regarding the constitution of the central advisory board are listed in the *Minimum Wages (Central Advisory Board) Rules, 2011*.

The government must consult with the committees/advisory boards, and by notification publish its proposals and consult with stakeholders. After considering the advice of the committees and/or all representations received by it, the appropriate government may, by notification in the Official Gazette, fix or revise the minimum wage rates in respect of each category of employment listed in the schedule to the MWA.⁵¹

While not prescribed under the MWA, the following are some of the criteria taken into consideration when fixing/revising minimum wage rates:

- cost of living/local conditions;
- paying capacity;
- economy of the industry; and
- a rise in the price of essential commodities.

Payment of Wages

Minimum wage rates may be fixed by the hour, the day, the month, or such other longer wage period as may be prescribed.

The *Payment of Wages Act, 1936* (the **Wages Act**) provides that the employer may fix any suitable wage period, so long as it does not exceed one month. However the Wages Act only mandatorily applies to employees earning not more than INR 18,000 (USD 268) per month.

Both, the Wages Act and the *Minimum Wages (Central) Rules, 1950* (the **MW Rules**) provide that wages must be paid on a working day. The MW Rules also state that:

- in case of an establishment in which less than 1,000 workers are employed, wages are to be paid before the expiry of the seventh day from the end of the wage period in respect of which the wages are payable; and
- in other establishments, wages are to be paid before expiry of the tenth day after the last day of the wage period in respect of which wages are payable.

Under the MW Rules, a wage slip is required to be issued by every employer to every person employed by him, a day prior to disbursement of wages. There is a prescribed form for wage slips ("**Form XI**"), which contains the following information:

- name of employee (with father's/husband's name);
- designation;
- wage period;
- rate of wages payable;
- total attendance/unit of work done;
- overtime wages; and
- total deductions.

Deductions from Wages

Employers are allowed to make certain specified deductions from the minimum wage. These are:

- fines;
- deductions for absence from duty;
- deductions for damage/loss of goods expressly entrusted into the custody of the employee, or for loss of money for which the employee is required to account, where such damage or loss is directly attributable to the employee's neglect or default;
- deductions for accommodation supplied by the employer;
- deductions for amenities and services (such as water, electricity, telephone services, etc.) that are provided by the employer (which must be authorised by a general or special order of the State Government, or any authorised officer thereof);
- deductions for recovery of advances of whatever nature (including advances for a travel allowance or conveyance allowance), and the interest due in respect thereof, or for adjustment of over-payment of wages;
- deductions of income-tax payable by the employee;
- deductions for recovery of loans made from any fund constituted for the welfare of labour in accordance with the rules approved by the State Government, and the interest due in that respect;
- deductions for recovery of loans granted for house-building or other purposes approved by the State Government, and the interest due in respect thereof; and
- deductions required to be made by order of a court or other competent authority (this would vary on a case by case basis, but could, for example, be a deduction required to be made as a result of a decree in an industrial dispute between an employer and an employee).

Working Hours

Normal Working Time

There are various statutes under Indian labour laws that provide for limitations on working hours. Which of these apply to a particular employee, depends on the nature of establishment that he or she works in.

There are three such laws which are relevant to the garment sector, and the threshold for normal working hours is the same under each:

- *The Factories Act, 1948* (the **Factories Act**): this applies to factory workers. Under this act, adult workers in the garment or clothing manufacturing industries may work a maximum of 48 hours per week and nine hours per day.
- *MW Rules* - the same maximum of 48 hours per week applies.
- *Shops and Establishments Acts* (the **S&E Acts**): these acts are state-specific, and apply to employees working in shops and commercial establishments other than factories. These acts vary from one state to another, but in most states the maximum working hours are 48 hours per week.⁵²

Overtime

There are statutory limits on the number of permitted overtime hours. These limits are imposed by two different laws, which apply to different establishments:

- **Factories Act**: for employees working in factories, the total number of working hours per week, including overtime, should not exceed 60 hours. Further, the total number of overtime hours should not exceed 50 hours in any one quarter.
- **S&E Acts**: limits vary by state, but are broadly similar. Under the state law for Karnataka (KSCEA), a maximum of one hour per day overtime may be worked, meaning a maximum of 10 hours per day may be worked. Further, under the KSCEA,

the total number of overtime hours worked in a period of three consecutive months should not exceed 50 hours.

Overtime Rates

The Factories Act, the S&E Acts and the MW Rules provide for twice the ordinary rate of wages for overtime work. Ordinary rate of wages means (i) the basic wage; and (ii) the cash equivalent of the advantages accruing to the workers through the concessional sale of food grains and other articles. Ordinary wages do not include any bonuses.

Night Work

There are no special premiums in place for night work.

Rest Time

Employers are legally required to provide employees with a standard amount of rest time per day. This obligation is under different statutes:

- **Factories Act:** for employees working in factories, a rest interval of at least half an hour should be provided in such a way that no period of continuous work would exceed five hours.
- **S&E Acts:** All S&E Acts provide for rest intervals. These vary by state, but are broadly similar. For example, the KSCEA provides that an employee should be provided with a rest interval of at least one hour after every continuous work period of five hours.

Paid Holiday

Employers must offer a minimum level of paid holiday leave to employees. This obligation is under different statutes:

- **Factories Act:** for employees working in factories, workers who have worked for at least 240 days in a year are entitled to annual/earned leave with wages. This is calculated at the rate of one day of earned leave for every 20 days of work performed by the employee in the previous calendar year, or for every 15 days of work in the case of child workers (below the age of 15).
- **S&E Act:** these acts also provide for annual leave and/or sick leave to employees. Under KSCEA, for instance, an employee is entitled to one day of annual leave with wages for every 20 days of work performed. Further, each employee is also entitled to 12 days of sick leave with wages in a calendar year.

Some S&E Acts also provide for another type of leave, known as “casual leave”. This is not defined in statute but is typically interpreted as meaning leave taken for any reasonable cause (e.g. because a dependant is ill).

The levels and categories of leave entitlements vary from state to state. The provisions are relatively more beneficial in the case of child workers.

Public Holidays

Most states have specific statutes dealing with the public holidays to which employees are entitled.

For instance, in Karnataka, the *Karnataka Industrial Establishments (National and Festival) Holidays Act, 1963* (the **Holidays Act**) governs and regulates the grant of national and festival holidays to employees employed in industrial and commercial establishments in the State of Karnataka. It is applicable to shops, commercial establishments, factories, plantations and other establishments notified by the State Government. Section 3 of the Holidays Act provides that every employee is allowed the following holidays in each calendar year:

- 26 January, 15 August, 2 October; and
- five other days for such festivals as the employer may specify from the list of festivals specified in the Schedule to the Holidays Act;

- however, for industrial establishments that are private (that is not owned or controlled by the Government of India), the number of such festival holidays will instead be seven (out of which 1 May and 1 November will be mandatory holidays).

Liability and Contracts

Liability and Duties

There is no single specific statute that exhaustively deals with an employer's liability or duty in respect of employees. Most employment statutes (such as the Factories Act and the S&E Acts) lay down certain obligations on employers, relating to matters such as safety, security and working conditions.

Set out below are a number of examples of legislation which provide protection to employees:

- **Contractors:** In a number of sectors, employers primarily enter into arrangements with contractors, whereby the contractors supply the requisite number of contract labourers required by the employer, who is then deemed to be the principal employer. This method is largely used for employing unskilled and semi-skilled employees. The *Contract Labour (Regulation and Abolition) Act, 1970 (CLA)* regulates the arrangements between the contractor, the principal employer and the contract labourer, and governs the employment conditions of contract labour. The contractor is primarily liable and responsible for the welfare and health of the contract labourers. The CLA (and the rules framed thereunder) sets out various obligations that the contractor is required to follow. If the contractor fails to comply with its obligations under the CLA, then the principal employer may be held liable. If this is the case, then the principal employer may recover from the contractor any expenses incurred in fulfilling the contractor's obligations.
- *Minimum Wages Act, 1948:* guarantees a minimum level of wages for workers engaged in certain kinds of industries and establishments.
- *Workmen's Compensation Act, 1923:* provides for compensation (at the level of wages) to be provided to employees for injuries caused during the course of employment.
- *Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013:* imposes a duty on the employer to provide for a safe work environment for its employees. Indian tort law is not codified but draws from common law, including the law laid down by the English courts. There is therefore a significant amount of case law in the realm of labour law.⁵³

Contract of Employment

Employers are not obliged to provide a legal contract, or similar document, to employees. However, it is customary (and recommended industry practice) that a written employment letter is executed with an employee, setting out the terms and conditions of employment, salary, benefits, etc. Indeed, certain S&E Acts require employers to issue an "appointment order" containing basic information such as employee name, address, rate of wages, joining date, etc. However, such S&E Acts are unlikely to apply to factories, and these requirements will not therefore apply to many employers in the garment sector.

Further, under the *Industrial Employment (Standing Orders) Act, 1946* (the **Standing Orders Act**), employers of industrial establishments are required to formally define the conditions of employment in their industrial establishment. The Standing Orders Act applies to:

- industrial establishments in which 100 or more employees are employed, or were employed on any day in the preceding 12 months; or
- in some States (such as Karnataka, Maharashtra and Gujarat), industrial establishments in which 50 or more employees are employed.

"Industrial establishment" is broadly defined under the Standing Orders Act⁵⁴. While the definition does not expressly include the garment industry, it is likely that it would be included under the terms "factory" or "any workshop where any article is manufactured or adapted". Further, many states (including Karnataka and Maharashtra) have made the Standing Orders Act applicable to shops and commercial establishments as well.

Probation Period

There is no specific legislation that classifies employees as 'probationers', and employees on probation are therefore usually treated in the same way as regular employees. However, it is common practice to engage employees as "probationers" for an initial period of three to six months, and this practice has been recognised by courts of law in India.

During the probation period, employers may review the performance of the employee and terminate his/her employment without any reason. During this period an employee does have to pay the minimum wages contemplated under the Minimum Wages Act, 1948.

However, probation periods are not usually extended to more than 240 days. The reason for this is the provisions of the *Industrial Disputes Act, 1947 (IDA)*⁵⁵, which protects 'workmen'⁵⁶ who have completed at least one year, or 240 days of employment prior to termination. Under the IDA, an employee who meets this requirement, must be given notice and severance compensation. Further, under different S&E Acts (such as KSCEA), the obligation to provide notice and reasonable cause for termination is triggered once an employee completes six months of employment.

Under the federal *Apprentices Act, 1961 (AA)* persons who are freshly appointed in certain industries and employments are required to be treated as apprentices for certain periods of time (as specified in the AA). In practice, this legislation is now largely applicable only to industries that are under the control or supervision of the Ministry of Skill Development and Entrepreneurship. Several of these industries (known as cutting and tailoring trades), which are covered under the AA, may relate to the garment industry, these include:

- designer and master cutter;
- dress maker;
- embroidery and needlework; and
- tailor (general/men/women).

Types of Contract and Restrictions

Fixed term contracts of employment are permitted and recognised under Indian law. Under the IDA, a fixed term contract (either project based or duration based) may be entered into, and the employment of an employee terminated at the expiry of this contract, without triggering any severance indemnities. Casual labour and daily wage labour is also permitted under Indian law.

There is no limit per se on the number of times a short-term contract can be renewed. However, it is possible that an employer may engage an employee under a fixed term contract of less than one year, and on its expiry enter into a similar contract for the same period successively (thus avoiding the payment of tenure based benefits to the employee). In such cases, courts of law may rule the contract to be a sham, and provide that the employee has been a regular employee of the company, in continuous employment for the entire duration of all fixed term contracts.

Laws Relating to Short-term Contracts

There are no separate laws that apply only to short term contracts.

However, it is likely that short term employees may be excluded from certain benefits where these benefits are tenure based. For example, under the *Payment of Gratuity Act, 1972* (the **Gratuity Act**)⁵⁷, provided an employee has completed at least 5 years of continuous employment with the employer, he or she is eligible for gratuity at the time of resignation, superannuation, retirement, or termination (without cause). A fixed term employee will not therefore be eligible for gratuity, unless he or she has completed at least 5 years' service at the expiry of his or her contract/termination.

Similarly, under the IDA, a workman who has completed at least one year of continuous employment may not be terminated without cause unless he or she:

- is given notice of at least one month (or paid wages in lieu thereof); and
- paid compensation calculated at the rate of 15 days' average pay for every completed year of service (or part thereof) in excess of six months.

Therefore, if a fixed term contract is for a period of less than one year, and is terminated during this period (before the expiry of the contract), the employee would not be entitled to notice or

compensation under the IDA. The employee may however be entitled to notice under the specific S&E Act.

However, some other benefits would be applicable to an employee irrespective of the duration of employment. For example, the provident fund payable under the *Employees' Provident Fund and Miscellaneous Provisions Act, 1952* (the **PF Act**)⁵⁸ would be applicable to any employee irrespective of the duration of employment, as long as the total number of persons employed in the establishment is 20 on any day during the preceding 12 months. The PF Act requires the employer and employee to contribute 12% of the basic wages of the employee towards the provident fund. The employee's contribution is deducted from his or her monthly salary, while the employer's contribution is provided over and above the salary of the employee. These amounts are then remitted to the employee's provident fund account with the Employees' Provident Fund Organisation.

Severance Allowance

Employees are entitled to certain redundancy/severance pay at the time of termination (unless the termination is for misconduct), including:

Severance/Retrenchment Compensation

Under the IDA, a workman who has completed at least one year of continuous employment, is entitled to "retrenchment" compensation equivalent to 15 days' average pay for every completed year of continuous service (or any part thereof in excess of six months).

Retrenchment is defined under the IDA as "the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action," but does not include:

- voluntary retirement of the workman; or
- retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and workman concerned contains a stipulation in that regard; or
- termination of the service of a workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry, or of such contract being terminated under a stipulation in that behalf contained therein; or
- termination of the service of a workman on the ground of continued ill-health.

Therefore, besides termination for misconduct and the categories specifically listed above, all other categories of termination of a workman are likely to qualify as "retrenchment", meaning the employer must follow the procedure prescribed under the IDA (including the payment of retrenchment compensation). Under the IDA, a workman is only entitled to notice and compensation if he has completed at least one year of continuous service with the employer.

Notice

Under the IDA, a workman who has completed at least one year of continuous service is entitled to written notice of at least one month, or payment of wages in lieu thereof.

Similar notice provisions are also included in the S&E Acts. In some states, the notice entitlement applies at the end of three months of continuous service. For instance, in Maharashtra, under the *Bombay Shops and Establishments Act, 1948*, an employee is entitled to notice of at least 14 days, or payment of wages in lieu thereof, if he has completed at least three months of continuous service with the employer, at the time of termination.

Gratuity

Under the Gratuity Act, an employee who has rendered continuous service of at least five years is entitled to gratuity, upon termination (without cause), resignation, retirement or superannuation. Gratuity is also payable at the time of death or disablement of an employee, in which case the five year eligibility requirement is not applicable. Gratuity is calculated at the rate of 15 days' wages (at the rate of the last drawn wages) for every completed year of service or part thereof in excess of six months, subject to a limit of INR 10,00,000 (Rupees Ten Lakhs, USD 14,877).

Accrued Leave Encashment

The employee would also be entitled to payment of wages for accrued and unused annual leave at the time of termination.

Unilateral Termination by Employer

India does not recognise the concept of employment at will. The termination of an employee's employment must therefore be for some reasonable cause. There are two kinds of termination that are recognised in India:

Termination with Notice

Under the IDA (as well as S&E Acts), an employee may be terminated for reasonable cause (other than misconduct), by way of notice or pay in lieu thereof. The IDA prescribes a written notice period of one month once an employee has completed at least one year of continuous service. Under the S&E Acts, notice periods range from 14 days to one month. For example, under the KSCEA, once an employee has completed at least six months of continuous employment, his/her employment may only be terminated with notice of at least one month, or pay in lieu thereof.

Termination for Misconduct

In the case of termination for misconduct, employers must follow due process. No employee may be terminated for misconduct without an internal disciplinary enquiry being conducted. The disciplinary process is required to be in compliance with the principles of justice, according to the accused employee a right to be heard, including right of cross-examination, where applicable. While this is not expressly provided for under any statute, it has evolved as a recognised principle, under various judgments.

Individual Labour Disputes

To appeal an employer's decision to terminate his or her employment, the employee would need to follow the procedure established under the IDA (for raising an industrial dispute, or a claim of unfair dismissal). The appropriate government (that is, the jurisdictional labour commissioner) has been given the power to refer industrial disputes for adjudication, to a board, labour court or tribunal (described in more detail below). Therefore, the employee would approach the labour commissioner with the claim, and the commissioner would file it before the appropriate court.

Gender and Age

Equal Pay

Article 39 of the Constitution of India envisages that the state should direct its policy towards ensuring equal pay for equal work for both men and women. The *Equal Remuneration Act, 1976* (ERA) was enacted to seek to fulfil the objectives of this provision. Under the ERA, the employer is required to pay equal remuneration to men and women workers for the same work or for work of a similar nature. The ERA also mandates that there cannot be a reduction in the pay of the worker in order to fulfil these requirements under law.

Pregnancy

There are legal protections in place for pregnant women prior to maternity leave. The *Maternity Benefit Act, 1961* (MBA), contains "light-work" provisions. These mean that a pregnant woman cannot be required to do any work which:

- is laborious in nature;
- involves long hours of standing;
- would likely interfere with her pregnancy or normal development of foetus; or

- is likely to cause miscarriage or adversely affect her health.

Whilst maternity leave can be availed only six weeks before the date of delivery, these light work protections can be availed for a total period of ten weeks before the expected date of delivery (provided the employee asks for it). To ensure female employees are aware of their right to ask for these protections, the employer is obliged to display the provisions of the MBA in the language or languages of the locality in a conspicuous place in every part of the establishment in which women are employed.

Maternity Leave

There is a legal minimum period of maternity leave for employees. Under the MBA, every woman who has carried out not less than 80 days of service in the 12 months immediately preceding the expected date of her delivery, is entitled to 12 weeks of maternity leave. Of these 12 weeks, not more than six weeks of leave may be granted before the delivery.

The employer and employee may enter into an agreement under which the employee takes additional leave (with or without pay) over and above the prescribed periods.

Maternity Pay

The MBA provides that women are entitled to statutory maternity pay, at the level of average pay for the period of her actual absence. In addition, women are entitled to receive a medical bonus of INR 3,500, if no prenatal confinement or postnatal care is provided by the employer free of charge.

Right to Return

The MBA provides that employees cannot be discharged or dismissed while on maternity leave, nor can there be any disadvantageous change to their conditions of employment. It is important to note however, that if dismissal is on account of any prescribed gross misconduct, a pregnant woman would be deprived of her maternity benefit.

New Parents

There are no laws in place to ensure freedom from discrimination as a new parent.

Paternal Leave

Indian law does not provide for paternal leave. However, the employer may provide for paternal leave, at his or her discretion. As a good practice measure, some organisations allow their employees paternity leave.

Childcare

In every factory where more than 30 women workers are employed, a suitable room for the use of children (under the age of six years) is required to be provided. The State Governments are also empowered to make rules for providing additional facilities in these rooms, including for washing, changing the clothes of children, provision of milk and other refreshments, and provision for mothers to feed the children at necessary intervals.

The MBA provides for two nursing breaks until the child attains the age of 15 months. The MBA does not mention the duration of the break, but rules made under the MBA by the Central Government and some State Governments have mentioned that each of the breaks shall be of 15 minutes. The rules provide that an “extra sufficient period” must be provided to the woman for reaching the crèche or the place where her child is kept by her while on duty, and for coming back to the place of duty, provided that the duration of each such break shall be extended by not less than five and not more than 15 minutes.

Sexual Harassment

The *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013* (the Sexual Harassment Act) contains provisions regulating, prohibiting and punishing sexual harassment of women (but not men) in the workplace. The Sexual Harassment Act further places an obligation on employers employing 10 or more employees, to constitute an

Internal Complaints Committee (ICC). The Sexual Harassment Act is applicable even to the unorganised sector and Local Complaints Committees are set up in every district to deal with complaints from organisations where there are less than 10 employees.

Minimum Working Age

Laws provide for a minimum working-age. Section 67 of the Factories Act prohibits employment of a child in a factory who is less than fourteen. Further, the AA provides that an individual cannot be an apprentice until s/he reaches 14 years of age.

The *Child Labour (Prohibition and Regulation) Act, 1986* (CLPRA) prohibits the employment of children (of up to 14 years of age) in industries considered to be hazardous. Hazardous industries include tobacco, stone crushing, catering, mining, skinning, dyeing, processes involving the manufacturing of leather and leather products and the cement industry.

The CLPRA provides that if a person employs any child or permits any child to work in any hazardous industry, this offence is punishable by imprisonment (for three months to one year) and/or a fine (of INR 10,000 to INR 20,000 – approximately USD 150 to USD 300).

Also, the Factories Act states that contravention is punishable with imprisonment for a term of up to two years and/or a fine of up to INR 100,000 (approximately USD 1,500).

Social Security/Healthcare

Clinics

Employees are not obliged to provide a clinic for their employees. However, under the Factories Act, every establishment is required to maintain first-aid boxes at the rate of not less than one box for every 150 workers.

There is no definitive data available on how many employers do in practice provide clinics. Based on anecdotal accounts, many large employers provide some form of access to clinics (e.g. a doctor may visit on certain days of the month or free health check-ups maybe organised).

Free Healthcare

There is no provision for free access to healthcare to be provided by the employer. However, the *Employee's State Insurance Act, 1948* (ESI) provides that where the establishment is registered with the State Insurance Corporation and regular contributions are paid, all employees (irrespective of the number of hours worked, or the temporary or permanent nature of their employment) are entitled to certain benefits. The ESI provides for:

- payments to an insured person in case of sickness;
- payments to an insured woman for pregnancy, miscarriage and related ailments;
- payments to an insured person for disablement as a result of employment;
- if an insured person dies as a result of employment injury, then compensation is given to the dependants of the insured;
- medical treatment and attendance on insured persons; and
- payment to the eldest surviving member of the family in the case of the death of an insured person, towards funeral expenses.

Social Security Payments

There are no social security benefits provided to supplement the cost of living for workers who do not receive a living wage. However, some social security measures do exist (albeit very limited), and are incorporated into the current social welfare legislations. Examples of these include workmen's compensation for workers that have suffered from injury in the workplace, and unemployment insurance under the ESI.

Some states have state-specific Social Security Schemes, such as Sevana Social Welfare Pension (active in the state of Kerala) and Rajiv Aarogyasri Community Health Insurance Scheme (active in the state of Andhra Pradesh). Additionally, some government programs do exist that provide for subsidised housing and food security for those that fall below the poverty line, but these are not worker specific.

Occupational Injury

There is a scheme for payment of compensation to those unable to work due to occupational injury. The *Workmen's Compensation Act, 1923* provides for the payment of compensation for injury caused by accident while in employment. Also, if an employee contracts an occupational disease while in employment, it is also treated as an injury caused by an accident.

Amount of compensation

- When the injury of the employee results in death: The amount of compensation payable is an amount equal to 50% of the monthly wages of the deceased multiplied by a figure ranging from 228.54 to 99.37 (depending upon the age of the deceased) or an amount of INR 120,000 (approximately UDS 1,780), whichever is higher.
- Where the injury of an employee results in his permanent total disablement: The amount of compensation he is entitled to receive is an amount equal to 60% of the monthly wages of the employee multiplied by a figure ranging from 228.54 to 99.37 (depending upon the age of the employee) or an amount of INR 140,000 (approximately USD 2,000), whichever is higher.

Health

Under the MBA, pregnant workers are entitled to a maternity benefit in the form of a medical bonus of one thousand rupees (USD 14.87) if no prenatal confinement or post-natal care is provided by the employer free of charge. This amount can be increased to a maximum limit of twenty thousand rupees (USD 297).

Retirement Pension/Social Insurance

There are contribution paid schemes for the benefit of the employee. The *Employees' Provident Funds and Miscellaneous Provisions Act, 1952* (the **EPF Act**) and the *Employee Provident Fund Scheme, 1952* provides that an employee who earns up to INR 15,000 (Rupees Fifteen Thousand Only) per month is eligible for mandatory provident fund contributions (the provident fund is a savings fund). The EPF Act requires an employer to contribute the following towards the provident fund account of each of its eligible employees:

- 12% of the basic wages.
- Dearness allowance: this is a cost of living adjustment allowance which is calculated using a person's salary to mitigate the impact of inflation; this amount is then added to the basic salary to get the total salary.
- Retaining allowance (if any): this is an amount which is paid to an employee to retain him during a period where no operations are taking place in the establishment; it may be an amount which is paid to an employee for his exceptional skills or talents, and is added to the basic salary to get the total salary.

Other Benefits

Certain private companies provide free or assisted insurance schemes for its employees.

Some of the most common employee benefits that are offered in India are Employees' Provident Fund (this is to be compulsorily provided), private provident funds, superannuation plans, pension plans, gratuity and wellness programmes.

Trade Union Rights

The formation of trade unions and industrial/labour disputes from part of the concurrent list (i.e. both the Union (parliament) and the State (legislature of States) have the power to legislate on

these matters). Set out below is a broad overview of legislation, although some of the specifics may vary between states.

All workers are entitled to join (or refuse to be a member of) a trade union. Whilst there are no specific exceptions to this, it is unusual for unions to be formed in certain trades (such as in IT). There are no restrictions on having more than one registered trade union in a workplace.

Under the *Indian Trade Unions Act, 1926* (the **Trade Unions Act**), all officers of a registered trade union must be persons actually engaged or employed in the establishment or industry with which the trade union is connected (except (i) not more than one-third of the total number of the officers, or (ii) five, whichever is less). No member of the Council of Ministers or any person holding an office of profit (which is not employment in the establishment/industry with which the trade union is connected) in India or the individual state, is allowed to be a member of the executive or other officer of a registered trade union.

Minimum Participation

Under Section 4 of the Trade Unions Act, a trade union can be registered:

- if seven or more members of a trade union (who are workmen engaged or employed in the establishment or industry with which it is connected), apply for registration; and
- the members of the trade union represent more than 10% of the workforce or 100 workmen, whichever is less, on the date of application for registration.

Additionally, certain states have legislations relating to trade unions, such as the *Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971* and the *Kerala Recognition of Trade Unions Act, 2010*, which have been implemented to recognise the role of trade unions in facilitating collective bargaining, and setting out their rights and obligations.

Protections Against Trade Union Discrimination

Employers are prohibited from engaging in certain acts that constitute “unfair labour practices” (as defined in Schedule 5 of the IDA). The prohibited activities include:

- interfering with, restraining or coercing employees in the exercise of their rights to (i) organise, form, join or assist a trade union and (ii) engage in activities for the purposes of collective bargaining or otherwise for mutual aid or protection;
- dominating, interfering with, or contributing support (financial or otherwise) to any union;
- establishing employer sponsored unions; and
- encouraging or discouraging membership in any union by discriminating against any employee.
- The punishment for engaging in unfair labour practices is⁵⁹:
- imprisonment of up to six months and/or a fine of up to INR 1,000 (approximately USD 15); and
- where the person committing the offence is a company/body corporate, or an association of persons (whether incorporated or not), every director, manager, secretary, agent or other officer or person concerned with the management thereof will be deemed to be guilty of such offence (unless he proves that the offence was committed without his knowledge or consent).⁶⁰

Other Forms of Worker Representation

Sections 3 and 9C of the IDA provide for the following representative bodies to be set up (whether a trade union exists or not):

Works Committee

Every industrial establishment (defined below) which employs 100 or more workmen in the preceding 12 months, may be required to constitute a “Works Committee” (by a general or special order issued by the appropriate government). The committee:

- must consist of an equal number of representatives from the employer and the workmen engaged in the establishment; and
- the representatives of the workmen must be chosen from among the workmen engaged in the establishment and in consultation with their trade union (if any).
- The objectives of the Works Committee are:
- to promote measures for securing and preserving good relations between the employer and workmen; and
- to comment upon matters in the common interest of the employer and employees, and to endeavour to reach a compromise in any material difference of opinion on such matters.

For these purposes, an “industrial establishment” is defined under the IDA to mean an establishment or undertaking in which any industry is carried out. Where however several activities are carried on in the same establishment or undertaking, and only some of such activities are industries, then:

- if a unit of the establishment which carries on an activity which is an industry is severable from the other unit or units, such unit shall be deemed to be a separate industrial establishment or undertaking; or
- if the predominant activity carried on in an establishment (or any unit thereof) is an industry, and the other activities carried on in such establishment are (i) not severable from this; and (ii) are carried out for the purposes of aiding the carrying on of the predominant activities, the entire establishment (or, as the case may be, unit thereof) shall be deemed to be an industrial establishment.

Grievance Redressal Committee (GRC):

Any industrial establishment employing at least 20 workmen is required to set up an internal GRC, for the resolution of disputes arising out of individual grievances. The GRC must be composed of a maximum of six members, with equal representation from the employer and the workmen.

The Right to Strike

Workers have the right to strike. However, this is a conditional right rather than an absolute right, and is subject to reasonable restrictions. This right to strike flows from the fundamental right to form a trade union contained in Article 19(1)(c) of the Constitution of India.

Limitations on Right to Strike

Employees employed in an industrial establishment may not go on strike in breach of contract at any of the following times⁶¹:

- while any conciliation proceedings before the Board of Conciliation (described in further detail below) remain undecided, and for seven days after the conclusion of such proceedings;
- while any proceedings before a Labour Court, Tribunal or National Tribunal (each described in further detail below) remain undecided, and for two months after the conclusion of such proceedings;
- while any arbitration proceedings before an arbitrator remain undecided, and for two months after the conclusion of such proceedings (where a notification has been issued by the appropriate government pursuant to which employers and workmen who are not parties to the arbitration, but are concerned in the dispute, are given an opportunity to present their case before the arbitrators); or
- during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award.

Employees employed in a public utility service may not go on strike:⁶²

- a. without giving the employer six weeks’ notice of the strike (as prescribed); or
- b. within 14 days of giving the notice under (a); or

- c. before the expiry of the date of the strike specified in any notice given to the employer under (a); or
- d. while any conciliation proceedings before a conciliation officer remain undecided, and for seven days after the conclusion of such proceedings.

A strike would be considered illegal in the following circumstances:⁶³

- it is commenced or declared in contravention of Sections 22 or 23 of the IDA (see above); or
- it is continued in contravention of an order made by the appropriate government prohibiting the continuance of any strike in connection with an industrial dispute;
- it has been referred to a Board, Labour Court, Tribunal or National Tribunal; or
- it has been referred for arbitration (for which a notification has been issued by the appropriate government pursuant to which employers and workmen who are not parties to the arbitration, but are concerned in the dispute, are given an opportunity to present their case before the arbitrators).

Acting in contravention of the above rules may lead to the following punishment:

- Any workman who commences, continues or otherwise acts in furtherance of a strike which is illegal under the IDA may be punished with imprisonment of up to one month, and/or with fine of up to INR 50 (USD 0.74).⁶⁴
- Any person who instigates or incites another to take part in or otherwise act in furtherance of a strike which is illegal under the IDA, may be punished with imprisonment of up to six months, and/or with fine of up to INR 1,000.⁶⁵
- Any person who knowingly expends or applies any money in direct furtherance or support of any illegal strike may be punished with imprisonment of up to six months and/or with a fine which may extend to INR 1,000. (approximately USD 15)⁶⁶

Collective Bargaining

If an employer refuses to bargain collectively (in good faith) with the recognised trade unions, this is considered an unfair labour practice under the IDA. Any establishment that commits an unfair labour practice can be punished:

- with imprisonment of up to six months, and/or with a fine of up to INR 1,000 (approximately USD 15); or
- where an offence under the IDA is committed by a company/body corporate, or an association of persons (whether incorporated or not), every director, manager, secretary, agent or other officer or person concerned with the management thereof will, be deemed to be guilty of such offence, unless he proves that the offence was committed without his knowledge or consent.

Recognition of Trade Unions

Recognition of trade unions is generally a matter of agreement between the employer and the trade union. In this process, employers will usually accept trade unions which are representative, and which they are therefore prepared to engage with on matters concerning the interests of employees. In certain states (like Maharashtra and Kerala) there are specific legal provisions for recognition of trade unions.

Recognition of trade unions relating to industrial establishments is regulated under (i) a voluntary code (the Code of Discipline, the **Code**) and (ii) the “Criteria for Recognition of Unions” which are appended to the Code, and have been adopted by the Standing Labour Committee⁶⁷ and subsequently ratified by the representatives of Employers and Central Trade Union Organisation⁶⁸. The Code is a set of guidelines mutually and voluntarily accepted to maintain discipline in industries in both the public and private sectors. The Code states that management should agree to recognise a trade union in accordance with the criteria stated in the Code.

The Ministry of Labour & Employment, Government of India, issued an office memorandum⁶⁹ stating that the membership of trade unions in any establishment may be verified by either the “check off” or “secret ballot” system:

- A “check off” system is where each individual worker authorises management in writing to deduct union fees from his wages, and credit it to the chosen union. This gives management concrete evidence on the strength of the unions.
- A “secret ballot” system is a system of voting secretly, under which all workers who are employed on a particular date are allowed to cast their votes in favour of one union through a secret ballot.

Enforcement/Implementation Mechanisms

Disputes

Under the IDA, an employee may refer an “industrial dispute” (defined to include any difference between the employers and employees in connection with employment or non-employment, or the terms of employment or conditions of labour) for adjudication before various authorities, details of which are provided below:

Works Committee

Works Committees are more fully described above. Such committees are under a duty to promote measures to (i) secure and preserve good relations between the employer and employees and (ii) to comment upon matters in the common interest of the employer and employees, and to endeavour to reach a compromise where there is a material difference of opinion.

Conciliation Officers

The appropriate government has the power to appoint conciliation officers, who can mediate in, and promote the settlement of, industrial disputes. The officers have the power to (i) investigate industrial disputes, (ii) investigate all matters affecting the merits and rights to a settlement, and (iii) do all such things as the officer thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

Board of Conciliation

The appropriate government has the power to constitute a Board of Conciliation (a **Board**), which will promote the settlement of an industrial dispute. A Board may consist of a chairman and two or four other members. The Board has the power to (i) investigate industrial disputes, (ii) investigate all matters affecting the merits and rights to a settlement, and (iii) do all such things as the officer thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

Courts of Inquiry

The appropriate Government has the power to constitute a Court of Inquiry (a **Court**) for inquiring into any matter appearing to be connected with or relevant to an industrial dispute. A Court may consist of 1 (one) independent person or such number of independent persons as the appropriate Government may deem fit.

Labour Courts

The appropriate Government has the power to appoint one or more labour courts (a **Labour Court**) consisting of one person only, for the adjudication of industrial disputes relating to matters such as:

- the discharge or dismissal of workmen, including the re-instatement of, or granting of relief to, workmen wrongfully dismissed;
- the illegality or otherwise of a strike; and
- the withdrawal of any customary concessions or privileges.

Industrial Tribunals and/or National Tribunals

The appropriate government has the power to constitute one or more industrial tribunals (a **Tribunal**) for the adjudication of industrial disputes relating to any matter. A Tribunal will consist of one person only, to be appointed by the appropriate government.

The Central Government has the power to constitute one or more national industrial tribunals (a **National Tribunal**) for the adjudication of industrial disputes which, in the opinion of the Central Government, involve questions of national importance or are of such a nature that industrial establishments situated in more than one state are likely to be interested in, or affected by, such disputes. A National Tribunal will consist of one person only, to be appointed by the Central Government.

Every Board, Court, Labour Court, Tribunal and National Tribunal has the same powers as are vested in a civil court when trying a suit, in respect of the following matters:

- enforcing the attendance of any person and examining him on oath;
- compelling the production of documents and material objects;
- issuing commissions for the examination of witnesses; and
- in respect of such other matters as may be prescribed.

In the event an employer and the employees agree to refer an industrial dispute to arbitration, they may, before this is referred to any authority, refer such dispute to arbitration in accordance with the provisions of the IDA.

Victimisation

Under the IDA, discharging and dismissing employees by way of victimisation is considered an unfair labour practice. This will therefore attract all the protections and consequences described above (under the "Trade Unions" section).

Further, courts in India have been pro-active in ensuring that the rights and remedies available to employees against any unlawful and/or discriminatory treatment by the employer, are upheld.

Sanctions

Civil and criminal sanctions pertaining to labour related matters are prescribed under different statutes, including:

- Factories Act;
- MWA;
- MBA; and
- IDA. While the statutes prescribe sanctions for certain specific actions/non-compliance, set out below are a number of the more generic sanctions:
- The Factories Act stipulates that any contravention of its provisions is punishable by imprisonment of up to two years, and/or a fine of up to INR 100,000 (approximately USD 1,500).
- The MWA stipulates that if an employer pays an employee less than the minimum wage, the employer may be punished with imprisonment of up to six months, and/or a fine of up to INR 500 (approximately USD 7.50).
- The MBA stipulates that if any employer fails to pay any maternity benefit to a woman entitled under this statute, or discharges or dismisses such woman, the employer may be punished with imprisonment of between three months and one year, and with a fine of between INR 2,000 (approximately USD 30) and INR 5,000 (approximately USD 75).

The IDA stipulates:

- Any person who commits any unfair labour practice may be punished with imprisonment of up to six months, and/or a fine of up to INR 1,000 (approximately USD 15);
- Any employer who acts in furtherance of a lockout (which is illegal under this statute) will be punished with imprisonment of up to one month and/or with fine of up to INR 1,000 (approximately USD 15).
- Any person who knowingly expends or applies any money in support of any illegal strike or lockout will be punished with imprisonment of up to six months and/or with fine of up to INR 1,000 (approximately USD 15).

- Any person who breaches any term of any settlement or award, which is binding on him under this statute, will be punished with imprisonment of up to six months, and/or with a fine.
- Any person who wilfully discloses any information obtained by a conciliation officer, Board, Court, Labour Court, Tribunal, National Tribunal or an arbitrator in the course of any investigation as to a trade union or as to any individual business (whether carried on by a person, firm or company) will, on a complaint being made, be punished with imprisonment for up to six months and/or with fine of up to INR 1,000 (approximately USD 15).

Enforcement in Practice

Violations of labour rights by employers are not always brought to light. Under the Factories Act, when carrying out inspections, the Inspector of Factories should make note of any violations and serve a copy of this report to the occupier of the factory. The Inspector of Factories will also maintain a record of complaints filed by employees.

It is not uncommon for an employee/trade union to take up a dispute with an employer on labour-law related issues. However, only around 30% of such disputes reach the courts, whilst the majority are settled out of court.

Impact on Compliance

The courts have ensured the enforcement of labour laws in India, and have protected the rights of both the employers and employees. While the general approach has always been pro-employee (on the basis that employers may have a “high-handedness” when it comes to labour related matters), the courts have also opined that all issues raised by employees against employers cannot be taken on face value.⁷⁰

In practice, sanctions imposed for violation of labour laws have had a deterrent effect, compelling employers to comply with the prescribed laws.

Incentives

There are no other incentives provided to businesses under the law to maintain a high quality of treatment to their employees.

Realistic Opportunities for Reform

The current national government of India has proposed the following reforms in the area of rights for employees:

- The *Draft Factories (Amendment) Act 2015* imposes restrictions on the employment of pregnant women and disabled persons. It has also introduced new requirements for workers’ safety, such as supplying protective equipment and clothing to workers exposed to hazards, and implementing safeguards for the operation of hazardous processes.
- The *Child Labour (Prohibition and Regulation) Amendment Bill* seeks to completely ban child labour, making it a crime to employ children under the age of 14, or to employ those aged 14 to 18 years old in hazardous industries.
- The draft *Labour Code on Industrial Relations Bill, 2015*, which is formulated to consolidate and amend the laws relating to registration of trade unions, conditions of employment, investigation and settlement of disputes, and matters related incidental thereto, is currently before the parliament.

Exceptions to Labour Laws

The Government of New Delhi has exempted certain Special Economic Zones (**SEZ**) from compliance with several labour laws, and there is a ban on formation of trade unions. In practice though, labour laws are not compulsorily enforced in any of the SEZ units in the country.

Living Wage Considerations

The government of India is presently in the process of amending the MWA in order to address the problems of labour and contract workers. The objective is to have a standard minimum wage rate for all occupations. The amendment also proposes that payments be made through banking channels.

Enforcement of Workers' Rights in Practice

The IDA provides for various authorities to be put in place to ensure the enforcement of labour standards and resolve industrial disputes. These include authorities such as the Labour Court, Tribunals and National Tribunals (more fully described above).

However, given the superior position of employers in most situations, workers may not always proceed to enforce their legal rights, the primary reason being fear of loss of job.

To a great extent, the trade unions do adequately represent the rights of the employees.

Migrant Workers

Migrant workers are entitled to the same rights and benefits as regular workers. There is no discrimination made on the basis of a worker being a migrant. Further, the *Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979*, prescribes adequate protections in this regard.

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- ¹ World Bank, 2017. *India: Overview*. Available at: <https://www.worldbank.org/en/country/india/overview>
 - ² IBEF, 2017. *About Indian Economy Growth Rates and Statistics*. Available at: <http://www.ibef.org/economy/indian-economy-overview>
 - ³ *ibid.*
 - ⁴ World Bank, 2017. *India: Overview*.
 - ⁵ *ibid.*
 - ⁶ *ibid.*
 - ⁷ USAid, 2017. *India: Health*, Available at: <https://www.usaid.gov/india/health>
 - ⁸ *ibid.*
 - ⁹ World Bank, 2017. *India: Overview*.
 - ¹⁰ Gupta, A., 2013. *Education Status Report – Tamil Nadu: Elementary Education*, Catalyst Management Services; Centre for Education Innovations, p5. Available at: <http://www.educationinnovations.org/sites/default/files/India%20-%20State%20Education%20Report%20-%20Tamilnadu.pdf>
 - ¹¹ *ibid.* p7.
 - ¹² World Bank, 2017. *India: Overview*.
 - ¹³ Anand, R., Kochhar, K., Mishra, S., 2005. *The Impact on India of Trade Liberalization in the Textiles and Clothing Sector*, IMF, p3. Available at: <http://www.imf.org/external/pubs/ft/wp/2005/wp05214.pdf> p3
 - ¹⁴ *ibid.* p8.
 - ¹⁵ Society for Labour and Development, Asia Floor Wage Alliance, September 2013. *Wage Structures in the Indian Garment Industry*, p24. Available at: <http://asia.floorwage.org/resources/wage-reports/wage-structures-in-the-indian-garment-industry>
 - ¹⁶ ILO, 2015. *Insights into Working Conditions in India's Garment Industry*, p1. Available at: http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_379775.pdf
 - ¹⁷ Society for Labour and Development, Asia Floor Wage Alliance, September 2013. *Wage Structures in the Indian Garment Industry*, p8.
 - ¹⁸ Fair Labor Association, 2016. *Toward Fair Compensation in Global Supply Chains: Factory Pay Assessments in 21 Countries*. Available at: <http://www.fairlabor.org/report/toward-fair-compensation-global-supply-chains-factory-pay-assessments-21-countries>
 - ¹⁹ Asia Floor Wage Alliance, Society for Labour and Development, *Wage Structure in the Indian Garment Industry*, p37.
 - ²⁰ Mezzadri, A., Srivastava, R., 2015. *Labour Regimes in the Indian Garment Sector: Capital-Labour Relations, Social Reproduction and Labour Standards in the National Capital Region*, Centre for Development Policy and Research, p126. Available at: <https://www.soas.ac.uk/cdpr/publications/reports/file106927.pdf>
 - ²¹ Asia Floor Wage Alliance, Society for Labour and Development, *Wage Structure in the Indian Garment Industry*, p4.
 - ²² FIDH, 2014. *Behind the Showroom: The Hidden Reality of India's Garment Workers*, p12. Available at: https://www.fidh.org/IMG/pdf/india_garment_workers_report_2014.pdf
 - ²³ ILO, 2015. *Insights into Working Conditions in India's Garment Industry*, p39. Available at: http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_379775.pdf
 - ²⁴ *ibid.* p30.
 - ²⁵ *ibid.* p39-40.

- ²⁶ *ibid.* p20.
- ²⁷ *ibid.* p18.
- ²⁸ *ibid.* p21.
- ²⁹ FIDH, 2014. *Behind the Showroom: The Hidden Reality of India's Garment Workers*, p18.
- ³⁰ ILO, 2015. *Insights into Working Conditions in India's Garment Industry*, p24.
- ³¹ *ibid.* p29.
- ³² FIDH, 2014. *Behind the Showroom: The Hidden Reality of India's Garment Workers*, p19.
- ³³ *ibid.* p30.
- ³⁴ *ibid.* p14.
- ³⁵ Transparency International, 2015. *Corruption Perceptions Index 2015*. Available at: www.transparency.org/cpi2015
- ³⁶ *ibid.* p34.
- ³⁷ *ibid.* p14.
- ³⁸ Human Rights Watch, 2016. *World Report 2016: Events of 2015*, p298-305. Available at: https://www.hrw.org/sites/default/files/world_report_download/wr2016_web.pdf
- ³⁹ ITUC, 2015. *The 2015 ITUC Global Rights Index: The World's Worst Countries for Workers*. Available at: http://www.ituc-csi.org/IMG/pdf/survey_global_rights_index_2015_en.pdf
- ⁴⁰ FIDH, 2014. *Behind the Showroom: The Hidden Reality of India's Garment Workers*, p15.
- ⁴¹ ILO, 2015. *Insights into Working Conditions in India's Garment Industry*, p31.
- ⁴² FIDH, 2014. *Behind the Showroom: The Hidden Reality of India's Garment Workers*, p16.
- ⁴³ *ibid.* p15.
- ⁴⁴ ILO, 2015. *Insights into Working Conditions in India's Garment Industry*, p31.
- ⁴⁵ Paycheck, 2017. *Minimum Wage India 2017 – Current Minimum Wage Rate India*. Available at: <http://www.paycheck.in/main/salary/minimumwages>
- ⁴⁶ Approximate USD conversion rates as of September 2016.
- ⁴⁷ For example, the State of Tamil Nadu has exempted the application of a provision relating to maintenance of records to the employees involved in building operations. However, no specific reason for this was found in the notification.
- ⁴⁸ India has a robust public distribution system, where essential commodities are available at concessional rates.
- ⁴⁹ Section 5 of the MWA.
- ⁵⁰ Section 9 of the MWA.
- ⁵¹ Section 5 of the MWA.
- ⁵² For example, the state law for Karnataka provides that working hours must not exceed 48 hours per week.
- ⁵³ In the below cases, the court has not necessarily drawn from statutory law but has used common law principles to give a ruling in favour of the employee, and upheld the duty of care of the employer: *Mackinnon Mackenzie and Co. (P) Ltd. v. Ibrahim Mohd. Issak (1969) 2 SCC 607*: the Hon'ble Supreme Court held that an employee has the right to compensation for any personal injury suffered in the course of employment. *Balwant Rai Saluja v. Air India (2014) 9 SCC 407*: the Hon'ble Supreme Court held that an employer who has direct supervision and control over its employees is responsible for maintaining their conditions of employment and paying any compensation. The Court elucidated the different criteria to decide on the concept of "direct control and supervision": the employer (i) pays the salary to the employee instead of the contractor; (ii) controls and supervises the work of the employees; (iii) has a role in the selection and appointment of the employees, and (iv) acts as a disciplinary authority over the conduct and discipline of the employees. *M. Venkateshwarlu v. Andhra Pradesh State Transport Corporation, Writ Petition Number 40935 of 2015*: the Andhra High Court held that a driver who had suffered an injury leading to disability could not be posted to a job of lesser status. If his disability prevented him from taking up a job of the same status as his previous one, he must be given pay protection (i.e. he must have the right to draw his previous salary even while working in a lower position).
- ⁵⁴ The definition includes factories, railways, tramway services, motor transport services, air transport services, docks, wharves, jetties, inland vessels, mines, quarries, oilfields, plantations, workshops or other establishments in which articles are produced, adapted or manufactured, with a view to their use, transport or sale. It further includes any establishment (i) relating to the construction, development or maintenance of buildings, roads, bridges or canals, or (ii) relating to operations connected with navigation, irrigation or the supply of water, or (iii) relating to the generation, transmission and distribution of electricity or any other form of power, and (iv) any other establishment notified by the government.
- ⁵⁵ The IDA is a comprehensive legislation that provides for the investigation and settlement of employment disputes and for other purposes such as termination indemnities, etc.
- ⁵⁶ The IDA applies to a certain category of employees known as "workmen". "Workman" is defined in the IDA as "any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward". It specifically excludes: (i) any person who is employed mainly in a managerial or administrative capacity; or (ii) who, being employed in a supervisory capacity, draws wages exceeding INR 10,000 per month, or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature. Courts of law have interpreted the definition broadly to include most categories of employees, irrespective of the salary or wages drawn by them, except the specific exemptions provided above. The test for determining whether an employee is a "workman" is the substantial nature of the work done by the employee.
- ⁵⁷ The Gratuity Act is applicable to all factories. It is also applicable to all commercial establishments in which 10 or more persons are employed or were employed on any day of the preceding 12 months. Employee under the Gratuity Act means "any person (other than an apprentice) who is employed for wages, whether the terms of such

employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies”.

⁵⁸ The PF Act is applicable to every factory engaged in any industry specified in Schedule I (which includes textiles) and in which 20 or more persons are employed, and to any other establishment employing 20 or more persons. Employee under the PF Act means “any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment and who gets his wages directly or indirectly from the employer, and includes any person employed by or through a contractor (or agency) in or in connection with the work of an establishment, and any person engaged as an apprentice, not being an apprentice engaged under the *Apprentices Act, 1961*, or under the standing orders of the establishment”. However, note that the provident fund scheme only applies to employees earning up to INR 15,000 per month. However, as common practice, most employees (even if they are earning more than the above threshold) provide provident fund contributions under the PF Act.

⁵⁹ Section 25U of the IDA.

⁶⁰ Section 32 of the IDA.

⁶¹ Section 23 of the IDA.

⁶² Section 22 of the IDA.

⁶³ Section 24 of the IDA.

⁶⁴ Section 26 of the IDA.

⁶⁵ Section 27 of the IDA.

⁶⁶ Section 28 of the IDA.

⁶⁷ In its 16th Session in 1957.

⁶⁸ At the 16th Session of the Indian Labour Conference, held in 1958.

⁶⁹ Dated 8 April 2011.

⁷⁰ For example, in the case of *People’s Union for Democratic Rights v. Union of India (1982) 3 SCC 235 and others*, the Hon’ble Supreme Court of India has held that violations of labour laws must be strictly followed, and appropriate and adequate punishment must be imposed upon the accused. It was further observed by the court that labour laws are enacted for improving the conditions of the workers, and employers cannot be allowed to buy off immunity against violations of labour laws. This was a case where the act of the employer was categorised as carrying out an “unfair labour practice”, and a punishment of simple imprisonment for a period of six months and fine of INR 1,000 was imposed.

INDONESIA

Indonesia is the largest economy in Southeast Asia. In recent years, the country's gross national income per capita has steadily risen, from USD 560 in 2000 to USD 3,374 in 2015. Indonesia is the world's fourth most populous nation, the 10th largest economy in terms of purchasing power parity and a member of the G-20.¹

An emerging middle-income country, Indonesia has made enormous gains in poverty reduction, cutting the poverty rate by more than half since 1999 to 11.2% in 2015.² However the decline in poverty has slowed considerably in recent years; more than 28 million Indonesians still live below the poverty line and 40% remain vulnerable to poverty. Unemployment remains a significant problem, and a barrier to tackling poverty, with population growth now faster than the growth in employment.³ Indonesia is also one of the most unequal countries in the region; between 2002 and 2013, income inequality increased by 24%.⁴ Women continue to have less access to education, employment, and services.⁵

Access to health and education services is uneven, with significant regional, urban/rural and gender disparities. Large sections of the population, particularly in rural areas, have no access to safe drinking water or sanitation.⁶

The textile and clothing industry accounted for nearly 2% of national GDP and more than 7% of Indonesia's total exports in 2013. The industry is concentrated near Jakarta in the western end of Java, but central and eastern Java are becoming more important garment and textile production centres.⁷ The main export markets for Indonesian textiles and clothing are North America and other parts of East Asia and the Pacific.⁸

As of 2015, 2.2 million people worked in the garment sector, out of an estimated entire labour force of 125.3 million people.⁹ A survey carried out by ILO's Better Work Indonesia found that, within factories participating in their programme, 86% to 88% were female, which they stated "reflected the gender composition commonly observed in apparel factories".¹⁰

However, the industry has been struggling in recent years. As of October 2015, the GDP of the sector has contracted by 6.1% compared to the same period the previous year and Indonesia's apparel shipment fell by 10.9% from 2014.¹¹ In September 2015, the jobs of around 36,000 textile and garment employees were under threat, adding to the 45,000 workers who the Confederation of All Indonesia Workers' Union (KSPSI) said had already been let go from factories¹².



Source	Statistic	Result	Year calculated
World Bank	Population	257.6 million	2015
World Bank	GDP in USD	861.9 billion	2015
World Bank	GDP growth	4.8%	2015
World Bank	Inflation	6.4%	2015
World Bank	Life expectancy	68.8	2014
World Bank	Infant Mortality (per 1000 live births)	23	2015
Transparency Int.	Corruption Index –Score –Rank	37/100 90/168	2016
IFPRI	Global Hunger Index	22.1 (serious)	2015
UNDP	Human Development Index	0.689 (medium)	2015
UNDP	Expected years of schooling	12.7	2012
Wage Indicator	Minimum Wage– lowest per month (IDR)	1,337,645	2017
Wage Indicator	Minimum Wage– highest per month (IDR)	3,355,750	2017
Fair Wage Network	Living wage – per family of 2 adults and 2 children (IDR)	6,108,817	2016

Wages and Working Conditions

The minimum wage is fixed at the district level, ranging from USD 130 to USD 200 per month. The Wage Indicator Foundation estimates that the lowest estimate of a living wage for an individual in Indonesia is double the current minimum wage for garment workers.¹³ The Asia Floor Wage for Indonesia is set at around USD 360 per month.¹⁴

“Each month I am paid a wage including overtime of IDR 1,541,000 (USD 171) whereas my routine expenditure each month is IDR 1,747,500 (194 USD). Nearly every month I go into debt by IDR 206,500 (23 USD) even though I limit what I spend by decreasing the quality and quantity of things which we need as a family.” – Factory worker (2011).¹⁵

Failure to pay even this minimum is a problem in many factories, particularly those using second and third tier subcontractors, where workers are hired on a daily basis.¹⁶ The ILO claims that 39.1% of workers are paid below the minimum wage in the Indonesian garment sector,¹⁷ that is, 41.1% of women and 36.5% of men.¹⁸ They also found that 43% of workers complained of late payment of wages and 38% were concerned by excessive pay deductions.¹⁹

Judges at a People’s Tribunal into wages in the garment sector, which was organised by the Asia Floor Wage and held in Jakarta in 2014, found overwhelming evidence of “systematic violation of the fundamental right to a life lived with human dignity”, as a result of the payment of low wages to Indonesia’s garment workers.²⁰

Indonesian labour law states that 40 hours is the standard working week, and overtime cannot exceed three hours per day or 14 hours per week. However, 10-40 hours a week is the norm.

Workers said they had to work overtime, as the minimum wage does not cover basic living costs and because they risked being sacked if they refused overtime.²¹ Workers also reported that those who fail to meet production targets were sometimes subjected to mental and physical abuse.

*“A recent incident [...] involved 40 workers being locked in an unventilated room without access to toilet facilities, water and food for over three hours as a punishment for failing to reach their production targets. Researchers were told that this type of behaviour was used by management to ensure workers met their targets in the future, and that sometimes an entire production line would be locked in the room for failing to meet targets”.*²²

The use of temporary and short term contracts is increasing in the industry across all positions and at all levels of responsibility, along with the use of labour agents. Contract and agency workers are more likely than permanent workers to be exploited by management, to suffer from lower wages, forced overtime, intimidation and higher production targets.²³ During peak seasons, factories recruit permanent staff, but often fire them at the end of the three-month probationary period, since during this probationary period employers are not required to pay minimum wages or social security provisions. Many workers employed through private agencies are denied a number of entitlements, including holiday pay, written contracts, sick pay or termination pay at the end of the employment period²⁴.

Workers also report concerns with work-related health problems, including fatigue, dehydration and back pain, occupational safety, abusive treatment and sexual harassment, all of which have been identified as increasing concerns by the ILO Better Work programme.²⁵

Political Freedom and Rule of Law

President Joko Widodo came to power in 2014 with promises to improve human rights. His record however, has not been good, with harassment of religious minorities, discriminatory laws against women and LGBTQIA people, the failure to release large numbers of political prisoners and widespread implementation of the death penalty for convicted drug traffickers all severely marring his record.²⁶

Indonesia still suffers widespread corruption, including bribery of the judiciary and corruption within the public sector.²⁷ Following the establishment of its Corruption Eradication Commission (KPK) in 2002, Indonesia improved 19 places to 88th in Transparency International's 2015 Corruption Perception Index, up from 107th in 2014, although its rise in the ranking can also be partly attributed to the increase in corruption in other countries.²⁸ KPK members are appointed by parliament and approved by the president, but are accountable to the public. Attempts to curb their power have faced significant popular resistance.²⁹ New attempts are underway to strip the KPK of its power of arrest, which it holds independently from the police. These changes are being opposed by civil society groups.³⁰ There is also a belief that the de-centralisation of government since 2000 has increased corruption levels.³¹

Ineffective enforcement of laws and judgments remains a big problem in Indonesia. The justice system is considered to be lacking in impartiality. According to the World Justice Project (**WJP**), Indonesia ranks 7th out of 15 East Asia and Pacific countries in regard to constraints on government powers.³² Although impunity has improved between 2014 and 2015, the WJP states that it remains “an area in need of attention”.³³

Freedom of association is provided for by law, which also prohibits anti-union discrimination, and provides for collective bargaining. Approximately 11,000 enterprise agreements (**CLAs**) have been signed across all industries nation-wide. These CLAs are overwhelmingly in large enterprises with union membership, and rarely found in medium, small, or micro-enterprises.³⁴ It is therefore unlikely that many CLAs apply to the garment industry, where union membership is low. Even where they do exist, these agreements largely restate the law and rarely cover wages or other monetary benefits, although they are known to include exemptions from prevailing minimum wage rates.³⁵

In practice workers face significant barriers to forming and joining trade unions and these appear to be worsening. Indonesia has dropped from level four (systematic violation of rights) in 2015 to level five (no guarantee of rights) in the ITUC's 2016 Global Rights Index.³⁶ The ITUC cite numerous examples of violations of union rights including workers being assaulted and injured by police during a peaceful protest in October 2015 against a new wage regulation and then being named as suspects and facing legal action; police harassment and intimidation of

unionists, and police violence and arrests at protests against minimum wage reforms in November 2015.³⁷

Numerous bureaucratic barriers to both organising and collective bargaining also prevent workers from easily joining unions or negotiating for better workplace rights. This includes the government's power to refuse official registration on arbitrary, unjustified or ambiguous grounds;³⁸ restrictions on trade unions' right to establish branches, federations and confederations, or to affiliate with national and international organisations;³⁹ the requirement to get prior approval from authorities in order to bargain collectively, and the imposition of fixed and unreasonable procedural requirements (e.g. short time limits for reaching an agreement).

The Indonesia sportswear industry does have a Freedom of Association Protocol, the first multi-stakeholder agreement on union rights. Signed in 2011 between unions, employers and multinational brands, the protocol provides a practical set of guidelines on how to uphold and respect workers' rights.⁴⁰ The agreement also includes articles on non-victimisation of trade union officers and members, and a non-intervention pledge on the part of employers into trade union activities, and provides a detailed overview of the rights workers and unions are entitled to, including the right to have an on-site union office, to publicise materials and to access workers.⁴¹

Legal Section

Wages

Minimum Wage

Minimum wages apply in Indonesia. The law requires the Government of Indonesia to regulate the minimum wage based on what is needed for adequate life, taking into account economic productivity and growth.⁴²

Minimum Wage Levels

Minimum wages are calculated by reference to the following categories:

- provinces;
- regencies/cities;
- sectors⁴³ in such provinces;
- sectors in such regencies/cities.

The calculation of the monthly minimum wage is based on the day-to-day components required to live adequately as a single unmarried person in a certain province/regency/city and on the relevant sector in such province/regency/city. Economic growth is also considered in calculating the minimum wage⁴⁴. Minimum wages between provinces/regencies or between sectors may therefore vary.

The list of Provincial Minimum Wages of the Republic of Indonesia as of 2016 is set out in Annex 1 hereto. The lowest current monthly minimum wage is IDR 1,425,000 (approximately USD 109) in East Nusa Tenggara, and the highest is IDR 3,100,000 (approximately USD 238) in DKI Jakarta. The second highest is IDR 2,435,000 (approximately USD 186) in Papua.

Minimum Wage Grades

Subject to the exceptions noted in the “Minimum Wage Exceptions” section below, the minimum wage is applied to employees of all ages. There are no specific requirements as to the number of hours per day that must be worked in order for an employee to benefit from the minimum wage. Minimum working hours are usually regulated in employment contracts, corporate regulations or collective working agreements, subject to a maximum of 40 hours per week.⁴⁵

If an employee works for less than one month or less than 40 hours in total, then the requirement to pay the minimum wage does not apply. However, if the period of part-time work exceeds one month, the minimum wage must be complied with on a pro rata basis.

Minimum Wage Exceptions

- Companies which are unable to pay the minimum wage may apply for “postponement” from the local government.⁴⁶ Postponement⁴⁷ exempts a company from having to pay the minimum wage for a specified period of up to 12 months, subject to the approval of the governor and the consent of the workers.⁴⁸
- There is no requirement for companies to pay apprentices the minimum wage.⁴⁹ However, apprentices are entitled to receive “pocket money” and travel expenses.
- Domestic workers who reside with their employer are entitled to a specific domestic worker minimum wage, which varies based on the provincial regulation of where the domestic worker works.⁵⁰

Basic/Additional Amounts

The minimum wage is a basic rate salary, which may include or exclude additional fixed subsidies/support as a component.⁵¹ Fixed subsidies/support are those benefits which are paid or afforded to employees regularly and which are not linked to the employee’s presence or performance at work. This can include housing, transport and/or food if regularly received by employees each month. If, however, the employee is only afforded such a benefit on working

days, this cannot be included as a component of the minimum wage. The value of fixed subsidies/support and its inclusion as a component of the minimum wage also depends on the individual employment contract, corporate regulation or collective working agreement.

Minimum Wage Review

The minimum wage is reviewed once a year.⁵² The determination as to what is required to live adequately is made and reviewed by the Minister of Manpower and Transportation based on the research/report conducted by the National Wages Council.⁵³ The calculation of the minimum wage is then made according to the following formula:⁵⁴

- $UM_n = UM_t + \{UM_t \times (\text{Inflation}_t + \% \Delta \text{PDB}_t)\}$
- *UM_n*: determined minimum wage.
- *UM_t*: current minimum wage.
- *Inflation*: inflation from the previous September to the following September.
- ΔPDB_t : growth of GDP calculated from the third and fourth quarter of the previous year and the first and second quarter of the current year.

Payment of Wages

The payment of wages is agreed between the employer and the employee in the relevant employment contract, corporate regulation or collective working agreement.

Employers are legally required to provide a wage slip detailing the wage received by the employee.⁵⁵

Deductions from Wages

Employers may make deductions from wages, subject to a maximum deduction of 50% of the total wage received by the employee. Deductions are permitted only in the following instances:⁵⁶

- to satisfy fines (provided the grounds and amount are expressly regulated in the relevant employment contract, corporate regulation or collective working agreement);
- as compensation for damage to the employer's goods and equipment;
- to satisfy amounts owed to a third party if the employee has given a specific power of attorney to this effect;
- where wages have been prepaid;
- to satisfy rent of a house or other property by the employer to the employee;⁵⁷
- to satisfy repayment of a loan from the employer to the employee; and/or
- where the wage has been overpaid.

Sickness and Sick Pay

In the case of sickness,⁵⁸ employers may make deductions from an employee's wages after certain specified periods of time.⁵⁹

- 0% of wage in the first four months of sickness;
- 25% of wage in the second four months of sickness;
- 50% of wage in the third four months of sickness;
- thereafter, 75%.
- Following 12 months' consecutive sickness, an employer may terminate the employee's employment.

Working Hours

Normal Working Time

Normal working time must not exceed:

- seven hours per day and 40 hours per week if six days per week are worked; or
- eight hours per day and 40 hours per week if five days per week are worked.⁶⁰

Overtime

Overtime working hours must not exceed three hours per day and 14 hours per week.⁶¹

Overtime must be ordered in writing by the employer and consented to in writing by the employee. The employer is obliged to keep a list of overtime work completed, including details of the employees and hours worked.⁶²

Overtime Rates

Overtime rates per hour are 1/173 times the monthly salary of the employee.⁶³

Further overtime rates apply as follows:⁶⁴

- on normal working days:
 - a. first overtime hour: 1.5 x hourly overtime payment;
 - b. thereafter: 2 x hourly overtime payment;
- on weekends and public holidays (where six days per week are worked):
 - a. first seven overtime hours: 2 x hourly overtime payment;
 - b. eighth overtime hour: 3 x hourly overtime payment;
 - c. thereafter: 4 x hourly overtime payment; and
- on weekends and public holidays (where five days per week are worked):
 - a. first eight overtime hours: 2 x hourly overtime payment;
 - b. ninth overtime hour: 3 x hourly overtime payment;
 - c. thereafter: 4 x hourly overtime payment.

Employees working overtime are entitled to sufficient rest, food and drink (around 1,400 calories)⁶⁵ in addition to overtime pay.

Night Work

Distinguishing between night and day work is discretionary and subject to the relevant employment contract, corporate regulation or collective working agreement. No distinction is made for specific sectors that require continuous work, such as healthcare, transport and security.⁶⁶

Rest Time

An employee who works for four hours consecutively is entitled to a break of at least 30 minutes (which is excluded from the calculation of working hours).⁶⁷ Praying time is included in rest time.⁶⁸

Paid Holiday

An employee who has been working for an employer for a full 12 months is entitled to 12 days paid annual leave.⁶⁹ Employees are not entitled to any paid leave in their first 12 months of employment.

An employee is also entitled to fully paid personal leave in the following circumstances:

- for female employees:⁷⁰
- one and a half months prior to the delivery of their child and 1.5 months following the delivery of their child;
- one and a half months (or as otherwise recommended by a doctor) following a miscarriage;
- for marriage: three days;⁷¹
- for marriage of his or her child: two days;⁷²
- for circumcision of child: two days;⁷³
- for baptism of child: two days;⁷⁴

- for male employees, when wife gives birth or has a miscarriage:⁷⁵ two days;
- for the death of a spouse, child, parent, son- or daughter-in-law, or father- or mother-in-law:⁷⁶ two days;
- for the death of a relative living in the same house:⁷⁷ one day.
- Employees are also entitled to leave in the following circumstances:
- when fulfilling obligations to the State as mandated by law;⁷⁸
- when on trade union duty;⁷⁹ and
- when attending studies/workshops required by the employer.⁸⁰
- All employees are entitled to days off on public holidays.⁸¹

Liability and Contracts

Liability and Duties

Employers are obliged to:

- maintain the physical and mental health and safety of employees⁸² through:
- prevention, improvement, treatment and recovery (including payment of healthcare costs); and
- compliance with workplace health standards;⁸³ and
- provide protection with regard to:
- occupational safety and health;
- morality and goodness; and
- humane treatment and dignity/religious values.⁸⁴

Employers must also apply an occupational safety and health management system integrated with their corporate management system.

Employers are liable for damage caused by employees in the course of duties assigned to them, unless it can be proven that the act of such employee could not have been prevented.⁸⁵

Contract of Employment

Employers are legally obliged to provide a contract of employment to employees.⁸⁶ In the case of a working agreement made verbally in respect of employment of an unspecified time, the employer is obliged to provide a letter of appointment.⁸⁷ For employment of a specified time, a written employment agreement must be provided (in both Indonesian and Latin script).⁸⁸

Appointment letters for employment in respect of an unspecified period must contain the following:⁸⁹

- identity of the employee (name and address);
- date when employment commences;
- details of the occupation; and
- wage.

Employment agreements for employment in respect of a specified period must contain the following:⁹⁰

- identity of the employer (name, address and business field) and the employee (name, sex, age and address);
- occupation/description of the role;
- place of work;
- wage and form of wage payment;
- requirements of the role (including rights and obligations of employer and employee)
- time and place of entry into force;
- time and place the agreement is made; and
- signatures of both parties.
- If an employment agreement or letter of appointment is not provided:

- a fixed term/contract employee will be deemed a permanent employee;⁹¹ and
- a permanent employee will remain treated as a permanent employee; however, the employer can be held liable for failure to issue and appointment letter and subject to criminal sanctions in the form of a fine (minimum IDR 5,000,000 (USD 381.60)⁹²).

Probation Period

Probation periods may last no longer than three months and probationary employees must be paid the minimum wage.⁹³

There is no express prohibition with respect to repeated probation periods. However, the plain meaning of the *Law No. 13 of 2003 concerning Manpower (Manpower Law)* is that a probation period of more than three months is not permitted

Types of Contract and Restrictions

Employment agreements for a specified period (i.e. fixed-term employment) may only be made in respect of roles which are only required for or would be completed in a specified period,⁹⁴ namely:

- once completed or provisional jobs;
- roles expected to have a duration of no longer than three years;
- seasonal roles;
- roles related to new or additional products which are being trialed.

Fixed-term employment agreements are prohibited for regular jobs. Where fixed-term employment agreements are permitted, the maximum length of such agreement is two years (subject to a maximum extension of one further year).⁹⁵ If a fixed-term employee works for more than three years, they will be deemed a permanent worker.⁹⁶ Notwithstanding this, the employer may renew a fixed-term employment agreement once, provided that (i) such renewal is completed after a period ending 30 days after the expiry of the initial agreement, and (ii) the renewed agreement is for a maximum of two years. Following such renewal, a fixed-term employee would be deemed permanent after five years.

Regardless of their type of employment agreement, all employees are entitled to social security and employers are obliged to register all employees to obtain such rights.⁹⁷

Severance Allowance

An employee is eligible to receive a severance payment in the event of dismissal. Severance pay is calculated in accordance with the table set out in Annex 2.

In certain specified circumstances, the calculation of severance pay may differ as follows:

- the business is merged or consolidated and the employee does not wish to continue employment: 1 x severance pay;⁹⁸
- the business is merged or consolidated and the employer does not wish to continue employment: 2 x severance pay;⁹⁹
- the employer closes the business due to two years' continuing losses following a force majeure event: 1 x severance pay;¹⁰⁰
- the employer files for bankruptcy: 1 x severance pay;¹⁰¹
- the employer commits a crime: 2 x severance pay;¹⁰²
- the employee dies: 2 x severance pay (payable to the heir of such deceased employee);¹⁰³
- the employee reaches mandatory retirement age: 2 x severance pay;¹⁰⁴ or
- the employee suffers prolonged sickness following a workplace accident and is unable to work for 12 months: 2 x severance pay.¹⁰⁵
- No severance pay is payable where:
- the employee is unable to work for six months due to ongoing criminal proceedings or is found guilty of a crime during such six-month period;¹⁰⁶

- the employee violates their employment agreement, corporate regulation or working agreement following three written warnings of such violation from the employer;¹⁰⁷ or
- the employee is absent for a period of five or more consecutive working days without providing written reasons and evidence following two written requests from the employer to do so.¹⁰⁸

Dismissal

Where an employee violates their employment agreement, corporate regulation or collective working agreement, the employer may terminate working relations following the consecutive issuance of a first, second and third warning letter (each being valid for six months),¹⁰⁹ provided that a declaratory judgment/decision from the Industrial Relations Court has been given. This is the case even if the employee remedies the violation following receipt of the third warning letter.

In general, employers will negotiate the termination of an employee's employment agreement with either their trade union or, if the employee is not in a trade union, the employee themselves.¹¹⁰

Failing negotiation, the employer must make a written application for the employee's termination to the institution authorised to settle industrial relations disputes.

Such application must be accompanied by reasons for discontinuing/terminating the working relationship.¹¹¹

The dispute process consists of the following steps:

- bipartite bargaining between the employer and the employee with a view to reaching a consensus;
- if (1) fails, the local authorised manpower offices will offer both parties a collective agreement to settle by way of conciliation or arbitration proceedings;
- if the parties do not select settlement through conciliation or arbitration proceedings within seven working days, the authorised manpower offices will transfer the dispute to a mediator; and
- if the parties attempt to settle by way of conciliation or arbitration proceedings but no agreement is reached, either party may file a petition with the Industrial Relations Court.¹¹²

Employers are legally required to refer any disagreements between the employer and employee to the above dispute settlement mechanism.

Employees may appeal to the Industrial Relations Court to withhold a judgment/decision to terminate their employment.

Gender and Age

Equal Pay

Article 6 of the Manpower Law states that every employee is entitled to equal treatment without discrimination from their employer.

Employers must give rights to workers without differentiating between sex, ethnicity, race, religion, skin colour or political ideology.

Pregnancy

An employer must not employ a pregnant worker between the hours of 23:00 and 7:00 if a doctor is of the opinion that the work would be dangerous for their health and safety (or that of the foetus).¹¹³

Other than an employer's general obligation to ensure the physical and mental health and safety of employees,¹¹⁴ there is no specific prohibition on female employees undertaking "dangerous" work during pregnancy.

Employers are prohibited from terminating the employment of a pregnant employee by reason of pregnancy.¹¹⁵ However, a pregnant employee may choose to terminate her employment at any time pursuant to a resignation letter (which cannot be rejected by the employer).¹¹⁶

Maternity Leave and Pay

As noted in the section entitled “Paid Leave” above, pregnant employees are entitled to one and a half months of paid leave prior to the birth of their child and one and a half months thereafter.¹¹⁷ There is no minimum length of employment required to benefit from this.

Arrangements regarding time out of work for check-ups (and payment for such time) would be regulated in the relevant employment agreement, corporate regulation or collective working agreement.

Right to Return

A female employee must be guaranteed her existing employment when she returns to work after maternity leave.¹¹⁸

New Parents

Protection for new parents is as follows:

- female employees who are breastfeeding their children are entitled to have proper opportunity to breastfeed their child during the working day, in nursing areas provided by their employer¹¹⁹;
- male and female employees are protected from discrimination on the grounds that they are married, breastfeeding or have toddlers¹²⁰.

Paternal Leave

As noted in the “Paid Leave” section above, male employees may take two days of paid leave when their wife gives birth. This is not afforded to male employees who are in an unmarried partnership.

Childcare

Employers are obliged to provide a day care centre for the children of their employees.¹²¹ Employees are not required to contribute towards this.

Sexual Harassment

There are legal prohibitions against committing sexual harassment in the workplace.¹²² Furthermore, sexual harassment is a punishable crime under Article 294, paragraph (2) of the Indonesian Criminal Code.

There are no specific sanctions for an employer if sexual harassment occurs in the workplace. However, the employer can be held liable if it is proven in court that the employer could have prevented the sexual harassment but did not do so. In practice, most employers employ security guards to prevent sexual harassment.

Minimum Working Age

The general minimum working age is 15, and the minimum age for hazardous work is 18. However, employers may employ persons between 13 and 15 years of age provided that they are employed in light work which does not harm or disrupt their physical, mental, and social development.¹²³ Employees between the ages of 13 and 15 are entitled to receive the minimum wage unless they are employed in their family business.

The following conditions must be met with respect to the employment of persons between the ages of 13 and 15:

- a written permit from the young person’s parents or custodians must be obtained;

- an employment agreement must be entered into between the employer and the young person's parents or custodians;
- working hours must be a maximum of three hours;
- working hours must be during the day and not interfere with schooling; and
- such young person must be afforded occupational health and safety, clear working relations and payment of the minimum wage.

Employers which are found to employ children under the age of 13 may be subject to criminal sanctions as follows:

- a prison sentence of one to four years; and/or
- a fine between IDR 100,000,000 (USD 7,632) and IDR 400,000,000 (USD 30,528).¹²⁴

Child labour remains a problem in Indonesia, from assisting in family businesses to employment as beggars and sex workers. Prevention of child labour prior to 2015 was conducted by local/provincial government; however, this is now the responsibility of both the central and local governments. It is unclear how the change of supervision has impacted child labour.

In 2009, the Indonesian Statistics Centre Agency issued a report regarding child workers.¹²⁵ The report found that there were around 1,760,000 child workers in Indonesia (aged 5 to 17), engaged in the following economic activities:

- agriculture (60%);
- service (26%);
- industry (7%); and
- others (7%).

It is estimated that between 2008 and 2014, only 63,055 child workers have been withdrawn from employment.

Social Security/Healthcare

Clinics

Employers must provide an occupational health service to their employees.¹²⁶ This may take the form of a company clinic or hospital, or involve cooperation with an occupational safety service institution to provide such services to employees. Employers with several employees/companies may establish an occupational safety service for employees.

Clinics must be provided for companies with over 1,000 employees or between 500 and 1,000 employees where the work is of high risk.¹²⁷ Small to medium sized employers generally engage with health institutions to provide health services to their employees.

Free Healthcare

All employees are entitled to obtain health protection, which must be provided by the employer by integration in their corporate management system.¹²⁸ Healthcare benefits are afforded in the form of an individual healthcare service (covering promotive services, prevention, cure and rehabilitation), including medicine and related medical consumables.¹²⁹

Employees are required to contribute a premium to receive free healthcare. Employer contributions must be made for all employees regardless of the length of employment (employers are required to register employees to the social security institution), and part-time workers are afforded the same rights as their full-time counterparts.

Healthcare benefits consist of the following:

PRIMARY HEALTHCARE (covering non-specialist healthcare services)	ADVANCED LEVEL REFERRAL HEALTH SERVICES
Administration services	Administration services
Promotive and preventive services	Basic medical examination, treatment and consultation
Examination, treatment, and medical consultation	Specialist examination, treatment and consultation
Non-specialist medical treatment, both operative and non-operative	Specialist medical treatment both for surgical or non-surgical operation in accordance with the medical indications
Drug services and medical consumables	Drug services and medical consumables
First-level diagnostic laboratory investigations	Advanced diagnostic services in accordance with medical indications
Primary hospitalisation in accordance with medical indications	Medical rehabilitation
	Blood services
	Forensic medical services
	Corpse of dead patient/mortuary Services
	Family planning services
	Non-intensive inpatient care
	Hospitalisation in intensive care

Promotive and preventative services cover:

- health counselling (including disease risks and healthy lifestyle);
- basic and routine immunisation;
- family planning (contraceptive services and counselling); and
- health screening (to select individuals in order to detect the risk and impact of diseases).

Social Security Payments

The Social Protection Card (*Kartu Perlindungan Sosial*) enables poor households to receive subsidised food, a temporary and direct support programme or free education for their children.

Occupational Injury

Article 29 of Law number 40 of 2004, concerning the National Social Security System, and Government Regulation number 44 of 2015, concerning Work Accidents and Death Security, guarantee that an employee who has suffered illness or injury in the workplace will receive healthcare benefits in addition to cash compensation.

If a person is no longer able to work due to occupational injury, they may claim work accidents benefits.¹³⁰ Such benefits may consist of the following:

Health services:

- basic and additional medical examinations;
- basic and additional health treatments;
- hospitalisation (first class room in a government hospital or an equivalent private hospital);
- diagnostic examinations;
- treatment;
- special care or treatment;
- other tools and implants;
- doctor/medical services;
- blood transfer; and/or
- medical rehabilitation; and

payments:

- transport cost of the employee from the workplace to hospital or home, including the first aid cost;
- temporary payment for being unable to work;
- payment for temporary anatomical disability, temporary functional disability, permanent anatomical disability, partial functional disability and total disability;
- payment for fatality and funeral;
- periodical payment if the employee is killed or suffers total disability or illness caused by working;
- payment of orthopaedic and/or prosthetic treatment;
- reimbursement for dentures; and
- scholarships for the employee's children if the employee is killed or suffers total disability caused by working.

In addition, employees who are continuously ill for a very long time, who are disabled as a result of a work accident and are unable to perform their work after they have been absent for more than 12 consecutive months, may request receipt of:

- 2 x severance pay (see the "Severance Allowance" section above);
- reward pay for the period of employment they have worked, amounting to twice the amount of such reward pay stipulated under Article 156, paragraph (3) of the Manpower Law; and
- compensation pay amounting to one time the amount of that which is stipulated under Article 156, paragraph (4) (f) of the Manpower Law.

Health Insurance

There is a paid social security scheme for health insurance. In the private sector, this is 5% of the employee's monthly wage, with 4% paid by the employer and 1% contributed by the employee.¹³¹

Accident benefits schemes depend upon the level of risk of the working environment. They typically range between 0.24% and 1.74% of the employee's monthly wage, paid wholly by the employer.¹³²

Health insurance deductions are made directly from the employee's salary.

Retirement Pension/Social Insurance

There is a paid social security scheme for pension/retirement.

For retirement/old age security (*Jaminan Hari Tua*), this is 5.7% of the employee's monthly wage, with 3.7% paid by the employer and 2% contributed by the employee.¹³³

For pension benefits (*Jaminan Pension*), this is 3% of the employee's monthly wage, with 2% paid by the employer and 1% contributed by the employee.¹³⁴

Pension/retirement deductions are made directly from the employee's salary.

Trade Union Rights

Every worker is entitled to establish and become a member of a trade union.¹³⁵ Each trade union must have at least 10 members.¹³⁶ A worker may not be a member of more than one trade union in the same company.¹³⁷

Employers must not discriminate against their employees based on their trade union activities. For example, an employer cannot force an employee to join a trade union, nor can they prevent an employee from joining or establishing a trade union by means of:

- terminating employment, temporarily suspending employment, demoting or transferring the employee to another post, another division or another place in order to discourage or prevent him or her from carrying out union activities or to make such activities virtually impossible;
- failing to pay or reducing the employee's wage;
- intimidating the employee; or
- campaigning against the establishment of trade unions.¹³⁸

In addition to trade union activities, employee representatives are elected democratically to represent the interests of the employees to the employer.¹³⁹

There is no limitation on the number of trade unions in one workplace.

The Right to Strike

Employees have the right to go on strike, provided that certain procedures have been followed prior to the exercise of such right.¹⁴⁰ In particular, employees of companies that serve public interest or safety are not permitted to strike if there would be a disturbance to public interest or the public would be endangered as a result.¹⁴¹

Collective Bargaining

Only government-registered trade unions may conduct collective bargaining with an employer (in the form of a collective working agreement).¹⁴²

The following requirements apply with respect to collective bargaining:¹⁴³

- if there is only one trade union in a company, the membership of the trade union must be greater than 50% of the total workforce before negotiations regarding a collective working agreement may take place (or if the membership is insufficient, over 50% of the workforce must have voted to support the trade union);
- in a company where there are two or more trade unions, the trade unions can establish a negotiation team with members being taken proportionally from the number of members of the respective trade unions, provided that no more than three trade unions may represent workers without a membership of at least 10% of the workforce.

Employers are required to provide opportunity for trade union activities to be carried out during working hours as agreed in a collective working agreement. The collective working agreement must cover the following, among other things, with respect to trade union activities:¹⁴⁴

- types of union activities for which opportunity will be provided; and
- procedures for the provision of such trade union opportunities.
- Employers must also provide facilities for the performance of trade union activities and rights such as:¹⁴⁵
- the negotiation of a collective working agreement with the management;
- the representation of workers in industrial dispute settlements;
- the representation of employees in manpower institutions;
- the establishment of institutions or carrying on of activities to improve employee welfare;
- the carrying out of other manpower or employment related activities which are not contrary to valid national statutory rules and regulations; and

- the cooperation of trade unions with international trade unions and international organisations, provided such affiliation is not contrary to valid national statutory rules and regulations.

If an employer prohibits a trade union (or an employee from joining a trade union), the employer can be reported to the manpower supervising authority or Industrial Relations Court.

Note that an employee whose position in a company creates a conflict of interests between the management and the rest of the employees is not permitted to be a trade union official in such company.

Enforcement/Implementation Mechanisms

If workers believe that their employer has breached any of the labour standards set out above, they may take any of the following actions:

- report the employer to the manpower supervisor in the relevant territory, who will conduct an investigation and issue an investigation note/written decision regarding the employer's compliance with the Manpower Laws;
- use the Bipartite Cooperation Institution (a manpower communication and consultation forum in companies with 50 or more employees);
- apply for the termination of working relations to the industrial relations dispute settlement institution¹⁴⁶ in the event that the employer has committed an action such as:
 - torturing, threatening or embarrassing the employee;
 - persuading or ordering the employee to commit illegal acts;
 - failing to pay the employee punctually for three or more consecutive months (irrespective of whether the employee has subsequently ratified this);
 - failing to fulfil the obligations promised to the employee; or
 - ordering the employee to undertake tasks outside of those agreed and/or giving the employee a task which would endanger life, safety, health or morality other than those agreed by the employee.

The process of industrial relations disputes settlement is regulated under Law number 2 of 2004 concerning Industrial Relations Disputes Settlement.

Victimisation

Employees are protected from victimisation by a prohibition on employers from obstructing or creating difficulties for employees to establish, join or operate trade unions.¹⁴⁷ An employee can bring a claim for such victimisation in the industrial relations dispute settlement institution and may be awarded compensation if the employer is found to be in breach.¹⁴⁸

An employer may still be required to pay compensation to the employee irrespective of whether criminal sanctions of a prison sentence and/or a fine have also been applied.¹⁴⁹

Disputes

Based on the 2013 Jakarta Legal Aid Institute Report, there were 204 reports regarding the violation of labour rights. In 2014, there were 228 such reports to the Jakarta Legal Aid Institute.

In practice, usually employees are active in reporting violations of the Manpower Law committed by their employers to the supervisory authorities. There are many strikes to request that the government impose sanctions on employers.

No formal information is available regarding the source of employer/employee disputes. In practice, it seems the most common areas of dispute are in relation to termination and compensation/severance pay calculations.

Employees may approach the following institutions regarding enforcement of labour laws:

- Industrial Relations Dispute Settlement Institutions. Generally, there are several methods to settle disputes, including by consensus, by mediation, by conciliation or through the Industrial Relations Court.

- Ministry of Manpower and Transmigration. In addition to regulating Manpower and Transmigration, this institution also ensures the enforcement of Manpower Law through its regulations and programs. This institution also receives and solves complaints and issues relating to industrial relations.
- Provincial Manpower Supervision based on Presidential Regulation number 21 of 2010 concerning Labour Inspection. This institution supervises the enforcement of the Manpower Law by employers and workers in the provincial/regency/city levels.

Sanctions

The following civil and criminal sanctions apply in respect of violations of the Manpower Law. Criminal sanctions would be applied to individual employers (if natural persons) or otherwise the director of the relevant company/legal entity.

Type/Form		
Administrative	Civil	Criminal
<p>Article 190(2) of the Manpower Law: Reminder. Written warning. Restrictions on business activities. Freezing of business activities. Revocation of approval. Cancellation of registration. Temporary suspension of production partly or wholly. Revocation of business licenses.</p> <p>[Reflects steps taken if employer continues to violate the Manpower Law]</p>	<p>Usually based on the decision of the industrial relations dispute settlement institution.</p> <p>There are four types of employment disputes that the Industrial Relation Court can handle, as follows:</p> <p>Disputes of rights. Disputes of interests. Disputes over termination of employment. Disputes among trade unions within one company.</p> <p>Sanctions:</p> <p>Cancellation of working agreement between the employer and the employee. Cancellation of termination . Change of the status of the employee from contracted worker to permanent worker. Status of strike. In relation to the violation of Manpower Law, breach of working agreement.</p>	<p>The Manpower Law</p> <p>Minimum one year's imprisonment.</p> <p>Fine of up to IDR 500,000,000 (USD 38,160).</p>
Article		
<p>The Manpower Law (as regulated by Article 190 of the Manpower Law):</p> <p>Article 5: Job Discrimination. Article 6: Equal Treatment. Article 15: Training Standard. Article 25: Outside Indonesia Apprenticeship. Article 38 (2): Manpower placement service provider. Article 45 (1): Expatriate. Article 47 (1): Compensation to expatriate. Article 48: Return the expatriate to country of origin.</p>		<p>The Manpower Law:</p> <p>Article 183: Employing children in dangerous works (Article 74), the employers shall be subjected to a criminal sanction in the form of imprisonment for two years to five years, and/or a fine of IDR 200,000,000 (USD 15,264) to IDR 500,000,000 (USD 38,160).</p> <p>Article 184: The employers, who do not register their employer to a pension program (Article 167 (5)), shall be subjected to a</p>

<p>Article 87: safety and health management system. Article 106: Bipartite cooperation institution. Article 126 (3): Collective working agreement text printed and distributed by the employers. Article 160 (1) and (2): Employers' obligation to provide assistance to the workers' family in the event that the workers are being detained due to an alleged crime.</p> <p>National Social Security System Law</p> <p>Article 17: The employers do not register their workers to National Social Security System, the employers can be imposed with the following administrative sanctions:</p> <p>Written warning; Fine; and/or Exclusion of certain public services.</p> <p>The Sanction procedure is further regulated in the Gov Regulation No. 86 of 2013</p>		<p>criminal sanction in the form of imprisonment for one to five years; and/or a fine of IDR 100,000,000 (USD 7,632) to IDR 500,000,000 (USD 38,160).</p> <p>Article 185: the employers who violate:</p> <p>expatriate license (Art 42 (1 and 2)); employing children (Art 68); failure to comply with employing children's requirements (Art 69 (2)); religion practice opportunity (Art 80); rest for pregnant women and after giving birth (Art 82); paying lower than a minimum wage (Art 90 (1)); prevent right to strike (Art 143); reemploy worker if the worker is declared not guilty (Art 160 (4)); or paying gratuity and compensation if the worker is involved in criminal proceeding for six months or is declared guilty (Art 160 (7) shall be subjected to a criminal sanction in the form of imprisonment for one to four years, and/or a fine of IDR 100,000,000 (USD 7,632) to IDR 400,000,000 (USD 30,528).</p> <p>Art 186: the employers who violate:</p> <p>protection by the manpower placement service providers (Art 35 (2)); providing protection covering welfare, safety and physical and mental health of manpower (Art 35 (3)); failure to pay wages in the case of Article 93 (2))¹⁵⁰</p> <p>shall be subjected to a criminal sanction in the form of imprisonment for one month to four years, and/or a fine of IDR 10,000,000 (USD 763) to IDR 400,000,000 (USD 30,528) at the maximum.</p> <p>Art 187, the employers who violate:</p>
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		<p>a license for manpower placement service (Art 37 (2));</p> <p>compliance with the applicable standard and competence for expatriates (Art 44(1));</p> <p>expatriate transfer of knowledge (Art 45 (1));</p> <p>protection for disabled workers (Art 67 (1));</p> <p>employing children condition (Art 71 (2));</p> <p>women workers requirements (Art 76);</p> <p>failure to pay overtime wages (Art 78 (2));</p> <p>failure to provide rest and leave (Art 79 (1 and 2));</p> <p>failure to pay overtime wages on official holiday (Art 85 (3));</p> <p>replacing or imposing sanction to workers who conduct a strike (Art 144),</p> <p>shall be subjected to a criminal sanction in the form of imprisonment for one to 12 months, and/or a fine of IDR 10,000,000 (USD 763) to IDR 100,000,000 (USD 7,632).</p> <p>Art 188, the employers who violate:</p> <p>license for private vocational training institution (Art 14 (2));</p> <p>regarding manpower placement collection cost (Art 38 (2));</p> <p>no letter of appointment for working agreements for unspecified period (Art 63 (1));</p> <p>overtime requirement (Art 78 (1));</p> <p>providing corporate rule for company employing 10 workers or more (Art 108 (1));</p> <p>corporate rule validity and renewal (Art 111 (3));</p> <p>notification and explanation of the corporate rule circulated among the workers (Art 114);</p> <p>notification of lockout (Art 148)</p> <p>shall be subjected to a criminal sanction in the a fine</p>
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		<p>of IDR 5,000,000 (USD 381) to IDR 500,000,000 (USD 38,160).</p> <p>BPJS (Social Security Organising Body) Law</p> <p>Article 55: The employer who violates the provisions regarding collection of dues/premium for social security to BPJS shall be subject to imprisonment for no more than eight years or a fine for no more than IDR 1,000,000,000 (USD 76,321).</p> <p>Labor Union Law</p> <p>Everybody who bars or forces workers/laborers as referred to under Article 28¹⁵¹ is subjected to a sentence of no less than one year and no longer than five years in jail and/or a fine of no less than IDR 100,000,000 (USD 7,632) and no more than IDR 500,000,000 (USD 38,160).</p> <p>Occupational Safety Law</p> <p>Failing to comply with this law, the employer will be sentenced to no more than three months in jail or a fine of IDR 100,000 (USD 7.63).</p>
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Enforcement in Practice

Administrative Sanctions

In 2015, the manpower authority sanctioned 49 companies which violated the obligation to pay religion celebration support. Such sanctions vary from naming the companies in the media to suspending the required sector permits of such companies.

Industrial Relations Court (Civil Sanctions)

An example Industrial Relations Court case is as follows:

Supreme Court Decision No. 208 K/Pdt.Sus-PHI/2013: An employer (Prayitno) against a textile company, PT HAND SUM TEX (which makes Lulu Lemon, Calvin Klein, and Alfred Duner brands and established since 1989). The subject of dispute was the suppression of right of association (union busting) and the termination of employment. Mr Prayitno was chosen as the chairman of the labour union in PT Hand Sum Tex. Mr Prayitno as the chairman often asked the company to comply with the Manpower Law and social security law, thus PT Hand Sum Tex gave several warning letters to Mr Prayitno before terminating the employment relationship. The Supreme Court sentenced that the termination of Mr Prayitno is unlawful and he shall be paid all his full salary until he is reinstated again as employee by PT Hand Sum Tex.

Criminal Sanctions

Example criminal cases and sentences are as follows:

- **Supreme Court Decision No. 687/K/Pid.Sus/2012:** Supreme court sentenced employer Tjioe Christina to one-year imprisonment and IDR 100 million fine (USD 7,632) because she underpaid her workers below the minimum wage in Surabaya province. She violated Article 185 (1) in conjunction with Article 90 (1) of the Manpower Law.
- The President Director of PT Philia Mandiri Sejahtera, which is the head truck operator in Tanjung Priok, North Jakarta, was declared guilty by the Supreme Court because:
- he did not pay his four workers their salary between November 2005 and March 2006; and
- he did not pay the salary because the four workers joined a strike to request the minimum wage salary. He also terminated their employment without compensation.

Thus, there were two indictments: (Article 186 (1) in conjunction with Article 93 paragraph (2), and Article 185 (1) in conjunction with Article 90 paragraph (1) of the Manpower Law). The employer was received a fine of IDR 15 million (USD 1,144) and one month imprisonment if he did not pay the fine.

- The Tangerang District Court sentenced an employer, Yuki Irawan, the owner of CV Logam Cahaya, for slavery by violating the Indonesian Criminal Code (not the Manpower Law) and several other relevant laws. Mr Yuki Irawan employed children, tortured and detained his workers, so that the workers were unable to leave the workplace. Mr Yuki Irawan was sentenced to 11 years in jail and a fine of IDR 500 million (USD 38,160).



Impact on Compliance

It appears that the application of sanctions in respect of industrial disputes and violations of the Manpower Law have had an impact in reducing the number of breaches and violations, as demonstrated by the following statistics:

Statistics of Industrial Relations Cases from 2010-2013

Year	District Court	Settled	Cassations	Judicial Reviews
Cases that had not been settled in 2009	455	1200	635	92
2010 cases	1304			
Cases that had not been settled in 2010	448	1087	554	104
2011 cases	1277			
Cases that had not been settled in 2011	371	686	277	33
2012 cases	820			
Cases that had not been settled in 2012	370	421	47	11
2013 cases	276			

Incentives

In certain circumstances, the Government of Indonesia provides incentives to employers so that their employment is not terminated even where the employer has sustained financial losses. For example, the Government of Indonesia is planning to provide a textile industry subsidy in the form of either an income tax cut or 50% subsidy for companies with over 2000 employees or a IDR 50,000,000 (USD 3,816) investment.

There are, however, no specific incentives to otherwise ensure the good treatment of employees.

Realistic Opportunities for Reform

As of March 2016, draft laws concerning household worker protection are being put into place.

Living Wage Considerations

The Government of Indonesia calculates a local wage based on the components required for daily life in order for a single unmarried person to live adequately. This goes towards the

calculation of the legal minimum wage in each province/regency/city. The latest list of components of daily living needs are regulated in the Ministry of Manpower and Transmigration Regulation Number 13 of 2012 concerning the Components and Implementation of Adequate Life Realisation Phases.

An unofficial translation¹⁵² of the list of daily life requirements for a single worker is set out in Annex three hereto.

The Labour Union Association of Indonesia (ASPEK) estimates that the living wage in Jakarta should be around IDR 5,000,000 (USD 381) to IDR 7,000,000 (USD 534) per month due to the high cost of living in the capital city.

The current minimum wage of Jakarta is between IDR 3,100,000 (USD 236) and IDR 4,000,000 (USD 305), thus the discrepancy with living wage is between IDR 1,900,000 (USD 145) and IDR 3,900,000 (USD 297).

Enforcement of Workers' Rights in Practice

The enforcement of workers' rights in Indonesia is often hindered by the following issues:

- The employers and the employees are ignorant of or lack understanding regarding their rights and obligations.
- The employee usually has a weak bargaining position with the employer, thus when the employee does something that the employer does not like, such as establishing or joining a labour union or conducting a strike, the employer will threaten to terminate their employment or suspend payment of their salary, thereby suppressing the rights of the employee.
- The employee depends on the salary to live or support their family and so they try not to damage relations with their employer. Employees therefore usually stay silent, even if they know that their rights are being violated by their employer.
- The employee may fear retaliation by the employer, such as a bad reputation, which could make it difficult to gain new employment.
- Employees can report their employers to the manpower supervision; however, in most cases the manpower supervision will not conduct investigations, as they are bribed by the employers. There are many corruption and bribery issues in the manpower authorities, particularly in local manpower authorities.
- Outsourced workers are not usually notified of or provided their rights by their agency or the employing company.
- Most employment cases are related to termination and compensation/severance issues and salary/minimum wage or religion celebration support (*Tunjangan Hari Raya*). There may therefore be a lack of precedent in other areas.

Although the law provides that the supervision of employers and workplaces is conducted by provincial governments with the cooperation of the central government,¹⁵³ in practice supervision and inspection are not actively pursued and investigations take place only after an employee has reported a violation.

According to the Jakarta Legal Aid Institution:

- between 2006 and 2013, there were 3,315 Supreme Court decisions concerning industrial relations;
- 2,993 out of 3,315 had legal standing or related to manpower matters;
- employees or trade unions were the claimants in the 2,645 out of 2,993 decisions;
- 2,617 cases were appealed to cassation stage at the Supreme Court;
- 1,427 of the cassations were appealed by the employers;
- 374 of the decisions were appealed to the Supreme Court for judicial review;
- 221 of 374 decisions put to judicial review were appealed by the employers;
- 17 cases subject to judicial review were won by the employers where previously the employees/trade unions had won in the lower courts.

Foreign or Migrant Workers

Basic rights such as maintaining the physical and mental health and safety of employees apply to all employees regardless of migrant status.

However, there are certain differences in the benefits afforded to foreign workers as follows:

- Foreign workers can only be employed as contracted workers, not permanent workers. This means that benefits afforded to permanent workers, such as protection against the termination of their employment contract without declaratory judgment of the Industrial Relations Court, cannot apply to foreign workers.
- Foreign workers who work less than six months in Indonesia cannot register for social security benefits.
- The number of foreign workers in Indonesia is capped at one foreign worker for every 10 local workers.
- Certain positions cannot be assigned to foreign workers.
- Foreign workers must:¹⁵⁴
 - have appropriate educational qualifications for the position;
 - provide certificates of competency or at least five years of work experience relevant to the position;
 - provide a statement letter describing how the transfer of knowledge and skills to the Indonesian counterparts will be effected and evidenced by training reports;
 - provide evidence of an insurance policy with an Indonesian insurance entity;
 - hold an Indonesian Taxpayer Registration Number (NPWP) if they have been working in Indonesia for more than six months; and
 - be enrolled in the National Social Security System (*Jaminan Sosial Nasional*) if they work in Indonesia for more than six months.
- In addition, employers are legally required by the Manpower Law to prioritise local employees over foreign workers.

ANNEX 1

Provincial Minimum Wages of the Republic of Indonesia as of 2016

As mandated in Article 89 Paragraph (4) of the Law Number 13 of 2003 concerning Manpower, Article 41 Paragraph (1) of the Government Regulation Number 78 of 2015 concerning Wage, and Article 6 Paragraph (1) of the Minister of Manpower and Transmigration Regulation Number 7 of 2013 concerning Minimum Wage that the Government (Governor) shall determine the minimum wage for workers at provincial level (the Governor may determine the minimum wage for regencies within the province), below is the list of provincial minimum wages of the Republic of Indonesia as of 2016:

No.	Province	2016 monthly minimum wage (in Indonesian Rupiah)	2015 monthly minimum wage (in Indonesian Rupiah)	Comparison to the 2015 minimum wage	Regulation
1	Riau Islands (<i>Kepulauan Riau</i>)	2,178,710 (USD 166)	1,954,000	Increased by 11.5%	Governor Decree No. 1647 of 2015 as of 28 October 2015
2	West Kalimantan (<i>Kalimantan Barat</i>)	1,739,400 (USD 132)	1,560,000	Increased by 11.5%	Governor Decree No. 821/Disnakertrans/2015 as of 19 October 2015
3	West Nusa Tenggara (<i>Nusa Tenggara Barat</i>)	1,482,950 (USD 113)	1,330,000	Increased by 11.5%	Governor Decree No. 561-698 of 2015 as of 30 October 2015
4	West Sumatera (<i>Sumatera Barat</i>)	1,800,725	1,615,000	Increased by 11.5%	Governor Decree No. 562-777 of 2015 as of 30 October 2015
5	Jambi	1,906,650	1,710,000	Increased by 11.5%	Governor Decree No. 460/KEP/GUB/DISOSNAKERTRANS of 2015 as of 30 October 2015
6	Nangroe Aceh Darussalam	2,118,500	1,900,000	Increased by 11.5%	Governor Regulation No. 60 of 2015 as of 30 October 2015
7	South Kalimantan (<i>Kalimantan Selatan</i>)	2,085,050	1,870,000	Increased by 11.5%	Governor Decree No. 188.44/0434/KUM/2015 as of 30 October 2015
8	Banten	1,784,000	1,600,000	Increased by 11.5%	Governor Decree No. 561/474-HUK/2015 as of 29 October 2015
9	Gorontalo	1,875,000	1,600,000	Increased by 17.19%	Governor Decree No. 421/13/X/2015 as of 29 October 2015
10	Bali	1,807,600	1,621,172	Increased by 11.5%	Governor Regulation No. 61 as of 6 November 2015
11	North Sumatera (<i>Sumatera Utara</i>)	1,811,875	1,625,000	Increased by 11.5%	Governor Decree No. 188.44/544/KPTS/2015 as of 9 November 2015
12	Bangka Belitung	2,341,500	2,100,000	Increased by 11.5%	Governor Decree No. 188.44/1146/TK.T/2015 as of 13 November 2015
13	Central Kalimantan (<i>Kalimantan Tengah</i>)	2,057,550	1,896,367	Increased by 8.5%	Governor Regulation No. 39 of 2015 as of 14 August 2015
14	North Sulawesi (<i>Sulawesi Utara</i>)	2,400,000	2,150,000	Increased by 11.63%	Governor Regulation No. 37 of 2015 as of 30 October 2015
15	Central Sulawesi (<i>Sulawesi Tengah</i>)	1,670,000	1,500,000	Increased by 11.33%	Governor Decree No. 561/627/Disnakertransdag-ST/2015 as of 19 October 2015
16	Maluku	1,775,000	1,650,000	Increased by 7.58%	Governor Decree No. 266 pf 2015 as of 22 October 2015
17	West Papua (<i>Papua Barat</i>)	2,237,000	2,015,000	Increased by 11.02%	Governor Decree No. 561/198/X/2015 as of 22 October 2015

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18	West Sulawesi (Sulawesi Barat)	1,864,000	1,655,500	Increased by 12.59%	Governor Decree No. 188.4/705/SULBAR/X/2015 as of 26 October 2015
19	Bengkulu	1,605,000	1,500,000	Increased by 7%	Governor Decree No. E536XIV of 2015 as pf 28 October 2015
20	Riau	2,095,000	1,878,000	Increased by 11.5%	Governor Decree No. 1361 of 2015 as of 30 October 2015
21	DKI Jakarta	3,100,000	2,700,000	Increased by 14,81%	Governor Regulation No. 230 of 2015 as of 20 October 2015
22	East Kalimantan (Kalimantan Timur)	2,161,253	2,026,126	Increased by 6.67%	Governor Decree No. 561/K.694/2015 as of 1 November 2015
23	South Sulawesi (Sulawesi Selatan)	2,250,000	2,000,000	Increased by 12.5%	Governor Decree No. 2424/XI/2015
24	North Kalimantan (Kalimantan Utara)	2,175,340	2,026,126	Increased by 7.36%	Governor Decree No. 2424/XI/2015 of 29 October 2015
25	Lampung	1,763,000	1,581,000	Increased by 11.51%	Governor Decree No. G/541/III.05/HK/2015 as of 11 November 2015
26	Southeast Sulawesi (Sulawesi Tenggara)	1,850,000	1,652,000	Increased by 11.99%	Governor Decree No. 54 of 2015 as of 17 November 2015
27	North Maluku (Maluku Utara)	1,681,266	1,577,617	Increased by 6,57%	Governor Decree No. 250/KPTS/MU/2015 as of 2 November 2015
28	West Java	2,250,000	-	-	Governor Decree No. 561/KEP.1244- BANGSOS/2015 as of 1 November 2015
29	East Nusa Tenggara (Nusa Tenggara Timur)	1,425,000	1,250,000	Increased by 14%	Governor Decree No. 246/KEP/HK/2015 as of 29 October 2015
30	South Sumatera (Sumatera Selatan)	2,206,000	1,975,346	Increased by 11.73%	Governor Decree No. 838/kpts/disnakertrans/2015 as of 24 November 2015
31	Papua	2,435,000	2,193,000	Increased by 11.03%	Governor Decree No. 88.4/420/2015 as of 30 November 2015

ANNEX 2

Severance Pay Calculations

In general, severance pay is calculated as follows:

1. Amounting to wages for one month, in the case of the working period being less than one year.
2. Amounting to wages for two months, in the case of the working period being one year or more than two years.
3. Amounting to wages for three months, in the case of the working period being two years but less than three years.
4. Amounting to wages for four months, in the case of the working period three years but less than four years.
5. Amounting to wages for five months, in the case of the working period being four years but less than five years.
6. Amounting to wages for six months, in the case of the working period being five years but less than six years.
7. Amounting to wages for seven months, in the case of the working period being six years but less than seven years.
8. Amounting to wages for eight months, in the case of the working period being seven years but less than eight years.
9. Amounting to wages for nine months, in the case of the working period being eight years but less than nine years.

The maximum of severance is nine months' wage.

ANNEX 3

Indonesian law and regulations concerning manpower

- a. Law No. 13 of 2003 concerning Manpower (**Manpower Law**).
- b. Law No. 21 of 2000 concerning Labour Union (**Labour Union Law**).
- c. Law No. 2 year 2004 concerning Industrial Relations Disputes Settlement.
- d. Law No. 40 of 2004 concerning the National Social Security System (**National Social Security System Law**).
- e. Law No. 24 of 2011 concerning the Social Security Organizing Body (**BPJS**).
- f. Law No. 1 of 1970 concerning Occupational Safety (**Occupational Safety Law**).
- g. Law No. 36 of 2009 concerning Health Law.
- h. Government Regulation No. 78 of 2015 concerning Wages (**Wages Regulation**).
- i. Presidential Regulation No. 21 of 2010 concerning Labour Inspection.
- j. Government Regulation No. 44 of 2015 concerning Work Accidents and Death Security for occupational injury.
- k. Government Regulation No. 45 of 2015 concerning the Pension Benefit Program Implementation.
- l. Government Regulation No. 86 of 2013 concerning the Procedures to Impose Administrative Sanctions to Employers except Public Officials and every Individual, except Employers, Employees and Recipients of Contribution Subsidies in the Implementation of Social Security (**Government Regulation No. 86 of 2013**).
- m. Presidential Regulation No. 12 of 2013 concerning Health Security.
 - a. First Amendment: the Presidential Regulation No. 111 of 2013.
 - b. Second Amendment: the Presidential Regulation No. 19 of 2016.
- n. Minister of Manpower Regulation No. 2 of 2015 concerning Domestic Worker Protection.
- a. Minister of Manpower and Transmigration Regulation No. 7 of 2013 concerning the Minimum Wage.
- b. Minister of Manpower and Transmigration Regulation No. KEP. 231/MEN/2003 concerning Procedures of the Minimum Wage Postponement.
- o. The Minister of Manpower and Transmigration Regulation No. KEP. 102/MEN/VI/2004 Concerning Overtime Hours and Overtime Wages.
- p. Minister of Manpower Regulation No. Ke-150/Men/1999 concerning Social Security for Daily, Contracts and Fixed-term Contracts.
- q. Ministry of Manpower and Regulation No: KEP. 233/MEN/2003 concerning the Type and Nature of Work Performed Continually.

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- 42 Article 88, paragraph 3 (a) and 4 of Law No. 13 of 2003 concerning Manpower (the Manpower Law).
- 43 Business groups and their divisions based on the Indonesian Standard Industrial Classification (KBLI). By way of example, the Governor of the Jakarta Special Capital City Region issued Governor Regulation No. 8 of 2016 on 2016 Minimum Wages for the Industrial Sector, as follows: (1) construction and public works; (2) chemicals, energy and mining; (3) metal work, electronics and machinery; (4) automotive industry; (5) insurance and banking; (6) food and beverage; (7) pharmaceuticals and health services; (8) textiles, apparel and leather; (9) tourism; (10) telecommunications, and (11) retail.
- 44 Article 3, paragraph (1) of the Minister of Manpower and Transmigration Regulation No. 7 of 2013 concerning Minimum Wages, and Article 43, paragraph (1) of the Minister of Manpower and Transmigration Regulation No. 78 of 2015 concerning Wages.
- 45 Article 77, paragraph (2) of the Manpower Law.
- 46 Article 90, paragraph (2) of the Manpower Law.
- 47 Note procedural requirements detailed in the Minister of Manpower and Transmigration Regulation No. KEP. 231/MEN/2003 concerning the Procedure of Minimum Wage Postponement and/or relevant local regulations.
- 48 Article 5, paragraph (1) of the Minister of Manpower and Transmigration Decree No. KEP. 231/MEN/2003 concerning the Procedure of Minimum Wage Postponement.
- 49 Article 22 and its elucidation of the Manpower Law and Minister of Manpower and Transmigration Regulation No PER.22/MEN/IX/2009 concerning Domestic Apprenticeship.
- 50 Minister of Manpower Regulation No. 2 of 2015 concerning the Protection of Domestic Workers.
- 51 Article 41, paragraph (2) of the Government Regulation No. 78 of 2015.
- 52 Article 43, paragraph (1) of the Wages Regulation and Article 8, paragraph (2) of the Minister of Manpower and Transmigration Regulation No. 7 of 2013 concerning the Minimum Wage.
- 53 Article 43 of the Wages Regulation.
- 54 Article 44 of the Wages Regulation.
- 55 Article 17, paragraph (2) of the Wages Regulation.
- 56 Article 95, paragraph (1) of the Manpower Law. This is further regulated in detail in Article 51, paragraph (1) and Article 57 of the Wages Regulation.
- 57 Note that there is no regulation enforcing market rents.
- 58 Conditions regarding sick pay: (i) a doctor must confirm the employee is unable to work; (2) if the employee is registered for social security following a workplace accident, the employer may use the benefit of the social security to assist the employee; (3) if not registered for social security, the employer must compensate the employee and pay medical costs [following a workplace accident], and (4) the employer may be liable for not providing a safe working environment under the Manpower Law and Occupational Safety Law.
- 59 Article 93, paragraph (3) of the Manpower Law.
- 60 Article 77, paragraph (2) of the Manpower Law.
- 61 Article 78, paragraph (1)(b) of the Manpower Law.
- 62 Article 6 of the Minister of Manpower and Transmigration Decree No. KEP 102/MEN/VI/2004.
- 63 Article 8 of the Minister of Manpower and Transmigration Regulation No. KEP. 102/MEN/VI/2004 concerning Overtime Hours and Overtime Wage.
- 64 Article 11 of the Minister of Manpower and Transmigration Regulation No. KEP. 102/MEN/VI/2004 concerning Overtime Hours and Overtime Wage.
- 65 Article 7 of the Minister of Manpower and Transmigration Regulation No. KEP. 102/MEN/VI/2004 concerning Overtime Hours and Overtime Wage.
- 66 Ministry of Manpower and Regulation No: KEP. 233/MEN/2003 concerning the Type and Nature of Work Performed Continually.
- 67 Article 79 paragraph (2)(a) of the Manpower Law.
- 68 Article 80 of the Manpower Law.
- 69 Article 79, paragraph (2)(c) of the Manpower Law.
- 70 Article 82, paragraph (1) of the Manpower Law.
- 71 Article 93, paragraph (4)(a) of the Manpower Law.
- 72 Article 93, paragraph (4)(b) of the Manpower Law.
- 73 Article 93, paragraph (4)(c) of the Manpower Law.
- 74 Article 93, paragraph (4)(d) of the Manpower Law.
- 75 Article 93, paragraph (4)(e) of the Manpower Law.
- 76 Article 93, paragraph (4)(f) of the Manpower Law.
- 77 Article 93, paragraph (4)(g) of the Manpower Law.
- 78 Article 93, paragraph (2)(d) of the Manpower Law.
- 79 Article 93, paragraph (2)(g) of the Manpower Law.

- 80 Article 93, paragraph (2)(h) of the Manpower Law.
81 Article 85, paragraph (1) of the Manpower Law.
82 Article 35, paragraph (3) of the Manpower Law.
83 Article 164 and 165 of the Law No. 36 of 2009 concerning Health Law.
84 Article 86 of the Manpower Law.
85 Article 1367 of the Indonesian Civil Code (ICC), Supreme Court Decision No. 670 K/Pdt/2004.
86 Article 51, paragraph (1) of the Manpower Law.
87 Article 63 of the Manpower Law.
88 Article 57, paragraph (1) of the Manpower Law.
89 Article 63, paragraph (2) of the Manpower Law.
90 Article 54, paragraph (1) of the Manpower Law.
91 Article 15, paragraph (1) of the Minister of Manpower and Transmigration Decree No. KEP.100/MEN/VI/2004.
92 Article 188 of the Manpower Law.
93 Article 60 of the Manpower Law.
94 Article 59 of the Manpower Law.
95 Article 59, paragraph (4) of the Manpower Law.
96 Article 3, paragraph (2) of Ministry of Manpower and Regulation No. Kep-100/Men/VI/2004 Tahun 2004 concerning the Implementation of Fixed Term Contracts.
97 Law No 40 of 2004 concerning National Social Security System.
98 Article 163 of the Manpower Law.
99 Article 163 of the Manpower Law.
100 Article 164 of the Manpower Law.
101 Article 165, paragraph (1) of the Manpower Law.
102 Article 169 of the Manpower Law.
103 Article 166 of the Manpower Law.
104 Article 167 of the Manpower Law.
105 Article 172 of the Manpower Law.
106 Article 160, paragraph (7) of the Manpower Law.
107 Article 161 of the Manpower Law.
108 Article 168 of the Manpower Law.
109 Article 161, paragraph (1) of the Manpower Law.
110 Article 151 of the Manpower Law.
111 Article 152 of the Manpower Law.
112 Industrial Relation Dispute Settlement Law.
113 Article 76 of the Manpower Law.
114 Article 35 of the Manpower Law.
115 Article 153, paragraph (1)(e) of the Manpower Law.
116 Article 162, paragraph (1) of the Manpower Law.
117 Article 82 of the Manpower Law.
118 Article 153, paragraph (1)(e) of the Manpower Law.
119 Article 83 of the Manpower Law.
120 Article 5 of Minister of Women Empowerment and Child Protection Regulation No. 5 2015 Concerning Working on Providing Means Responsive Gender and Care for Children in Workplace.
121 Article 3 of the Minister of Women Empowerment and Child Protection Regulation No. 5 2015 Concerning Working on Providing Means Responsive Gender and Care for Children in the Workplace.
122 Article 86, paragraph (1) of the Manpower Law.
123 Article 69 of the Manpower Law.
124 Article 185 of the Manpower Law.
125 Badan Pusat Statistik (BPS) and ILO-IPEC Jakarta, 11 February 2010. *Pekerja anak di Indonesia 2009*. Available at: http://www.ilo.org/jakarta/whatwedo/publications/WCMS_123584/lang-en/index.htm
126 Article 4 of the Ministry of Manpower and Transmigration No. PER.03/MEN/1982 concerning Occupational Health Service.
127 General Director of Manpower Supervision Development No. KEP. 22/DJPPK/VI/2007 concerning Technical Procedure for Implementing Occupational Health Services.
128 Articles 86 and 87 of the Manpower Law.
129 Article 20 of Presidential Regulation No. 12 of 2013 concerning Health Security, and amended in Law No. 111 of 2013 (healthcare Security Law).
130 Article 25 of the Government Regulation No. 44 of 2015 concerning Accident and Death Benefits.
131 Presidential Regulation No. 111 of 2013 concerning Amendment to Presidential Regulation No. 12 of 2013 concerning Health Security.
132 Government Regulation No. 44 of 2015 concerning Accident and Death Benefits.
133 Government Regulation No. 46 of 2015 concerning Retirement/Old Age Security Program Implementation.
134 Article 28 of Government Regulation No. 45 of 2015 concerning Pension Benefit Program Implementation.
135 Article 104 of the Manpower Law.
136 Article 5 of Law No. 21 of 2000 concerning Labour Union (Labour Union Law).
137 Article 14 of the Labour Union Law.
138 Article 38 of the Labour Union Law.
139 Article 110, paragraph (3) of the Manpower Law.
140 Article 137 of the Manpower Law.

- ¹⁴¹ Article 139 of the Manpower Law.
¹⁴² Article 116 of the Manpower Law.
¹⁴³ Articles 119 and 120 of the Manpower Law.
¹⁴⁴ Article 29 of Act, Number 21, year 2000.
¹⁴⁵ Article 25 and 26 of the Manpower Law.
¹⁴⁶ Article 169 of the Manpower Law.
¹⁴⁷ Article 28 of the Labour Union Law.
¹⁴⁸ Article 169, paragraph (2) of the Manpower Law.
¹⁴⁹ Article 189 of the Manpower Law.
¹⁵⁰

Workers being sick thus unable to execute job.

Female workers being sick in the first and second day of their menstruation period thus unable to execute job.

Workers not coming to work due to marriage, wedding organising, circumcision, baptism of their child, their wife gives birth or suffers miscarriage, their husband or wife or child or son/daughter-in-law or parent or father/mother-in-law and family member in one house passes away.

Workers being unable to execute their job because they are executing their obligation to the state.

Workers being unable to execute their job because they perform worship ordered by their religion.

Workers being ready for executing job already promised by an employer but the employer does not employ them because of their mistake or obstacles that should be avoidable.

Workers exercising their right to rest.

Workers executing tasks of trade unions on the basis of approval of employer.

Workers executing educational tasks from employer.

¹⁵¹ See "Trade Union Rights" section above.

¹⁵² From appendix I of the Ministry of Manpower and Transmigration Regulation No. 13 of 2012.

¹⁵³ Presidential Regulation No. 21 of 2010 concerning Manpower Supervision/Labour Inspection.

¹⁵⁴ Minister of Manpower Number 35 of 2015 Regarding Amendment of Minister of Manpower Regulation Number 16 of 2015 Regarding the Procedure for the Utilization of Expatriate Workers.

MEXICO

Mexico's government is a federal presidential republic. The country experienced an economic downturn following the 2008 global financial crisis, which the current government, led by President Enrique Peña Nieto, sought to address. The country sought to encourage economic growth and increase competition through legislative reform in the education, energy, financial, fiscal and telecommunications sectors. Despite such efforts, the country continues to struggle with the oppression of drug-related gang violence,¹ low real wages, high unemployment, polarised income distribution and fewer opportunities for the poorer southern states.²

Mexico is the 12th largest export economy,³ and the second largest economy in Latin America with an annual GDP of USD 1.1 trillion and an annual growth rate of 2.5%.⁴ The country experienced strong economic growth in 2014-2015 as a result of public auctions designed to encourage private investment in some of the country's largest exports—oil, gas and electricity.⁵ However, the Mexican economy has been facing significant problems in recent years, triggered in part by declining oil prices, falling oil production, a large informal sector employing over half of the work force, corruption⁶ and the tightening of US monetary policy.⁷ This is highlighted further given that approximately 20% of government revenue comes from the state-owned oil company, PEMEX⁸, which is currently experiencing a fragile financial situation.⁹ To further Mexico's plight, national debt is increasing rapidly, with the debt-to-GDP ratio now over 50%.¹⁰

Poverty remains endemic, with 46% of the population living in poverty and 12% living in extreme poverty.¹¹ The unemployment rate of Mexico decreased from 5.0% in 2014 to 4.4% in 2015.¹² The health system is highly fragmented; there is high inequality between richer and poorer segments of the population in terms of both access to and quality of healthcare.¹³ Mexico's education system is ranked in the bottom quartile: ranked 120th out of 139 countries surveyed by the World Economic Forum.¹⁴ The country also has one of the highest secondary school dropout rates (almost 50%) in Latin America. On top of this, graduation rates are declining among lower-income groups.¹⁵

Mexico's USD 2.2 trillion economy has become increasingly oriented towards manufacturing since the North American Free Trade Agreement came into force. Mexico has become the US' second largest export market and third largest source of imports¹⁶—the US accounts for almost 90% of Mexico's exports.^{17, 18} Despite Mexico's free trade agreements (with the US and 46 other countries), the Mexican textile and clothing industry has faced strong competition from Asian exporters in recent years, but remains an important industry, contributing to 6% of GDP. In textiles and clothing, Mexico's primary export was to the USA. The survival of Mexico's industry has been dependent on competitive labour costs and the geographic proximity to the United States.¹⁹

Textile and apparels account for nearly 20% of all manufacturing employment, employing almost 415,000 workers in 2013. The number of workers employed in each *maquila* (manufacturing facility) range from a few workers to more than a thousand. While some of them are registered, many of them remain unregistered,²⁰ with women representing over 85% of the total workforce.²¹

Source	Statistic	Result	Year calculated
World Bank	Population	127,017,224	2015
World Bank	GDP in USD (trillion)	1.144	2015
World Bank	GDP growth %	2.541	2015
World Bank	Inflation %	2.7	2015
World Bank	Life expectancy	76.722	2014
World Bank	Infant mortality per 1000 live births	11	2015
Transparency Int.	Corruption Index –Score out of 100 –Rank out of 176	30 123	2016
IFPRI	Global Hunger Index	7.2 (low)	2016
UNDP	Human Development Index	0.762 (high)	2015
UNDP	Expected years of schooling	13.1	2014
Wage Indicator	Minimum wage – lowest per month (MXN)	2,433.2	2017
Wage Indicator	Minimum wage – highest per month (MXN)	6,913.3	2017
Fair Wage Network	Living wage – per family of 2 adults and 2 children (MXN)	12,061	2016

Working Conditions in Mexico’s Garment Industry

An ILO report shows that in terms of working hours Mexico was the first country among 24 garment exporters with the highest total annual working hours, with 2,392 hours in 2014. While normal weekly working is limited to 48 hours, overtime working is limited to 468 hours per year.²² Long working hours is one of the significant reported problems of garment workers in Mexico:

“You have no energy after work. I get home by 6:30 p.m., but I have to wake up again at 5:30 in the morning. In the smaller towns, some get home at 8:30 p.m. and have to wake up at three or four in the morning.” – A woman worker in Aguascalientes.²³

A study of a textile factory in Mexico shows that organisational conditions facilitate violence, such as prohibiting workers from speaking with colleagues, setting unrealistic workloads, spreading rumours and pressuring them illegally to speed up production.²⁴

Moreover, unionisation in the apparel *maquila* is difficult due to high rates of subcontracting and worker turnover.²⁵

Louie, M. C.’s study, *Life on the Line*, which focuses on the experiences of female Mexican immigrant workers at Levi Strauss & Co in Mexico, shows that employees must stay longer than their shift without pay if they do not finish set production goals. Girls aged 12 and 13 work in the factories. Workers are searched when they leave for lunch and at the end of the day to check if

they steal materials. Women are given urine tests when hired to fire those found to be pregnant.²⁶

Wages

Garment workers in Mexico saw the largest erosion in wages, which fell in real terms by 28.9% between 2001 and 2011. This decline coincided with the fact that Mexico fell from the United States' top source of imported garments in 2001, when it accounted for nearly 15% of imports, to the United States' fifth-largest clothing supplier in 2011, when it accounted for slightly less than 5% of imports.²⁷

In Mexico's garment industry, the prevailing wage, including overtime compensation, provided 67% of living wage in 2011.²⁸

Minimum Wage Rates in Mexico's Garment Industry, as of 1 January 2015²⁹

Specificity	Minimum Wage (Daily, MXN)	Minimum Wage (Monthly, MXN)
Sewing, garment factories, (Area A)	90.50	2,353
Sewing, homeworking (Area A)	93.20	2,423
Sewing, garment factories, (Area B)	85.95	2,235
Sewing, homeworking (Area B)	88.25	2,295

Freedom of Association and the Rule of Law

In Mexico, the judicial system remains vulnerable to political interference and corruption weakens long-term commercial competitiveness.³⁰

Mexican security forces have been implicated in repeated, serious human rights violations, such as extrajudicial killings, enforced disappearances and torture, in the course of efforts to fight organised crimes.³¹

Corruption, deeply embedded culturally, is extensive and fed by billions of narco-dollars. It is entrenched in the power of monopolists, party leaders and mafias. There is an ongoing epidemic of violence, corruption and impunity. Contracts are generally upheld, but courts are inefficient and vulnerable to political interference.³²

In Mexico, the inefficiency of the legal system and other institutional weaknesses, such as the structure of the police force and corruption within the system, remain significant problems. Corruption promotes a range of illegal activities, including non-compliance with tax laws, and regulatory obligations.³³

¹ BBC News., 2017. *Mexico Country Profile*. Available at: <http://www.bbc.co.uk/news/world-latin-america-18095241>

² Central Intelligence Agency., *The World Factbook*. Available at: <https://www.cia.gov/library/publications/the-world-factbook/geos/mx.html>

³ The Observatory of Economic Complexity, *Mexico*. Available at: <http://atlas.media.mit.edu/en/profile/country/mex/#Exports>

⁴ World Bank, 2017. *Mexico*. Available at: <http://www.worldbank.org/en/country/mexico>

⁵ CIA, 2017. *The World Factbook*. Available at: <https://www.cia.gov/library/publications/the-world-factbook/geos/mx.html>

⁶ *ibid.*

⁷ Organisation for Economic Co-operation and Development, 2015. *OECD Economic Surveys Mexico*, p4. Available at: <http://www.oecd.org/eco/surveys/Mexico-Overview-2015.pdf> p4

- ⁸ CIA, 2017. *The World Factbook*. Available at: <https://www.cia.gov/library/publications/the-world-factbook/geos/mx.html>
- ⁹ The World Bank, 2017. *Mexico Overview*. Available at: <http://www.worldbank.org/en/country/mexico/overview>
- ¹⁰ *ibid.*
- ¹¹ Programa de las Naciones Unidas para el Desarrollo en México, 2017. *México en breve*. Available at: <http://www.mx.undp.org/content/mexico/es/home/countryinfo/>
- ¹² ILO, 2015. *2015 Labour Overview Latin America and the Caribbean*, p14. Available at: http://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/documents/publication/wcms_450098.pdf
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- ¹⁴ Villiers Negroponete, D., 2012. *Mexico's Enrique Peña Nieto Confronts the Challenges of Federalism, Fiscal Reform and Education*, The Brookings Institution. Available at: <https://www.brookings.edu/blog/up-front/2012/11/30/mexicos-enrique-pena-nieto-confronts-the-challenges-of-federalism-fiscal-reform-and-education/>
- ¹⁵ OECD, 2015. *OECD Economic Surveys: Mexico 2015*, p37. Available at: http://www.oecd-ilibrary.org/economics/oecd-economic-surveys-mexico-2015_eco_surveys-mex-2015-en
- ¹⁶ CIA, 2017. *The World Factbook*. Available at: <https://www.cia.gov/library/publications/the-world-factbook/geos/mx.html>
- ¹⁷ Global Tenders, 2017. *Economy of Mexico*. Available at: <http://www.globaltenders.com/economy-mexico.htm>
- ¹⁸ World Trade Organisation, 2015. *International Trade Statistics 2015*, p53. Available at: https://www.wto.org/english/res_e/statis_e/its2015_e/its15_merch_trade_product_e.pdf
- ¹⁹ International Trade Administration, 2016. *2016 Top Markets Report Technical Textiles Country Case Study: Mexico*, p1. Available at: http://trade.gov/topmarkets/pdf/Textiles_Mexico.pdf
- ²⁰ <https://newint.org/easier-english/Garment/sweatmexico.html>
- ²¹ ILO, 2016. *Sectoral Studies on Decent Work in Global Supply Chains*, p24. Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/publication/wcms_485367.pdf
- ²² ILO, 2016. *Labour Standards in Global Supply Chains: A programme of action for Asia and the garment sector*. Available at: http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_444449.pdf
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- ²⁴ ILO, 2016. *Meeting of Experts on Violence against Women and Men in the World of Work*, p20. Available at: http://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/meetingdocument/wcms_522932.pdf
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- ²⁷ Center for American Progress, 2016. *Global Wage Trends for Apparel Workers 2001-2011*, p8. Available at: <https://cdn.americanprogress.org/wp-content/uploads/2013/07/RealWageStudy-3.pdf>
- ²⁸ *ibid.* p19.
- ²⁹ ILO, 2015. *Labour Standards in Global Supply Chains: a Programme of Action for Asia and the Garment Sector*. Available at: http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_436867.pdf
- ³⁰ The Heritage Foundation, 2017. *2017 Index of Economic Freedom: Mexico*. Available at: <http://www.heritage.org/index/country/mexico>
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MOROCCO

In recent years, Morocco has undergone significant democratic reforms, and has experienced favourable economic growth with a rapid improvement in social development indicators. Between 2001 and 2013 its economy grew at an average rate of 5% GDP per year, with extreme poverty amongst its 44 million population being almost eradicated; dropping from 2% in 2001 to just 0.28% in 2013.¹ However, the severe droughts in 2015 slowed growth considerably, growth forecasts for 2016 being predicted at less than 2%.²

Despite positive economic figures, unemployment remains very high, and 20% of the population still lives in poverty or under threat of poverty.³ Morocco also lags behind on key health and education indicators. Access to health services remains extremely unequal and differs widely between the rural and urban populations and socio-economic groups.⁴ Although 95% of primary-school-aged children are enrolled in school, drop-out rates are high. Only 53% of students enrolled in middle school continue on to high school, and less than 15% of first grade students are likely to graduate from high school.⁵ There is a significant disparity between urban and rural areas in terms of educational achievement and large gaps between male and female enrolment after primary school age.⁶

Garment Industry

Textile and clothing manufacturing is a traditional industry for Morocco but is declining.⁷ Nevertheless, it remains an important industry, accounting for 9-10% of economic output in 2014.⁸

Morocco has an advantage in terms of the European market—its delivery times are shorter,⁹ which is particularly important for fast fashion brands, which have fast turnover times. Spain accounts for 38-40% of Morocco's fast fashion export sales, followed by France, the UK, Germany and Italy. Spain's Inditex Group has been a long-term important client for around 150 Moroccan garment producers.¹⁰

The garment industry is a vital source of employment for the country, particularly for women. Women's economic participation in Morocco is of 26% and has not changed since 1990. Only 15% of women in urban areas are employed, compared to 62% of men; the majority of these women are employed in the garment industry.¹¹

Source	Statistic	Result	Year calculated
World Bank	Population	34.33	2015
World Bank	GDP in USD	100.4 billion	2015
World Bank	GDP growth	4.4%	2015
UNDP	Life expectancy per 1000 live births	74	2014
UNDP	Infant mortality	26.1	2014
Transparency Int.	Corruption Index –Score out of 100 –Rank	36 88/168	
IFPRI	Global Hunger Index	9.5 ranked low	2015
UNDP	Human Development Index	0.628	2014
UNDP	Expected years of schooling	11.6	2014
Wage Indicator	Minimum wage – lowest per month (MAD)	1813	
Wage Indicator	Minimum wage – highest per month (MAD)	1817	
Fair Wage Network	Living wage – per family of 2 adults and 2 children (MAD)	4,573	2016

Poverty and Wages

Information in English on the working conditions of Morocco's garment workers is limited. However, a report from 2013 by the Jacques Berque Centre in Rabat found that women were working on average nine hours a day, five days a week, and were earning around USD 1.45 an hour—with some earning less.¹²

Khadija, a worker in her thirties, explains, “The midday meal should not cost more than MAD 20 (USD 2.40). Not everyone eats three times a day.”

The report found that workplace hardship, rather than wages, was the most significant grievance. Workers told researchers that the pace of work and extreme noise in the factories left them stressed and exhausted. They also described the impact of the conditions on their health, aggravated by the poor access to decent healthcare. The majority of the women interviewed did not have access to a doctor at work and did not visit one until the pain had become persistent.

“The pace and noise induce a great deal of stress and fatigue, so much fatigue,” explains Aicha, a young woman of 33 whose face has already been creased with wrinkles and who appears weary and has a hazy gaze. The other women workers share that they have had “colleagues collapse, falling to their knees and barely being able to walk out of the factory due to the extent of their exhaustion.” Other woes included back and leg pain. Other complaints included eczema and chronic headaches. “I’m asthmatic. I was not born with asthma, rather I became this way here!”

Women form the majority of garment workers. They work out of economic necessity rather than choice, paid employment being considered a “less noble activity” than staying at home and looking after the family, which is seen as the woman's core responsibility. As a result women in Morocco face stigma for doing salaried work.¹³

Improved protections have been put in place for women workers in Morocco, including reducing the workload for expectant mothers and provisions for breastfeeding. However, reports suggest that these laws are not always enforced and in reality workers are often dismissed once their employer discovers they are pregnant.¹⁴

Social protection laws are in place to enable workers to access pensions. However only around 30% of the labour force contributes to a pension scheme, meaning that most workers do not receive a pension when they are deemed too old to work and most become reliant on family support.¹⁵

Politics and the Rule of Law

The current coalition government is led by a moderate Islamist party, Party for Justice and Development (PJD), and is composed of four parties.¹⁶ Since the adoption of the new Constitution in 2011, Morocco has engaged in a program of wide-ranging institutional reforms intended to ensure a more open and democratic society, more modern law and institutions, greater separation of powers, and increased decentralisation.¹⁷

However, Morocco's judicial system is still perceived as corrupt, highly inefficient and lacking both independence and transparency. It was given a score of 33 on Transparency International's corruption index and ranked 88 out of 168 countries.

Anti-corruption laws are not effectively enforced in Morocco, and government officials reportedly engage in corruption with impunity. The vast majority of Moroccans believe public officials and civil servants to be corrupt and almost eight in ten consider that the police are corrupt.¹⁸

Morocco is categorised as a "regular violator" of trade union rights by the ITUC. Whilst workers have protection against discrimination on the basis of trade union membership, there are significant legal barriers to workers exercising the right to bargain collectively or to take strike action.¹⁹

Although there is limited information on industrial action in the garment industry specifically, it is known that incidents of anti-union violence and attacks on union activists are not uncommon. Workers employed in export processing zones face extra limitations on their right to organise, in large part due to the inability of outside organisations or individuals to gain access.²⁰

Legal section

Wages

Minimum Wage²¹

Morocco is a member of the ILO. Morocco has ratified the *ILO C131 Minimum Wage Fixing Convention, 1970 (No. 131)* and *Recommendation, C135 - Workers' Representatives Convention, 1971 (No. 135)*. Accordingly, Morocco has undertaken to maintain a system of minimum wages which covers all groups of wage earners whose terms of employment are such that coverage would be appropriate.

Minimum wage laws apply in Morocco for both agricultural and non-agricultural activities.²² The legal minimum wage may not be less than the amount determined by regulation, after consultation with (i) the professional employers' organisations; and (ii) trade union organisations of the most represented employees²³ (see "5. Trade Union Rights - Collective Bargaining" below).²⁴

Minimum Wage Levels

On April 30th, 2014 Morocco's prime minister, Abdelilah Benkirane, announced a 10% rise in the minimum wage for the private sector (the "SMIG"), from MAD 12.24 per hour (USD 1.51 per hour) to MAD 13.46 per hour.²⁵

The minimum wage was raised by 5% in July 2015 and was to be raised by a further 5% in 2016, bringing the average monthly minimum salary to MAD 2,571–up from MAD 2,338.

Exceptions to the Minimum Wage

Any employee who is paid on the basis of piece work, the job performed or profitability, is entitled to receive at least the legal minimum wage. Nevertheless, where an authorised expert determines that a shortfall in the work completed is directly attributable to the employee and not to any extraneous cause, wages may be reduced by the employer to reflect the work actually performed.²⁶

A person carrying out an internship is not entitled to a minimum wage. However, the payment of social security is mandatory in relation to any payment made to an intern (for example, for transportation and meals).

Basic/Additional Amounts

The legal minimum wage for agricultural and non-agricultural activities may not be less than the amount determined by regulation after consultation with the professional employers' organisations and trade union organisations of the most represented employees.²⁷

For non-agricultural activities, the legal minimum wage is calculated on the basis of the value determined by the regulations then in force. Gratuities and additional benefits, in cash or in kind, are taken into account in assessing this legal minimum wage. However, for agricultural activities, benefits in kind cannot be taken into account for the calculation of the legal minimum wage.²⁸

Minimum Wage Review²⁹

The minimum wage is set through decentralised collective bargaining. Collective agreements set the coefficient for determining minimum wage rates for categories of employees in accordance with their professional qualifications (the respective minimum wage will be the SMIG multiplied by this coefficient). Wage rates determined by collective agreement may not be lower than the minimum wage rates set by the government.

There are no legislated wage controls in Morocco other than the minimum wage. Therefore, wages and salaries can be freely agreed between employees and employers. Apart from agreed pay increases, an indexing system enables the government to raise by decree all wages

and salaries effectively paid when the Central Commission for Prices and Wages records an increase of at least 5% in the cost of living.

Payment of Wages

Wages must be paid at least twice a month at a maximum of sixteen days' interval, irrespective of the method of remuneration (time rates, piece rates or job rates). Salaries must be paid at least once a month.³⁰

Upon the payment of wages to employees, the employer must deliver to his employees a proof document ("a pay-slip") that must include all data determined by the government labour authority to be included.

An employee's acceptance (without objection or reservation) of a pay-slip stating the payment of their wages does not imply a waiver of that employee's right to wages and related benefits. This provision remains applicable even if the employee signs at the bottom of the document: "Read and Approved".³¹

Deductions from Wages

Employers may not deduct or set-off against the amount of wages payable to the employees any debts owed to them by employees, including debts relating to supplies provided by the employer.

There are certain exceptions to this rule, and set-off is permitted where the employer has provided the following to the employee:

- tools or equipment needed for work;
- materials and instruments that the employee has received and kept in his custody; or
- amounts paid in advance for the purchase of these tools, equipment, materials and instruments.³²

Working Hours

Normal Working Time

For non-agricultural activities:

- the normal working hours prescribed for employees are 2,288 hours per year, or 44 hours per week; and
- the overall annual working hours may be distributed over the year according to the needs of the employer, provided that the normal working hours do not exceed ten hours per day (subject to the exceptions referred to in Articles 189, 190 and 192).³³

For agricultural activities:

- the normal working hours are 2,496 hours per year; and
- such hours are divided into periods according to the necessary requirements of crops, and based on a daily period to be determined by the competent government authority (after consultation with professional employers' organisation and trade union organisations of the most represented employees).³⁴

Overtime

The working hours of an employee may be extended beyond normal working hours, only if:

the work performed by such employee is essentially intermittent work; or

it is necessary to perform preparatory or complementary works essential to the general activity of the institution, which cannot be executed within the normal working hours.

However, such extended working hours may not exceed a maximum of twelve hours a day.³⁵

Notwithstanding the above, if an employer is faced with work that is required in the national interest, or an extraordinary increase of work, it may require its employees to work beyond

normal working hours in accordance with conditions determined by regulation. In such circumstances the employer must pay an overtime allowance.³⁶

Overtime Rates

Whatever the mode of remuneration for the employee, overtime shall be paid at the following increased rates:

For non-agricultural activities:

- at a 25% increase in wage for overtime hours worked between 6 a.m. and 9 p.m.; and
- at a 50% increase in wage for overtime hours worked between 9 p.m. and 6 a.m.
- For agricultural activities:
- at a 25% increase in wage for overtime hours worked between 5 a.m. and 8 p.m.; and
- at a 50% increase in wage for overtime hours worked between 8 p.m. and 5 a.m.

In both cases, these increases will be (i) 50% and (ii) 100% respectively if the overtime is worked on the weekly rest of the employee, even if a compensatory rest period is granted.³⁷

Night Work

There are specific provisions relating to the employment of women and juveniles at night.³⁸

Women

Subject to any exceptions determined by a regulation, women may be employed at night (subject to consideration of their health and social situation, after consultation with professional employers' organisations and trade union organisations of the most represented employees.

Any conditions that must be provided to facilitate women working at night shall be laid down in regulations.

Juveniles

The employment of juveniles under the age of sixteen at night is prohibited, save in the following circumstances:

- in the case of unemployment due to force majeure or accidental interruption that is not of a periodic nature (provided that this exception may not be exploited for more than twelve nights a year, unless the officer in charge of labour inspection otherwise authorises); and
- to prevent imminent accidents, organise rescue operations or repair unpredictable damage (the employer may work under this exception for one night only, and disabled employees may not work under this exception).

If relying on either of the exceptions under (i) or (ii) above, the employer must notify the officer in charge of labour inspection of this fact.

Rest Time^{39, 40}

Morocco has ratified the *ILO C014 - Weekly Rest (Industry) Convention, 1921 (No. 14)* (the “Weekly Rest Convention”), which provides for a weekly rest day for employees employed in industrial employment (as defined in the Weekly Rest Convention). Accordingly, Morocco has undertaken to ensure that all staff employed in any industrial undertaking (public or private), enjoy a period of rest comprising at least twenty-four consecutive hours, in every period of seven days (subject to the exceptions detailed below).

Employees shall be granted a mandatory weekly rest which:

- shall be of at least twenty-four hours calculated from midnight to midnight;
- shall be Friday, Saturday or Sunday, or the day of the weekly market; and
- shall be granted simultaneously to all employees in the same institution.
- Notwithstanding the above, employers may give a weekly rest by rotation to all or part of their employees, where:
 - such employer is an institution whose activity requires a permanent opening to the public or the suspension of whose activity would harm the public, or
 - such employer is an institution where suspension of activity would result in losses due to the perishable nature or rapid deterioration of raw materials, materials under preparation, or agricultural produce constituting the core of its activity; or
 - the government labour authority has authorised the giving of weekly rest by rotation (following receipt of an application for the same from the relevant institution, and only after consultation with the professional employers’ organisations and trade union organisations of the most represented employees).

The weekly rest period may be suspended where it is justified by the nature of the relevant institution’s activity, the products used, completion of urgent work or an unusual increase in work volume. The application of these exceptions is to be determined by regulation, after consultation with the professional employers’ organisations and trade union organisations of the most represented employees.

Paid Holiday⁴¹

Morocco has ratified the *ILO C052 - Holidays with Pay Convention, 1936 (No. 52)* relating to paid annual holiday. Employers must therefore offer a legal minimum level of paid holiday leave to employees. Article 231 of the Labour Code provides for:

- 1.5 days of paid annual leave for each month of work; or
- 2 days of paid annual leave for each month of work in respect of employees under the age of 18 years.

After each period of 5 years’ service by an employee, paid annual leave is increased by 1.5 days (provided that this addition may not increase the total leave to more than 30 days of actual work).⁴²

There are no conditions to receiving bank holidays (i.e. employees do not have to have worked for a minimum period of time to be entitled to such days).

Liability and Contracts

Liability and Duties

The Moroccan Civil Code⁴³ provides that a manufacturer/artisan shall be liable for damage caused by apprentices when they are subject to supervision, save where the manufacturer/artisan can establish that he could not have prevented it.

Contract of Employment⁴⁴

There is no requirement that permanent contracts are provided for in writing and proof of transfer of an employee's salary, including by way of a wage slip, is sufficient proof that there is an employment relationship. However, for fixed term contracts, a written employment contract is mandatory.

Probation Period

The standard probation periods for contracts of indefinite duration are as follows:

- three months for managers (and similar roles);
- one and half months for employees; and
- fifteen days for workers.

The probation period may be renewed once.⁴⁵

The probation period for fixed-term contracts may not exceed:

- one day in respect of each working week (provided that the probationary period is not in excess of two weeks for contracts of less than six months); or
- one month for contracts in excess of six months.

However, in the case of fixed term contracts, shorter probation periods than those mentioned above may be provided for in the contract of employment, the collective labour agreement or the internal regulations.

Short-term Contracts⁴⁶

Temporary employment companies are defined as companies that recruit employees in order to temporarily put them at the disposal of third parties, known as "users". Users assign the employee(s) non-permanent jobs known as tasks and supervise the execution of these tasks.

An employer may hire the employees of a temporary employment company (after consulting the organisations representing employees inside the company), to perform "tasks" only in the following cases:

- the replacement of an employee with another in case of absence or suspension of the employment contract, provided that such suspension is not caused by a strike;
- a temporary increase in the company's activity;
- performing work of a seasonal nature; or
- performing work for which it is customary not to conclude an employment contract for an indefinite period due to the nature of work.

The employees of a temporary employment company may not be hired for the performance of works involving special hazards.

Requirements of Temporary Contracts⁴⁷

The contract between the temporary employment company and every employee provided to the employer is concluded in writing. This contract shall include the following:

- the reason for hiring a temporary employee;
- the period of the task and the place of execution;
- the amount determined as consideration for making the employee available to the employer;
- the qualifications of the employee;
- the wage and terms of payment;
- the probationary period;
- the descriptions of the job that the employee will occupy;
- the membership number of the temporary employment company and the registration number of the employee at the National Social Security Fund;
- terms of repatriation of the employee by the temporary employment company if the task is done outside of Morocco; and
- the contract should also stipulate the possibility of hiring the employee by the employer company after completing his task.
- The task period⁴⁸ may not exceed:
- the period of the employee's contract suspension (where an employee is replaced by a temporary employee);
- three months, renewable once, in cases where the employee is hired as a result of the temporary increase in the company's activity; and
- a non-renewable six-month period where the employee is hired to perform work of a seasonal nature or work for which it is not customary to conclude an employment contract for an indefinite period due to the nature of the work.

Severance Allowance^{49, 50}

An employee on a permanent contract is entitled to compensation in case of dismissal regardless of the mode of remuneration and the frequency of payment of wages, provided that he or she has worked for the same employer for six months.⁵¹

The amount of compensation for dismissal, for each year or part of a year of actual work shall be equal to the following:

- 96 hours of pay for the first five years of service;
- 144 hours of pay for the period of service from 6 to 10 years;
- 192 hours of pay for the period of service from 11 to 15 years; and
- 240 hours of wages for the period of service exceeding 15 years.

The dismissal compensation shall be calculated on the basis of the average wage received during the 52 weeks before termination.

Where the termination of employment has no valid cause, the employer must pay:

- prior notice;
- remaining annual leave;
- severance; and
- damages for unfair dismissal.
- Where the termination of employment is based on a fault, the employer must pay:
- prior notice; and
- remaining annual leave.

Dismissal⁵²

Where an employee has committed a serious offence, he or she may be dismissed without notice or compensation for dismissal or harm.

Notwithstanding the above, before dismissal the employee must be able to defend himself/herself and be heard by the employer or his representative in the presence of an

employee representative or union representative that the employee chooses within eight days of the date of establishment of the act charged against him.

Gender and Age

Articles 143-183 contain provisions relating to the protection of women and juveniles.

Discrimination against employees on the basis of race, colour, sex, disability, marital status, religion, political opinion, trade union membership, national extraction or social origin is prohibited. In particular, there must be no violation of the principle of equality of opportunity or treatment on an equal footing in terms of employment or profession, in particular regarding hiring, performance and distribution of work, vocational training, pay, promotion, granting of social benefits, disciplinary measures and dismissal.

Equal Pay^{53, 54}

Any discrimination in wage based on sex is prohibited if the value of the labour that the employees perform is equal.⁵⁵

Morocco has ratified the *ILO C100 - Equal Remuneration Convention, 1951 (No. 100)* relating to equal remuneration for men and women. Accordingly, Morocco has agreed (by means appropriate to the methods in operation for determining rates of remuneration) to promote and (in so far as is consistent with such methods), ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.

Morocco has ratified the *ILO C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)* relating to discrimination in the field of employment and occupation. Accordingly, Morocco has undertaken to declare and pursue a national policy designed to promote (by methods appropriate to national conditions and practice), equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.

Pregnancy

There are legal protections for pregnant women. The employment contract of a pregnant woman cannot be terminated during pregnancy or maternity leave. The employer must also ensure her workload is not increased.⁵⁶

In 2011, Morocco also ratified the *ILO Maternity Protection C183 - Maternity Protection Convention, 2000*.

Maternity Leave/Pay^{57,58}

The minimum legal period of maternity leave is 14 weeks, which is fully compensated by the social security system, National Fund for Social Security, CNSS. However, employers must register their employees first with the CNSS. Mothers may also take an additional one year of unpaid maternity leave.

Right to Return

Working mothers are reinstated in their original place of work on the expiry of their maternity leave, and continue to enjoy the benefits they had acquired prior to the maternity leave.⁵⁹

New Parents

Articles 152-181 relate to maternity protections. However, these maternity protections do not apply to the informal sector, where there is no protection.

Paternal Leave

Every employee who declares paternity of a child benefits from three days' paternity leave on the birth of each child.⁶⁰

Childcare⁶¹

Any employer with at least 50 women employees should ensure there is appropriate space dedicated to women when breastfeeding. These dedicated spaces may also be used as nurseries for the children of female employees working for the employer.

Sexual Harassment⁶²

Sexual harassment of an employee by an employer is a serious offence. Further, dismissal of the employee in such circumstances is considered to be arbitrary dismissal. Grave insult, violence or aggression against an employee, or incitement to corruption, are treated in the same way as sexual harassment.

Minimum Working Age^{63, 64}

Morocco has ratified the *ILO C138 - Minimum Age Convention, 1973 (No. 138)*, 06 Jan 2000 which states that the minimum age for admission to employment or work shall not be less than 15 years old.

Morocco has ratified the *ILO C182 - Worst Forms of Child Labour Convention, 1999 (No. 182)* which relates to the prohibition and elimination of the worst forms of child labour. Juveniles may not be employed or admitted to companies or employers under the age of fifteen.⁶⁵ Juveniles under the age of sixteen may not be employed in performances by an acrobat, entertainer, animal trainer, or manager of a movable circus or amusement park.

Juveniles under the age of eighteen may not:

- without the prior permission of the officer in charge of labour inspection after consultation with the juvenile's guardian, be employed as an actor or performer in public performances made by companies specified by a regulation; or
- perform perilous stunts, acrobatic exercise or contortion, or
- carry out works involving risks to their lives, health or morals.

Social Security/Healthcare

Clinics

Independent medical departments must be established at:

- industrial, commercial and craft companies as well as agriculture and forestry enterprises and their subsidiaries where more than fifty employees work;
- industrial, commercial and craft companies as well as agriculture and forestry enterprises and their dependencies, and employers engaged in works that expose their employees to the risk of occupational disease, as determined by the legislation on compensation for industrial accidents and occupational diseases.⁶⁶

Time taken in respect of a necessary medical examination shall be paid as normal working time.⁶⁷

Rules relating to the equipping of medical labour departments at company or inter-company level are determined by the government labour authority.⁶⁸ If the medical department is important enough to hold two full-time doctors, a second medical clinic shall be established.⁶⁹

Free Healthcare

Companies required to have a medical labour department (see above) shall ensure that the following employees are medically examined by the occupational physician:⁷⁰

- every employee prior to hiring (or, at the latest, before the expiration of the probation period);
- every employee at least once every 12 months for employees at or above 18 years, and every six months for those under 18 years;
- every employee who may be exposed to any danger;
- pregnant women;
- any mother of a child under two years;
- any wounded or disabled employee at a frequency which the occupational physician determines; and
- any employee in the following cases:
 - after an absence of more than three weeks because of an accident other than a work accident or a disease other than an occupational disease;
 - after absence due to a work accident or occupational disease; or
 - in case of recurrent absences for health reasons.

The means for enforcement of the provisions of this Article will be determined by the government labour authority.

Social Security Payments

There is no entitlement to pay in relation to absence due to illness or accident (other than an occupational disease or work accident), unless the employment contract, collective labour agreement or the internal regulations provide otherwise.⁷¹

Occupational injury

Morocco has ratified the *ILO C017 - Workmen's Compensation (Accidents) Convention, 1925 (No. 17)* relating to workmen's compensation for accidents. Accordingly, Morocco has undertaken to ensure that workers who suffer personal injury due to an industrial accident, or their dependants, shall be compensated on terms at least equal to those provided in the *Workmen's Compensation (Accidents) Convention*.

Morocco has ratified the *ILO C018 - Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18)* relating to workers' compensation for occupational diseases. Accordingly, Morocco has undertaken to provide that compensation shall be payable to workers incapacitated by occupational diseases, or in the case of death from such diseases, to their dependants, in accordance with the general principles of the national legislation relating to compensation for industrial accidents.⁷²

Morocco has also ratified the *ILO C019 - Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)* (the **Equality of Treatment (Accident Compensation) Convention**) relating to the equality of treatment for national and foreign workers in terms of workers' compensation for accidents. Accordingly, Morocco has undertaken to grant to nationals of any member state that has ratified the Equality of Treatment (Accident Compensation) Convention and who suffer personal injury due to industrial accidents in its territory, or to their dependants, the same treatment in respect of workers' compensation as it grants its own nationals.^{73,74,75}

The employer is responsible for the insurance of employees against work accidents and occupational diseases.⁷⁶

Health Insurance

The contributory health insurance scheme, Assurance Maladie Obligatoire (**AMO**), that covers all employees, professionals and workers of the informal economy, was phased in over five years from 2006.

AMO is expected to provide health insurance for 1.6 million wage earners in the private sector who are not currently covered. Also the RAMED medical assistance scheme was launched in 2012 directed towards the economically destitute. It has been estimated that around 5 million Moroccans are benefiting from the scheme. The number of beneficiaries will be much greater than the number of employees registered with the different schemes because family members are also covered.⁷⁷

The new Constitution adopted by Morocco in July 2011 reinforces the Moroccan rights to public social protection and provides access to social protection, to healthcare and to a healthy economic and social environment. These are part of the fundamental rights guaranteed by the Moroccan Constitution, which promotes the equal access of citizens to healthcare, social welfare, medical coverage, modern education, decent housing, work, access to public service according to merit, access to water and a healthy environment and sustainable development (Article 31 of the Constitution of 1 July 2011).⁷⁸

Retirement Pension/Social Insurance

The Social Security Fund (**CNSS**) provides for AMO and pensions. Employers may provide their employees with private medical insurance and pension rights, but it is not mandatory.

Trade Union Rights

Articles 396-474 contain provisions relating to trade unions, representatives of employees, work councils and trade union representatives inside of companies.

Members in charge of administration and management of the trade unions shall be:

- of Moroccan nationality;
- eligible to enjoy their civil and political rights;
- and shall not have been convicted of an offence with an automatic penalty of imprisonment for one of the following: larceny, fraud, breach of trust, forgery and falsification of documents, inciting minors to debauchery, assistance for debauchery, trafficking or using drugs, breaching the Company Law and misusing of joint assets.⁷⁹

There is no minimum percentage of workers required to be organised in order to register a trade union in the workplace. There are no limitations on the number of registered unions permitted in the workplace.

Protections against Trade Union Discrimination

Any infringement of the freedoms and rights relating to trade union practices, according to the laws and regulations in force, and any attack on freedom of work in respect of trade union rights are prohibited.⁸⁰

In addition, it is prohibited to discriminate against employees on the basis of political opinion or trade union membership, where such discrimination has the effect of violating or altering the principle of equality of opportunity or treatment on an equal footing, in terms of employment or profession, in particular regarding hiring, performance and distribution of work, vocational training, pay, promotion, granting of social benefits, disciplinary measures and dismissal.

The following, in particular, are protected:

- the banning of any discriminatory measure based on membership or trade union activities of employees; and
- the right of women, married or not, to join a trade union and participate in its administration and management.

Employers are obliged to provide facilities for trade unions and their elected officials (e.g. noticeboards, authorised leave, etc.). The law also provides for the election of staff representatives.

The Right to Strike

The right to strike is included in Morocco's Constitution.

Collective Bargaining

The Labour Code recognises the right to collective bargaining, but it can only be conducted by the "most representative" union, which must have at least 35% of the total number of employee delegates elected at the enterprise or establishment level.⁸¹

Articles 92-134 contain provisions on collective bargaining and collective labour agreements.

Morocco has ratified the ILO *C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*, relating to the right to organise and to bargain collectively. This Convention requires members, including Morocco, to ensure that workers enjoy adequate protection against acts of anti-union discrimination in respect of their employment.⁸²

Enforcement/Implementation Mechanisms

Breach of Labour Standards

The following acts are punishable by a fine of between MAD 300 and MAD 500.⁸³

- non-delivery or non-renewal of the work card as provided by Article 23; and
- failure to insert any data set by a regulation in the work card.

The penalty shall be applied as many times as there are employees for whom the provisions of Article 23 were violated, provided that the total fines shall not exceed more than MAD 20,000.

The employer shall be liable to a fine of MAD 2,000 to MAD 5,000 if the employees are denied access, upon appointment, to data stipulated in Article 24 and changes thereto. The fine resulting from breach of the provisions of Article 24 shall be doubled if a similar act is committed within a year of the final judgment having been pronounced.

Victimisation

No records are kept of complaints of victimisation.

There are no records/statistics kept on how common it is for employees/collectives to take up disputes with the employers, or what proportion of these escalate to court level.

Sanctions

The Ministry of Employment and Professional Development is responsible for implementing and enforcing child labour laws and regulations. The law provides for legal sanctions against employers who recruit children under the age of 15, with fines ranging from MAD 27,000 to MAD 32,000 (USD 3,260 to USD 3,870). Punishment for violations of the child labour laws includes criminal penalties, civil fines and withdrawal or suspension of one or more civil, national or family rights, including denial of legal residence in the country for five to ten years.⁸⁴

The following acts are punishable by a fine of MAD 300 to MAD 500.⁸⁵

- the employment of women or juveniles under the age of 16 to work at night (as provided in the last paragraph of Article 173), without obtaining a special permission as provided for in that paragraph; or
- non-compliance in non-agricultural activities with the minimum hours of rest for women and children between two consecutive working days, as stipulated in Article 174.

The fine shall be applied by reference to the number of women and juveniles in respect of whom the provisions of those two articles are not observed, provided that the total fines may not exceed the amount of MAD 20,000.

The following acts shall be punishable by a fine of MAD 300 to MAD 500:⁸⁶

- employment of juveniles under 18 years of age and women in underground quarries and works in mines, in violation to Article 179; or
- employment of juveniles under 18 years of age in works that may hinder their growth or worsen their disability, whether on the ground or underground, in violation to Article 180, and in the works referred to in Article 181.

The fine shall be applied as many times as there are employees for whom the provisions of the preceding two articles have not been observed, provided that the total fines may not exceed the amount of MAD 20,000. Failure to provide seats or providing an insufficient number of seats stipulated in Article 182 in each room where the female employees carry out their works in institutions referred to therein shall be punished by a fine of MAD 2,000 to MAD 5,000.

Enforcement in Practice

The Ministry has failed systematically to enforce sanctions in respect of child labour, largely due to a lack of resources. According to various reports, police, prosecutors and judges rarely enforce legal provisions on “forced labour in cases involving child domestics,” and few parents of children working as domestic servants were willing or able to pursue legal avenues that were likely to provide any direct benefit.

In 2012 a court convicted and sentenced an employer to 10 years in prison for beating a child maid to death. Additionally, an undetermined number of Filipina maids filed suits against their former employers for trafficking-like abuses. Some were awarded compensation. According to Justice Ministry officials, 28 employers were prosecuted in 2012 for employing a child domestic. Labour inspectors responsible for enforcing the labour code do not have jurisdiction to inspect private residences. The ministry’s small cadre of labour inspectors do not monitor the informal sector. 43 of the 51 national labour inspectorates had an inspector trained in child labour issues. These inspectors received up to 14 weeks of training from the International Labour Organisation’s International Program on the Elimination of Child Labour. During the year, child labour focal-point inspectors received additional training under an international agreement with Spain.⁸⁷

Enforcement of Employees’ Rights by Employees

The National Labour Institute and Inspectorates were set up under the *Labour Inspection Convention, 1947 (No. 81) - Morocco (Ratification: 1958)*, and are available to workers to ensure enforcement of the labour laws.⁸⁸

Employees can have recourse to labour inspectorates or to the courts. In practice, however, there is a possibility that employees would be limited in their actions due to considerations such as the length of time for any procedure, legal costs and the fear that the inspectors and judges may not be impartial and subject to bribery.

Impact on Compliance

There is no oversight of compliance with the various labour laws. In any event, however, since the financial sanctions for non-compliance would be considered low, they do not efficiently discourage any non-compliance with labour laws.

Incentives

Incentives are provided to businesses for them to maintain a high quality of treatment of their employees. Labour inspections are conducted by officers and local authorities. Fines/penalties can be imposed if the standards are not met.

Realistic Opportunities for Reform

There are no current initiatives in the country to strengthen workers’ right to a living wage; the last review of the minimum wage was approved in July 2015.

Living Wage Considerations

There is no official threshold for the purposes of establishing a living wage, but it is common knowledge that there is a huge gap between the legal minimum wage and the living wage.

Migrant Workers

Migrant workers are entitled to the same rights and benefits as national workers provided the labour relationship is governed by Moroccan law (expatriates excluded).

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MYANMAR (BURMA)¹

Myanmar was ruled by a military dictatorship from 1962 to 2010. Due to the oppressive nature of the regime and its extreme violation of human rights, the EU and many other large garment importing regions and countries imposed economic sanctions. Between 1988 and 2012, only 477 foreign companies invested in Myanmar, with a total Foreign Direct Investment of USD 4.1 billion.²

Since the beginning of political reforms in 2011, the majority of these sanctions have been removed and investment has soared. The EU lifted sanctions in April 2013 and afforded Myanmar tariff-free access to the EU by decision of July 2013 under its “Everything but Arms” preferential trade regime.^{3,4} During the 2014-2015 fiscal year alone, Foreign Direct Investment reached a record USD 8 billion, and 895 companies foreign countries invested in the country.⁵ As a result the International Monetary Fund (IMF) describes Myanmar as the world’s fastest-growing economy.⁶

Inequality and poverty remain a significant problem across the country. Two-thirds of the population live in rural areas where poverty is prevalent.⁷

The health indicators for the country are stark: among ASEAN countries, Myanmar has the lowest life expectancy (68 years for women and 64 years for men), the second-highest rate of infant and child mortality, and an alarming rate of maternal mortality.⁸ Among the top causes of death are preventable diseases such as malaria, acute respiratory infections and diarrhea. The vast majority of people cannot afford private healthcare and have to rely on a medical industry that is overstretched and lacks basic infrastructure, in rural areas this is non-existent.⁹

Source	Statistic	Result	Year calculated
World Bank	Population	53.90 million	2015
World Bank	GDP in USD	64.866 billion	2015
World Bank	GDP growth	1.7 billion	2015
UNDP	Life expectancy	65.9	2014
UNDP	Infant Mortality per 1000 live births	54.7	2015
Transparency Int.	Corruption Index –Score –Rank	22/100 147/168	
IFPRI	Global Hunger Index	23.5 rated serious	2015
UNDP	Human Development Index	148 rated low	2014
UNDP	Expected years of schooling	8.6	
Wage Indicator	Minimum wage–per month MMK	93,600	2016

Garment Industry

Despite the political regime, by 2000, manufactured garments accounted for 85% of total exports—54% of which went to the US. The economic sanctions imposed by the US in 2003 had a dramatic impact, resulting in the loss of many factories. The Myanmar Garment Manufacturers' Association (MGMA) claimed some 85,000 factory workers lost their jobs. After the sanctions, most of the garment factories catered to the domestic market, with some exporting to China, South Korea and Japan, which replaced the US as the main export markets. The sector now employs an estimated 200,000 workers, 90% of whom are women.

With the recent reinstatement of the GSP+ trade preferences for exports to the EU, companies are increasingly making products in and purchasing products from Myanmar. Exports from garment manufactures to the EU doubled in 2014, while total exports were valued at about USD 1.5 billion.

Manufacturing overall represents the third largest sector in Myanmar, with garments and textiles becoming one of the biggest areas of growth. International brand representatives and the Myanmar Garment Manufacturers Association (MGMA) have projected that over the next 10 years, the industry's value will grow from USD 912 million in 2012, to USD 8 billion–10 billion in 2022, employing up to one and a half million workers. Exports from garment manufactures to the EU doubled in 2014 and many well-known international brands including Adidas Group, Gap (USA), H&M, Marks & Spencer and Primark now source their products from factories in Myanmar.¹⁰

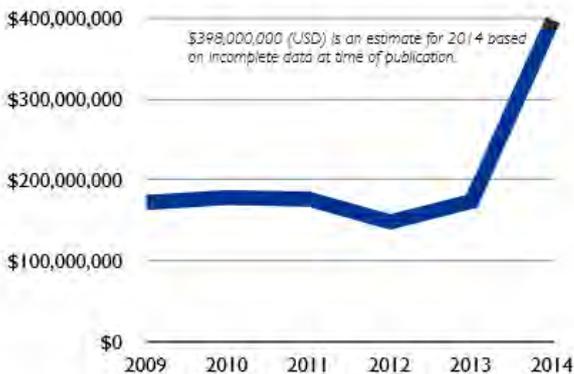
Myanmar currently has approximately 300 factories, with a workforce of nearly 300,000, 90% of whom are young women. The manufacturing of garments and footwear is mostly located in industrial zones around Yangon city, with a few factories outside Yangon in Thilawa, Mandalay, Bago and Patheingyi.¹¹

Garment exports from Myanmar...

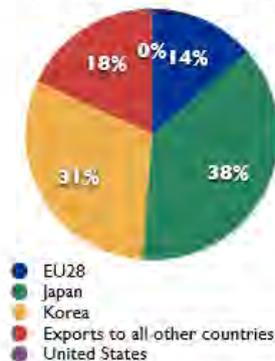
...to the world

...in 2011:	\$0.7 billion USD
...in 2012:	\$0.9 billion USD
...in 2013:	\$1.2 billion USD
...in 2014:	\$1.6 billion USD (SMART Myanmar projection; note: MIC previously predicted \$1.5 billion USD)

...to the European Union (HS61 & HS62 product categories)



Share of European market related to Myanmar's other export destinations in 2013 (garments HS61 & HS62)



12

Poverty and Wages

“The new minimum wage will still leave workers and their dependents just above the global severe poverty line of USD 1.25 per person, and many will still struggle to make ends meet.”—ITUC.¹³

Myanmar’s garment workers earn a minimum wage of MMK 3,600 for an eight-hour day, roughly EUR 68 per month. This represents the lowest minimum wage of any garment-producing country in the world aside from Bangladesh.¹⁴

This amount is lower than the MMK 4,000 demanded by the unions¹⁵ and is significantly lower than what is needed to pay a living wage, estimated by the Wage Indicator Foundation to be EUR 69.2 for an individual and EUR 109.5 for a typical family.

Even so, following the introduction of this wage in September 2013 workers reported that their employers responded by stripping away overtime hours, allowances for food and transport and bonuses. In one factory, workers claimed they were earning up to 30% less than they did before the minimum wage was introduced.¹⁶

Most garment workers’ wages support not just themselves, but other family members. Many may be the sole earner in their family. Low wages mean workers rely on high interest loans to pay for basic items and become trapped in a cycle of debt. An Oxfam survey carried out in 2015 revealed that almost half of those workers interviewed were in debt to money lenders, owing an average of MMK 57,400 and paying interest at around 18%. Saving for unexpected events such as illness, unemployment or ceremonial events such as weddings or funerals was totally impossible.¹⁷

Because the basic salary is insufficient to sustain a livelihood, workers have to do overtime in order to collect bonus payments. Workers report regularly working between 16-20 hours overtime a week—on top of the 45 hours of normal time—which is way over the legal limit. By law, overtime should be paid at a double rate but in practice this is rarely the case. Almost 22% of the workers interviewed by Oxfam reported doing forced overtime and Oxfam discovered numerous reports of unpaid overtime, with workers working through lunch breaks and into the night to meet high production targets. Many workers feel unable to refuse overtime work without risking retaliation by management.¹⁸

“Last month we had to do overtime until dawn (the next day). We had to do this overtime for one week continuously. With regular hours of work, we should be finishing at 7:30 p.m. but we had to work through the night until 6 a.m. the next day, and then at 7:30 a.m. we had to start work again. It harms my health. I don’t want to work all night until the next morning. We also regularly don’t receive all of our overtime wages. We only receive overtime pay for two hours. But the usual overtime working period is three and a half hours each day. If I work all night until morning, I only receive MMK 2,600 (USD 2).”¹⁹

Other non-wage benefits, although stipulated in law, are rarely provided for. Oxfam reported that 52% said they did not receive annual leave, 76% reported having their pay cut if they are sick and miss a day of work and in the majority of factories women were not paid for maternity leave.²⁰

Child labour remains a problem in Myanmar, largely driven by high levels of poverty. 23.7% of children aged 10-17 years participate in the workforce overall.²¹ Given the high prevalence of children in the labour force and the importance of the garment industry to the overall economy, the use of child labour in garment factories remains a considerable risk.

Since the opening up of its economy the Myanmar government has developed some legal policies related to social protection (pensions, health insurance and unemployment benefits), but the enforcement of these laws remains limited, and the vast majority of the population are not covered by them.²²

Political Freedom and Rule of Law

Myanmar scores 21/100 on Transparency International’s Corruption Index and is ranked 147 out of 168 countries listed.

Myanmar’s transformation to a democracy is extremely recent and its institutions are thus either in development or non-existent. While a host of laws are being written and passed, there is still no independent judiciary and therefore limited scope for implementation. Corruption remains widespread and endemic.

There are currently about 1,500 trade unions in Myanmar, mostly at the enterprise level, and most of them in the agriculture and manufacturing sector.

New labour laws adopted in 2012 allowed workers for the first time in decades to form legally recognised trade unions, to collectively bargain and to strike. However, these rights are not sufficiently elaborated to enable workers to fully exercise them.

For example, while Article 44(d) of the Labour Organizations Law prohibits the dismissal of a worker for membership of a union, or for the exercise of trade union activities or striking, it does not clearly prohibit other forms of discrimination or retaliation, or legislate against discrimination in hiring. Nor does it provide clear protection to workers seeking to form a trade union. Given that Myanmar is largely non-unionised, this lack of explicit protection is problematic.

The new laws also contain several elements restricting union activity, in contravention of ILO Conventions No. 87 and 98, and effectively preventing “lawful” strike action. Principles of collective bargaining are referred to in law, but no provisions have been made to implement the principle. An arbitration council has been established to provide an external process for settling disputes but, while an employer can face a penalty for violating the law, the fine is so low that it fails as a deterrent. Moreover, Myanmar has not ratified the ILO *Convention No. 98: the Right to Organize and Collective Bargaining (1951)*.

The limited development of the law, along with the lack of awareness among both employers and workers of what rights are actually guaranteed under it, means that, in practice, employers can and do discriminate against workers who seek to exercise their new rights.

Unsurprisingly repression of union activities and retaliation against the workers involved is common. Union activists are often separated from co-workers and striking workers and labour activists are regularly dismissed and blacklisted by employers.

“I am afraid of raising these issues or problems. If someone raises problems or makes complaints, he or she is dismissed from work. Because of this threat, I haven’t made any complaint.”²³

Legal section

Wages

Minimum Wage

There is a minimum wage in Myanmar.

Minimum Wage Levels

The minimum wage is MMK 3,600 (approximately USD 2.90) per day for eight hours and MMK 450 (approximately USD 0.36)²⁴ per hour. There is no differentiation for location or type of enterprise, but there is an exception for small businesses and family-owned self-managed businesses with 15 or less employees for whom the minimum wage does not apply.²⁵

Minimum Wage Grades

There are no provisions for grades under the minimum wage law.

Probation Period Wages

An employee who does not meet the skills or production standards specified by the relevant factory, workshop or work department must be trained to meet such standards during a probation period. A completely unskilled newly hired worker engaged in an induction/training programme of up to three months may be paid 50% of the minimum wage.²⁶ During the second three months of employment, the “probationary period”, employees must be paid no less than 75% of the minimum wage.

Basic/Additional Amounts

There is no definition of a minimum wage in the Minimum Wages Law 2013. The law only sets out the meaning of “wage”, being the fee, wage or salary to which the worker is entitled for carrying out hourly work, daily work, weekly work, monthly work or any other part-time work for the employer. Also included are an overtime fee or bonus given by the employer for good work or character, other remuneration as income and other benefits. However, it does not include:

- travelling allowances;
- pension salary and gratuity for service;
- social security cash benefits;
- allowance for accommodation and meals, electricity charges, water service charges and taxes;
- medical treatment allowances and recreation allowances;
- damages for dismissal from work and compassionate allowance; or
- other fees stipulated by the Ministry of Labour, Employment and Social Securities by notification with the approval of the Union Government.

Minimum Wage Review

The National Committee must revise or confirm the minimum wage every two years with the approval of the Union Government.²⁷ The Union Territory Committee, Region or State Committee must analyse the minimum wage once a year and must submit advice to the National Committee once every two years.²⁸

The National Committee must publish the proposed minimum wage at least 60 days in advance in the newspaper and gazette for public awareness and objection if any.²⁹

The National Committee must specify the minimum wage with the approval of the Union Government if there is no objection after 60 days.³⁰

Reviewing and fixing the minimum wages must be based on:³¹

- the consumer index;
- commodity prices and services;
- the inflation rate;
- requirements to invest in the industries in the rural region;
- production costs and other costs;
- productivity of the employees;
- employers 'capability to pay wages;
- state socio-economic conditions;
- other facts specified by the Ministry with the approval of the Union Government in line with changing conditions;
- the needs of workers and their families;
- existing salaries;
- social security benefits;
- living costs and changes in such living costs;
- compatible living standards;
- employment opportunities in conformity with the needs of State economy and development of production;
- total production value of the State and income of each person; and
- hazardous work which can affect health and nature of work.

Payment of Wages

Wages for hourly work, daily work, weekly work or part-time work, temporary work or piece work must be paid at the agreed time.³² For permanent work where there are no more than 100 employees, wages must be paid at the end of the period for payment. If there are more than 100 employees, payment should be made five days after the payment period begins.

For the garment manufacturing sector, the standard is to pay wages monthly, and to pay by the fifth of each month.

Currently, there is no legal obligation to provide wage slips to workers.

Deductions from Wages

The employer can deduct accommodation and ferry fees, the cost of meals, electricity charges, water costs, income tax of the employee and any extra wages paid mistakenly.³³ These deductions must not exceed 50% of the total wages of the employee.³⁴

For the garment manufacturing sector, it is standard custom and practice for the factory owners to cover the transport costs between the worker's dwellings and the factory, and these costs are not deducted from the worker's wages.

Working Hours

Normal Working Time

An employer must not employ an employee in shops and establishments (covering most commercial establishments which are not covered by the Factories Act 1951) for more than eight hours per day, and 48 hours per week.³⁵

The Factories Act 1951 is the law generally applicable to the garment industry. A factory employee's working hours must be no more than eight hours for a day and 44 hours per week, and must not exceed 48 hours in a week for work which has to be done continuously.³⁶

Overtime

Any hours over eight hours in a day or 44 hours in a week (or 48 for continuous work) are considered overtime.

A worker's total overtime must not exceed 12 hours in any week. However, for special circumstances the maximum limit is no more than 16 hours in a week. Further, the employer

must not employ the employee past 12 p.m. midnight.³⁷ For factory workers, overtime must not exceed 12 hours in any week or 16 hours per week for continuous work.

Overtime Rates

The overtime rate must be twice the basic rate of wages.³⁸

Night Work

There are no premiums in place for night work. In the garment manufacturing sector, there are no night shifts at this point in time. The garment industry does have factory production incentives and attendance bonuses as forms of work incentives.

Rest Time

Employees must not be employed continuously for longer than four hours without having a 30-minute break while employed in a shop or establishment.³⁹ Moreover the total working hours and break time together must not be more than 11 hours in a day, including overtime totals and a one hour break for employees in shops and establishments, and establishments for public entertainment. Watchmen and security personnel can be employed without these breaks.

For factory workers, there must be a minimum 30 minute break after five working hours and the combined working hours and break time must not exceed 10 hours a day. The working days must not exceed six days a week.

Paid Holiday

Employers must give paid holiday leave during all Myanmar officially gazetted holidays.⁴⁰ On average, Myanmar has 26 public holidays per year. Any work given on such a public holiday is paid at double the usual rate.

In addition every employee is entitled to 6 days of paid casual leave per year. This leave cannot be carried over to the next year, can usually only be taken up to three days at a time, and cannot be joined to any other leave.

Workers with 12 months service (with a minimum of 20 working days per month) are also entitled to 10 days earned leave (reduced for any month without the full 20 days' work). Earned leave can be accumulated for three years.

Liability and Contracts

Liability and Duties

The employer's liability and duty in respect of its employees is set out in the following laws:

- Leave and Holiday Act 1951;
- Social Security Law 2012;
- Factories Act 1951;
- The Employment and Skill Development Law 2013;
- Workmen's Compensation Act 1923;
- Factories Act 1951;
- Payment of Wages Law 2016; and
- Shops and Establishment Law 2016.

Occupational Health and Safety

The Factories Act 1952 contains health and safety measures with regard to air and ventilation, drinking water, space and light, latrines, restrictions on females and young workers handling weaving or spinning machines or heavy loads, escape routes and fire alarms. Individuals violating such laws may be sentenced to up to two years of imprisonment.

Contract of Employment

The employer must conclude an employment contract within 30 days of the start of the employment. A contract is not required for permanent appointments with government departments and government organisations, but a contract is needed for daily wage workers and piece rate workers appointed temporarily in government departments and government organisations.

Probation Period

For the three-month probation period, 75% of the minimum wages must be paid.⁴¹ There are no provisions for repeated probation periods under the law.

Types of Contract and Restrictions

There are no restrictions limiting the use of or provisions governing short term contracts. Employment contracts must be concluded by all employers and employees including small businesses and family-owned self-managed businesses with 15 or less employees where the minimum wage does not apply.⁴² The same laws apply to workers on short term contracts as on long term contracts.

Severance Allowance

Workers are entitled to redundancy/severance pay on termination by notice or without fault (e.g. redundancy).⁴³ The severance payment is calculated based on the employee's last salary (without overtime) and length of service at the employer's work place as follows:

- The completion of six months to less than one year's work, a severance payment is half of one month's salary.
- The completion of one year to less than two years' work, payment is one month's salary.
- The completion of two years to less than three years, payment is one and a half month's salary.
- The completion of three years to less than four years, payment is three month's salary.
- The completion of four years to less than six years, payment is four month's salary.
- The completion of six years to less than eight years, payment is five month's salary.
- The completion of eight years to less than ten years, payment is six month's salary.
- The completion of ten years to less than 20 years, payment is eight month's salary.
- The completion of 20 years to less than 25 years, payment is ten month's salary.
- The completion of 25 years and above, payment is 13 month's salary.

Termination by Employer

There are no provisions under the law for specific grievance or disciplinary measures to terminate the employee's contract. However the template employment contract issued by the Ministry of Labour and in general use, provides that the contract can be terminated based on the following:

- expiration of the employment contract.
- closing of the factory;
- the business is suspended due to an unexpected occurrence which is not caused by the employer;
- either the employer or the employee do not follow the rules and regulations of employment agreement;
- death of the employee; or
- the employee is punished due to committing an offence.

Gender and Age

Equal Pay

The minimum wage must be paid without discrimination on gender grounds.⁴⁴ It should be further noted that a large number of the garment factories in Myanmar are owned and managed by women owners, and because of this, women at the menial labour level are perhaps more empowered than in some other nearby countries.

Pregnancy

Employers are not allowed to ask pregnant women to work a night shift, and the employer may not change a pregnant employee's monthly wages and benefits. Pregnant women are only to perform light work duties.⁴⁵

Maternity Leave

According to Social Security Law 2012:

- A female employee has the right to six weeks paid leave before the birth and a minimum of eight weeks after the birth (a total minimum of 14 weeks. If there are twins, then the female employee can take an additional four weeks' maternity leave for childcare.
- In the event of an unpunishable miscarriage (i.e., not caused by abortion) then female employees can take a maximum of six weeks maternity leave.
- An employee can take up to seven individual days paid leave for ante-natal appointments
- Female employees with an adopted child of less than a year old can take up to eight weeks of child care leave until the child's first birthday. In order to qualify for this type of maternity leave, the employee must show the proper adoption registration.

Maternity Pay

Female employees are entitled to enjoy cash benefits relating to maternity only if they have worked a minimum of one year at the relevant establishment and paid social security contributions for a minimum of six months.⁴⁶

The female insured worker is entitled to the following:

- 70% of her average wage (of the previous year) during maternity leave; and
- Maternity expenses; for the eight weeks of maternity leave after the birth, for a single child delivery the maternal employee receives an additional 50% of her monthly average wages (i.e. a total of 120%) and for twin delivery 75% of monthly average wages, and for triplet delivery and above 100% of monthly average wages.
- In the event of an unpunishable miscarriage (i.e. not caused by abortion) the employee receives 70% of the average wage during maternity leave.

New Parents

There are no provisions to ensure freedom from discrimination as a new parent under the labour laws. A parent has the right to take leave for medical treatment for their child until one year after birth.

Paternity Leave

A male insured employee is entitled to enjoy the following paternity benefits as follows:⁴⁷

- If both wife and husband are insured then the paternal employee has the right to 15 days leave for infant care;
- If both wife and husband are insured then the paternal employee receives 70% of the previous year's average wage during the period of paternity leave

- If only the husband is insured but his wife is not, then the paternal employee, in addition to the above, receives half of the maternity expenses contained above in the “Maternity Pay” section.

Childcare

If there are 100 or more maternal employees with the children under five years old, the employer has to arrange a nursery with the aid of Ministry of Social Welfare, Relief and Resettlement.⁴⁸ If there are more than fifty but under 100 maternal employees with children under five years old, then the employer must arrange a nursery room at the factory.

Sexual Harassment

There is no specialised law at the moment to prevent sexual harassment in the workplace.

Minimum Working Age

The minimum age for working is 14 years.⁴⁹ There are no sanctions in respect of employers employing staff younger than the permissible age. Myanmar has not ratified ILO *Convention No. 138 on Minimum Age (1976)*, which does not permit working at aged 14 unless the conditions in Article 7 are met, namely the work is light and is (a) not likely to be harmful to their health or development; and (b) [is] not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received.

Social Security/Healthcare

Clinics

If there are more than 250 employees in a factory then the employer must provide them with a clinic in the factory.⁵⁰

Free Healthcare

If the employee has contributed to social security according to the Social Security Law 2012, the employee can enjoy healthcare benefits.

Social Security Payments

When an insured employee becomes permanently totally incapable of work he or she is entitled to enjoy the following benefits from the fund for invalidity benefit, superannuation benefit, and survivors' benefit in accord with the stipulations:⁵¹

- If contributions have been paid for 180 months before the medical certificate for invalidity, the person has the right to enjoy 15 times his or her average monthly wages in instalments or a lump sum at his or her choice.
- If contributions have been paid for more than 180 months, the person has the right to enjoy the benefit contained above as well as the excess contribution period.
- In a case where the contributions have been paid for 12 months and above but less than 180 months, the person has the right to enjoy 40% of the contribution paid by the employer and the contribution made by him or her together with the interest in accordance with the stipulations.
- In a case where the contribution has been paid for less than 12 months, the person has the right to withdraw the money contributed in lump sum.
- When the insured obtains the right to enjoy invalidity benefit, the employer is entitled to obtain 25% of his contribution for 12 months and above paid to the fund together with interest in accordance with the stipulations.

Period and Benefits of Unemployment Benefit

When an insured employee claims unemployment benefit:

- a. If he or she has paid contributions for up to 36 months, he or she is entitled to enjoy 50% of his or her monthly average wage for the previous year as unemployment benefit for up to two months. If he or she has paid contributions for more than 36 months, he or she will receive unemployment benefit for one additional month for every additional 12 month's contributions. However, the total period of unemployment benefit is limited to six months.
- b. If he or she is married at the time of unemployment, an additional amount is awarded by the Social Security Board, not exceeding 10% of the unemployment benefit above, depending upon the dependents of that person;
- c. If he or she is sick, the right to healthcare, medical treatment and cash benefit will accrue for the periods set out at (a) above;
- d. For maternity and confinement, the right to healthcare, medical treatment, and cash benefit will be for a minimum of two months and a maximum of six months in accordance with (a) above;
- e. He or she has the right to attend training permitted by the Social Security Board;
- f. If the insured employee dies while receiving unemployment benefit he is entitled to funeral expense in accordance with the stipulations.

Occupational Injury

If an employment injury occurs the insured employee has the right to take medical care in accordance with the stipulations and to enjoy other benefits as follows:⁵²

- Temporary Disability Benefit;
- Permanent Disability Benefit;
- Rehabilitation and Job Arrangement; or
- Survivors' Benefit for Occupational Disease.

Health Insurance and Retirement Pension/Social Insurance

The employer must pay three percent of the salary and the employee must pay two percent of their wages, totalling five percent for invalidity benefit, superannuation benefit and death benefit.⁵³

Trade Union Rights

Workers are entitled to join a trade union (labour organisation) in the workplace.⁵⁴ A minimum of 30 workers in the relevant trade or activity is required to form a basic labour organisation together with the support of not less than 10% of all workers in the relevant trade or activity.⁵⁵

Township Labour Organisations may be formed if desired by not less than 10% of all the basic labour organisations in the relevant township according to the category of trade or activity.

Regional or State Labour Organisations may be formed if desired by not less than 10% of all Township Labour Organisations in the relevant Region or State according to the category of trade or activity.

A Labour Federation may be formed if desired by not less than 10% of all Regional or State Labour Organisations according to the category of trade or activity.

A Myanmar Labour Confederation may be formed if desired by not less than 20% of all Myanmar Labour Federations according to the category of trade or activity.

Only one registered union is permitted in the workplace at a time.

The Executive Committee of the Basic Labour Organisations must be elected and formed with at least five members or any higher odd numbers.

The Township Labour Organisation, Region or State Labour Organisation and the Labour Federation must form its executive committee with odd number from a minimum of seven to a maximum of 15 members.

The Myanmar Labour Confederation must be formed with an odd number of executive committee members from a minimum of 15 to a maximum of 35 members.

There are no set regulations obliging employers to provide facilities for trade unions and their elected officials (e.g. noticeboard, authorised leave, check-off systems, workplace office etc.) although the employer must assist as much as possible in the interests of the factory's workers.

A labour organisation can demand re-appointment of a worker if dismissal is based on labour organisation membership or activities.

The Right to Strike

If a labour organisation wishes to go on strike in a public utility service it must, on the wishes of the majority of the member workers:⁵⁶

- Inform the relevant employer and the relevant conciliation body in accordance with the directive of the relevant labour federation of the date, place, number of participants, manner and the time of strike at least 14 days in advance.
- Negotiate, discuss and decide on the minimum service, prior to the dispute, which must be such as to meet the basic needs of the public while not impacting the right of strike of workers.

In doing so, the employers and the labour organisations must seek to reach agreement on the number and kind of posts that need to be filled in the event of a strike and the persons who will be required to remain at work. If they fail to reach an agreement, the minimum service levels must be determined by the competent court.

A labour organisation desirous to go on strike in a service which is not a public utility service must, on the wishes of the majority of the member workers, inform the relevant employer and the relevant conciliation body with the permission of the relevant labour federation of the date, place, number of participants, manner and the time of strike at least three days in advance before the day of strike.

The relevant conciliation body must inform the relevant employer whether it is permitted or not to lock-out work (i.e. refuse work to the workers). The relevant labour federation must inform the relevant labour organisation in time as to whether it is permitted to strike or not.

The lockout or strike will be illegal if:

- It concerns essential services⁵⁷ (those whose interruption are liable to endanger life, health or the security of the people in any segment of the population: water services; electricity services; fire services; health services; telecommunications services).
- The relevant labour federation has not given permission for the strike.
- Advance notice has not been given in respect of lock-out or strike.
- The strike is not concerned with labour affairs such as wages, salaries, welfare and working hours or other matters relating to the occupational interest of the workers.
- The strike is not in conformity with the date, place, time, period, number of participants and manner as obtained in the advance permission.

Collective Bargaining

There are no provisions that oblige employers to engage in collective bargaining with a workplace union. The employers may organise in parallel structures under the Labour Organisations Law of 2011.

The Myanmar Labour Confederation and the Labour Federations are entitled to make mutual contact with other organisations or other Labour Federations formed in accordance with law, the International Labour Organisation and the labour confederations or federations of any foreign country and to affiliate with international labour confederations and federations.

Enforcement/Implementation Mechanisms

Victimisation

The tribunal may decide the specific legal remedies for employee victimisation according to the Settlement of Labour Disputes Law 2012. The legal remedies will vary based on the level of the employee's victimisation.

There is no accurate available information on how often employer violations of labour rights are discovered, nor any records of complaints of victimisation.

Disputes

The workplace coordinating committee, which is required where there are 30 employees, is the first point for individual or collective disputes. The committee consists of four members - two from the employer and two from the workers. Grievances should be negotiated and settled by the committee within five days. The next step is to take the case to the township conciliation body for conciliation which should be decided within three days.

In individual disputes, appeals can be made to the relevant court.

In collective disputes, there is a regional/state arbitration body which should reach a decision within seven days and an arbitration council which forms a Tribunal.

Employees/collectives taking up a dispute with the employer and escalation of those disputes to court are an uncommon occurrence.

Sanctions

The Coordinating Committee, the Conciliation Body, the Arbitration Body, the Arbitration Council, and the Tribunal are available to workers to ensure enforcement of the labour law. Further, the Ministry of Industry may perform occupational safety site inspections such as inspecting a factory's boiler. The Ministry of Labour & Employment also has a Factory Inspections Unit.

The following is a list of local legislation relating to civil or criminal sanctions imposed on businesses that do not follow any of the labour standards described above:

- Leave and Holiday Act, 1951;
- Social Security Law, 2012;
- Factories Act, 1951;
- The Employment and Skill Development Law, 2013;
- Workmen's Compensation Act, 1923;
- Factories Act, 1951;
- Payment of Wages Law, 2016; and
- Shops and Establishment Law, 2016.
- Sanctions vary according to laws. For example:
 - Breach of health and safety and welfare laws can lead to two years of imprisonment
 - Violation of the Leave and Holiday Act may lead to up to two years of imprisonment
 - An employer who fails to make social security contributions must pay the contributions and fees, cover the medical or funeral expenses of the employee, and may be punished by one year's imprisonment and/or a fine.
- The penalty for violation of the payment of wages act is up to two year's imprisonment
- The penalty for violation of the minimum wages law is one year's imprisonment or a maximum fine of MMK 500,000 (USD 400) or both. The penalty for violation of the rules and orders is three months' imprisonment and/or a fine.

Enforcement in Practice

The case Case between North Shore Garment Factory Owner Mr. Kuan-Howard Huai-Chih and Five People including U Ye' Thura who are on behalf of hundred and four employees is an example of enforcement Government of these sanctions.

Incentives

There are no incentives provided to businesses to maintain a high quality of treatment of their employees.

Possible Reform

Upcoming reforms in the area of rights for employees: Labour Organisations Law (2011); Factory Act (2016); Ministry of Environment regulations.

Living Wage Considerations

According to an Oxfam survey of 12 factories, USD 120 per month is required for basic needs. The official minimum wage is MMK 3,600 per day (USD 3.09—approximately USD 83.43 per month for a six day week).

Transportation to and from the factory to the worker's dwellings is usually provided for free; the estimated monthly amounts set forth above are based mostly on: (1) accommodation cost; and (2) food and health costs.

¹ ITUC, 2015. *Foreign Direct Investment in Myanmar: What Impact on Human Rights?*. Available at: <http://www.ituc-csi.org/IMG/pdf/ituc-burma.pdf>

² *ibid.* p10.

³ European Commission, 2013. *EU re-opens its markets to Myanmar/Burma*. Available at: http://europa.eu/rapid/press-release_IP-13-695_en.htm

⁴ European Commission, updated 2017. *Countries and Regions: Myanmar (Burma)*. Available at: <http://ec.europa.eu/trade/policy/countries-and-regions/countries/myanmar/>

⁵ ITUC, *Foreign Direct Investment in Myanmar*, p10.

⁶ Myers, J., 2016. *Which are the world's fastest growing economies?*, World Economic Forum. Available at: <https://www.weforum.org/agenda/2016/04/worlds-fastest-growing-economies>

⁷ World Bank, 2017. *Myanmar: Overview*. Available at: <http://www.worldbank.org/en/country/myanmar/overview>

⁸ Oxford Business Group, 2016. *The Report, Myanmar 2016 – Myanmar's Healthcare Sector to Receive More Funding*.

⁹ Oxfam, 2015. *Oxfam Briefing Report Dec 2015 – Made in Myanmar*, p32.

¹⁰ ITUC, *Foreign Direct Investment in Myanmar*, p7. Available at: <http://www.ituc-csi.org/IMG/pdf/ituc-burma.pdf>

¹¹ Oxfam, 2015. *Oxfam Briefing Report Dec 2015 – Made in Myanmar*, p7.

¹² *Smart Report—Responsible Sourcing in A Frontier Market*, p2.

¹³ ITUC, 2015. *Myanmar: Employers Must Accept Minimum Wage*. Available at: <http://www.ituc-csi.org/myanmar-employers-must-accept>

¹⁴ Oxfam, 2015. *Oxfam Briefing Report Dec 2015 – Made in Myanmar*, p7.

¹⁵ ITUC, *Foreign Direct Investment in Myanmar*, p5. Available at: <http://www.ituc-csi.org/IMG/pdf/ituc-burma.pdf>

¹⁶ Oxfam, 2015. *Oxfam Briefing Report Dec 2015 – Made in Myanmar*, p22.

¹⁷ *ibid.* p22.

¹⁸ *ibid.* p14.

¹⁹ *ibid.* p17.

²⁰ *ibid.* p14.

²¹ ILO, 2015. *Knowledge, attitudes and practices (KAP) study on child labour in Yangon, Ayeyarwady Region and Mon State*, p1.

²² ILO, 2015. *Social Protection within the Framework of Labour Legislation Reform in Myanmar - Background Research Summary*, p15-16.

²³ Oxfam, 2015. *Oxfam Briefing Report Dec 2015 – Made in Myanmar*, p22.

²⁴ Approximate USD conversion rates as of September 2016.

²⁵ Notification No (2/2015) issued from National Minimum Wage Determination Committee.

²⁶ Sub-section 43(l) of the Minimum Wages Rules 2013.

²⁷ Rule 41, Minimum Wages Rules.

²⁸ Rule 24, Minimum Wages Rules.

²⁹ Rule 34, Minimum Wages Rules.

³⁰ Rule 36, Minimum Wages Rules.

³¹ Section 7 of Minimum Wages Law and rule 20 of Minimum Wages Rules.

³² Section 4 of the Payment of Wages Law, 2016.

³³ Section 7(b) of the Payment of Wages Law, 2016.

³⁴ Section 9 of the Payment of Wages Law, 2016.

³⁵ Section 11 (a) of the Shop and Establishment Law, 2016.

³⁶ Section 59 and 62 of the Factories Act, 1951.

³⁷ Section 11 (b) of the Shop and Establishment Law, 2016.

³⁸ Section 17 (a) of the Factories Act.

³⁹ Section 12 of Shops and Establishment Law, 2016.

⁴⁰ Section 3 of the Leave and Holidays Act, 1951.

⁴¹ Subsection 43 (l) of Minimum Wages Rules.

⁴² Notification 1/2015 issued from Ministry of Labour, Employment and Social Security.

⁴³ Notification 84/2015 of Ministry of Labour, Employment and Social Security.

⁴⁴ Section 43 (i) of the Minimum Wages Rules.

⁴⁵ Section 36 (4) of the law amending the Factories Act, 2016.

⁴⁶ Social Security Law, 2012.

⁴⁷ Social Security Law, 2012.

⁴⁸ Section 25 (1) of the 2016 Amendments of the Factories Act, 1951.

⁴⁹ Section 75 of the Factories Act 1951 and section 13 (a) of the Shops and Establishment Law, 2016.

⁵⁰ Section 47 of the Factories Act 1951.

⁵¹ Section 32 of the Social Security Law, 2012.

⁵² Section 52(a) of the Social Security Law, 2012.

⁵³ Section 55(b) of the Social Security Rules, 2014.

⁵⁴ Labour Organisation Law, 2011.

⁵⁵ Section 4 (a) (1) of the Labour Organization Law, 2011.

⁵⁶ Section 38 of the Labour Organisation Law, 2011.

⁵⁷ A non-essential service may become an essential service if the strike affecting it exceeds a certain duration, so as to give rise to damage which is irreversible or out of all proportion to the occupational interests of those involved in the dispute.

PORTUGAL

Economy

Portugal is recovering from its worst economic crisis in recent history. The collapse of foreign demand and investment drove the country into a deep recession from 2011 to 2013 and in 2011, Portugal signed a EUR 78 billion bailout agreement with the EU, which resulted in four years of fiscal austerity with spending cuts in areas such as schools, pensions and benefits.¹ Since late 2013 there have been signs of recovery, assisted by an increase in tourist visitors, which reached a record level in 2014.²

The service sector is the most important economic sector, representing more than 75% of GDP, and employs more than 65% of the active population. The industrial sector provides employment to 25% of the active population and comprises 22% of Portugal's GDP. The agricultural sector comprises a little over 2% of GDP and employs 5.5% of the population.³

Unemployment remains very high, particularly for young people; the unemployment rate for ages 15–24 exceeded 37% in July 2013, and was more than 40% for young women. Average earnings have dropped, and the incidence of temporary work in Portugal is one of the highest in the EU and continues to rise.⁴

Education is obligatory for all children aged 6-16 and is free from pre-school to high school. Free State healthcare is universal to Portuguese residents.⁵

Textiles and clothing are Portugal's largest industrial sectors. According to the Association of Portuguese Textiles these sectors include more than 5,000 companies and employ about 123,463 workers, or 20% of the Portuguese workforce. Most workers in the garment industry are women with few years of education. They are relatively older than in other garment production countries.⁶

Around 70% of garment production is in the northern regions of Portugal, particularly Porto and Braga. Roughly 80% is for export.⁷ Factories in Portugal are generally small. 90% of factories have fewer than 50 employees, with most factories employing between five and 10 workers.⁸

The industry has benefited from the high-quality workmanship that Portugal provides, along with one of the lowest costs for skilled labour within Europe.⁹ The production of leather shoes and accessories has been growing significantly in Portugal. From 2006 to 2013, exports from the local leather shoe industry increased by 213%.¹⁰

Source	Statistic	Result	Year calculated
World Bank	Population	10.35 million	2015
World Bank	GDP in USD	198.9 billion	2015
World Bank	GDP growth	1.5 %	2015
World Bank	Inflation	0.5 %	2015
World Bank	Life expectancy	80.7	2014
World Bank	Infant mortality per 1000 live births	3	2015
Transparency Int.	Corruption Index–Score –Rank	62/100 29/176	2016
UNDP	Human Development Index	0.843 (very high)	2015
UNDP	Expected years of schooling	16.3	2012
Wage Indicator	Minimum Wage– lowest per month €	530	2017
Wage Indicator	Minimum Wage– highest per month €	556.5	2017
Fair Wage Network	Living Wage– per family of 2 adults and 2 children €	932	2016

Wages and Working Conditions¹¹

The textile sector is one of the lowest paid in Portugal. According to union reports and audit results 90% of workers receive only the minimum wage. Minimum wages are often paid irrespective of experience or responsibilities and are rarely increased. Employees often perform overtime to boost their income. However, this is often paid at a lower level of compensation than the one prescribed by law, and is often unregistered.¹²

In July 2016, the Portuguese government raised the minimum wage to EUR 530 p.m. This remains the lowest in Western Europe.¹³ Unions believe that the raise was insufficient, particularly because the social security contributions made by employers in respect of employee wages have dropped slightly, from 23.75% to 23%.¹⁴

Overall working conditions at Portuguese factories are considered acceptable, and are likely due to the frequent controls by authorities.¹⁵ However many factories use subcontracted work to perform tasks such as dyeing and printing. These are often not part of monitoring programmes and health and safety conditions tend to be more precarious in these situations.¹⁶

The economic crisis has had a strong impact on factory production. Laws relating to working hours have been made more flexible to allow for shrinking orders and variations in peak and low seasons. The employer can use the so-called *banco de horas* (time bank) during peak seasons, meaning working hours can be increased according to the legal limits. This work is not considered overtime and may be compensated through an equivalent reduction of working time during low seasons, an increased holiday period, or a payment.¹⁷ It is difficult to assess whether workers are being properly compensated, as small factories do not record formal hours. Time records are only maintained by the larger factories.¹⁸

The economic crisis has also reduced investments by employers. Machines are therefore replaced less frequently and become more dangerous with time. The small size of production sites and the often informal subcontracting policies make it difficult to fully monitor the health and safety conditions at all production sites.¹⁹

Workers face issues related to physical effort at work, such as standing for long periods, maintaining a tiring position for a long time, or being exposed to very loud or piercing noise in their workplace. Other common occupational risks include the inhalation of toxic materials, as well as injuries on machines and from working tools.²⁰

Political Freedom and the Rule of Law

Political parties operate freely in Portugal. Freedom of speech and of the press are constitutionally guaranteed and respected in practice. This is also true of freedom of assembly and association. National and international groups operate in the country without interference.²¹ The judicial system is relatively independent but inefficient and slow.²²

The EU has noted that Portugal does not have a national anticorruption strategy and that the country needs to address shortcomings in prosecuting high-level corruption cases. It also found that 90% of Portuguese believe that corruption is widespread in their country.²³ Amnesty International is concerned that the austerity measures, introduced by the government due to the economic crisis, have had a negative impact on the enjoyment of human rights, in particular on the realisation of economic and social rights by the most vulnerable groups in Portuguese society.²⁴

Freedom of association is generally respected in Portugal. Portugal traditionally has had a high level of collective bargaining coverage and the retail garment sector is covered by several CBAs. The labour inspectorate is well-developed and its capacity complies with the ILO standards.²⁵ However, due to the small numbers of employers per factory, the number of unionised workers is relatively low in the textile sector.²⁶

Recent revisions of the labour legislation have affected power relations between the employer and employee by strengthening the position of employers.²⁷

Legal section

Wages

Minimum Wage Levels

The national minimum wage is EUR 530 (USD 595)²⁸ per month. The national minimum wage applies to all full-time employees, irrespective of their age and/or experience.

Minimum Wage Grades

The minimum wage is not graded in any way.

Probation Period Wages

Wages paid during any probation period must be equal to those which would be payable to the employee once the probation period has elapsed. Probationary employees are therefore entitled to 100% of the national minimum wage.

Basic/Additional amounts

The minimum wage represents a basic rate salary. It is common for employees to be given a meal allowance, although not mandatory.

Minimum Wage Review

The national minimum wage is reviewed annually and determined in accordance with specific legislation following consultation with social partners. The following factors are considered (among others) in the review of the minimum wage:

- the needs of employees;
- increases in the cost of living; and
- evolving working practices/productivity.

Payment of Wages

Wages are generally paid at the end of each month. However, they may alternatively be paid on a weekly or fortnightly basis. In each case, wages must be paid on the last working day of the period to which they relate.

Employers are legally required to provide employees with wage slips. Wage slips must contain the following details:

- full name of the employee;
- social security number of the employee;
- job level;
- gross salary (plus other payments if applicable);
- period for which wage slip relates;
- deductions (as applicable); and
- net amount paid.

Deductions from Wages

Employers may deduct withholding taxes, social security contributions and/or other amounts as required by law.

If an employee is subject to a court decision requiring deductions from their salary (such as the payment of a debt or an indemnity), the employer may also deduct this amount. Such deductions may not exceed one-third of the employee's wages and may be reduced depending on specific factual circumstances.²⁹

Employers may also make certain deductions from an employee's wages for items such as meals, telephone usage and petrol. However, this is only permitted in circumstances where the employee has provided their prior consent and the amount of such deductions may not exceed one-sixth of the employee's wages.

Working Hours

Normal Working Time

Normal working time must not exceed eight hours per day or 40 hours per week.

Overtime

Maximum overtime hours depend upon the size of the employer and whether the employee is a full or part-time worker, as follows:

- "Very Small" (< 10 employees and ≤ EUR 2 million yearly revenue) and 'Small' (10 to 50 employees and ≤ EUR 10 million yearly revenue) companies: 150 hours per employee per year;
- "Medium and Large" (> 50 employees and > EUR 10 million yearly revenue) companies: 150 hours per employee per year;
- Part-time employees: 80 hours per employee per year (subject to pro-rata adjustment).
- Maximum overtime hours worked per day are also subject to the following limits:
- normal working days: two hours per employee per day; and
- non-working days/half working days: the number of hours worked on a normal working day (or half, as applicable).

Overtime is limited to a weekly maximum working period of 48 hours (comprised of 40 hours of "normal working time" and eight hours overtime).

Note that yearly overtime limits for full-time employees may be increased to 200 hours pursuant to a collective bargaining agreement or by decree. Yearly overtime limits for part-time employees may be increased to 130 hours per employee per year with the consent of the employee.

Overtime Rates

Overtime rates are as follows:

- 125% of the basic wage for the first hour (or fraction thereof);
- 137.5% of the basic wage for subsequent hours on normal working days; and
- 150% of the basic wage on normal rest days, mandatory rest days and public holidays.

Night Work

Night work is paid at 125% of the basic daytime wage.

Rest Time

Employees who work overtime that does not allow regular daily rest time are entitled to have paid rest time in respect of the overtime hours that they have worked. Such paid rest time must be taken within three business days of the overtime work having been completed.

Employees who work on mandatory rest days have the right to claim one full day of paid rest, again to be taken within three business days of the work having been completed.

Paid Holiday

Employees are entitled to 22 days of paid annual leave per year. This increases by one working day for every five years of employment. Employees are also entitled to time off on public holidays,³⁰ irrespective of the length of time that they have been employed:

Liability and Contracts

Liability and Duties

Employers are responsible for the actions of their employees in the course of their employment. If an employee causes damage (either by act or omission) to a third party whilst acting for their employer, the employer is jointly liable (together with the employee) to the damaged party.³¹

There are a number of high court decisions that uphold the principle of employer responsibility.

Contract of Employment

The requirement to provide a written contract of employment depends on the nature of the employment relationship. According to Portuguese Law, there are two main types of labour agreement, which must be documented as follows:

- **Fixed-term Labour Agreements:** require a written contract. If the employer does not provide a written contract, the fixed term labour agreement will be converted into a permanent labour agreement.
- **Permanent Labour Agreements:** do not require a written contract. If no written contract is entered into, the rules of the Portuguese Labour Code will apply to the employer and the employee and a *de facto* employment relationship is set.

Probation Period

Probation periods depend upon (i) the level of the job and (ii) the type of labour agreement:

- **Fixed-term Labour Agreements:** probation periods vary in accordance with the duration of the fixed term agreement as follows:
- 15 days for fixed term labour agreements with a duration of less than 6 months; and
- 30 days for fixed term labour agreements with a duration of 6 months or more.

Permanent Labour Agreements:

- 90 days for general positions;
- 180 to 240 days for highly complex, managerial or other senior positions.

Probation periods cannot be repeated.

Types of Contract and Restrictions

Fixed Term Labour Agreements may only be used in the following situations:

- the replacement of an absent employee;
- seasonal work;
- to cover an exceptional increase in business activity;
- for new businesses;
- for employees seeking their first employment or who are long-term unemployed.

The maximum duration of Fixed Term Labour Agreements varies as follows:

- 180 days for employees seeking their first employment;
- Two years for new businesses or long-term unemployed employees; and
- Three years in all other cases.

Note that, for certain specific types of seasonal work (such as that related to harvests or other agricultural activities or for tourism-related events), a very short term Fixed Term Labour Agreement may be put in place for up to 15 days.

Employees whose employment is governed by a Fixed Term Labour Agreement are afforded the same rights as permanent employees, save as to severance pay (see "Severance Allowance" section below).

A Fixed Term Labour Agreement may be renewed up to three times, provided that its total duration does not exceed the limits mentioned above. If the duration of a Fixed Term Labour Agreement exceeds such limits, it will become a Permanent Labour Agreement.

Severance Allowance

In 2011, severance entitlements were reduced from 30 to 20 days' pay per year of service. Law 69/2013 further reduced severance entitlements to a maximum of 12 times the individual's base salary plus seniority pay or 240 times the statutory minimum wage (or 18 times the individual's base salary plus seniority pay in case of fixed-term or temporary contracts).

In more detail:

Severance pay is subject to the following caps:

- 20 x the minimum wage (currently EUR 530 (USD 595 per month)); or
- 12 x the employee's monthly salary (plus seniority subsidies) or, where the cap above applies, 240 x the minimum wage.

For employees hired after 1 November 2011, the minimum total severance amount is equal to three months' base remuneration plus senior subsidies (for years of service as applicable). The daily base remuneration and senior subsidy amounts are calculated by dividing the employee's monthly base remuneration and senior subsidy amounts by 30.

For employees hired prior to 1 November 2016 on Permanent Labour Agreements, the minimum severance amount is calculated as follows:

- up to and including 31 October 2012: an amount equal to one month's base remuneration plus senior subsidies (for years of service, as applicable) for each complete year of service (with any partial years being pro-rated accordingly); and
- after 31 October 2012: an amount calculated in accordance with the methodology for employees hired after 1 November 2011 as set out above.

For employees hired prior to 1 November 2016 on Fixed-Term Labour Agreements, the minimum severance amount is calculated as follows:

- Up to and including 31 October 2012:
- Fixed-Term Labour Agreements with a duration of up to six months: an amount equal to three days' base remuneration for each month of such Fixed-Term Labour Agreement;
- Fixed-Term Labour Agreements with a duration equal to or greater than six months: an amount equal to two days' base remuneration for each month of such Fixed-Term Labour Agreement; and
- after 31 October 2012: an amount calculated in accordance with the methodology for employees hired after 1 November 2011 as set out above.

Termination and Dismissal

Under Portuguese Law, an employee on a Permanent Labour Agreement may only be dismissed in the following circumstances:

- for "just cause" (requiring a disciplinary process proving the fault of the employee and based on a breach by the employee of their legal or contractual obligations);
- a collective dismissal procedure;
- an individual dismissal procedure due to the termination of a specific position; or
- an individual dismissal procedure due to the inability of the employee to adapt

Fixed-Term Labour Agreements have a more flexible termination procedure and it is possible to terminate an employee's employment without cause, subject to compliance with any necessary notice procedures.

Employees have one year following the termination of their contract of employment to challenge their dismissal. Such challenge would be by the taking of legal action against their former employer and the court would be required to determine (i) whether there were material grounds for dismissal and (ii) if all procedural requirements were observed.

Gender and Age

Equal Pay

Articles 23 to 28 of the Portuguese Labour Code provide that employers must not discriminate against their employees in any way. Articles 30 to 32 of the Portuguese Labour Code specifically prohibit discrimination on grounds of gender.

Pregnancy

Female employees are protected during pregnancy, including by the following provisions:

- labour conditions must be adapted to protect a pregnant employee's health;
- required tasks and functions must be adapted to protect a pregnant employee's health;
- a pregnant employee cannot be dismissed without verification from the National Equal Labour Conditions Committee;
- pregnant employees have the right to be absent for pre-natal medical appointments and any medical appointments relating to the birth of their child.

Maternity/Paternity Leave and Payment

Both male and female employees are entitled to leave following the birth of their child. If the leave is taken only by one parent, that parent may choose to take either 120 or 150 consecutive days' paid leave. Parental leave payments are covered by the social security regime in Portugal.

If 120 days' leave is taken, this is paid at 100% of the employee's reference pay. If 150 days' leave is taken, this is paid at 80% of the employee's reference pay. If both parents choose to share parental leave, the total leave that may be taken is extended by 30 days (amounting to either 150 or 180 consecutive days' paid leave). If 150 days' leave is taken, this is paid at 100% of the employee's reference pay. If 180 days' leave is taken, this is paid at 83% of the employee's reference pay.

Right to Return and New Parents

Discrimination on the grounds of an employee having become a new parent is forbidden. All prior employment conditions (function, job-level, pay etc.) must therefore be assured by the employer to facilitate the employee's return to work.

Paternal Leave

New fathers are entitled to take full or shared paternal leave as set out in "Maternity/Paternity Leave and Payment" above. Even if fathers do not choose to take full or shared parental leave, Portuguese Law provides that new fathers must take 10 consecutive or non-consecutive working days' leave in the 30 days following the birth of their child, of which five consecutive days must be taken immediately following the birth. Fathers are also entitled to optional leave of up to 10 consecutive or non-consecutive working days at the same time as the mother is taking her initial maternity leave.

Childcare

Portuguese Law does not oblige employers to provide childcare for their employees. However, this may be included in specific Collective Bargaining Agreements, particularly in the case of companies with high numbers of employees.

Sexual Harassment

Any type of harassment is forbidden in the workplace and is considered a serious administrative infraction pursuant to Article 29 of the Portuguese Labour Code. There are also criminal consequences for any employer committing harassment offences against an employee.

Minimum Working Age

The minimum working age in Portugal is 16. All employees must have either completed their compulsory schooling period or be enrolled to do so.

The employment of under-aged employees is considered a grave administrative infraction. There are regular surveillance exercises undertaken with respect to the employment of under children under 16, and child labour situations are believed to be uncommon in Portugal.

Social Security/Healthcare

Clinics

In practice, employers tend to provide clinics in large companies and factories.

Free Healthcare

All Portuguese workers have access to the Portuguese National Health Service. Treatment is either free or subject to a contribution (which is heavily subsidised by the state), depending upon the patient's economic circumstances. In addition, Portuguese workers have free access to medical examinations for purposes of checking their ability to work.

Social Security Payments

All Portuguese workers are obliged to contribute to the state social security system. The Portuguese social security system provides support to those who cannot work or who are unemployed (subject to certain conditions and limits).

Occupational Injury

Those who are unable to work through injury are eligible to receive a pension through the Portuguese social security system. They may also be financially compensated by compulsory insurance.

Health Insurance and Counselling

In addition to the Portuguese National Health Service and social security system, certain employers (usually large companies) may provide private medical insurance. The provision of counselling services is less common. However, the provision of private medical and counselling services by employers is not required by law.

Retirement Pension/Social Security

Social security contributions are mandatory. Contribution rates are as follows:

- employee contributions: 11%;
- employer contributions: 23.75%

Trade Union Rights

All Portuguese workers are entitled to join a trade union. Employees may create a "commission of workers" beyond that of the trade union in order to promote and protect the interests of the workers. Depending upon the size of the company, a minimum number of employees is required to create a 'commission of workers' is as follows:

- fewer than 50 employees: two employees;
- 51 to 200 employees: three employees;
- 201-500 employees: three to five employees;
- 501-1000 employees: five to seven employees; and
- more than 1000 employees: seven to eleven employees.

The Portuguese Constitution and the Portuguese Labour Code both protect employees who wish to join a trade union from discrimination. There is no specific limit to the number of trade

unions that an employee may join. Separately, employees can form a Works Council specific to their employer.

Each trade union has specific rules of access in order to become a representative, culminating in a vote of the employees that are registered with that trade union. The by-laws of the relevant trade union will govern procedures relating to potential conflicts of interest between trade union representatives and their employers.

The Right to Strike

Employees have the right to go on strike, provided that such strike is (i) work-related and (ii) limited to a request for better working conditions. Strikes must be performed in accordance with certain procedures, including a warning notification before commencement.

Collective Bargaining

As noted above, employees may choose to form a Works Council which will have separate legal status upon registration of its statutes with the Portuguese Labour Ministry. Once in place, an employer is bound to consult the Works Council under certain circumstances prescribed by law. The Works Council has separate legal rights—in particular, it may participate in any restructuring of the employer company.

The employer must make appropriate facilities available to the Works Council, as well as the materials and technical resources required for the performance of duties by the Works Council.

Enforcement/Implementation Mechanisms

If workers believe that their employer has breached any of the labour standards set out above, they may claim their rights either administratively or through recourse to the courts. The appropriate course of action will depend upon the nature of the breach and when it took place.

Generally, claims can be made with the support of/to:

- the Workers Council of the employer;
- the relevant trade union;
- the Ministry of Labour;
- the Public Attorney; or
- the Labour Court.

The victimisation by an employer of any employee asserting a claim against them would be considered discriminatory and give rise to the right to make an administrative or judicial claim to stop such victimisation, either to the Workers Council of the employer or to the Labour Court. An employer may be fined and obliged to indemnify the employee for moral/emotional damage if found guilty of victimisation.

Disputes

No statistics are available regarding the discovery of employee rights' violations in Portugal. However, dawn raids are carried out by the Labour Authorities in order to check the conditions of employees.

No statistics are available regarding the regularity with which employees take up disputes with their employers or how many disputes escalate to the level of the courts. Note that, during court proceedings, it is common for the parties to settle prior to the court reaching its conclusion.

Sanctions

The sanctions prescribed against employers for failing to comply with the above labour standards are set out in:

- the Labour Law Code (L. 7/2009); and
- the Labour Law Process Code (DL. 480/99).
- Sanctions may include:
- a fine (variable in amount depending upon the size of the employer, the nature and recurrence of the infraction and the culpability of the employer);

- publicity of the fine;
- interdiction of the employer for a maximum of two years;
- prohibition on the employer participating in public tenders for a maximum of two years; and
- the imprisonment of the employer's legal representative and/or managerial staff or directors.

Enforcement in Practice

The enforcement of employer sanctions does not tend to be broadly publicised in Portugal. However, if any employer has been sanctioned, it will generally be subject to close monitoring by the Labour Authority in the future.

Incentives

There are no specific incentives provided to businesses to maintain a high quality of treatment of employees.

Possible Reform

There is discussion of a potential reduction of maximum working hours for public sector employees from 40 hours per week to 35 hours per week.

Application

The above-mentioned laws and regulations apply throughout Portuguese territory.

1 Sud de France Développement, 2017. *Portugal: Economic and Political Overview*. Available at: <http://www.suddefrance-developpement.com/en/country-profiles/portugal/political-outline.html>.

2 BBC News, 2017. *Portugal Country Profile*. Available at: <http://www.bbc.co.uk/news/world-europe-17758217>.

3 Sud de France Développement, 2017. *Portugal: Economic and Political Overview*.

4 Fair Wear Foundation, 2016. *Fair Wear Foundation. Portugal Risk Assessment*, p2. Available at: <https://www.fairwear.org/wp-content/uploads/2016/09/Risk-Assesment-Portugal.pdf>

5 Foreign and Commonwealth Office, 2013 (updated 2017). *Living in Portugal*. Available at: <https://www.gov.uk/guidance/living-in-portugal>

6 Fair Wear Foundation, 2016. *Fair Wear Foundation. Portugal Risk Assessment.*, p1.

7 *ibid.*

8 *ibid.* p2.

9 Mellery-Pratt, R., *The Business of Fashion*, 2015. *'Made in Portugal' is On the Rise*. Available at: <http://www.businessoffashion.com/articles/intelligence/made-portugal-rise>

10 *ibid.*

11 Few reports have been done recently into conditions in Portuguese garment factories, therefore this section relies heavily on the Fair Wear Foundation Country Risk Assessment (Fair Wear Foundation, 2016. *Fair Wear Foundation. Portugal Risk Assessment*).

12 *ibid.* p9.

13 *ibid.*

14 *ibid.*

15 *ibid.*

16 *ibid.* p11.

17 *ibid.* p6-7.

18 *ibid.* p7.

19 *ibid.* p10.

20 *ibid.*

21 Freedom House, 2015. *Portugal*. Available at: <http://www.freedomhouse.org/report/freedom-world/2015/portugal>

22 GAN Integrity, 2015. *Portugal Corruption Report*. Available at: www.business-anti-corruption.com/country-profiles/portugal

23 Freedom House, 2015. *Portugal*.

24 Fair Wear Foundation, 2016. *Fair Wear Foundation. Portugal Risk Assessment*, p4.

25 Fair Wear Foundation, 2017. *Portugal*.

26 Fair Wear Foundation, 2016. *Fair Wear Foundation. Portugal Risk Assessment*, p2.

27 *ibid.* p4.

²⁸ Approximate USD conversions from September 2016.

²⁹ For example, where the employee is the sole earner in their household or incurs certain essential costs.

³⁰ Currently 13 days per year.

³¹ Article 500 of the Portuguese Civil Code.

ROMANIA

Economy

Romania joined the European Union in 2007. With a GDP growth of 3.7% in 2015, Romania has one of the highest growth rates in the EU.¹ Its main exports are machinery, transport equipment, raw materials and manufactured articles such as textiles and footwear.²

Romania has the highest percentage of its population in rural areas in the EU (45%) and one of the largest gaps in living and social standards between rural and urban areas. 70% of those in rural areas are living in poverty. One in five Romanians are income-poor, one-third of the population is unable to afford items considered to be desirable or even necessary to lead an adequate life.³

The education system in Romania suffers from lack of resources and poor quality. On average 15-year-old pupils are one year behind pupils of the same age from other countries that are part of the OECD.⁴

All Romanians are entitled to free medical treatment under a healthcare system that is funded by the state. However the medical system is seen as corrupt and many patients need to make payments to receive the care and attention they need.⁵

The garment and footwear industry is an important economic sector for Romania. Its export value ranks fourth, after machinery, metal and vehicles.⁶ In the leather footwear sector, Romania is among the top exporters in the world and is responsible for 8.2% of shoe production in the EU.⁷ In 2013 this had a total value of USD 1.304 million.⁸ Major foreign buyers are Dolce & Gabbana, Armani, Eugen Klein, H&M, Zara, C&A, and Gerry Weber.⁹

Garment production is spread over the whole country, with some concentration in traditional garment production areas such as Timiã, Sibiu, Iași, Mureã and Bucharest.¹⁰ In 2013 there were just over 150,000 people employed in the garment sector. Women accounted for 64% of the workforce.¹¹



Source	Statistic	Result	Year calculated
World Bank	Population	19.83 million	2015
World Bank	GDP in USD	178 billion	2015
World Bank	GDP growth %	3.7	2015
UNDP	Life expectancy	74.7	2014
UNDP	Infant mortality per 1000 live births	10.5	2014
Transparency Int.	Corruption Index– Score out of 100 – Rank out of 168		2015
IFPRI	Global Hunger Index	5.3 rated low	2015
UNDP	Human Development Index	0.793	2014
UNDP	Expected years of schooling	14.2	2014
Wage Indicator	Minimum wage– lowest per month (RON)	1,400	2017
Wage Indicator	Minimum wage– highest per month (RON)	1,400	2017
Fair Wage Network	Living wage– per family of 2 adults and 2 children (RON)	2,549	2016

Wages and Working Conditions

The clothing and footwear industry is the lowest paid among the manufacturing sectors in Romania. Figures from 2014 show garment and footwear workers earned an average monthly net wage of only EUR 241, compared to the whole economy average of EUR 345.¹²

In 2015, the official statistics office calculated the cost of a minimum consumer basket to be EUR 736. The legal minimum net wage of EUR 156, set in January 2016, falls far below this. Even with the maximum wage that can be earned when working overtime and receiving bonuses, it is impossible for workers to get close to being able to afford the official minimum consumer basket.¹³

There is also evidence of discrimination in pay towards minorities such as Roma people, and to migrants who do not have official papers. These groups are easily exploitable and are often paid well below the minimum wage.¹⁴

As a result of low wages, many workers live in poverty. Most have to rely heavily on family and friends for agricultural products, struggle to pay utility bills, have to extend rent payments due to their inability to afford housing loans, owe money to relatives and friends and only access medical check-ups (especially dental checks) irregularly.¹⁵

“We have to spend everything we have on daily needs and sometimes run out of money before the end of the month. Luckily, the local shop owners know us well and let us get products for free if we run out of money, allowing us to pay for them later. We don’t want to borrow money, and my husband had to take five months’ leave from his factory job to work in construction in Germany to top-up our family income. It was very hard work for him. But without this, we would not be able to cover our living expenses. We have a garden and some animals. If I had to buy meat, like chicken breast from the shop, I would not be able to afford it. So we must also take care of our animals every day because they are some of the only food we can afford.” – Kristina, garment worker, Romania.¹⁶

Experience and skill doesn’t lead to higher earning potential. Workers report that even if they are performing complex operations at a factory, or have many years’ experience, they are still only paid minimum wages.^{17, 18}

According to the law, workers are entitled to annual leave (usually 20 days), leave on public holidays, sick leave, parental leave and unpaid leave for personal reasons. However workers stated that they have difficulties taking sick leave, tending to family emergencies or taking their full annual leave. In addition, workers also reported that they are sometimes forced to take leave, often unpaid, when there were no orders.¹⁹

Overtime is common practice and is used by workers to help supplement their income. Workers reported working, on average, a 54-hour week.²⁰ Audit reports by the Fair Wear Foundation, between 2014 and 2015, show that factories are not transparent regarding overtime hours and they are not always recorded in the official books.²¹ There is evidence that overtime hours are not paid according to the law.^{22, 23}

The pressure of work and levels of stress experiences by workers are also on the rise, as productivity targets are increased without any corresponding increase in pay.

In a large factory in Romania, one worker told us that the quota per work shift had been increased from 4,200 to 6,000 pairs of shoes, but the wage did not rise. She said they would “have to work much harder for the same small amount of money”.²⁴

The use of home-based work is widespread, including in some factories during periods when the workload is high. In such times, workers are expected to continue sewing at home after ending their shift in the factory.²⁵

Political Freedom and the Rule of Law

High levels of corruption exist throughout Romania and the country has struggled to meet the European Union’s anti-corruption requirements. Transparency International gave it a score of 49 on its Corruption Perceptions Index and ranked Romania 58 out of 168 countries surveyed.

Trade union rights are regularly violated, with the ITUC describing “systematic violations of rights”.²⁶ The unionisation rate in garment factories is very low. Although some factories do have a collective bargaining agreement, it is often not updated. In many Romanian factories, there is a lack of effective worker representation and workers at factory level are often unaware of the content of the CBA.

New labour laws passed in 2011 introduced a variety of laws that have made the formation of company level unions difficult and reduced the ability of unions to represent workers or act collectively.²⁷ Collective bargaining at national level, which previously set minimum pay and conditions for the whole economy, was abolished. This de-centralisation in collective bargaining has brought with it uncertainties and collective bargaining has come to a standstill. The new rules for bargaining at industry and company level have weakened the position of unions.²⁸ The right to strike has also been curtailed, and the penalties for strikes deemed to be illegal are punitive.

Workers have reported that trade union representatives are sometimes put in place in order to improve the image of the company, though they have done little to effectively advance workers’ interests. For example, despite the presence of a trade union, wages in a researched Romanian factory have not increased beyond the legal minimum wage for the last decade.²⁹

“A few workers are involved in a union but they are only there to improve the company’s image. I don’t recall any action started by these union members.”

Without effective trade unions, the rights of workers are not protected and many are afraid to complain for fear of losing their job.³⁰

“When we complain to management, we are told to leave if we are not happy with the work in the factory. They know we have no better place to go and that we will continue to work for them. Compared to other factories, which give nothing, at least this one gives a daily lunch ticket and pays on time. So, what can we do? We stay here.”



Legal section

Wages

Minimum Wage

Minimum wages apply in Romania.

Minimum Wage Levels

Starting on 1 of May 2016, the minimum gross wage is RON 1,250 (approximately USD 315)³¹ per month for a full working schedule of 169.33 hours average per month, representing RON 7.382 per hour (approximately USD 1.86 per hour).

Minimum Wage Grades

The minimum wage law does not provide a number of grades. The wage is granted subject to the number of worked hours—employees that work less than the full working schedule (e.g., part-time) may have their wage reduced pro-rata accordingly.

Probation Period Wages

The minimum wage applies without any exceptions (e.g. apprenticeships/age requirements or exclusions, probationary wages).

Basic/Additional Amounts

The minimum wage is a basic rate and does not include bonuses etc., which are to be separately agreed upon in the labour contract.

Minimum Wage Review

The minimum wage is established by governmental decision, after having consulted the trade unions and the employers' association. Recently the minimum wage has been reviewed by the authorities in Romania every six months. There is no statutory requirement to review the minimum wage in accordance with a regular timetable.

Payment of Wages

Usually, wages are paid to workers at least on a monthly basis. There is no set date on which the wage must be paid.

Employers are not legally obliged to provide wage slips to the employees. Wage slips in Romania usually contain the following elements: gross salary, with all components: base salary, bonuses, allowances; worked hours; overtime; vacation days; withheld tax; withheld contributions; personal deduction (where applicable); net salary, and the rest of the payment.

Deductions from Wages

Employers are allowed to make deductions from the minimum wage solely in the cases given here and with the observance of the conditions provided by the law. The deductions may consist of damages caused to the employer or as a disciplinary sanction. Also, in case of a court decision favourable to a third party, the employer may retain and transfer a certain amount in favour of the third party according to the law.

Working Hours

Normal Working Time

The maximum number of working hours undertaken by employees is 40 hours per week.³²

Overtime

Eight hours over the normal number of working hours of 40 hours weekly is allowed.³³

Overtime Rates

Employees receive ordinary wages for overtime hours. Overtime has to be compensated by paid time-off in the following 60 calendar days. If this is not possible, employees are entitled to extra pay for overtime, which cannot be less than 75% of the basic salary.

Night Work

There is a premium for night work performed between 10 p.m. and 6 a.m. An employee who works at night is entitled to:

- their working schedule being shortened by one hour, for those days that the employee performs at least three hours of night work, without any deduction of the basic salary; or
- an increase of 25% of base salary for work performed during the night, if such time represents at least three hours worked night of a regular working schedule.

Rest Time

Employers are obliged to provide rest time for employees for a period of 12 consecutive hours, between any two working days. For shift workers, the employee is entitled to a break of at least eight hours prior to moving to another shift. The weekly rest is of 48 consecutive hours, normally on Saturday and Sunday.

Paid Holiday

An employee who has been working for an employer for a full 12 months is entitled to paid annual leave for at least 20 working days. Employees receive a holiday pay allowance, which may not be less than the basic salary, including permanent increments and allowances. Every employee is entitled to public holidays, as follows:

- 1 and 2 January;
- first and second day of Easter;
- 1 May;
- first and second day of Pentecost;
- Assumption of Virgin Mary;
- 30 November–Saint Andrew;
- 1 December; and
- first and second day of Christmas;
- two days for each of the three annual religious holidays, declared as such by legal religious denominations, other than Christian, for the persons belonging to those religious denominations.

Liability and Contracts

Liability and Duties

The employer must indemnify the employee in the event that the employee suffers material or moral damage due to the employer's fault, in connection with the employee's job tasks. Moral damages refer to non-material damages such as physical, mental or social suffering, besmirched honour or reputation and similar injury. The level of liability depends on the employer's action that caused the prejudice as well as on the actual prejudice suffered. There is no explicit rule provided by the law in this respect. In the case of an employee's inability to work, for example, employers might be compelled to pay damages either on a periodical basis or as a global amount.

Occupational Health and Safety

The employer must ensure that the workplace maintains hygiene and safety conditions.

Contract of Employment

Employers are obliged to conclude a written agreement with the employees and hand them over an original counterpart.

This labour contract must contain the following items:

- Identity and headquarters of the employer and identity of the employee;
- Job position, job description and workplace;
- Effective date and term of individual labour contract, if applicable;
- Wage, deadline for wage payment, wage-based allowances and additional payments;
- Working time and rest time;
- Amount of the paid annual leave;
- Probation period;
- Risks of the particular workplace;
- Criteria for assessing the professional activity of the employee;
- Conditions for granting the notice period and its duration; and
- Indication of the collective bargaining agreement, if applicable.

Probation Period

The standard probation period for new employees is 90 calendar days for execution (non-managerial) positions and 120 calendar days for managerial positions. During the probation period the employees receive a normal wage, as stipulated in the labour agreement. It is not possible to have repeated probation periods for the same position.

Types of Contract and Restrictions

The law allows the use of short term contracts (zero hour/fixed duration/day contracts). Fixed term contracts may be concluded only exceptionally, in the cases provided by the law (e.g. For replacing an employee whose contract is suspended, in case of temporary increase of the employer's activity, for performing seasonal activities, for carrying out certain works, projects or programmes). Only three fixed term contracts may be concluded between the same parties. Fixed term contracts may not be concluded for periods exceeding 36 months (with few exceptions). No legal restrictions apply for concluding part time contracts. Also, employees may be engaged through temporary work agencies, for a period of maximum 24 months which can be extended up to maximum of 36 months.

Workers employed on short term contracts are subject to the same laws/exclusions with regard to wages or social security rights provided for under law.

Severance Allowance

Workers may be entitled to redundancy/severance pay if they are rendered unemployed for reasons such as physical or mental inability, dismissal for reasons not related to the employee (i.e. redundancy), or collective dismissals. Such compensation depends on any collective or individual labour agreement. No legislation currently provides for a mandatory severance allowance to be provided to the employee.

Termination by Employer

Employers are obliged to follow specific disciplinary measures if they wish to terminate the contract of an employee for disciplinary grounds. The aggrieved employee may appeal in court the dismissal decision within 30 days of the receipt of the decision.

Gender and Age

Equal Pay

The Labour Code ensures that women and men receive equal pay.

Pregnancy

There are legal protections for pregnant women prior to maternity leave, including the following:

- The employee can't be compelled to work at night.
- If the pregnant employee performs heavy or unhealthy work as part of her employment, she is entitled to be transferred to lighter work, while still receiving her full wage.
- An employer is prohibited from dismissing a female employee or unilaterally terminating her labour contract for reasons of her pregnancy.

Maternity Leave

There is a legal minimum period of maternity leave for employees. A female employee is entitled to 126 calendar days of maternity leave: 63 days before childbirth and 63 days after childbirth.

Maternity Pay

Statutory maternity pay is available, covered by the sole national fund for health insurance. The value of the maternity pay is of 85% of the average value of the monthly income within the last six months (capped at 12 minimum gross wages provided by the law). The maternity pay is applicable throughout the duration of the maternity leave, but only for working days.

There is also a statutory payment for maternal risk, covered, as well, by the sole national fund for health insurance. The maternal risk pay is of 75% of the average value of the monthly income within the last six months (capped at 12 minimum gross wages provided by the law). The maternal risk pay is applicable throughout the duration of the maternal risk leave, which may be granted in the situation where the employee is exposed to certain risks at the workplace and such risks cannot be removed by the employer by temporary amending the work conditions and/or the working schedule and/or by moving the employee to a new working place.

Right to Return

Employees who return to their original place of work after maternity leave have the right to a breastfeeding break or to reduce their work schedule by two hours. They also have a right to refuse night work and cannot be forced to work in unhealthy or unbearable conditions. If the employees work at night or in unhealthy or unbearable conditions, they have the right to ask for a transfer for daytime work and in a healthy environment, while still receiving their full wage.

New Parents

A new mother has the right to the same wage as before her maternity leave upon her return. In addition, employees are entitled to parental leave until the child turns two years old. During such parental leave, employees are entitled to an allowance of 85% of the average value of the net income achieved in the last 12 months or, if the employee returns to work earlier, he or she shall benefit of an incentive of 50% of the minimum allowance for parental leave (the minimum allowance for parental leave is 85% of the value of the minimum gross wage provided by the law).

Paternity Leave

Fathers are entitled to paternity leave of five working days. If a father is insured under the state social insurance, he is entitled to paid paternity leave for five working days.

Childcare

Employers are not obliged to provide childcare to employees with young children.

Sexual Harassment

There are laws in place to prevent sexual harassment in the workplace.

Minimum Working Age

The Labour code sets 16 years old as the minimum working age. By exception, in specific conditions, 15-year-olds may conclude individual labour contracts. Employing staff younger than the permissible age constitutes a crime and is punished with imprisonment from three months to two years or a fine.

Social Security/Healthcare

For each employee, the following social security contributions are payable by the employer and employee: pensions contribution, health insurance contribution, unemployment contribution, work accidents and professional diseases contributions.

Clinics

Employers are obliged to provide occupational medical services for their employees, once they are hired and periodically.

Free Healthcare

Access to occupational medical services is free and unlimited. This covers periodic health checks and specific medical investigations in case of special working conditions (with risk factors).

Social Security Payments

There are provisions for social security in relation to supplementing the cost of living for workers not receiving a living wage and also for those out of work through illness or injury.

Occupational Injury

The legislation provides a scheme for payment of compensation to those unable to work due to occupational injury. The persons covered by insurance for work accidents and professional diseases are entitled to the following: medical rehabilitation and work capacity recovery, professional rehabilitation and reconversion, allowance for temporary work incapacity, allowance for temporary change of work place and allowance for reduced working time, allowances for integrity harm, allowances in case of death, and expenses reimbursement. Allowances for integrity harm are provided to persons whose integrity is permanently affected and have a loss of work capacity between 20% and 50%. The allowance for integrity harm is a fixed amount and is a one-time allowance, determined on the basis of the severity of the injury.

It cannot exceed 12 average gross salaries, as communicated by the National Institute for Statistics.

Health Insurance

The legislation provides contribution schemes for health insurance: 5.5% for the employee and 5.2% for the employer. The contributions are determined on the basis of the employee's gross monthly salary. The computation basis in case of the contribution owed by the employee is capped at five times the average gross salary. It is also common practice for private companies to provide private medical subscriptions and Wellness memberships to employees.

Retirement Pension/Social Insurance

The legislation provides contribution schemes for retirement: 10.5% for the employee and 15.8% for the employer (in case of normal working conditions). The contributions are determined in consideration of the employee's gross monthly salary. The computation basis is capped as follows: (i) in case of the contribution owed by the employee, it is capped at five times the average gross salary; (ii) in case of the contribution owed by the employer, it is capped at five times the average gross salary multiplied by the average number of employees.

Trade Union Rights

Workers are entitled to join a trade union, save where they hold public positions under the law: magistrates and military personnel from the Ministry of Defence, Ministry of Interior, the Romanian Intelligence Service, Protection and Guard Service, the Foreign Intelligence Service and the Special Telecommunications Service, units and/or subunits under the subordination or coordination of the aforementioned institutions/authorities.

The required number of employees that need to be organised in order to register a trade union in the workplace is 15 from the same working unit.

The legislation provides protections against trade union discrimination. The law prohibits the employer or any public authority from:

- Obstructing or causing difficulties to employees in the establishment, joining and operation of trade unions; and
- Requesting employees not to join or to withdraw from a trade union.

If no trade union exists, the legislation in force provides, as another form of representation, for workers' representatives. In the case of employers which have more than 20 employees and no trade union, the employees' interests can be promoted by their representatives. Workers' representatives are appointed during a general meeting of employees, with the vote of at least half plus one of the total number of employees. The main duties of the workers' representatives are the following: (i) to monitor the observance of the employees' rights, as per the legislation in force, the collective bargaining agreement (if applicable), the individual labour contracts and the internal regulations; (ii) to participate in the drafting of the internal regulations; (iii) to promote the employees' interests regarding salary, working conditions, working time, rest time, work stability, as well as any other professional, economic and social interests relating to labour relations; (iv) to notify the labour inspectorate in case of the non-observance of the legal provisions or the provisions of the applicable collective bargaining agreement; (v) to negotiate the collective bargaining agreement.

The legislation in force does not provide a restriction concerning the numbers of registered unions permitted in the workplace.

Employers are not obliged to provide facilities for trade unions and their elected officials (e.g. noticeboard, authorised leave, check off systems, workplace office). The trade unions leaders do, however, benefit from flexibilities such as reducing their monthly working schedule with a number of days for union activities, negotiated by individual or collective labour agreement, but without the employer being obliged to pay remuneration in respect of these days.

The Right to Strike

Workers have the right to strike except for prosecutors, magistrates, military personnel and special status personnel from the Ministry of Defence, Ministry of Interior, Ministry of Justice and the institutions and structures under their subordination or coordination, including from the National Prison Administration, the Romanian Intelligence Service, the Foreign Intelligence Service and the Special Telecommunications Service, the personnel employed by foreign armies stationed in Romania, as well as other categories of personnel for which the law prohibits the exercise of this right. Also, staff from air, sea, land transport, cannot declare any strike as of the departure of the mission until its completion. Staff on merchant marine ships sailing under the Romanian flag may declare a strike only under the rules established by international conventions ratified by the Romanian State.

A strike is allowed in hospitals and social care, telecommunications, the public radio and television, in the railway transport, in units providing transport and sanitation in municipalities and supplying the population with gas, electricity, heat and water, provided that strike organisers provide services at a third of normal activity. Similarly, workers from national energy system units, from operational units from nuclear sectors and units with continuous fire, may declare a strike on the condition that at least a third of activity is continued, so as not to jeopardise the life and health of people and with the condition of operating the facilities safely.

Further, there are limitations on the time period of strikes must not be of a “political” nature. The strike can be declared only if all possibilities of settling the conflict have been exhausted, if there has been a warning strike of no more than two hours, which must take place at least two days before the main strike and if the employer has been notified by the organizers of the strike two working days’ notice. Employees may also declare a solidarity strike, which cannot last more than one working day and has to be notified to the employer with at least two working days prior to ceasing work. The duration of the actual strike is set by the organisers of the strike (trade unions or workers’ representatives).

Collective Bargaining

Employers are obliged to engage in collective bargaining with a workplace union if there are more than 21 employees within the company. The trade union also has to obtain legal personality by registering in front of a court of law.

Enforcement/Implementation Mechanisms

If the workers believe that their employer has breached any labour standards and they are not able to settle such breach through negotiation with the employer, a worker may submit complaints to the Territorial Labour Inspectorate and/or to a court of law.

The laws described below are mandatory for all employers/employees in the country. The Labour Code is applicable to foreign employees and refugees that work in Romania, for Romanian employers. The employees cannot waive the rights recognised by the law; any transaction which seeks the waiver or limitation of such rights is null and void.

Individual and collective disputes are treated differently. Individual disputes are settled in court, whereas in the case of collective disputes, the law provides a specific legal framework for settlement; trade unions or workers’ representative have to notify the employer and the Territorial Labour Inspectorate, undertaking a conciliation procedure is mandatory, and mediation or arbitration can be undertaken after the conciliation with the parties’ consent.

Victimisation

The legislation provides specific legal remedies for victimisation of employees who seek to assert labour rights and these are effective in practice. The employer is prohibited from obstructing the employees’ right to strike. The employer is also prohibited from obstructing or creating difficulties for employees to establish or join trade unions. In the event of violation, administrative penalties (usually fines) generally apply against the employer. “Victimisation” might be a standalone cause of action.

Disputes

Usually, employer violations of labour rights are discovered once the employees submit complaints to a Territorial Labour Inspectorate and/or to a court of law, where all complaints are registered.

The aggrieved employee may appeal to a court against any employer's decision related to the individual labour agreement, with no litigation fee, and this is a very common practice.

Sanctions

The Territorial Labour Inspectorate ensures the enforcement of the Labour Law. The labour standards described above are regulated by the Labour Code, Civil Code, Law no. 62/2011 on social dialogue and Government Emergency Ordinance no. 96/2003 on maternity protection at workplaces. In principle, the above mentioned regulations provide fines for employers which do not observe the legal dispositions. Broadly, the levels of the fines vary between RON 300 and RON 20,000 (approximately USD 75 to USD 5,000).

Enforcement in Practice

If the courts of law decide that the employee was not legally dismissed, the employer has to pay the wages from the date of the dismissal until the date of the court decision. The employer may also be obliged to reintegrate the said employee at the working place. In practice, the sanctions have an impact on compliance with the various labour laws.

Incentives

There are no incentives provided to businesses to maintain a high quality of treatment of their employees.

Realistic Opportunities for Reform

There are no upcoming Government reforms in the area of rights for employees.

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³³ As allowed by the Labour Code.

SRI LANKA

Sri Lanka is a democratic republic and a unitary state governed by a semi-presidential system.¹ The legislative capital, Sri Jayawardenepura Kotte, is a suburb of the commercial capital and largest city, Colombo.

Having transitioned from a predominantly rural agriculture economy towards a more urbanised economy driven by services, Sri Lanka is now designated as a lower- to middle-income country. In 2016, the IMF estimated Sri Lanka's gross domestic product at USD 87,461 billion,² with annual economic growth at 6.4% between 2010 and 2015. Such robust economic growth has been largely attributed to a peace dividend since the end of the 25-year civil war in 2009.³

Economic growth has been accompanied by improvements in most of the key indicators used to assess social development. The percentage of the population living below the national poverty line dropped from 22.7% in 2002 to 6.7% in 2012. There has also been an improvement in living standards, reflected by a rise in asset ownership and household per capita income among the poor.⁴

Tourism, tea export, apparel, textiles and rice production constitute Sri Lanka's main economic sectors. Businesses operating in these industries are strong contributors to Sri Lanka's healthy employment rate, which averaged at 94.74% between 2004 and 2016.⁵

As Sri Lanka aspires to become a higher-middle-income country, it faces challenges such as reducing the role of agricultural employment from its present share of a third of the population. Moderate poverty also remains an issue—in 2012/13, nearly 15% of the population lived on less than USD 3.10 per day.⁶

Source	Statistic	Result	Year calculated
World Bank	Population	20,966,000	2015
IMF	GDP in USD	87,461 billion	2016
World Bank	GDP growth	5.1%	2015
World Bank	Inflation	0.922	2014
World Bank	Life Expectancy	74.795	2014
World Bank	Infant mortality (per 1000 live births)	31.7	2015
Transparency Int.	Corruption Index —Score —Rank	36/100 95/176	2016
IFPRI	Global Hunger Index	25.5	2016
UNDP	Human Development Index	0.78	2014
UNDP	Expected years of schooling	14	2014
Wage Indicator	Minimum Wage - lowest per month (LKR)	10,000	2017
Wage Indicator	Minimum Wage - highest per month (LKR)	31,667	2017

Fair Wage Network	Living Wage – per family of 2 adults and 2 children (LKR)	26,452	2016
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Economic and Social Indicators

Sri Lanka had a per capita income of USD 3,924 in 2015, and an average growth rate of 6.4% between 2010-2015. Extreme poverty is low, affecting 1.9% of the population in 2012/2013. Modest poverty is higher; nearly 15% of the population lived on less than USD 3.10 per day in 2012/2013.⁷

The unemployment rate is less than 4% overall,⁸ with an employment-to-population ratio for males of more than 70%; for females it is around 30%. This has been relatively constant over the last three decades. Low female labour force participation rates may be contributed to by the fact there are more girls continuing in secondary and tertiary education than boys. Many women migrate for employment in the Middle East. Women comprise the bulk of the workforce in the plantation and apparel sector.⁹ The proportion of own account workers has remained at around 40%.

More than 20% of children under five are underweight, although reliable data and information is only present up until 2007.¹⁰ The under-five mortality rate reduced to 11.3 deaths per 1,000 live births in 2009 (from 22.2 in 1991). The infant mortality rate reduced to 9.4 (from 17.7 in 1991).¹¹ The maternal mortality rate declined from 92 deaths per 100,000 live births in 1990 to 33.3 in 2010. The number of HIV/AIDS cases is gradually increasing. Malaria cases have reduced from 400,000 in the early nineties to 23 by 2012. There have been no deaths from malaria since 2007. Tuberculosis and dengue fever are major health issues.¹² Access to safe drinking water has reached 89.7%. 87.2% of households have adequate basic sanitation.¹³

Net enrolment in primary schools reached 99.3% in 2009. The literacy rate of 15 to 24 year olds was at 97.8% in 2012.¹⁴

Garment Industry

Garment exports make up between 45%¹⁵ and 52%¹⁶ of Sri Lanka's total exports, or USD 4.4 billion.¹⁷ Sri Lanka only makes up a 1.2% share of global apparel exports.¹⁸

The apparel sector is largely made up of higher-value, niche products. Apparel prices are higher than competitors in all major product categories, driven "at least partly by relatively high and rising labour costs", according to a World Bank report.¹⁹

Major export markets are the United States and European countries.²⁰ However, growth in exports to the EU has slowed since 2010, "when the European Commission revoked Sri Lanka's Generalized System of Preferences Plus (GSP+) status as a penalty for alleged human rights abuses committed at the end of the country's civil war", from 13-14% in 2005-2010, to about 7% a year.²¹

Garment employment decreased from 340,000 in 2003 to 267,000 in 2012.²² Over 70% of apparel workers are women, compared to less than 30% in other industries.²³

"With the dismantling of the Multi-Fibre Agreement (MFA), where sourcing was no longer based on quotas, Sri Lanka's apparel industry shifted to higher value-added production and marketed itself as a location committed to ethically responsible trading. The Garments without Guilt initiative was put in place. Promoting Sri Lanka as a production destination concerned with ethical production, increasing workers' quality of life and poverty alleviation is its psalm. Sri Lankan apparels hence claims to be evangelical about respecting a strong labour legislative framework."²⁴

Wages and Working Conditions in the Garment Sector

A Garment Manufacturing Trade wages board is in existence. Employers and workers are represented in equal numbers, although female representation is low. The system has only been moderately successful in bringing wage levels closer to living wage levels. It has been very successful in securing compliance with labour law. Ensuring compliance with minimum

wage policies has “proved controversial”. Employer organizations and specifically 1st tier companies together with trade unions have had a generally positive influence on compliance with labour law, whereas the government and the global brands and global buyers have had a medium influence.²⁵

In March 2016, a new bill was passed to set the minimum wage at LKR 10,000 per month for all industries, including the garment manufacturing sector. The law was retrospectively applied from 1 January 2016.²⁶

“For the garment industry, in 2013-2015 separate minimum wage rates were in existence depending on skill grades, with minimum wages set from LKR 8,970 for the lowest grade/first year and at LKR 10,140 to LKR 11,330 for the two highest grades, the highest rate attainable in the fifth year of employment. Legislating for a minimum wage and including an ‘increment’ effective in 2016 has compromised the bargaining power of the workers to negotiate wages based on labour trends and the market. However, the trade unions promoted this approach on the basis that in other sectors, including in SMEs, a wage below the proposed MW was paid.”

“Workers in the garment industry have received uniforms, free meals, free transport and opportunities for training including overseas training, particularly when working for large manufacturers and foreign-owned factories.”²⁷

Garment workers’ earnings are enough to cover the nutritional needs of a typical family, but not enough to allow an exit from poverty or provide for expenses beyond mere subsistence. Garment workers do not have to work overtime to earn a minimum wage, but do have to in order to earn more than the minimum wage. The trend towards lean production methods creates “unhealthy pressure on individuals who may have had to work in an accelerated mode so as not to let down their team mates or to create tensions in teams for not living up to expectations”.

An employment model of manpower agencies is emerging, used to recruit casual hands to work at double the daily rates with no accountability for quality of products. “The subsequent burden of damage control was often vested in the regular workforce earning a traditional wage”.

“The main factors preventing an increase to the present level of garment wages were related to workers not having the skills necessary for garment production; therefore, the added value produced was limited. The main factory-level factors preventing an increase to the present level of wages in the garment industry were said to be the easy availability of new workers at the present level of wages and conditions, as well as the discrimination against women working in the industry.”²⁸

Around 26% of garment workers are currently in unions. Union busting and the perception of trade unions as “troublemakers” put many garment workers off joining. They are also hampered by the short time garment workers often spend in the sector. Unions, “to make up for their lack of access to factories were prone to exaggerate their case in order to attract the attention” of global buyers.²⁹

The largest trade union in the garment sector has undertaken education activities in EPZs, and has discussed what it could do to achieve union stability. “Its 5-year action plan focused on recruiting 5,000 new members. The plan also centred on the continuing education and training of activists and on improving the union’s image, through the organization of a festival close to the EPZs every year. The union runs offices in major EPZs, where experienced organizers can help workers in need.”³⁰

Less than 10% of garment workers are covered by enterprise-level CBAs. The most common type of contract in the garment industry is a full-time, temporary contract, increasingly brokered through the intervention of manpower agencies. The relationship between the different trade unions, between the government and trade unions, and between trade unions and global buyers is averagely strong. The relationship between the trade unions and employer organizations by contrast is moderately weak. Employers are in a favourable position due to the fact that they are often more articulate and can present their cases better to global buyers. Unions, on the other hand, have problems in promoting their case and lack negotiation skills.³¹

An ITGLWF investigation found that wages are often based on productivity targets despite the law stipulating that workers should be paid based on the number of days worked and not the number of items produced. At one factory, workers had their basic pay cut if they did not achieve management-set targets. At another factory owned by the same company, workers did not receive any incentive pay unless the entire quota was reached. Workers reported that the

targets were impossible to meet so they never received any bonus, even when denying themselves toilet breaks and rest periods in an attempt to reach the target. At two other factories, workers were forced to work unpaid overtime until they met the management-set targets.³²

Overtime for women is capped at 60 hours per calendar month, while overtime for 16-18 year olds is capped at 50 hours per month. The law on overtime removed the word “voluntary” in 2002, which unions say has exacerbated the problem of forced overtime. At one factory investigated by ITGLWF, “workers stated they were forced to work overtime of between 90-100 hours per month. The workers had to get prior approval from management before leaving the factory if they did not agree to work overtime. Workers said anyone who requested to leave would be denied and that management would verbally harass the worker for asking to leave. The workers noted that overtime worked was recorded on two cards—one white and one yellow. The workers believe that management did this to mislead inspectors. At another factory, workers reported that they work between 100-130 hours of overtime per month. Again those who refused to work overtime were subjected to verbal harassment and abuse by supervisors and management.”³³

Gender discrimination is common in sportswear and leisurewear factories. The ITGLWF investigation found that: during the recruitment process management stated that they prefer workers not to marry; four companies carried out pregnancy tests and pregnant workers were not recruited; workers who are up to seven months pregnant were required to continue carrying out the full range of job tasks, without consideration given to the health of the workers and the child; sexual intimidation or abuse was common; two of the 17 companies banned relationships between co-workers, while other workers reported that in some companies if 2 workers marry, one must leave their employment, and in some cases workers were prevented from seeing their partners. Workers believe management do so because they fear employees might get pregnant and that the company would have to pay maternity leave; extremely low wages in the sector impacts workers’ ability to consider marrying and starting a family.³⁴

“The main country-level institutional and political factors preventing garment wage increases related to barriers to unionization. These were said to include: dysfunctional collective bargaining; political influence of main employers in the garment industry; permissive labour laws and regulations; the base salary influencing payments of gratuity, and external limits to the influence of trade unions on wages and conditions.”³⁵

Political Freedom and the Rule of Law

General

The new government, which took power in 2015, “quickly abolished surveillance and censorship of media and civil society groups, embarked on constitutional reforms to restrict executive powers, and took steps to restore the independence of the judiciary”. In contrast to the previous government, “it also initiated a new, more open dialogue with the international community, including human rights organizations”.³⁶

*“However, the government took no significant measures to end impunity for security force abuse, including police use of torture”.*³⁷

In August 2015, the United Nations Office of the High Commissioner for Human Rights “issued a scathing report on abuses committed by all sides during Sri Lanka’s 1983-2009 armed conflict with the secessionist Liberation Tigers of Tamil Eelam”. The report “documented credible accounts of unlawful attacks, killings, enforced disappearances, torture, sexual violence and attacks on humanitarian assistance.”³⁸

Transparency and Corruption

Sri Lanka ranked 95th on Transparency International’s 2016 Corruption Perception Index, compared to 85th in 2014.³⁹

“The most common forms of corruption include bribes paid to avoid bureaucratic red tape, bribe solicitation by government officials, nepotism and cronyism. There is a high-level of corruption in the public procurement sector. The main anti-corruption laws are the Penal Code and Bribery

Act, which criminalise corruption and attempted corruption in the form of extortion, and active and passive bribery. No clear distinction between bribery and facilitation payments is made, but gifts given with a purpose of corruption are prohibited under the Prevention of Corruption Act. Sri Lanka's anti-corruption legislation lacks enforcement, and powerful political elites often go unpunished for committing corruption crimes."⁴⁰

"Steps were taken in 2015 to strengthen enforcement of existing safeguards and uphold the current legal and administrative framework. The Commission to Investigate Allegations of Bribery or Corruption was given additional powers of investigation and prosecution under the 19th Amendment; a new commissioner was appointed in October 2015, and a number of cases were initiated by year's end, although the commission's speed in dealing with a backlog of cases remains hampered by a lack of staff. Nevertheless, the commission opened investigations into a number of high-ranking politicians and officials from the previous government, including members of the Rajapaksa family. The cabinet approved a Right to Information Bill in December 2015, marking an additional improvement in transparency."⁴¹

Respect for the Right to Freedom of Association and Collective Bargaining

Most of Sri Lanka's trade unions are independent and legally allowed to engage in collective bargaining, but this right is poorly respected. Except for civil servants, most workers can hold strikes, though the 1989 Essential Services Act allows the president to declare any strike illegal. While more than 70% of the mainly Tamil workers on tea plantations are unionized, employers routinely violate their rights. Harassment of labour activists and official intolerance of union activities, particularly in export processing zones, are regularly reported.⁴²

The law prohibits anti-union discrimination, but does not provide adequate means of protection against it. Public sector employees may not join private sector unions. Public and private sector unions may not federate with each other (public sector employees are not covered by the rules governing federation under the Industrial Disputes Act, but by a separate regime called the Establishment Code). Unions can be de-registered under emergency legislation if they are deemed to be obstructing or delaying essential services. On 3 August 2006, the Ordinance and the Emergency Regulations were amended to expand on the number of services defined as essential. Further to protests by trade unions, in an amendment promulgated on 29 September 2006, the long list of essential services was replaced by a broad, unrestricted definition. The regulations allow the president to designate as "essential" any service "which is of public utility or is essential for national security or for the preservation of public order or the life of the community and includes any department of the government or branch thereof". To make such a declaration, the president only needs to order the restriction to be issued in the government gazette.⁴³

A union has a right to recognition if they represent more than 40% of the workforce, though this is very difficult in practice, partly due to the diversity of the trade union movement, which means that it is difficult for any single union to have such large proportion of members. Legislation establishing Employees' Councils creates separate non-union forums. The Employees' Councils Act compels employers to provide facility time for employees' councils but not for trade unions. The Minister of Labour may refer "minor" disputes to an arbitrator without the parties' consent. The Minister may extend the coverage of a collective agreement to an industry or district if the parties to the agreement are sufficiently representative.⁴⁴

Employee Councils (EC), present in EPZs, were established in the mid-nineties. The EC model is based on a set of guidelines drafted by the Sri Lankan Board of Investment (BOI), with input from employers based in EPZs. There was and is no consultation with trade unions. An EC consists of a body of between 5-10 workers, elected by secret ballot, who are responsible for the representation of collective bargaining and the settlement of industrial disputes. Eligible members are non-management/supervisory personnel employed by the factory. They are provided with two hours per month to carry out their functions. There is no fee for members, and employers fund the EC and its activities. Employers and the BOI argue that these ECs meet the criteria laid down in ILO Convention 87 on Freedom of Association. The Sri Lankan authorities have actively promoted the use of ECs to prevent the establishment of independent and democratic trade unions.⁴⁵

If a trade union is able to organise 40% of the workforce, it must inform employers, who often challenge this assertion. The resolution mechanism defined in the Industrial Disputes Act states that the Commissioner for Labour must hold a referendum whereby the workers vote to say whether they are members of a trade union or not, thus establishing the unionized percentage

of the workforce. The experience of many workers and unionists, according to the ITGLWF investigation, is that the Commissioner for Labour moves extremely slowly when organising the referendum, which facilitates union busting. Union officials and members have direct experience of these activities, such as verbal abuse and discrimination. "This intimidation leads to some workers giving up their union membership and makes it very difficult for unions to maintain the 40% membership threshold defined in the guidelines. Another and deeply troubling way in which employers have prevented trade unions from organising is by securing recognition for their EC as a trade union. The workers interviewed by our researchers feel that the ECs do not provide for democratic representation of workers. Furthermore, some employers are even failing to meet their obligations under the EC Guidelines; for example, at 11 of the factories for which the trade union could secure information, not one held elections for the EC by secret ballot. In addition, the BOI did not monitor any of the elections that took place at these 11 factories. The workers interviewed also reported that worker representatives are selected by management who choose their favourites or workers they are confident can be forced to support their positions. It was reported that employers provide these workers with extra benefits and privileges in order to retain their support".⁴⁶

In the ITGLWF investigation, workers reported that "there is little transparency or communication with the workforce. Once an EC is created workers are not informed of issues arising or discussions which take place. The workers also stated that they have no way in which to raise problems or concerns with the ECs. Workers also reported that management or factory owners set the schedule and agendas of the meetings and that any discussion on wages, hours of work or working conditions tends to be prohibited. In the ECs analysed management were willing to deal only with the most marginal of work related issues".⁴⁷

Examples in practice:

- In August 2015, a case was filed at the Supreme Court of Sri Lanka, seeking reinstatement and compensation for workers sacked by Australian latex manufacturer Ansell. The company dismissed the 289 workers, mostly women, in December 2013, in a dispute over pay. Initially 11 workers were dismissed for trying to organise industrial action over low pay—which the profitable company wanted to reduce even further—long hours and appalling working conditions, after attempts at negotiation had failed. This prompted the remaining workers to go on strike. Those who did not respond to a return-to-work order were promptly dismissed, and many had not found work since.
- Samantha Koralearachchi, president of All Ceylon Health Services Union, was arrested at Chilaw hospital on 30 July 2015. He was charged with illegal entrance and conducting a political meeting. The union filed a complaint with the human rights commission claiming wrongful arrest, and stating that Mr Koralearachchi had entered the hospital with the permission of the hospital director and political leaflets were not distributed. Two months earlier Mr Koralearachchi and the health services union had led a strike, including a protest march by 40,000 workers, to demand the payment of salary arrears.
- Ansell Lanka Pvt., located in the Biyagama Export Promotion Zone (BEPZ), refuses to recognise the Free Trade Zones and General Services Employees Union as a bargaining agent. Branch leaders have been attacked and dismissed and members have been prejudiced for seeking to defend their rights. In October 2013, Ansell sacked almost 300 workers for protesting against the company's decision to discriminate against union leaders and members. The workers remained out of work four months after having been sacked. Trade unionists have faced anti-union discrimination by management since early 2013. For example, on 22 March 2013, management deducted half a day's wage of workers who had complained about the fact that they were not provided with meals. On 10 April 2013, two unknown motorcycle riders attacked the union branch president, Athula Kamal, in Kiribathgoda. On 2 May 2013, Ansell Lanka dismissed two committee members of the branch union and another active union member without giving them the opportunity to respond to the disciplinary charges that had been laid against them. A female committee member was also suspended from work on 9 April 2013. On 29 May 2013, workers were coerced to sign a letter of consent accepting an increased production target without being able to consult with the union. After protests and a written complaint to the Minister of Labour, management finally permitted inspectors

to the company on 16 July 2013. On 10 October 2013, management suspended Athula Kamal for having complained to police about the assault on him in April. When workers protested against management's decision by going on strike 14 October 2013, the Assistant Commissioner of Labour of Colombo Central tried to arrange a mediation meeting between the two parties and asked management to reinstate Athula Kamal. Instead, management decided to dismiss Athula Kamal and ten union leaders and two union members who had gone on strike. The Labour Ministry called for compulsory arbitration on 29 November 2013. While the arbitration order the workers to return to work, Ansell Lanka refused to allow them to do so. Instead, Ansell required the workers to apply for employment.

- Palla & Co, a supplier of Swiss shoe company Bata, sacked almost 200 workers for organising a trade union and seeking to bargain collectively in December 2013. The workers involved were also added to a blacklist of union agitators, making it impossible for them to find another job. As a consequence, 100 of the sacked workers were still seeking reinstatement at Palla as at 11 December 2014. Contrary to its corporate code of conduct, Bata pulled out completely from Palla in late 2013. The appropriate action would have been to ensure that the factory reinstated the sacked workers, recognised the union, and paid the wage increases that were due.⁴⁸

Sri Lanka has collective agreements at national and/or regional levels. Wages set in these collective agreements were typically higher than the minimum wage. If the agreements offered less favourable conditions than national requirements, they do not have the force of law. Neither can CBAs that contravene legislation get the force of law. However, there is a lack of freedom of association and unionisation in sectors that are critical to the growth of the economy, based on the assumption that collective bargaining might hamper sectoral growth.⁴⁹

The main hurdles for the regulation and enforcement of labour law “were seen to relate to the lack of voice of workers in certain sectors, and to the imbalanced power relationships in the workplace”. Major issues are “the use of manpower agencies who operate outside the law; a lack of consistency in judicial decisions on labour matters; a lack of promotion of ILO Conventions 87 (Freedom of Association and Protection of the Right to Organise) and 98 (Right to Organise and Collective Bargaining); and the fact that some trade unions seemingly preferred confrontation to negotiation”.⁵⁰

Access to Fair, impartial and Efficient Justice Systems

“Police in Sri Lanka continued to routinely torture and ill-treat individuals taken into custody to extract ‘confessions’, but also for personal vendettas or to extort funds.

“While Sri Lanka has legislation prohibiting torture, the government failed to ensure disciplinary or criminal prosecutions against police officers and their superiors. Many alleged perpetrators remained in active duty or were merely transferred to another police station. Only in a handful of particularly egregious cases in the media spotlight was serious action taken against the offending officers. Even in those cases, superior officers were not held to account as a matter of command responsibility.

*“Victims of torture and their families faced a daunting path to redress and justice. Those of limited means, particularly from rural communities, often found the various procedural steps overwhelming and prohibitively expensive. Many reported ongoing harassment by the police when back in their villages”.*⁵¹

A new Tamil chief justice was appointed in January 2015. This is seen as “a positive step taken by the new administration”, as is “the re-formation of an independent commission to oversee judicial appointments”.

“Corruption remains common in the lower courts, but the levels of threats and political interference that occurred under the previous government have abated under the new government”.⁵²

However, another report says that corruption in the judicial system is more problematic than Freedom House say. According to the GAN Business Anti-Corruption Portal, the judiciary is not independent, public trust in politicians is low and government policymaking is not transparent. The independence of the

judiciary is undermined by the harassment, the attacks and threats to judges. Persons willing to pay bribes have better access to the legal system. Sri Lanka's record in handling investment disputes is problematic, and court procedures can be time-consuming, resulting in companies avoiding taking commercial disputes to court. Disputes become politicised, and contract-stability could be improved. A quarter of Sri Lankans consider the judiciary to be corrupt.⁵³

¹ Constitution of the Democratic Socialist Republic of Sri Lanka, Chapter 1: The People, The State and Sovereignty.

² International Monetary Fund, April 2015. Report for Selected Countries and Subjects. Available at: <http://www.imf.org/external/pubs/ft/weo/2015/01/weodata/weorept.aspx?pr.x=48&pr.y=18&sy=2014&ey=2019&scsm=1&ssd=1&sort=country&ds=.&br=1&c=524&s=NGDPD%2CNGDPDPC%2CPPPGDP%2CPPPPC&grp=0&a=>

³ World Bank, 2017. Overview: Sri Lanka. Available at: <http://www.worldbank.org/en/country/srilanka/overview>

⁴ *ibid.*

⁵ Trading Economics, 2017. Sri Lanka Employment Rate: 2004-2017. Available at: <http://www.tradingeconomics.com/sri-lanka/employment-rate>

⁶ <http://www.worldbank.org/en/country/srilanka/overview>

⁷ World Bank, 2017. Sri Lanka: Overview.

⁸ *ibid.*

⁹ UNDP, 2014. Millennium Development Goals Country Report 2014: Sri Lanka. Available at:

<http://www.lk.undp.org/content/srilanka/en/home/library/mdg/sri-lanka-millennium-development-goals-country-report-2014.html>

¹⁰ *ibid.*

¹¹ *ibid.* p4.

¹² *ibid.* p5.

¹³ *ibid.* p6.

¹⁴ *ibid.* p3.

¹⁵ Lopez-Acevedo, G., and Robertson, R., 2016. Stitches to Riches? Apparel Employment, Trade, and Economic Development in South Asia: Overview, World Bank. Available at:

<https://openknowledge.worldbank.org/bitstream/handle/10986/23961/210813Overview.pdf>

¹⁶ Trading Economics, 2016. Sri Lanka Exports. Available at: <http://www.tradingeconomics.com/sri-lanka/exports>

¹⁷ Lopez-Acevedo, G., and Robertson, R., 2016. Stitches to Riches? Apparel Employment, Trade, and Economic Development in South Asia: Overview, World Bank.

¹⁸ *ibid.*

¹⁹ *ibid.* p13.

²⁰ Sri Lanka Export Development Board, 2016. Apparel Export Performance. Available at:

<http://www.srilankabusiness.com/apparel/apparel-export-performance.html>

²¹ Jegarajah, S., and Tan, H., 2016. TPP trade deal to challenge Sri Lanka's apparel export sector', CNBC.

Available at: <http://www.cnbc.com/2016/04/27/tpp-trade-deal-to-challenge-sri-lankas-apparel-export-sector.html>

²² Van Klaveren, M., 2016. Wages in Context in the Garment Industry in Asia, Wage Indicator Foundation.

Available at: <http://www.wageindicator.org/documents/publicationslist/publications-2016/van-klaveren-m-2016-wages-in-context-in-the-garment-industry-in-asia-amsterdam-wageindicator-foundation-april-28-2016>

²³ World Bank, 2016. Sri Lanka: Overview.

²⁴ Ruwanpura, K.N., 2015. "Garments without Guilt? Uneven labour geographies and ethical trading – Sri Lankan labour perspectives", Journal of Economic Geography, p1-24.

²⁵ Van Klavaren, M., 2016. Wages in Context in the Garment Industry in Asia, Wage Indicator Foundation, p75.

²⁶ *ibid.* p74.

²⁷ *ibid.*

²⁸ *ibid.* p76.

²⁹ *ibid.* p74.

³⁰ *ibid.*

³¹ *ibid.* p75.

³² ITGLWF, 2011. An Overview of Working Conditions in Sportswear Factories in Indonesia, Sri Lanka & the Philippines, p5. Available at: <http://www.ituc-csi.org/IMG/pdf/ITGLWFSportswearReport2011.pdf>

³³ *ibid.* p10.

³⁴ *ibid.* p11.

³⁵ Van Klavaren, M., 2016. Wages in Context in the Garment Industry in Asia, Wage Indicator Foundation, p77.

³⁶ Human Rights Watch, 2016. World Report 2016: Sri Lanka. Available at: <https://www.hrw.org/world-report/2016/country-chapters/sri-lanka>

³⁷ *ibid.*

³⁸ *ibid.*

³⁹ Transparency International, 2016. Corruption Perceptions Index. Available at:

<http://www.transparency.org/research/cpi/overview>

⁴⁰ GAN Business Anti-Corruption Portal, 2015. Sri Lanka Corruption Report. Available at: <http://www.business-anti-corruption.com/country-profiles/sri-lanka>

⁴¹ Freedom House, 2016. Freedom in the World 2016: Sri Lanka. Available at: <https://freedomhouse.org/report/freedom-world/2016/sri-lanka>

⁴² *ibid.*

⁴³ ITUC, 2014. Survey of Violations of Trade Union Rights: Sri Lanka: Legal. Available at: <http://survey.ituc-csi.org/Sri-Lanka.html>

⁴⁴ *ibid.*

⁴⁵ ITGLWF, 2011. An Overview of Working Conditions in Sportswear Factories in Indonesia, Sri Lanka & the Philippines, p7.

⁴⁶ *ibid.*

⁴⁷ *ibid.* p8.

⁴⁸ ITUC, 2014. Survey of Violations of Trade Union Rights: Sri Lanka: Legal.

⁴⁹ Van Klavaren, M., 2016. Wages in Context in the Garment Industry in Asia, Wage Indicator Foundation, p75.

⁵⁰ *ibid.* p76.

⁵¹ Human Rights Watch, 2016. World Report 2016: Sri Lanka.

⁵² Freedom House, 2016. Freedom in the World 2016: Sri Lanka.

⁵³ GAN Business Anti-Corruption Portal, 2015. Sri Lanka Corruption Report.

TURKEY

Turkey is the 18th largest economy in the world with an annual GDP of USD 718.2 billion.¹ Following a decade of high growth rates, the country has been transformed into an increasingly urbanised society with dramatically falling poverty levels; the number of Turkish people living in poverty has halved between 2002 and 2012.² Over the last four years however, political crises, internal and external conflicts, the arrival of millions of Syrian refugees and the deteriorating economic situation in a number of its key export markets have all impacted on Turkey's growth.³ Following a coup attempt in July 2016 the government declared a "state of emergency", which many fear is being used as an excuse to eradicate democratic opposition and give enormous powers to President Erdogan.⁴ Strict anti-terrorism laws have been used to repress civil rights, including freedom of speech and the media, and Turkey now has one of the largest numbers of imprisoned journalist in the world.⁵

Corruption is widespread in Turkey's public and private sectors. Anti-corruption laws are poorly enforced, and anti-corruption authorities are ineffective or unwilling to tackle corruption.⁶ It scored 42 on TI's Corruption Perception Index, ranking 66 out of 168 countries surveyed.⁷ Although the Constitution provides for an independent judiciary, accusations of interference into the court system are still made.⁸ Turkey scores 3.3 out of a possible 7 on the Judicial Independence rankings carried out by the World Economic Forum.⁹

Turkey scores fairly highly on the Human Development Index, with access to public services improving over the last decade and impacting on health indicators. In 2003 Turkey had the highest rate of child mortality in the developed world—this figure was halved by 2013. However, access to services, including education, is highly unequal, particularly regarding gender; only 40% of girls complete secondary education, compared to 60% of boys.¹⁰

In 2015 Turkey's largest export markets were Germany, the UK, Iraq, Italy, the US and France,¹¹ its major exports including vehicles, textiles and clothing, machinery and mechanical appliances, iron and steel, electrical machinery and equipment. It is Europe's largest textile manufacturer, with textile and clothing accounting for 10% of its exports.¹² It is the third largest supplier of clothing to Europe, which imported EUR 13.7 billion worth of Turkish textiles and clothing in 2014,¹³ with the largest share going to Germany, followed by Spain and then the UK.¹⁴

The industry is mainly composed of small to medium-sized businesses, many of which operate in the informal sector.¹⁵ Officially the garment and leather industry (excluding textile production) employs around 508,000 workers, representing 4.4% of total employment. However, many more workers are employed in the informal sector and, when these workers are taken into account, the total workforce is estimated to be closer to two million.¹⁶

The percentage of women employed in the industry is much lower than in Asia and varies according to the position. Cutting, ironing, knitting and dyeing jobs are considered "traditionally" to be men's work, whilst jobs such as cleaning, helping and basic sewing are seen as domestic duties and therefore as women's work.¹⁷

Source	Statistic	Result	Year calculated
World Bank	Population	78.67 million	2015
World Bank	GDP in USD	717.9 billion	2015
World Bank	GDP growth	4.0 %	2015
World Bank	Inflation	7.7 %	2015
World Bank	Life Expectancy	75.2	2014
World Bank	Infant Mortality (per 1000 live births)	12	2015
Transparency Int.	Corruption Index – Score – Rank	41/100 75/176	2016
IFPRI	Global Hunger Index	5.1 (low)	2015
UNDP	Human Development Index	0.767 (high)	2015
UNDP	Expected years of schooling	14.4	2012
Wage Indicator	Minimum Wage– per month lowest (TRY)	1,777.5	2017
Wage Indicator	Minimum Wage– per month highest (TRY)	1,777.5	2017
Fair Wage Network	Living Wage– per family of 2 adults and 2 children (TRY)	2,592	2016

Poverty and Wages

In practice the minimum wage frequently operates as a ceiling rather than as a floor.¹⁸ The average gross earning of workers in apparel manufacturing in 2015 was TRY 1,465.86, and in two out of nine factories surveyed by the Fair Labor Association (FLA), workers were earning less than the poverty threshold of 1,370 TRY.¹⁹ This is far below the living wage benchmark of 4.492.15 TRY calculated by the Confederation of Turkish Trade Unions (Türk-İş), based on a four-member family.

The current minimum wage in Turkey was raised to TRY 1,647 (gross) in 2016 and TRY 1,300 (net) (still far below the living wage calculated by the Türk-İş union, as set out above). This means that even with two members of the family working at the minimum wage, family income would still fall below the Türk-İş living wage.

“The picture is clear, it is not possible for us to make savings since we cannot afford basic needs. [...] There is nothing in our hand; we are only surviving on a daily basis.”– Turkish garment worker.²⁰

One of the consequences of low wages is that workers have to take on overtime work in order to meet their basic needs. As one Turkish worker told researchers, “without overtime we cannot survive.”²¹ There is no legal limit on overtime and workers regularly work up to 72 hours per week. This failure to limit overtime contravenes ILO Conventions, which provide that workers should work no more than 12 hours of overtime per week.²²

Turkey’s textile industry remains largely unregulated with an estimated [60% of the workforce](#) unregistered.²³ Lack of worker registration (and consequent lack of tax payments) has implications for worker entitlements to social security benefits, healthcare and pension allowances, all of which accrue by virtue of tax payments. Unregistered workers in a factory in

the Batman region of Turkey reported difficulties in obtaining health services, stating that they “are trying hard not to get ill”.²⁴ Moreover, even where workers are registered and relevant employment taxes are paid, employers frequently pay overtime “off the book”, which reduces benefits that would otherwise be acquired.²⁵

Syrian refugees are increasingly being employed in garment factories, often on wages significantly lower than the legal minimum wage. Since these workers rarely have a right to work, they have no legal redress for breaches of law in relation to their employment. However, they have no other option but to take on illegal work, if they are to sustain themselves and their families. Syrian women make up the majority of this workforce, with Syrian children also being employed in large numbers.²⁶

*“I would love to go to school, I miss reading and writing,” says Hamza. “But if I go to school, nobody is going to bring food to my home.” At their spartan one-room home nearby, Hamza’s mother nods in agreement. “They have to work,” she says of her children. “If they don’t work then we can’t live.”— Syrian refugee interviewed by the Guardian, May 2016.*²⁷

New labour laws enacted in January 2016 have allowed refugees to apply for work permits; however, the law requires an employer to give his employees a contract before they can apply for a permit, something which most employers are unwilling to do.

*“If [employers] helped us get a work permit, they’d have to pay us like Turkish workers—and they would never want to do that.”— Syrian refugee interviewed by the Guardian, April 2016.*²⁸

Freedom of association and collective bargaining are permitted by Turkish law. However, in practice, they are subject to significant constraints. The ITUC has given Turkey its lowest ranking out of 5—“No Guarantee of Rights”—and expresses significant concerns over legal restrictions faced by workers wishing to join a union, as well as over protection of workers from discrimination and attacks.²⁹

In a number of areas, including in registration of a union, negotiations and strikes, the law provides for significant government interference, allowing it to prevent union formation and to suspend legally organised strikes.

Unions are required to pass a double membership threshold in order to legally negotiate a collective bargaining agreement (CBA) on behalf of workers in a given factory. This threshold states that first, a union must represent both 40% of the workforce of a single employer or factory group (or more than half of the workers in a single factory) and secondly, it must represent a certain percentage of workers within the entire industry sector. In practice, it is close to impossible to meet these two threshold tests.³⁰ Thus, of the 13 unions currently registered in Turkey in the “Textile, Ready-Made Clothing, and Leather” industry, only three exceed the industry threshold required for them to negotiate and sign a CBA with an employer.³¹

Although illegal to fire a worker for being a member of a union, the consequence of doing so is a fine only; there is no reinstatement requirement. That lack of job protection in practice stops workers from joining a trade union, especially those with a precarious status, such as migrant and temporary workers. And this in turn makes it difficult for trade unions to obtain the necessary membership for them to participate in CBA negotiations.³²

Legal section

Wages

Minimum Wage

Minimum wages apply in Turkey. There is a legal minimum wage which applies equally to all sectors across the country.

Minimum Wage Levels

The minimum wage is set at TRY 1,647.00 (gross) or TRY 1,300.00 (net) per month for 2016, which is equivalent to USD 554.00 (gross) and USD 437.00 (net), respectively.

Apprentices who work as a part of their occupational training must be paid a salary of no less than 15% of the minimum wage. If there are more than 20 employees in the relevant workplace, the salary paid to apprentices may not be less than 30% of the minimum wage.

Although controversial, it is generally accepted under Turkish law that an employer has no obligation to pay interns (who are generally university students and work to gain experience). Interns are not expressly defined under Turkish law; however, pursuant to the Turkish labour law doctrine, they are defined as persons possessing theoretical knowledge but who need to gain practical information relating to their relevant occupation. Interns are not deemed "employees" pursuant to the Labour Code No. 4857 ("Labour Code") as the parties do not actually have the intention to enter into an employment relationship. There are, therefore, no explicit requirements regarding age or probationary periods for interns.

Minimum Wage Grades

The minimum wage does not vary according to the type of employment—part time or full time—and to probationary period status. In a part time employment structure, the hourly wage payable by the employer is set at TRY 7.32 gross per hour (approximately USD 2.39).

However, slight differences exist in the net amount of the minimum statutory wage received by the employee if the employee is a housekeeper (*kapıcı*), since the wages paid to housekeepers are not subject to stamp tax (*damga vergisi*).

Employees who have children are entitled to TRY 50-100 (approximately USD 16-32) per month as a minimum living allowance depending on the number of children they have.

Probation Period Wages

The minimum wage does not change depending on the type of employment or during a probation period.

Basic/Additional Amounts

Gross minimum wage includes the employee's share in social security contribution, the employee's share in unemployment insurance, minimum living allowance, income tax and stamp tax.

Minimum Wage Review

The minimum wage must be reviewed at least once every two years by the Minimum Wage Fixing Board of the Ministry of Labour and Social Security.³³ This Board consists of two general managers of the Ministry of Labour and Social Security, the president of the State Statistics Institute, a representative from the Under-secretariat of the Treasury, a representative from the State Planning Organization, five representatives from the trade union having the highest number of members, and five representatives from the employers' union having the highest number of members.

According to the Regulation on Minimum Wages, the Board can cooperate with all relevant public institutions and universities and receive opinions from the employer and employee representative bodies during the process of fixing the minimum wage. If it deems it necessary,

the Board can also acquire expert views. All the negotiations and works of the Board are confidential. Decisions of the Board are announced to the public by its president.

Payment of Wages

In principle, salary is paid once every thirty days. The parties can agree to decrease the payment period to a week through a collective bargaining agreement or individual employment agreement.

Deductions from Wages

The following deductions are permitted by law for employer to deduct from employee's minimum gross salary;

- SSI Premium (14%);
- Unemployment Insurance Fund (1%);
- Income Tax (15%);
- Stamp Tax (7.59%).

Apart from the above percentages, the employer must also pay a 15.5% social security premium payment.

Employers are legally obliged to provide wage slips.³⁴ The employer must indicate all legal deductions, taxes, insurance premiums and overtime work payments.

Working Hours

Normal Working Time

45 hours is considered normal weekly working hours. A working day may not exceed 11 hours.³⁵

Overtime

Overtime is limited to 270 hours per year.³⁶

Overtime Rates

The overtime rate is set at 1.5 times higher than the normal rate.³⁷

Night Work

There is no premium for night work. "Night" is defined as the period from 8 p.m. until 6 a.m.³⁸

Rest Time

An employer must give employees the following mandatory rest time:

- 15 minutes' rest time for four hours and less work,
- 30 minutes' rest time for four hours' to 7.5 hours' work,
- 1 hour's rest time for more than 7.5 hours' work.

Rest time is not included in the working time.

Paid Holiday

The length of minimum annual paid leave depends on the length of service.

The paid holiday leave levels are as follows:

- 14 days for one to five years' seniority (the 5th year is included);
- 20 days for five to 15 years' seniority;
- 26 days for higher than 15 years' seniority (15th year is included).

Employees benefit from the public (religious/national) holidays regardless of their term of service with an employer.

For an employee to become entitled to annual paid leave under the Labour Code, an employee must have worked for minimum one year. The parties can, however, agree that the employee will be entitled to paid leave before the employee has worked for one year.

Liability and Contracts

Liability and Duties

An employer is strictly liable if an employee damages a third person while carrying out their work.³⁹

An employer also has a duty of care to its employees pursuant to the Occupational Health and Safety Law. The employer has to take all measures necessary to protect the health and safety of its employees, including the prevention of occupational risks through the provision of information and training, organisation and equipment. They must ensure these measures are adjusted to take into account changing circumstances, with the aim of achieving improvements. Such obligations also include carrying out a risk assessment, or having a risk assessment carried out, designating employees as occupational safety specialists, occupational physicians and other health staff.

In cases where the employer does not take the necessary measures despite the employees' requests, employees can terminate their employment agreements. If it is impossible to prevent serious and imminent danger, the employees have the right to leave their workplaces and go to a safe place without having to ask the employer to take the necessary measures. If the relevant employee has suffered damages due to the employer's fault, then the employee can demand compensation for the damages.

Employees also have the right immediately to terminate the employment agreement if performance of the work endangers their health or life.

Employers are obliged to keep records of all occupational accidents and diseases, and to carry out the relevant examination regarding the accidents and illnesses and organise the related reports.⁴⁰

The employer must notify the local authorised police force of the occupational accident, as well as the Social Security Institution within three business days of the accident at the latest. If the accident occurred at a location that the employer does not control, the three business days commence on the day the employer learns of the occupational accident.

Failure to file these notifications triggers imposition of administrative fines ranging from TRY 2,600 to TRY 7,800 (approximately USD 850 to USD 2,550) depending on the number of employees involved and the hazard classification of the relevant workplace. Besides the administrative fine, the employer will be obliged to reimburse the Social Security Institution for the treatment costs it incurred prior to the notification by the employer of the accident. If a work accident or occupational disease has occurred as result of the employer's intentional acts or acts that contravened its occupational health and safety obligations, the employer must compensate the health services, transportation and other relevant expenses incurred by the Social Security Institution. In calculating the allowances to be allocated to an employee who has been deprived of income, the Social Security Institution considers various variables such as age, the possibility of losing entitlement to payment and the reduction rates fixed by it. All these items amount to *peşin sermaye değeri*. The employer will be asked to wholly reimburse this amount.

Contract of Employment

Neither the Labour Code nor the Code of Obligations dictates the form of employment agreements.

Fixed-term employment agreements with a term of a year or more which are governed by the Labour Code must be in writing.

Apart from the above, the employer must provide the employee with a document containing essential provisions of employment such as the term of employment, wage and termination terms.

Probation Period

It is possible to include a probationary period of up to two months in employment contracts. The probation period must be agreed in writing to be valid. Employers must not pay less than the minimum wage during the probationary period. It is not possible to have repeated probation periods, but it is possible to increase the probationary period to up to four months through a collective bargaining agreement.

Types of Contract and Restrictions

Fixed term contracts must specify objective criteria such as completion of specific work, performance of a specific, temporary duty, or the occurrence of a particular event. In the absence of such objective criteria, an employment agreement is deemed to be for an indefinite term even where the parties had agreed otherwise. Renewal of a fixed-term employment agreement is subject to the same requirements.

Part-time employment is defined as employment where the employee's normal weekly working hours are considerably shorter than those of a full-time employee, i.e. where the employee's weekly working time is less than two-thirds of the normal weekly work time at the relevant workplace. Part-time employees enjoy the same rights and benefits as comparable full-time workers, paid pro rata. Part-time employees cannot be asked to perform work exceeding their pre-determined working hours or overtime work. Part-time employees' salary should be determined on an hourly basis and stated in the employment agreement.

"On call work"⁴¹ is a type of part-time employment. This type of employment enables an employer to receive assistance when needed, as well as enabling the employee to arrange his or her working schedule for other employers, if any. Pursuant to the Labour Code, unless agreed otherwise by the parties, weekly working hours are 20 hours, and the employer must give at least four days' notice before the contemplated working day. Unless agreed otherwise, the employer is required to receive services from the employee for at least four consecutive hours on a particular date once the employee is called for work. The agreed wage of the employee must be paid to him/her regardless of whether he or she has worked all the working hours agreed in the agreement.

Employees who are on fixed-term employment contracts or part-time employment contracts are subject to the same laws/exclusions regarding wages or social security rights, although, in part time employment the social security premiums to be paid for the employee will be less than in a full-time employee's case.

To renew a fixed-term employment agreement, there should be objective criteria such as completion of specific work, performance of a specific, temporary duty or the occurrence of a particular event. In the absence of such objective criteria, such fixed-term employment agreement will be deemed an employment agreement for indefinite term. The length of renewal is not subject to any limit as long as there is an objective reason to renew the fixed term contract.

Severance Allowance

In Turkey, employees are entitled to statutory severance pay after they complete the first year in the workplace, which may not exceed the retirement wage paid to the highest ranking government official as set out in the State Officials Law No. 657. Employees who resign are not entitled to any statutory severance pay.

Employees are only entitled to "statutory seniority compensation" for dismissal after they have worked for one year. This compensation is calculated by multiplying the number of years of employment by the latest monthly gross wage. "Statutory seniority compensation" to be paid per each year of service is capped by law. Until the end of the first half of 2016, this was TRY 4,092.53 (approximately USD 1,338). If the relevant employee's monthly salary is higher than this amount, the "statutory seniority compensation" per each service year cannot exceed this cap.

If the employer has not given the requisite notice prior to termination, the employee is entitled to compensation for that requisite notice period. The notice periods under Turkish law are two, four, six and eight weeks depending on the employee's year of service.

Notice and seniority compensation is calculated by reference to the value of all benefits received by an employee, not just the employee's monthly salary.

Annual leave that is not taken is payable to an employee at the end of employment.

If an employee has been dismissed for "just cause", consequent on his or her behaviour, no entitlement to "statutory seniority compensation" or compensation arises. Just cause includes:⁴²

- Health reasons:
 - If the employee has contracted a disease or become disabled owing to his own deliberate act, loose living or drunkenness, and as a result is absent for three successive days or for more than five working days in any month; or
 - if the Health Commission has identified that an employee's sickness is incurable and the employee's performance at the workplace is harmful.

In cases of illness or accidents which are not attributable to the employee's fault and which are due to reasons outside those set forth in (a) above and in cases of pregnancy or confinement, the employer is entitled to terminate the contract if illness or injury continues for more than six weeks beyond the notice periods set forth in Article 17 of the Labour Code. In cases of pregnancy or confinement, the period mentioned above shall begin at the end of the notice period, which will start after the maternity leave period stipulated in Article 74 of the Labour Code. No wage is paid for the period during which the employee fails to perform any work due to the suspension of his contract.

- Employee behaviour contrary to the rules of ethics and goodwill and similar cases:
 - If, when the employment contract was concluded, the employee misled the employer by falsely claiming to possess qualifications or to satisfy requirements that constitute an essential feature of the employment contract or by giving false information or making false statements;
 - if the employee said anything or acted in a way that constitutes an offence against the honour and dignity of the employer or a member of his family, or makes denouncements or attributes groundless accusations against the employer that offend the employer's honour and dignity;
 - if the employee sexually harasses another employee of the employer;
 - if the employee assaults the employer, a member of his family or a fellow employee, or if he comes to work drunk or by having taken drugs or consumes alcohol or drugs at the workplace;
 - if the employee is dishonest and disloyal to the employer, for example by breach of trust, theft or disclosure of the employer's trade secrets;
 - if the employee commits a crime at the workplace that is punishable with imprisonment of seven days or more and that cannot be postponed;
 - if, without the employer's permission or just reason, the employee is absent from work for two consecutive business days, or twice in one month on the business day following a holiday or on three business days in any month;
 - if the employee insists on not performing his or her duties despite being warned;
 - if either wilfully or through gross negligence the employee endangers safety or damages or loses machinery, equipment or other property or materials of the workplace or those that do not belong to the workplace but are in his possession and this damage/loss cannot be offset by 30 days' salary.
- Force majeure: If a force majeure prevents the employee from performing his duties for more than one week.
- Absence: If the absence of the employee is due to him or her being taken into custody and absence exceeds his or her statutory notice period indicated in Article 17.

In addition to just causes, Article 18 of the Labour Code recognises "valid reasons" for dismissal, which include poor performance, misbehaviour and business decisions such as restructuring and downsizing.

Unemployment pay may be available where the employment is terminated unilaterally by the employer without just cause and the employee meets certain conditions, e.g., working a minimum period of time (600 days to 1,080 days) and having paid the unemployment pay contribution in the last three years. In such circumstances, the employee may also demand reinstatement, again provided that the employee meets certain conditions. If the employee wins the reinstatement lawsuit, the employer will have to reinstate the dismissed employee and will be ordered to pay non-employment compensation, which consists of four months' gross wages of the employee including social benefits. If the employer does not reinstate the employee, then the employer will also need to pay non-reinstatement compensation of four to eight months' gross wages, excluding the social benefits but including social security premiums and taxes, in addition to the non-employment compensation.

Termination

If an employment contract is terminated for just cause due to the employee's misbehaviour, the employer is not obliged to obtain a written defence statement from the employee, but the termination must be made within six business days of discovering the offending behaviour. Where it is necessary for the employer to collect more information through an investigation, the employer must establish an investigation committee within six business days of discovering the offending behaviour and start the investigation. The Labour Code does not refer to such investigations or to an investigation committee. The termination must then be done within six business days of obtaining the result of the investigation.

Individual Labour Disputes

There is no statutory mechanism through which employees may appeal an employer's decision to terminate the contract, although the employee can bring a claim for reinstatement within 30 days. Employers can also however provide an internal appeal mechanism.

Gender and Age

Equal Pay

Equal pay for the same or similar work is required by Article 5 of the Labour Code titled "Equal Treatment Principle".

Pregnancy

A pregnant employee must be given paid leave for periodic examinations during her pregnancy.

Pregnant and breastfeeding employees cannot be required to work more than seven and a half hours per day. Where supported by a medical report, the employee must be given duties suitable for her health condition.

Pregnant employees cannot be forced to work on night shifts starting from the date on which their pregnancy is identified by a health report until the birth. In addition, female employees are not allowed to work on night shifts for a period of one year following the birth of the child.

Maternity Leave

Maternity leave starts eight weeks before birth and continues for eight weeks after birth.⁴³ In the event of twins or triplets, the first eight-week term can be extended for two more months. These time periods can be increased before and after delivery if deemed necessary by a medical report in view of the female employee's health and the nature of her work.

A female employee can request unpaid leave of up to six months following maternity leave. In addition, upon the expiry of the maternity leave periods discussed above, female employees are entitled to use half of the total weekly working hours as unpaid leave for 60 days in the first delivery, for 120 days in the

second delivery and for 180 days in the following deliveries. In the case of twins or triplets, 30 days is added to the periods mentioned herein. If the baby is disabled, such right can be used for 360 days.

Maternity Pay

A female employee is entitled to receive unemployment (maternity) pay during the paid portion of the maternity leave.⁴⁴ Female employees can also benefit from half-day working pay equal to the minimum daily gross wage for the unpaid leave that she uses following the expiry of the maternity leave period.

Right to Return

During maternity leave, the employment contract is deemed suspended. Upon the expiry of maternity leave period, the employee returns to her original place of work and continues to work under the same terms and conditions.

New Parents

There is no specific measure to prevent discrimination against new parents, but the employer should observe the general equal treatment principle and not discriminate against an employee on the basis of maternity.⁴⁵ Female employees are allowed a total of one and a half hours breastfeeding leave per day to feed their children that are less than a year old.

Paternal Leave

Male employees are entitled to use five days' paid leave as paternal leave when their wives give birth. The wording of the Labour Code does not recognise parental leave if the mother and father are not married.

Childcare

Under the Labour Code, an employer must establish a breastfeeding room in any workplace with 100-150 female employees (regardless of their age and civil status). This room should be separate from the working locations and at a distance of at most 250 meters.

An employer must provide a kindergarten with a breastfeeding room for children of the ages of 0-6 years if the number of female employees in the workplace is more than 150. The employer is also obliged to hire personnel and health officers, conduct health examinations, provide food and education for the children to stay at the kindergarten.

The kindergartens and breastfeeding rooms must be, among other things, dust free, easy to clean, have natural light, an appropriately large garden and separate changing facilities.

Sexual Harassment

The Code of Obligations regulates the employer's obligation to prevent sexual harassment. Within the employment relationship, the employer must acknowledge and safeguard the employee's personality rights, have due regard for his or her health and ensure that proper moral standards are maintained.⁴⁶ In particular, the employer must ensure that employees are not psychologically and sexually harassed and that the victim of such harassment does not suffer further adverse consequences.

The employee is entitled to terminate the employment contract if the employer sexually harasses the employee and also where the employee was sexually harassed by another employee or by third persons, if the employer did not take adequate measures to stop the behaviour or prevent recurrence when the employer had been informed of the misconduct.⁴⁷

Sexual harassment in an employment relationship is an aggravated form of sexual harassment.⁴⁸

Minimum Working Age

Employment of children under the age of 15 is prohibited. However, children aged 14 and who have completed primary education can be employed to do light work that will not hinder their physical, mental and moral development. Those who continue their education can be employed in jobs that will not prevent their school attendance. Children under 14 years old may be employed for artistic, cultural and advertising activities provided their employment does not hinder their physical, mental and moral development or interfere with school attendance. "Light works" refer to the works such as sales works with craftsmen, side work in offices, flower arrangements and sale, side work at libraries and fairs and exhibitions (not including carrying and stowing materials).

Boys under the age of 18 cannot be employed in underground or in underwater work, such as in mines, cable-laying and construction of sewers and tunnels. Children and young employees under the age of 18 cannot be employed on industrial work at night.

Employers receive an administrative fine for infringement of this rule, fixed at TRY 1,560 (approximately USD 500) per infringement in 2016. Even if several employees are under age, this may amount to a single infringement of the rule for the purposes of the fine.

These fines are effectively imposed by the government on businesses during random inspections.

Social Security/Healthcare

Clinics

Employers must designate employees as occupational safety specialists, occupational physicians and other health staff. Depending on the number of employees in the workplace and the hazard class (as regulated by the Occupational Health and Safety Law) of the workplace, the required number of occupational safety specialists and occupational physicians and the time they need to spend in the workplace will vary. Other health staff will be required if the workplace is classified as "very hazardous" and there are ten or more employees. If too few employees in the undertaking are competent enough to be designated, the employer must enlist a joint health and safety unit to partially or fully provide these services. Provided that the employer has the required qualifications and documents, the employer can offer the appropriate services in light of the hazard class and number of employees, or it can acquire services from a common occupational health and safety board.

Employers must comply with a set of other occupational health and safety related obligations such as informing their employees and giving them training on occupational health and safety related issues, providing a safe and healthy working environment for their employees, examining their employees' health before hiring them and also during their term of employment, conducting risk assessments for the workplace, preparing emergency plans, and appointing persons responsible for first aid, evacuation and fire-fighting.

In practice, employers tend to provide clinics in workplaces where there is manufacturing and thus a high risk of accidents. The government is also sensitive about such workplaces and inspects these workplaces to ensure compliance.

Free Healthcare

There is free access to healthcare. Although the list of persons who have free access to healthcare is a comprehensive one, from an employment law perspective, persons who are registered as an employee with the Social Security Institution have free access to healthcare, as of the date they are registered with the Social Security Institution.

Both the employee and his or her dependents have free access to healthcare. Dependents are defined as the employee's spouse, the employee's children who have not (i) reached 18 years of age and are not married; (ii) reached 20 years of age and are not married if the children are attending high school, receiving training on apprenticeship or receiving occupational training in establishments; (iii) reached 25 years of age and are not married if the children are attending university, and (iv) who are not married but are disabled (the children's ages will not be taken into consideration) and the employee's parents, whom the Social Security Institution has, depending on its own criteria, identified as being in the care of the employee. For a person to

qualify as a dependent, the person must not be registered with the Social Security Institution and not be receiving income or monthly payment from the Social Security Institution due to having social security coverage.

Healthcare includes, among other things, health services that are aimed to protect individuals' health and to prevent drug addiction; both as outpatient and inpatient, physicians' examination, clinical examinations required by the physician, laboratory tests, medical intervention and treatment to be carried out upon diagnosis, rehabilitation, medical services with regard to organ, tissue or stem cell transfers, dental care, medical services related to pregnancy, reproduction treatment, etc.

Social Security Payments

Members of families where the Social Security Institution has, based on its own criteria and data, identified that the monthly amount of income per family member is less than one third of the applicable minimum statutory salary and who are also Turkish nationals who have not yet reached 18 years of age (these individuals' income will not be taken into consideration) have free access to healthcare.

In addition to the above, starting from the third day of illness, provided that he or she meets certain criteria, the employee can benefit from "temporary disability pay" provided by the Social Security Institution. In the case of an occupational accident or occupational illness, the employee benefits from the "temporary disability pay" from the first day of the occupational accident/occupational illness. An employee who is on maternity leave also benefits from the "temporary disability pay" during her maternity leave, provided that she satisfies certain criteria. The employer has the right to deduct the amount of the "temporary disability pay" from the employee's monthly fixed salary.

Unemployed individuals can also benefit from the so called statutory unemployment pay, provided that:

- The individual became unemployed due to the reasons set forth under the Law on Unemployment Insurance. Below is a list of the most relevant cases for termination of employment:
 - Termination by the employer in compliance with the notice period requirements under Article 17 of the Labour Code.
 - Termination by the employee before expiry of the employment agreement or without complying with the notice periods, based on ethical and good faith rules, force majeure or health reasons.
 - Termination by the employer before expiry of the employment agreement or without complying with the notice periods, based on force majeure or health reasons.
 - Termination of employment due to expiry of the employment agreement.
 - Termination of employment due to transfer or shutdown of the workplace, or change of the type of work/workplace.
 - The individual must have continuously worked for a period of 120 days before termination of his or her employment and paid social security premiums for such period.
- The individual must have paid unemployment insurance premiums for at least 600 days in the last three years.
- The individual must have applied to the Turkish Labour Institution within 30 days as of the termination of his or her employment.

Occupational Injury

Please see the above discussion of "temporary disability pay".

Health Insurance

Where an individual is registered with the Turkish social security regime as an employee of an employer, the below premium percentages will be payable by the employee and the employer:

Type of Risk	Employer's Share (%)	Employee's Share (%)	Total (%)
Short-term risks (work-related accidents)	1.5%-2.5% (Currently this is applied as 2%)	-	1.5%-2.5%
Long-term risks (death, old age, disability)	11%	9%	20%
General health insurance	7.5%	5%	12.5%
Contribution to unemployment insurance	2%	1%	4% (inclusive of 1% state contribution)
Total	22% - 23%	15%	37% - 38%

It is common practice for employers to provide private health insurance for white collar employees, i.e. manager level.

Trade Union Rights

It is a constitutional right for employees to join a trade union. Pursuant to the Law on Trade Unions and Collective Bargaining Agreements, individuals who are classified as "employees" and are at least 15 years of age, can become members of "employee trade unions". Employees who qualify as "employer's representatives", however, cannot become members of "employee trade unions". Such employees can become members of "employer trade unions" instead.

Employees can become a member of the union associated with their business only.

Employees and employers cannot become members of more than one trade union at the same time and in the same business. Employees working for different employers at the same time and in the same business can, however, become members of more than one trade union. Memberships that are contrary to such provision will be invalid.

Individuals are free to become members of unions. Individuals can freely form a union or join an existing union, and conduct union activities. No one can be forced to become a member of a union or to withdraw from membership. Hiring an employee can also not be subject to being a member of a union, continuing membership of a union or withdrawing from membership.

Employers cannot discriminate against members of a union, and their employment agreements cannot be terminated because of their union activities. If the employer fails to comply with this obligation, compensation of not less than 12 months' salary of the relevant employee will be imposed.

Workplace union representatives and union managers also enjoy certain protections under the Law on Trade Unions and Collective Bargaining Agreements.

Article 118 of the Criminal Code imposes imprisonment from six months to two years on those exercising coercion or threats against a person in order to force such person to join or not to join a union, join or not to join a union's activities, withdraw from union membership or resign from

his or her duty in the union. If the activities of a union are inhibited by coercion or threat or any other unlawful conduct, imprisonment from one year to three years may be imposed.

Union representatives must be provided with adequate opportunities to enable them to rapidly and efficiently perform their duties. In practice, union representatives can hold meetings at the workplaces, utilise communication means, make applications to the management of the workplace, and distribute unionist publications and announcements in the workplace. As long as the union representatives perform their duties under their employment agreement and comply with work discipline, the employer is required to allow them to perform these duties. If a union representative attends a union activity to perform his or her union related duties or joins a collective bargaining process, the days he or she could not work are deemed worked and will be taken into account for calculation of annual paid leave entitlement.

The employer is also under the obligation to announce the collective bargaining agreement, decisions of special arbitrators, the High Council of Arbitrators or courts regarding collective disputes, in places that can be viewed by employees in the workplace.

The Right to Strike

Employees have the right to strike during the negotiations for a collective bargaining agreement. Strikes are nevertheless prohibited in the following services: emergency services (saving life or property), funeral and mortuary, utilities: water, electricity, natural gas and petroleum as well as petrochemical works, production of which starts from naphtha or natural gas; in workplaces operated directly by the Ministry of National Defence, General Command of Gendarmerie and Coast Guard Command, fire-fighting services carried out by public institutions and in hospitals.

Where the life of the community is paralyzed by a natural disaster, the Council of Ministers may prohibit strikes in such areas as may be necessary.

It is not permitted to call a strike in sea, air, rail and road transportation vehicles, which have not finalised their journey in their domestic destination.

Employees who work in activities where the continuity of production processes have to be maintained for technical reasons, or is necessary to ensure the safety of the workplace and to prevent damage to machinery, installations, equipment, raw materials and finished and semi-finished products, and to ensure the protection of animals and plants, may be restricted in their right to strike.

According to Article 70 of the Law on Trade Unions and Collective Bargaining Agreements, if employees violate the above listed limitations on going on strike or joining a strike, then the employer will have the right to dismiss such employees.

Collective Bargaining

Once a union obtains a mandate from the Ministry of Labour and Social Security to enter into a collective bargaining agreement with the employer, the employer will have no choice but to start negotiations with the union. Eventually, the parties will either reach an agreement or they will have to abide by the decisions of the mediator, special arbitrator or the High Council of Arbitrators with regard to the terms of such collective bargaining agreement.

The following two conditions must be satisfied for a union to be able to enter into a collective bargaining agreement with an employer:

- a. the union should have at least 1% of the employees working in the same line of business as its members in Turkey (the nation-wide criterion); and
- b. more than 50% of the employees working in the same workplace should be members of the union. If, however, a collective bargaining agreement is to be concluded with an enterprise, at least 40% of the employees who work in all the workplaces of that enterprise will have to be members of that union.

In more detail: For a union to be able to enter in to a collective bargaining agreement with an employer, in addition to the nation-wide criterion, it must have more than 50% of the employees working in the same workplace as its members. Therefore, where the collective bargaining agreement will be concluded on a workplace-basis only, it is not possible for more than one union to enter into a collective bargaining agreement with the employer.

If, on the other hand, the collective bargaining agreement will be concluded with an enterprise which has multiple workplaces and multiple unions have at least 40% or more of the employees working in all workplaces of the enterprise as their members, the union which has the maximum number of employees as its member will have the right to conclude a collective bargaining agreement with the employer.

Enforcement/Implementation Mechanisms

Disputes

Employees can file official complaints before the Ministry of Labour and Social Security, the Turkish Labour Institution and the Social Security Institution, as relevant.

Employees can challenge their dismissal before the courts by filing a reinstatement lawsuit (this can result in maximum 12 months' salary as compensation. Bad faith compensation is three times the employee's notice compensation and compensation for unjust termination can be a maximum of six times' the employee's monthly salary, as applicable. Employees can also file lawsuits for damages.

Approximately half of the high court's workload comes from labour disputes and there are six chambers of the high court solely dealing with labour and social security disputes.

Due to understaffing at the Ministry of Labour and Social Security, it can take several years before an inspector visits an employer's premises.

There is no official record kept for every type of victimisation

In cases of termination and occupational accidents resulting in bodily harm, it is very common for employees to challenge the employer. However, in other cases such as overtime pay or short payment of social security premiums, it is not common for employees to bring a challenge due to the likely consequent tension. If, however, there is a union in the relevant workplace, then it is highly likely that the disputes with the employers will be taken up and then, if not resolved, be brought before courts.

Victimisation

Where an employee is dismissed for having pursued his or her legal rights against the employer, reinstatement can be sought, as can bad faith compensation (up to three times the notice compensation) or compensation for unjust termination (up to six months' salary).

Reinstatement lawsuits and demanding bad faith compensation are effective in practice. However, it is more difficult for an employee to establish an entitlement to bad faith compensation since the onus of proof lies on him or her to prove bad faith. By contrast, in seeking reinstatement, it is the employer who has to prove that the termination was based on a valid reason/just cause.

Compensation for unjust termination, on the other hand, is applicable for employees who do not fall under the scope of the Labour Code, but rather the Turkish Code of Obligations. Such cases are rare, and courts do not have a settled jurisprudence on this matter.

Sanctions

The relevant enforcement bodies are the Ministry of Labour and Social Security, the Turkish Labour Institution, the Social Security Institution and their local directorates, trade unions and courts.

Trade unions may not (i) use the titles of political parties or signs, (ii) engage in commercial activity save that they can invest in industrial or commercial corporations with maximum 40% of their cash, or (iii) distribute their income among their members save that they can provide education allowances and other assistance to their members throughout lockouts or strikes.

The relevant legislation relating to civil or criminal sanctions that do not follow the labour standards described above are: the Criminal Code, the Labour Code, the Law on Social

Security and General Health Insurance, the Law on Occupational Health and Safety, the Law on Foreigners' Work Permits and the Law on Trade Unions and Collective Bargaining Agreements.

The major sanctions not already covered above can be summarized as follows:

Article 117 of the Criminal Code foresees imprisonment of six months to two years for those who, either by force or threat or any other unlawful act, violate another person's freedom to work. In practice, public prosecutors will summon the CEO of a company to question him/her about this. If they are satisfied that the CEO has not perpetrated such a crime, or the acts were not overlooked by them, they will further question others in an effort to identify the real perpetrator. Those who, by benefiting from individuals' desperate situations, employ them paying no or very little salary or who force such individuals to work in inhumane conditions, will be sentenced to imprisonment for six months to three years, or to a monetary fine. Those who unlawfully force employees to increase or decrease salary amounts, or force employees to work under the conditions different than those agreed in the employment agreement, or cause suspension or termination of the work or continuance of the suspension will be sentenced to imprisonment from six months to three years.



The Labour Code, the Law on Social Security and General Health Insurance, the Law on Occupational Health and Safety, the Law on Foreigners' Work Permits and the Law on Trade Unions and Collective Bargaining Agreements also foresee numerous administrative fines for non-compliance with the obligations listed therein, such as entering into collusive subcontracting relationships, not allowing labour inspectors to conduct their duties, not completing risk assessment in the workplace, employing foreign nationals without work permits, etc. The amounts of the administrative fines are updated each year, and some of them are multiplied by reference to the number of employees in respect of which the employer failed to comply with relevant obligations or the number of times the employer has failed to comply with the obligation. If the employer fails to pay the administrative fines on time, there can be additional interest and penalties for delay. Some examples of administrative fines can be found below:

Administrative fines under the Labor Code No. 4857		
Act	Fine Amount in 2016	
To declare the workplace fraudulently.	TRY 17,700.00 (approximately USD 5787)	Primary employer and the representative of the subcontractor will be severally fined.
To contravene the principle of equal treatment among employees.	TRY 141.00 (approximately USD 46)	For each employee in such situation.
Not to give a written document which states employment agreement's content.	TRY 141.00 (approximately USD 46)	For each employee in such situation.
Not to prepare payroll (<i>ücret hesap pusulası</i>).	TRY 584.00 (approximately USD 190)	-
To divide the annual paid leave by breaching the Code.	TRY 285.00 (approximately USD 93)	For each employee in such situation.
Not to pay annual paid leave amount to the employee whose employment agreement was terminated.	TRY 285.00 (approximately USD 93)	For each employee in such situation.
Not to comply with make-up work (<i>telafi çalışması</i>) procedures.	TRY 285.00 (approximately USD 93)	For each employee in such situation.
Not to apply rest breaks.	TRY 1,560.00 (approximately USD 510)	-
Not to prepare personnel file.	TRY 1,560.00 (approximately USD 510)	-
Not to comply with the regulations on working hours.	TRY 1,560.00 (approximately USD 510)	-

Enforcement in Practice

In general, administrative fines are imposed where, during an inspection at the employer's workplace, the labour inspectors and/or the inspectors of the Social Security Institution identify non-compliance with employer obligations and/or the applicable laws. Fines can also be imposed following an investigation into a complaint filed by an employee.

Impact on Compliance

The above has a positive impact on the employers' approaches to their employees, but violation of the labour norms unfortunately remains common.

Incentives

Social security incentives exist for employers who comply with certain criteria. For instance, the government will provide 5% premium support for employers' premium payment percentages shown in the chart under section 5 above.

Possible Reform

A draft law has been submitted by the Council of Ministers to the Turkish Parliament, which introduces provisions on "manpower agencies", making the leasing of employees through private employment offices legal, and also on remote working. This draft law can be considered as a step towards bringing Turkey's employment legislation in line with today's needs and the current practice, as "leasing of employees" is commonly used in the market despite having no legal basis.

The hunger threshold has been defined by Türk-İş as the necessary food costs a family of four members must incur in order to have healthy, balanced and sufficient nourishment.

The poverty threshold is defined as the total amount of costs a family of four members must incur with regard to nourishment, clothing, accommodation (rent, electricity, water and heating), transportation, education, health and similar needs.

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³³ Article 39 of the Labour Code.

³⁴ Article 37 of the Labour Code.

³⁵ Article 37 of the Labour Code.

³⁶ Article 41 of the Labour Code.

³⁷ Article 41 of the Labour Code.

³⁸ Article 69 of the Labour Code.

³⁹ Article 66 of Turkish Code of Obligations.

⁴⁰ Article 14 of the Occupational Health and Safety Law.

⁴¹ Comparable to 'zero hours contracts' in the UK.

⁴² Article 25 of the Labour Code.

⁴³ Article 74 of Labour Code.

⁴⁴ Article 16 of the Law on Social Security and General Health Insurance.

⁴⁵ Article 5 of the Labour Code.

⁴⁶ Article 417 of the Code of Obligations.

⁴⁷ Article 24 of the Labour Code.

⁴⁸ Article 105/2 of the Turkish Criminal Code.

VIETNAM¹

The Socialist Republic of Vietnam is a one-party state, run by the Vietnamese Communist Party, which is still ostensibly run along communist lines, but with an increasingly liberalised economy. Over recent decades Vietnam has experienced rapid economic growth and been transformed from one of the poorest countries in the world into a country now designated as lower to middle income.²

This growth has been accompanied by improvements in most of the key indicators used to assess social development. The percentage of the population living in extreme poverty has dropped to 3%, down from over 50% in 1990. The Vietnamese population is better educated and has a higher life expectancy than most countries with a similar per capita income.³

Vietnam is a huge player in the global garment industry: It is the fifth largest garment and textile supplier in the world, and the second largest garment and textile exporter to the US market.⁴

Unsurprisingly therefore, the garment and textile industry plays a significant role in Vietnam's economy, accounting for 15% of the country's GDP and 18% of its total exports.^{5,6}

The industry also provides vital livelihoods to two and half million Vietnamese workers, most of whom are young women migrating from rural areas to find work: 83.7% of garment and textile workers are from rural areas, women make up 81.6% of the workforce and the average age of garment workers is low, at just 28 years old.⁷

Source	Statistic	Result	Year calculated
World Bank	Population	91.70 million	2015
World Bank	GDP in USD	193.6 billion	2015
World Bank	GDP growth	6.7 %	2015
World Bank	Inflation	0.6 %	2015
UNDP	Life expectancy	75.8	2014
UNDP	Infant Mortality (per 1000 live births)	19	2014
Transparency Int.	Corruption Index – Score – Rank	31/100 112/168	2015
IFPRI	Global Hunger Index	14.7 moderate	
UNDP	Human Development Index	0.666 medium	2014
UNDP	Expected years of schooling	11.9	2014
Wage Indicator	Minimum wage – lowest per month (VND)	2,580,000	2017
Wage Indicator	Minimum wage – highest per month (VND)	3,750,000	2017
Fair Wage Network	Living wage – per family of 2 adults and 2 children (VND)	7,191,933	2016

Wages and Working Conditions

Wages

In January 2016, the Vietnamese government raised the general minimum wage levels, which includes for garment workers to between VND 2.4 million (EUR 94) and VND3.5 (EUR 137) per month, depending on where in the country a garment or textile worker is employed.

Although minimum wage wages have increased significantly over recent years, the cost of basic goods remains high, particularly in the cities, and estimates suggest that the legal minimum represents just 75-80%⁸ of what is needed to meet even the lowest living wage estimates. As a result, around half of employees in the garment industry have to work more than 48 hours per week to supplement their earnings with overtime payments⁹

Vietnam's non-compliance rate is the lowest among seven countries in Asia, with around 6.6% of workers not receiving the mandated minimum¹⁰. Women workers are much more likely than male workers to be paid less than the minimum wage, as are workers with low levels of education.

Working Hours

Extremely long working hours and illegal and non-voluntary overtime are endemic in the industry; labour laws stipulating overtime limits are widely ignored. According to the 'Better Work Vietnam report', just under half of the factories had records that did not reflect the hours actually worked.¹¹ It is common practice for factories to have 'double books', separating overtime and weekend work from the main payroll, and thus hiding hours that exceed the legal limit. Excessive working hours derives both from low wages and workers feeling unable to refuse overtime due to a fear of punishment or dismissal.

Workers at a Korean-owned manufacturer reported that prior to going on strike "they had been forced to work extra 110 to 120 hours per month, with no vacations or breaks." One factory worker revealed that "according to the contract I signed, I could take off Sundays but had to then work from 7 a.m. on Saturday morning to 8 a.m. on Sunday morning." Another employee stated, "We are all so exhausted from the job, but whenever somebody asked for a reduction in overtime they were fired." ¹²

Social Security

Vietnamese workers also have better access to health and education services than many of their colleagues in neighbouring countries. Education is compulsory, tuition is free and universal until age 14, although in reality many families are required to pay a variety of school fees.

Vietnam is also working to establish a universal healthcare programme, although this remains much harder to access or afford for workers located in rural areas. Workers register for social insurance, to which both they and their employer contribute, and this covers health and other benefits. However, many factories regularly fail to comply with their social security obligations. An ILO survey found that 40% of factories failed to collect and forward worker social insurance and 44% of employers failed to pay their own contributions on time. The majority of factories (82%) failed to pay workers, for maternity and sick pay, within the three working days as the law required.¹³

One way of avoiding any social security liabilities is to employ workers on temporary contracts, or with no contract at all. In many cases workers are employed "on a temporary basis for several years, in order to avoid paying contributions. The ILO found that 16% of factories they surveyed had employees working without a contract."¹⁴

Political Freedom and Rule of Law

Corruption and lack of transparency are a major problem in Vietnam, which scores 31/100 on the Transparency International Corruption Index and is ranked 121 out of 168 countries listed.

Governmental corruption is endemic. Further, the judicial system lacks independence, with political and economic influences regularly affecting the outcome of cases. Political freedoms in

Vietnam are largely curtailed with severe restrictions on citizens' political rights to free and fair elections, freedom of speech and freedom of association.¹⁵

Freedom of Association and Collective Bargaining

Whilst the Vietnamese Constitution purports to provide for the right of citizens to form associations and trade unions, the laws governing trade union formation in practice represent a denial of freedom of association, as defined by the ILO Conventions. This is because the only legally recognised Trade Union organisation is the Vietnam General Confederation of Labour (VGCL), which is controlled by the Vietnamese Communist Party. Any union established by workers within a factory or enterprise must affiliate to the VGCL in order to be recognised under law.

The independence of unions at factories is also severely compromised by the involvement of management representatives within their decision-making structures. The ILO found that 47% of factories had senior management on trade union executive committees, in 58% of factories, management were involved in activities and decision making on the trade union, whilst in 7% management were found to have directly interfered in trade union activities.¹⁶

Unsurprisingly this means that few workers are covered by collective bargaining agreements that meet international standards. Where they do exist, collective bargaining agreements are seen as a formality rather than as the result of real negotiation between the workers and employers.

Better Work¹⁷ found that, of those factories enrolled in its programme, in 32% the employer had not consulted with the union when it was legally required to do so. In 46% agreements had been passed without 50% of workers approving it and when collective agreements had been passed 15% of the factories failed to make this public to the workers.¹⁸

Strikes are not supported by the main union structure in Vietnam and have no legal protection. Strikers and strike organizers in Vietnam face dismissal and blacklisting by employers, along with targeted prosecution and imprisonment by government authorities.¹⁹

On November 22 (2015), police temporarily detained Vietnamese labour union members Do Thi Minh Hanh and Truong Minh Duc for several hours after dispersing a meeting between the two and more than 800 factory workers dismissed by a Korean-owned apparel company. Minh Hanh alleged that plainclothes police tied her hands behind her back, threw her to the ground, and struck her in the face, resulting in her hospitalization.²⁰



Legal Section

Wages

Minimum Wage

Minimum wages apply in Vietnam. The minimum wage is defined as the lowest payment for an employee who performs the simplest job in normal working conditions. It is supposed to ensure the employee's minimum living needs and those of his or her family.²¹

Minimum Wage Levels

There is a region-based minimum wage scale.

- The latest legal minimum wage scale (as of February 2016) is as follows:²²
- VND 3,500,000 (approximately USD 157) per month for companies operating in Region I (inner city districts of Hanoi, Ho Chi Minh City, Hai Phong and other major cities).²³
- VND 3,100,000 (approximately USD 139) per month for companies operating in Region II (outer city districts of Hanoi, Ho Chi Minh City, Hai Phong and other major cities, and smaller cities).
- VND 2,700,000 (approximately USD 121) per month for companies operating in Region III.
- VND 2,400,000 (approximately USD 107) per month for companies operating in Region IV
- (Region III and Region IV cover other rural districts and provinces, including smaller towns).

On 2 August 2016, the National Wage Council reached an agreement on the minimum wage scale to be adopted in 2017. The agreement will be submitted to the Prime Minister for approval, and subsequently to the Government for it to enact a decree promulgating the region-based minimum wage scale. Pending the enactment of the decree, the agreed minimum wage will not be effective. The agreed minimum wage by the National Wage Council is as follows:

- VND 3,750,000 (approximately USD 169) per month for companies operating in Region I (increase of 7.14% from 2016 minimum wage);
- VND 3,320,000 (approximately USD 149) for companies operating in Region II (increase of 7.1% from 2016 minimum wage);
- VND 2,900,000 (approximately USD 131) for companies operating in Region III (increase of 7.41% from 2016 minimum wage);
- VND 2,580,000 (approximately 116) for companies operating in Region IV (increase of 7.5% from 2016 minimum wage).

Minimum Wage Grades

This minimum wage is applied to employees working in normal conditions, satisfying normal working hours per month, who are untrained workers doing the simplest tasks (a standard which is not further defined).²⁴

Employees who work fewer than normal working hours may have their wages reduced on a pro-rata basis.

If the employee is a trained worker, his or her wage must be at least 7% higher than the minimum wage scale given above. A "trained worker" includes a worker who has received a vocational training certificate, degree or diploma, a junior college or college degree, a vocational high school degree or a university degree.

If the employee works in "heavy, hazardous and dangerous" conditions, his or her wage must be at least 5% higher than the minimum wage. If the employee works in "extremely heavy, hazardous and dangerous" conditions, his or her wage must be at least 7% higher than the minimum wage.²⁵

Probation-period Wages

Wages paid during a probation period must be equal to at least 85% of the standard wage for the job. The law is silent as to whether such probation wages may be lower than the minimum wage.²⁶ The Department of Labour, Invalids and Social Affairs has confirmed (informally) that the minimum wage is the lowest wage for employees and there are no exceptions to it, including during the probationary period.

Basic/Additional Amounts

The minimum wage is a basic rate, and does not include bonuses, etc., which are to be separately agreed upon in the labour contract. The law stipulates that allowances, additions, subsidies and bonuses regulated by the company are to be provided according to the labour contract, collective bargaining agreement or the company's regulations.²⁷

Minimum Wage Review

There is no fixed period for review of the minimum wage. However, for the past five years, the minimum wage has been revised once a year.

The minimum wage is assessed by the National Wage Council appointed by the Prime Minister. The National Wage Council is an advisory body of the Government composed of the Ministry of Labour, Invalids and Social Affairs, the Vietnam General Confederation of Labour (the VGCL), and the central employer's representative organisation, the Vietnam Chamber of Commerce and Industry (VCCI). The VCCI is an independent non-governmental body.²⁸

To arrive at a level for the minimum wage, the National Wage Council analyses the socio-economic circumstances and residential living standards of employees and their families. They will also assess the implementation of the prescribed minimum wage, the wage levels in the labour market and the payment capacity of companies.

The National Wage Council will then formulate and advise the Government on the annual plans for the region-based minimum wage. The Government is responsible for promulgating the governmental decree.

Payment of Wages

Wages may be paid as follows:²⁹

- hourly, daily or weekly: in these cases wages must be paid after the working hour, day or week, or in a lump sum as agreed by the parties, provided that the wages are paid in a lump sum at least every 15 days;
- monthly: in which case wages must be paid once per month or once every half month; or
- based on products or piecework, as agreed by the parties. However, if the work is to be performed over a number of months, each month the employee must be provided with an advance wage according to the volume of work completed in the past month.

There is no provision under Vietnamese law that requires employers to provide wage slips to its employees.

Deductions from Wages

An employer may only make a deduction from an employee's wage as compensation for damage to tools and equipment of the employer. In the event of deduction to the monthly wage, the employee is entitled to request that the employer provide a payslip to clarify such deduction.³⁰

Working Hours

Normal Working Time

“Normal working time” must not exceed eight hours per day or 48 hours per week.³¹

This may be determined on an hourly, daily or weekly basis but, in any event, normal working time must not exceed 10 hours per day and 48 hours per week.

For employees that perform “extremely heavy, hazardous or dangerous jobs” as prescribed by the Ministry of Labour, Invalids and Social Affairs, working time must not exceed 6 hours per day.

Overtime

Overtime working hours must not exceed 50% of the normal working hours per day (for weekly work, the total of normal working hours and overtime working hours must not exceed 12 hours per day, or 300 hours per month, and the overtime working hours must not exceed 200 hours per year, or 300 hours for special cases stipulated by the Government).³²

Overtime Rates³³

Overtime rates are as follows:

- at least equal to 150% of the basic wage for normal days;
- at least equal to 200% of the basic wage for weekends; and
- at least equal to 300% of the basic wage for public holidays
- (excluding the wage for public holidays and paid leave days).

Night Work

There is a special rate for night work (between 10 p.m. and 6 a.m.), which is at least 30% of the wage for the employee’s job performed during normal workdays.³⁴

Overtime rates will also apply, with an additional 20% of the daytime wage.

Rest Time

An employee who works for eight hours consecutively (or six hours for “extremely heavy, hazardous or dangerous jobs”) is entitled to a break of at least 30 minutes. An employee who works at night (between 10 p.m. and 6 a.m.) is entitled to a break of at least 45 minutes.³⁵

Shift workers are entitled to a break of at least 12 hours prior to the next shift.

Paid Holiday

The right to holiday pay only accrues after an employee has worked for an employer for a full 12 months. **Annual leave**, which should be stated in his or her contract, is then as follows:³⁶

- For employees working in normal conditions: 12 working days;
- For employees doing “heavy, hazardous or dangerous jobs”, employees working in a place with harsh living conditions, and employees who are minors or disabled: 14 working days; and
- For employees doing “extremely heavy, hazardous or dangerous jobs” and employees working in a place with extremely harsh living conditions: 16 working days.
- The above will increase by one working day for every five years of employment.
- An employee is also entitled to fully-paid **personal leave** in the following circumstances:³⁷
- for marriage: three days;
- for marriage of his or her child: one day; and
- for the death of a blood parent or parent of his or her spouse, his or her spouse or child: three days.

All employees are also entitled to fully paid days off on the following **public holidays**:³⁸

- Calendar New Year Holiday: one day (first day of January of each calendar year);

- Lunar New Year Holidays: five days;
- Victory Day: one day (thirtieth day of April of each calendar year);
- International Labour Day: one day (first day of May of each calendar year);
- National Day: one day (second day of September of each calendar year);
- Hung Kings' Festival: one day (tenth of March of each lunar year).

Foreign employees are also entitled to one traditional new-year holiday and one national day of their country.

If any of the holidays above fall on a weekend, the employees are entitled to take the following day off as compensation.

Liability and Contracts

Liability and Duties

In the event of a labour accident or occupational disease, the employer is responsible for the following:³⁹

- bearing the co-payment and portion of the costs not covered by health insurance (for employees who have health insurance); and bearing all medical expenses incurred from first aid or emergency aid until stable treatment (for employees who do not have health insurance);
- paying full wages to the employee due under the labour contract during the medical treatment period; and
- compensating the employee as follows:⁴⁰
- where the labour accident or occupational disease is not due to the employee's fault, and he or she loses 5% or more of his or her working ability, the following compensation is payable:
 - a. an amount at least equal to 1.5 months' contractual wages if there is loss of 5%–10% of working ability, and an additional 0.4 months' wages for every 1% increase between 11%–80% of working ability;
 - b. an amount at least equal to 30 months' contractual wage if there is loss of 81% or more of working ability, or to family members of the employee who dies from a labour accident.
 - c. where the labour accident or occupational disease is due to the employee's fault, an allowance at least equal to 40% of the rate at (a) above is payable.

The employer must also ensure that the workplace maintains certain hygiene and safety conditions (a safe and clean working environment, safety conditions for machinery and equipment, treatment of dangerous or harmful factors, sufficient signage, etc.).⁴¹

Furthermore, under the Labour Code, the employer must also provide protective equipment, arrange periodic health examinations or check-ups and arrange sufficient training.

New Regulations on Occupational Health and Safety

A new law on Occupational Health and Hygiene will come into effect from 1 July 2016.

Under this law, all employees under labour contracts have the right to:

- have assurance of equal, safe and hygienic working conditions, and to request that the employer provide such conditions during the course of work;
- receive adequate information about dangerous or harmful factors in the workplace and prevention measures, and to receive training in occupational safety and hygiene;
- receive benefits in the form of personal protective equipment, healthcare, and occupational disease check-ups; have insurance against occupational accidents and occupational diseases paid for by the employer; and other relevant rights;
- request his or her employer to assign him/her appropriate work when his or her health becomes stable after treatment;
- refuse work or leave the workplace but still receive full salary without being considered to be in violation of labour discipline in a situation where he or she clearly

identifies an occupational hazard which seriously threatens his or her life and health, provided he or she immediately informs his or her senior manager and continues to work until such manager and person in charge of occupational safety and hygiene handles such hazard; and

- make complaints, denunciations or take legal proceedings as prescribed by law.

As the law is recently enacted, there have been no guiding instruments issued for its implementation and it remains to be seen how it will be implemented in practice and harmonised with the Labour Code.

Contract of Employment

An employment relationship will only arise if there is a labour contract in place. This labour contract must contain the following items:

- identity of the employer (or its lawful representative) and the employee
- job description and workplace
- term of employment/labour contract
- wage, form of wage payment, deadline for wage payment, wage-based allowances and additional payments
- regimes for promotion and wage rise
- working time and rest time
- provision of labour protection equipment
- social insurance and health insurance regime; and
- training, retraining and occupational skill improvement

Except for temporary jobs with a duration of less than three months, the labour contract must be in writing, in two copies— one to be kept by the employee and the other to be kept by the employer.⁴²

Probation Period

The employer and the employee may reach an agreement regarding probation and the rights and obligations of the parties during the probation period.⁴³

For this purpose, the parties may enter into a probation contract, which contains the items stipulated in the “Contract of Employment” section above, without the provisions on training, insurance and wage rises which are not applicable.

While the parties are free to agree on the probation period, and it is to be determined based on the nature and complexity of the job, the following conditions apply:⁴⁴

- There can only be one probation period; and
- The probation period cannot exceed:
 - 60 days for jobs which require professional and technical qualifications of collegial or higher level;
 - 30 days for jobs which require professional and technical qualifications of intermediate vocational level, professional secondary level or for technical and skilled employees; and
 - six days for other jobs.

The wage paid during the probation period must be equal to at least 85% of the standard wage for the job. Although the law is silent on the point, the labour authorities have confirmed verbally that the probation wage must not be less than the minimum wage.

Types of Contract and Restrictions

There are three types of labour contracts in Vietnam:⁴⁵

1. **Indefinite term contract**, where the duration of the employment is not stipulated;
2. **Definite term contract**, where the duration of the employment is stipulated and is for a period of between 12– 36 months; and

3. **Seasonal or work-specific contract**, where the duration of the employment is less than 12 months.

The Labour Code prohibits the entering into of a seasonal or work-specific contract for a job with a duration of more than 12 months (except in cases of temporary replacement of an employee).

If the employee continues to work after a contract of type (2) or (3) above has expired, the employer and the employee are required to execute a new contract. Otherwise, the labour contract at (2) will become an indefinite term contract and the labour contract at (3) will become a definite term contract with duration of 24 months.

In the event that the employer and the employee enter into a new labour contract with a definite term, only one definite term contract may be signed. If the employee continues working, an indefinite term contract must be executed.

Zero hour labour contracts are permitted. The law allows the employer and the employee to select the form of wage payment (e.g. based on working time) and wages may be paid on an hourly, daily or weekly basis.⁴⁶

Workers employed on short-term contracts are not subject to different laws or exclusions in regard to wages.

However, employees on a labour contract of less than three full months will not be entitled to the mandatory health insurance regime under Vietnamese law (see below).

Severance Allowance

An employee is eligible to receive a severance allowance in the event the labour contract is terminated in the following circumstances:⁴⁷

- the labour contract expires;
- the work stated in the labour contract has been completed;
- the labour contract is mutually terminated;
- the employee is imprisoned or sentenced to death, or is prohibited from performing the labour contract due to a court judgment;
- the employee dies, is missing, or is declared by the court to have lost his or her civil act capacity;
- the employer dies, is missing, is declared by the court to have lost his or her civil act capacity, or, for companies, terminates its operations;
- the employee unilaterally terminates the labour contract; or
- the employer unilaterally terminates the labour contract, lays off the employee due to structural or technological change or because of economic reasons, merger consolidation or division.

Severance allowance is available to employees who have worked regularly for a full 12 months or longer. It is calculated as follows:

Severance allowance = years worked × (0.5 × recent monthly wage)

“Years worked” is the total period during which the employee actually works for the employer less the period during which the employee benefits from unemployment insurance in accordance with the Law on Social Insurance and less any working period for which the employee has received severance allowance from that employer in the past.

“Recent monthly wage” is the average wage under the labour contract during the six months preceding the time the employee loses his or her employment.

The employer is also required to pay a **job-loss allowance** (in addition to the severance allowance) to an employee who loses his or her job as a result of:⁴⁸

- a structural or technological change, or for economic reasons, and the employer is unable to create a new job for the employee; or
- a merger, consolidation, split or separation of companies, and the employee is dismissed as a result of such restructuring.

Job-loss allowance is available to employees who have worked regularly for a full 12 months or longer. It is calculated as follows:

Job-loss allowance = years worked × recent monthly wage

but it must be no less than two months' wages—e.g., if the employee has been working for the employer for 14 months, the job-loss allowance still must be equal to at least two months' wages.

“Years worked” is the total period during which the employee actually works for the employer less the period during which the employee benefits from unemployment insurance in accordance with the Law on Social Insurance and less the working period for which the employer has paid severance allowance.

“Recent monthly wage” is the average wage under the labour contract during the six months preceding the time the employee loses his or her employment.

Termination

Unilateral Termination by Employer

The employer is only able to terminate the labour contract unilaterally in limited circumstances as follows:⁴⁹

- The employee often fails to perform his or her job as stated in the labour contract, (NB: in practice, the employer has the burden of proof and must provide evidence that the employee often failed to perform his or her job);
- The employee is sick or has an accident and remains unable to work after having received treatment for 12 consecutive months (for indefinite term contracts), for six consecutive months (for definite term contracts) or more than half the term (for seasonal or work-specific contracts);
- There is a natural disaster, fire or other force majeure event and the employer, having exhausted all remedial measures, has to scale down production and cut jobs; or
- The employee is absent from the workplace within 15 days after suspension of the labour contract (see below).

The employer must also give advance notice of termination of at least 45 days (for indefinite term contracts), 30 days (for definite term contracts) or three days (for seasonal or work-specific contracts).

With the exception of dismissal (addressed below), any termination by the employer that does not fall within the above scope will be considered an illegal termination, and penalties are applicable.

Suspension

Suspension can arise if the employee is called for military service, held in custody or detention, subject to rehabilitation, or falls pregnant. Generally, suspension must not exceed 15 days (or 90 days in exceptional circumstances). During a period of suspension, the employee receives 50% of his or her wages.

A pregnant employee's employment may only be suspended if she has a certificate from a competent health establishment stating that continued work will adversely affect her pregnancy. She may then unilaterally temporarily postpone performance of her labour contract. Such suspension is not unilaterally determined by the employer.

Individual Labour Disputes

Labour disputes may be resolved by two means:

- via labour conciliators; or
- via the people's courts

In ordinary cases, settlement of labour disputes must first be attempted by engaging labour conciliators prior to proceeding to litigation. However, there are exceptions—e.g. disputes over unilateral termination of employment⁵⁰ (see section 7 below).

The framework for settlement through labour conciliation is stipulated in the Labour Code and its guiding instruments.

The framework for settlement via the people's courts is stipulated in Vietnam's Civil Procedure Code (2004), as amended from time to time, and its guiding instruments.

Article 42 of the Labour Code sets out obligations upon the employer in the event it illegally unilaterally terminates a labour contract, including minimum compensation requirements and employment reinstatement obligations.

Dismissal

The employer may dismiss the employee if it is able to prove any of the following:⁵¹

- The employee has committed an act of theft, embezzlement, intentional infliction of injury, use of drugs in the workplace, disclosure of technological or business secrets, infringement of intellectual property, or acts which cause serious damage or threaten to cause serious damage to the assets and interests to the employer;
- The employee, who was already subject to the disciplinary measure of a wage rise delay for a violation, re-commits the same violation when the disciplinary record has not been written off; or
- The employee is absent from the work without plausible reason (e.g., natural disaster, fire or illness) for a total of five working days in one month, or 20 days within one year.

The dismissal procedures are summarised as follows:⁵²

1. A dismissal meeting is convened with the employer, the employee and the representative of the competent trade union.
 - During the meeting, the employer is required to furnish evidence of the conduct warranting dismissal.
 - The employee may, either by independently or with a representative (e.g. lawyer), defend himself/herself.
2. Meeting minutes must be agreed upon and recorded with the signatures of all participants
 - In the event of a refusal to agree, reasons must be provided.
 - If the trade union representative of the employee is absent from the meeting three consecutive times, the employer may make a decision on the dismissal in their absence.
3. If there is agreement, the employer will issue a "dismissal decision", which must be sent to the trade union representative and the employee.
 - If the trade union representative disagrees with the dismissal, the employer and the trade union representative will notify this to the relevant labour authorities.
 - The employer may then dismiss the employee 30 days after this notice, but will be responsible for its dismissal decision (i.e., the employee may take formal legal action in the courts against improper dismissal).

Due to the long (and potentially costly) procedures involved in dismissing an employee, in practice, the employer and the employee tend to reach a settlement to terminate the employment relationship by mutual agreement.

In practice, the Vietnamese courts and the labour authorities have a tendency to maintain the pro-employee regime set out under labour laws. A strict approach to determine whether the dismissal was lawful is generally adopted.

Gender and Age

Equal Pay

Article 26 of the Constitution of Vietnam stipulates that “male and female citizens have equal rights in all fields”, and that “gender discrimination is prohibited”.

Furthermore, the law prescribes employer obligations toward female employees, which include an obligation to ensure gender equality in “recruitment, assignment, training, wages, awards, promotion, payment of wage and policies on social insurance, medical insurance, unemployment insurance, working conditions, labour safety, working time, rest time and other welfare pertaining to physical and spiritual conditions”.⁵³

Pregnancy

Female employees are protected during pregnancy, including by the following provisions:⁵⁴

- An employer is not permitted to mobilise female employees to work at night, work overtime or go on long working trips from the employee’s seventh month of pregnancy onwards (or from her sixth month of pregnancy if she works in a mountainous, remote, distant, border or island area).
- If the female employee performs heavy work as part of her employment, upon reaching her seventh month of pregnancy, she is entitled to be transferred to lighter work or have her daily working time reduced by one hour, while still receiving her full wage.
- An employer is prohibited from dismissing a female employee or unilaterally terminating her labour contract for reasons of her pregnancy.
- An employer is prohibited from dismissing a female employee during her pregnancy. (This prohibition tends to be strongly enforced by the labour authorities and the courts.)

A pregnant employee may also unilaterally terminate her labour contract or postpone the performance of her labour contract if she provides a certificate of health establishment which states that continued work would adversely affect her pregnancy.⁵⁵

Pregnant employees are entitled to take leave for five prenatal check-ups (one day per check-up), or two days for per check-up for employees who live far from health establishments, or have pathological signs or abnormal pregnancies.⁵⁶

Maternity Leave

A female employee is entitled to six months of combined pre-natal and post-natal leave. Prenatal leave must not exceed two months.⁵⁷ If the woman gives birth to twin or more babies, she is entitled to one additional month off for each child. After the six months of maternity leave, additional leave without pay may be taken if agreed upon with the employer.

Maternity Pay

Maternity pay is covered by the social insurance regime in Vietnam (see below). It applies when the employee has paid social insurance premiums for at least six months within the 12 months prior to childbirth or adoption.

The monthly maternity leave allowance is 100% of the average salary over the six months preceding the leave on which social insurance premiums are based.

A per-diem allowance is paid for leave for the prenatal check-ups, which is equal to the monthly maternal allowance divided by 24 days.⁵⁸ Female employees are also entitled to a lump-sum allowance of two times their basic salary for each child in the month of childbirth.⁵⁹

Right to Return

A female employee must be guaranteed her existing employment when she returns to work after maternity leave.⁶⁰ If the job position is no longer available, the employer must arrange alternative employment with a wage no lower than the wage she was paid prior to the maternity leave.

New Parents

Protection for new parents is as follows:⁶¹

- An employer is not permitted to mobilise female employees to work at night, work overtime or go on long working trips if the employee is nursing a child of under 12 months of age;
- An employer is prohibited from dismissing a female employee or unilaterally terminating her labour contract for reasons of her nursing a child of under 12 months of age.
- An employer is prohibited from dismissing a female employee who is nursing a child of under 12 months of age.

In addition, a female employee nursing a child of under 12 months of age is entitled to a 60 minute break every working day, on full wages, to breastfeed children, collect or store milk, or rest.

Paternity Leave

The social insurance regime (see below) has provisions for paternity leave⁶², where the parents are married. Fathers are entitled to paternity leave of:

- five working days;
- seven working days, if the wife undergoes a surgical birth or gives birth prematurely prior to 32 weeks of pregnancy;
- 10 working days, if the wife gives birth to twins, and an additional three working days for each child from the second; and
- 14 working days, if the wife gives birth to twins or more children, and undergoes a surgical birth.

Paternal leave must be taken within 30 days from the date of childbirth. The statutory allowance is the same as the maternity leave allowance as set out under “Maternity Pay” above.

Childcare

The employer is required to assist and support in building crèches and kindergartens, or cover part of childcare expenses at crèches and kindergartens incurred by female employees.⁶³ There is no minimum level of support stipulated by law. The extent of subsidy is to be agreed between the employer and the employee.

Sexual Harassment

There are legal prohibitions against committing sexual harassment in the workplace.⁶⁴ Sexual harassment is a ground for the employee lawfully to terminate his or her labour contract unilaterally.⁶⁵ However, with the exception of domestic employees (e.g. maids), no further guidance by the authorities has been issued regarding the definition of sexual harassment. There are also currently no regulations that prescribe sanctions for sexual harassment in the workplace, making enforcement difficult. It is unclear whether there have been any cases at all in which an employer has been taken to court by an employee pursuant to the sexual harassment prohibitions of the Labour Code.

The primary recourse available to employees is through the criminal offences stipulated in Vietnam’s Penal Code. However, such provisions are rarely invoked due the requirement for police involvement and the burden of proof required.

Minimum Working Age

The employment of persons aged under 13 years is prohibited, except as an actor/actress or gifted athlete.⁶⁶

Furthermore, employees aged 13– 15 years of age may be employed in the following jobs:⁶⁷

- traditional jobs (drawing dots on ceramics, sawing clams, painting lacquer, making *poonah* paper, conical hats, making incense, drawing dots on hats, mat weaving, drum marking, brocade weaving, and making rice noodles and bean sprouts);

- arts and crafts (embroidery, art wood, making horn combs, weaving nets, making *Dong Ho* paintings, and moulding toy figurines);
- wicker, making home appliances and fine art crafts from natural materials;
- rearing silkworms; and
- packing coconut candy.

The minimum wage as set out above also applies to the employment of employees of 13– 15 years of age.

An individual employer will be subject to an administrative fine from VND 20,000,000– 25,000,000 (approximately USD 900– 1,115) for employing staff younger than the permissible age.⁶⁸ This fine is doubled if the employer is an organisation or company.

Given the lack of statistical information, it is difficult to assess the effectiveness of such sanctions/regulations.

Social Security/Healthcare

Clinics

There is no legal requirement on employers to provide a clinic for employees. In practice, it is not common to do so. This may be attributable to the existence of mandatory health insurance to which the employer is required to contribute, as well as the mandatory periodic health check as set out below.

Free Healthcare

There is no specific provision regarding free access to healthcare under Vietnamese law. However, the employer must organise periodic health checks for employees (including apprentices and trainees), and obstetrics and gynaecology checks for female employees, once per year (or once every 6 months for employees engaged in heavy and harmful jobs and for disabled, minor or elderly employees).⁶⁹ There are no conditions that need to be satisfied by the employees in order to be eligible for this periodic health check.

Social Security Payments

There is no social security regime in Vietnam to supplement the cost of living for workers not receiving a living wage. However, the social insurance regime set out below covers those out of work due to illness or injury (but excludes labour accidents, which is covered by the employer—see above). In general, this regime entitles the employee to a monthly allowance equal to 75% of the salary of the month preceding the leave on which social insurance premiums are based. A separate allowance is applied to employees on long-term treatment for certain diseases prescribed by the Ministry of Health.⁷⁰

Occupational Injury

These provisions are discussed under section 3, “Liability and Contracts”.

Health Insurance

There is a mandatory health insurance regime under Vietnamese law for employees on an indefinite term labour contract or on a contract for at least three full months.⁷¹ Under this regime, the employer and the employee are required to make contributions to the employee’s health insurance fund, which are calculated as a percentage of the employee’s wage. Currently,⁷² the required health insurance contribution rate is 4.5% of the employee’s monthly salary or remuneration, of which the employer will contribute two-thirds (2/3) and the employee will contribute one-third (1/3).

Retirement Pension/Social Insurance

Social insurance fully or partially offsets an employee’s income which is reduced or lost due to his or her sickness, maternity, labour accident, occupational disease, retirement or death, and is

based on his or her contributions to the social insurance fund. It is mandatory under Vietnamese law and applies to persons who work under labour contracts for at least one full month.⁷³ Currently,⁷⁴ the required social insurance contribution rate is 26% of the employee's monthly salary or remuneration, of which the employer will contribute 18% and the employee will contribute 8%.

Trade Union Rights

All Vietnamese workers in all enterprises established and/or operated in Vietnam are entitled to join a trade union in the workplace, regardless of occupation, gender and religious belief.⁷⁵ This right applies to Vietnamese workers only.

At least five employees are required in order to establish a trade union in the workplace.⁷⁶

The law prohibits the employer from:⁷⁷

- obstructing or causing difficulties to employees in the establishment, joining or operation of trade unions;
- requesting employees not to join or to withdraw from a trade union; and
- discriminating against employees regarding wages, working time, and other industrial relations rights and obligations, in order to obstruct employees from establishing, joining or operating a trade union.

Furthermore, the law requires the employers to create favourable conditions for employees to establish, join and operate trade unions.⁷⁸

The trade union is the only worker representative in Vietnam. In non-unionised workplaces (i.e., in the event no grassroots trade union has been established in the workplace at the company level), the immediate higher-level trade union will be responsible and employees will be represented by the district-level trade union. This trade union is formed by the relevant People's Committee (a government body).

Certain procedures (such as dismissal, retrenchment due to corporate changes, creating of wage tables, suspension of employment, the calling of strikes) require participation by a grassroots trade union. In the event a company-level trade union has not been established, such procedures will involve the district-level trade union.

Just one grassroots trade union is created for each employer. The law does not prescribe the number of permitted registered unions but, in practice, the higher-level trade union will only recognise one grass-roots level trade union at the workplace.

The employer must provide the grassroots level trade union with an office, information and other necessary conditions to carry out trade union activities. Employers are also responsible for collaborating and creating favourable conditions for immediate higher-level trade unions.

Furthermore, a part-time trade union representative has the right to use working time for trade union activities and have his or her wage paid by the employer. A full-time trade union representative will have his or her wage paid by the trade union (from trade union dues) and must be ensured collective welfare benefits similar to other employees as stated in the collective labour agreement or the employer's regulations.⁷⁹

While there has been no official release by the government, according to unofficial sources in the press other forms of worker representation may be legalised in Vietnam in the future.

The Right to Strike

Employees have the right to go on strike, which is a temporary, voluntary and organised work stoppage of an employee's collective to achieve demands in the process of labour dispute settlement.⁸⁰

The employer may approach the court to seek an order declaring that a strike has been illegally initiated. An illegal strike occurs in the event of the following:⁸¹

- it does not arise from an interest-based collective dispute (see section 7 below);
- it is organised for employees who are not working for the same employer;

- the dispute is being settled, or has not been settled by an agency, organisation or person in accordance with the Labour Code;
- it occurs in a strike-prohibited enterprise prescribed by the Government; or
- it occurs when there has been a decision to postpone or stop the strike.

Furthermore, before, during and after a strike, employees are prohibited from using violence and sabotaging the employer's machines, equipment and assets, as well as violating public order and security.⁸²

The "employees' collective" refers to the grassroots trade union for company-level collective bargaining.

Collective Bargaining

Employers are obliged to engage in collective bargaining. Either employers or employees may request collective bargaining, and the requested party is not permitted to refuse such request. In the event of such request, within seven working days (or up to a maximum time of 30 days from the date the request is received), the employers and the employees must agree on the time for opening a bargaining meeting. In the event one party refuses to bargain or does not conduct the bargaining within this time limit, the other party may carry out the procedures required to request a labour dispute settlement in accordance with the law.⁸³

Enforcement/Implementation Mechanisms

If workers believe that their employer has breached any of the labour standards set out above and they are not able to settle such breach through negotiation with the employer, a labour dispute will arise between the parties. A "labour dispute" comprises either an **individual labour dispute** between an employee and an employer or a **collective labour dispute** between an employees' collective and an employer.

Individual Disputes

These disputes can be settled through conciliation and the people's courts. The worker may send a request for conciliation to the employer. Labour conciliators are appointed by the district-level state management agency of labour to conciliate labour disputes. Conciliation with employers is not only a right of workers but also a required procedure prior to going through the individual dispute at the court for settlement. However, the law permits some labour disputes to be raised at a court without going through conciliation including:

- a dispute over disciplinary dismissal or unilateral termination of a labour contract;
- a dispute over compensation for damages and allowances upon termination of the labour contract;
- a dispute between a domestic employee and his or her employer;
- a dispute over social insurance in accordance with the law on social insurance, or over health insurance in accordance with the law on health insurance;
- a dispute over compensation between employees and enterprises or non-business units sending employees to work abroad.

In the event of unsuccessful conciliation, or if either party does not comply with a written agreement of conciliation between parties, workers may request a settlement of the dispute by a competent court in Vietnam. The worker will then need to follow the required procedure prescribed by law, starting with submitting a dossier to the court and concluding with the court's decision.

Collective Labour Disputes

Collective labour disputes are classified into (a) right-based collective labour disputes and (b) interest-based collective labour disputes:

A right-based collective labour dispute is a dispute between an employees' collective and an employer which arises from differing interpretation and implementation of labour law, collective labour agreements, internal labour rules and other regulations and lawful agreements. An

example would be where all employees in a company make a claim against the employer to increase their wage in accordance with new minimum wage legislation.

These disputes can be settled through conciliation or the decision of the chairperson of the People's Committees and people's court.

The collective workers can send a request for conciliation to the employers. Labour conciliators are appointed by the district-level state management agency to conciliate labour disputes. In the event of unsuccessful conciliation or if either party does not implement the written agreement that records the successful conciliation, either disputing party may make a request for settlement by the chairperson of the district-level People's Committee for right-based collective labour disputes. If the two parties disagree with decision of the chairperson of the district-level People's Committee, either disputing party may request settlement by a court.

An interest-based collective labour dispute is a labour dispute arising from the request of an employees' collective for the establishment of new working conditions (other than those stipulated in labour law, collective labour agreement, internal labour rules or other regulations and lawful agreements reached during negotiations between the employees' collective and the employer). An example would be where a group of employees requests a wage increase above the minimum wage.

These disputes can be settled by conciliation conducted by conciliators and a labour arbitration council. After attempted conciliation any disputing party may request settlement by the Labour Arbitration Council.

Victimisation

The law provides for protection of employees from victimisation as follows:

- The employer is prohibited from obstructing the employees' right to strike.⁸⁴
- The employer is prohibited from obstructing or creating difficulties for employees to establish, join or operate trade unions.⁸⁵

In the event of violation, administrative penalties generally apply against the employer (see below). In practice, the competent authorities tend to exhibit a pro-employee stance and where a violation is discovered, can be active in applying such sanctions.

Victimisation can be a standalone cause of action.

Disputes

According to statistics of the Ministry of Labour, Invalids and Social Affairs published last year there are approximately 25,000 violations detected each year— primarily relating to labour contracts, wages, social security and disciplinary measures. (This figure is made up of individual violations; for example, if an employer underpaid 100 workers in the same way, this would be 100 violations.)

The number of disputes brought by individuals apparently outweighs the number of collective labour disputes. However, there is no case precedent database in Vietnam on which to search for past or existing complaints against employers and the proportion of labour disputes that escalate to the court appears to be low, although there are no official statistics on such proportion. The low proportion probably results from the lengthy pre-litigation procedures set out by Vietnam's labour laws in the event of a labour dispute, including labour conciliation. Only in certain circumstances can the disputants proceed to litigation without going through such procedures (see above).

Furthermore, the court procedures in Vietnam are time-consuming and can be costly (e.g., expenses for legal fees, which are not recoverable through the court). For industries such as textiles, where the quantum of the claim may be disproportionately low (due to, for example, low salary claims) compared to the costs for litigation, employees would be dissuaded from going to the courts for final resolution.

The Vietnam General Confederation of Labour, particularly grassroots level trade unions, are responsible for representing and protecting the rights and legitimate interests of trade union members and employees. They participate in negotiations, sign and supervise the implementation of collective labour agreements, wage scales and wage tables, labour norms, wage payment regulations and bonus regulations, internal working regulations and democracy

regulations companies, participate in and assist in the settlement of labour disputes, and hold dialogues and cooperate with employers to build harmonious, stable and progressive industrial relations in enterprises, agencies or organizations.

Labour disputes are also resolved by:

- labour conciliators appointed by district-level People's Committees;
- labour arbitration councils appointed by the provincial-level People's Committees;
- Chairpersons of district-level People's Committees; and
- People's courts

The Chairman of the trade union is prohibited from concurrently holding certain managerial positions in a company (e.g., Chairman of the Members' Council, President of the Company and General Director/Director). He or she is also prohibited from holding post as a head of an administrative authority or business unit of the state.⁸⁶

Sanctions

Administrative sanctions, as set out below, may be imposed on employers for failing to comply with the above labour standards.⁸⁷

As of 19 February 2016, the Penal Code⁸⁸ prescribes the following penal liability for individuals:

- Individuals in the company who are responsible for and in breach of regulations relating to labour safety, labour hygiene or occupational health and safety in crowded places, which breach causes loss of life or serious damage to health and/or property of persons, will be subject to the following penal liability:

Criminal Sanction

Non-custodial reform of up to three years or a prison term of six months–five years.

If the individual committing the offence was responsible for labour safety and labour hygiene or safety in crowded places of the employer, or if the offence causes "*very serious consequences*": imprisonment of 3-10 years.

If offence causes "*particularly serious consequences*": imprisonment of 7–12 years.

An offender may also be subject to fines of VND 5,000,000– VND 50,000,000 (approximately USD 225– USD 2,250) or be banned from holding certain posts or practising certain occupations or performing certain jobs for 1– 5 years.

- Individuals who employ children (those under 16) to perform jobs that are heavy, dangerous or in contact with hazardous substances, thereby causing serious consequences (not defined and subject to interpretation by the courts), or those who have already been administratively sanctioned by continue to commit the offence, will be subject to the following penal liability:

Criminal Sanction

Fine of VND 5,000,000– VND 50,000,000 (approximately USD 225– USD 2,250), non-custodial reform of up to two years, or imprisonment of three months–two years.

If crime is committed more than once, against more than one child, or causes "*very serious*" or "*particularly serious*" consequences, imprisonment of two to seven years.

The individual sanctioned would be someone directly responsible for recruitment.

The current Penal Code in force does not apply corporate liability.

On 27 November 2015, the National Assembly promulgated a new Penal Code⁸⁹ ("New Penal Code). This New Penal Code was to come into effect on 1 July 2016, and to provide for corporate liability and new crimes. However, it has now been withdrawn to rectify errors. It is not known what changes will be made, or when the law will be brought into force.

Sanctions typically involve administrative fines imposed by the labour authorities against the employer. However, depending on the magnitude of the violation, the employer may also have its operations temporarily suspended.

A tabulated summary appears below. The fines shown are applied to employing organisations or companies. Where the offending employer is an individual, the fines below will be halved:

Violations	Administrative Penalty (halved where the employer is an individual)
Concluding an incorrect labour contract or failing to conclude a written labour contract	VND 1,000,000– VND 40,000,000 (approximately USD 45– USD 1,800) Depending on number of employees subject to the violation.
Violations against laws on probation	VND 1,000,000– VND 10,000,000 (approximately USD 45– USD 450) Depending on type of violation. Employer also forced to pay 100% of wages to workers during probation for underpayment during probation or prolonged probation.
Violations in unilaterally terminating the labour contract	VND 1,000,000– VND 40,000,000 (approximately USD 45– USD 1,800) Depending on number of employees subject to the violation.
Failure to provide or sufficiently provide severance pay or redundancy pay within the deadline prescribed	VND 1,000,000– VND 40,000,000 (approximately USD 45– USD 1,800) Depending on number of employees subject to the violation. Employer also forced to provide the severance or redundancy pay, together with interest at maximum on deposits announced by State Bank of Vietnam
Violations against laws on collective bargaining agreement	VND 1,000,000– VND 30,000,000 (approximately USD 45– USD 1,350) Depending on type of violation.
Violations against law on reporting, establishing and announcing the company salary scale, payroll and work limits	VND 1,000,000– VND 10,000,000 (approximately USD 45– USD 450) depending on type of violation.
Violations against law on payment of wages, including minimum wage	VND 10,000,000– VND 150,000,000 (approximately USD 450– USD 6,750) depending on type of violation and number of employees subject to the violation. Employer also forced to repay sufficient wages to workers. For minimum wage violations, employer’s operations may also be suspended for 1– 3 months (N.B. in practice, this is very rarely imposed).
Failure to provide sufficient rest breaks during working hours and between shifts, as well as personal/unpaid leave as prescribed	VND 4,000,000– VND 10,000,000 (approximately USD 180– USD 450)

Violations	Administrative Penalty (halved where the employer is an individual)
Violations on regulations against weekly rest, annual leave and holidays	VND 1,000,000– VND 30,000,000 (approximately USD 45– USD 1,350)
Imposing more hours of work than permitted by law	VND 40,000,000– VND 100,000,000 (approximately USD 1,800– USD 4,500) For excess overtime work, employer's operations may also be suspended for 1– 3 months (N.B. in practice, this is very rarely imposed).
Violations against having internal labour regulations	VND 10,000,000– VND 20,000,000 (approximately USD 450– USD 900) Depending on type of violation.
Violations against occupational health and safety	VND 4,000,000– VND 20,000,000 (approximately USD 180– USD 900) Depending on type of violation.
Violations against employment conditions for pregnant female employees or female employees on maternity	VND 20,000,000– VND 40,000,000 (approximately USD 900– USD 1,800) Depending on type of violation.
Violations against use of underage workers	VND 20,000,000– VND 50,000,000 (approximately USD 900– USD 2,250) Depending on type of violation.
Violations against prevention of strikes	VND 6,000,000– VND 10,000,000 (approximately USD 270– USD 450) Depending on type of violation.
Violations against trade unions	VND 2,000,000– VND 20,000,000 (approximately USD 90– USD 900) Depending on type of violation.
Failure to make or sufficiently make contributions to social insurance and unemployment insurance premiums	12% - 15% at the time administrative violation is recorded (capped at VND 150,000,000, approximately USD 6,750) for insufficient or untimely contribution. 18% - 20% at the time administrative violation is recorded (capped at VND 150,000,000, approximately USD 6,750) for failure to contribute.
Failure to apply for compulsory social insurance or unemployment insurance	VND 1,000,000 (approximately USD 45) for every worker.

Enforcement in Practice

Information on enforcement in practice is limited to what has been reported in the press. There is no available database of court judgments/decisions and the decisions of the labour authorities to apply administrative sanctions are confidential and not disclosed.

Cases that are made public generally have a criminal element, as hearings for criminal cases are made public. One example that has been publicised is as follows:

In 2015, the Ministry of Labour, Invalids and Social Affairs published the inspection of labour safety and hygiene results for 19 contractors engaged in construction in Vung Ang Economic Zone, Ha Tinh Province. Most companies had violated regulations on labour safety and hygiene and regulations on rest and working time.

Details of the sanctions were not published. However, the policy authorities of Ha Tinh Province prosecuted and put on trial two workplace commanders and worker supervisors for criminal offences on violating labour safety and hygiene regulations.

Impact on Compliance

In practice, the imposition of sanctions appears to have a mixed impact, depending on the type of offence. Sanctions against safety and hygiene offences, as well as those on employment of minors and minimum wage matters, do see some positive impact. This is because following administrative sanctions, the labour authorities tend to closely monitor the violating employers and supervise the implementation of remedial measures ordered by the authorities.

However, these more positive impacts are generally seen in urban areas due to the additional governmental scrutiny applied to these areas. In practice, for rural districts or provinces, the situation has been less positive, and the monetary sanctions can be considered disproportionately light in view of the scale of a company's operations. Furthermore, corruption is a particular issue in rural districts or provinces due to less monitoring and scrutiny. As a result, these areas are more likely to have officers from lower level governmental authorities (which may include labour authorities) "paid" to turn a blind eye to non-compliance.

Incentives

There are no specific incentives provided to businesses to maintain a high quality of treatment of employees.

However, employers that hire a large number of female employees will be entitled to corporate income tax reductions. Particularly, employers employing 10– 100 female employees (accounting for more than 50% of total employees) or over 100 female employees (accounting for more than 30% of total employees), are entitled to a reduction in corporate income tax equal to additional expenses for female employees as follows:

- expenses for vocational re-training;
- expenses for salaries and allowances for teachers in kindergartens and nurseries organised and managed by the company;
- expenses for additional health examinations in the year;
- expenses for allowances to female employees giving birth;
- salary and allowances to female employees during maternity leave after giving birth or breastfeeding, but who are still working

Similar allowances apply for the employment of ethnic minorities.⁹⁰

Possible Reform

It is possible that, in order to implement the commitments in the Trans-Pacific Partnership Agreement, reforms relating to the right of employees to participate in representative organisations may be enacted. Such reforms could allow employees to join another representative organisation to protect their rights if the trade union provides them inadequate protection.

Living Wage Considerations

The laws of Vietnam provide that the minimum wage must ensure the employee's and his or her family's minimum living needs. The minimum wage is therefore said to represent the Vietnamese government's opinion on the amount necessary to cover the overall minimum living demands of the employee and his or her family. However, in negotiations for increasing the 2016 minimum wage on 3 September 2015, the Deputy Chairman of the Vietnam General Confederation of Labour (VGCL) stated that the 2016 minimum wage only satisfied 86% of the employee's basic needs. Further, there are no statistical agencies or statistics published in Vietnam to precisely evaluate the local living wage required for the employee's basic needs.

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 - ² World Bank, 2017. *Vietnam: Overview*. Available at: <http://www.worldbank.org/en/country/vietnam/overview>
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 - ⁴ Better Work, 2015. *Better Work Vietnam: Garment Industry 8th Compliance Synthesis Report*, p7. Available at: <http://betterwork.org/blog/portfolio/better-work-vietnam-garment-industry-8th-compliance-synthesis-report-july-2015/>
 - ⁵ Fair Wear Foundation, 2015. *Vietnam Country Study 2015*, p11. Available at: https://www.fairwear.org/wp-content/uploads/2011/12/Country-Study-Vietnam-FINAL_web.pdf
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 - ⁸ IndustriAll, 2015. *Vietnam: On the road to a living wage*. Available at: <http://www.industriall-union.org/vietnam-on-the-road-to-a-living-wage>
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 - ¹¹ Better Work, 2015. *Better Work Vietnam: Garment Industry 8th Compliance Synthesis Report*, p95.
 - ¹² Worker Rights Consortium, May 2013. *Made in Vietnam: Labor Rights Violations in Vietnam's Export Manufacturing Sector*, pp.14-15.
 - ¹³ Better Work, 2015. *Better Work Vietnam: Garment Industry 8th Compliance Synthesis Report*, pp18- 19.
 - ¹⁴ *ibid.*, p. 20.
 - ¹⁵ U.S. Department of State, 2015. *Vietnam 2015 Human Rights Report: Executive Study*, p1
 - ¹⁶ Better Work, 2015. *Better Work Vietnam: Garment Industry 8th Compliance Synthesis Report*, p16.
 - ¹⁷ As a partnership between the UN's International Labour Organization and the International Finance Corporation, a member of the World Bank Group, Better Work brings diverse groups together—governments, global brands, factory owners, and unions and workers—to improve working conditions in the garment industry and make the sector more competitive.
 - ¹⁸ Better Work, 2015. *Better Work Vietnam: Garment Industry 8th Compliance Synthesis Report*, p16.
 - ¹⁹ Worker Rights Consortium, May 2013. *Made in Vietnam: Labor Rights Violations in Vietnam's Export Manufacturing Sector*, p8.
 - ²⁰ U.S. Department of State, 2015. *Vietnam 2015 Human Rights Report: Executive Study*, p52.
 - ²¹ Article 97, Labour Code.
 - ²² Prescribed under Decree No. 122/2015/ND-CP, which came into effect on 1 January 2016. Approximate USD conversions as of September 2016.
 - ²³ The coverage of each region above is specified in the appendix to Decree No. 122/2015/ND-CP.
 - ²⁴ Article 91, Labour Code; Article 5(1), Decree No. 122/2015/ND-CP.
 - ²⁵ Article 7(3)(c), Decree No. 49/2013/ND-CP.
 - ²⁶ Article 26, Labour Code.
 - ²⁷ Article 5(4), Decree No. 122/2015/ND-CP.
 - ²⁸ Article 92, Labour Code.
 - ²⁹ Article 95, Labour Code.
 - ³⁰ Article 101, Labour Code.
 - ³¹ Article 104, Labour Code.
 - ³² Article 106, Labour Code.
 - ³³ According to Article 97(1) of the Labour Code.
 - ³⁴ Article 97(2), Labour Code.
 - ³⁵ Article 107, Labour Code.
 - ³⁶ Article 111, Labour Code.
 - ³⁷ Article 116, Labour Code.
 - ³⁸ Article 115, Labour Code.
 - ³⁹ Article 144, Labour Code.
 - ⁴⁰ Calculated in further detail under Circular No. 04/2015/TT-BLDTBXH, issued by the Ministry of Labour, Invalids and Social Affairs.
 - ⁴¹ Article 138, Labour Code.
 - ⁴² Article 16, Labour Code.
 - ⁴³ Article 26, Labour Code.
 - ⁴⁴ Article 27, Labour Code.

- 45 Article 22, Labour Code.
46 Article 94, Labour Code.
47 Article 48, Labour Code.
48 Article 49, Labour Code.
49 Article 38, Labour Code.
50 Articles 200 and 201, Labour Code.
51 Article 126, Labour Code.
52 Article 30, Decree No. 05/2015/ND-CP.
53 Article 154, Labour Code; Article 5, Decree No. 85/2015/ND-CP.
54 Article 155, Labour Code.
55 Article 156, Labour Code.
56 Article 32, Law on Social Insurance.
57 Article 157, Labour Code.
58 Article 39, Law on Social Insurance.
59 Article 38, Law on Social Insurance.
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83 Article 68, Labour Code.
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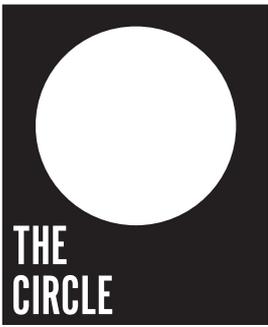
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Designer: www.allispossible.org.uk

Ref: OH0390

