



International
Labour
Office

Geneva

EFFECTIVE PROTECTION FOR DOMESTIC WORKERS: A GUIDE TO DESIGNING LABOUR LAWS



**EFFECTIVE PROTECTION FOR
DOMESTIC WORKERS:
A GUIDE TO DESIGNING LABOUR LAWS**

Copyright © International Labour Organization 2012
First published 2012

Publications of the International Labour Office enjoy copyright under Protocol 2 of the Universal Copyright Convention. Nevertheless, short excerpts from them may be reproduced without authorization, on condition that the source is indicated. For rights of reproduction or translation, application should be made to ILO Publications (Rights and Permissions), International Labour Office, CH-1211 Geneva 22, Switzerland, or by email: pubdroit@ilo.org. The International Labour Office welcomes such applications.

Libraries, institutions and other users registered with reproduction rights organizations may make copies in accordance with the licences issued to them for this purpose. Visit www.ifrro.org to find the reproduction rights organization in your country.

Effective protection for domestic workers: a guide to designing labour laws / International Labour Office, Conditions of Work and Employment Programme, Industrial and Employment Relations Department – Geneva: ILO, 2012

1 v.

ISBN 978-92-2-125275-7 (print)
ISBN 978-92-2-125276-4 (web pdf)

International Labour Office; Conditions of Work and Employment Programme; International Labour Office; Industrial and Employment Relations Dept

domestic worker / domestic work / labour contract / working conditions / living conditions / wages / hours of work / labour relations / recruitment / migrant worker / child worker / role of ILO / ILO Convention / ILO Recommendation / labour legislation / comment

13.01.6

ILO Cataloguing in Publication Data

The designations employed in ILO publications, which are in conformity with United Nations practice, and the presentation of material therein do not imply the expression of any opinion whatsoever on the part of the International Labour Office concerning the legal status of any country, area or territory or of its authorities, or concerning the delimitation of its frontiers.

The responsibility for opinions expressed in signed articles, studies and other contributions rests solely with their authors, and publication does not constitute an endorsement by the International Labour Office of the opinions expressed in them.

Reference to names of firms and commercial products and processes does not imply their endorsement by the International Labour Office, and any failure to mention a particular firm, commercial product or process is not a sign of disapproval.

ILO publications and electronic products can be obtained through major booksellers or ILO local offices in many countries, or direct from ILO Publications, International Labour Office, CH-1211 Geneva 22, Switzerland. Catalogues or lists of new publications are available free of charge from the above address, or by email: pubvente@ilo.org

Visit our web site: www.ilo.org/publns



TABLE OF CONTENTS

Preface	ix
About this guide	xi
1. Regulating domestic work: Context and rationale	1
1.1. Decent work for domestic workers: The case for inclusive labour law	1
1.2. Specific features of domestic work to keep in mind	3
1.3. The role of international labour standards	4
1.4. The Domestic Workers Convention, 2011 (No. 189) and Recommendation (No. 201)	6
2. Preparing to design labour law for domestic workers	9
2.1. Preliminary considerations	9
2.2. Definitions and scope of application of labour laws	11
3. Formalizing the employment relationship	15
3.1. Written contracts or particulars of employment	16
3.2. Model contracts	20
3.3. Migrant domestic workers	20
4. Fundamental principles and rights at work	25
4.1. Freedom of association and the right to collective bargaining	26
4.1.1. <i>Ensuring effective legal coverage</i>	26
4.1.2. <i>Promoting collective bargaining</i>	27
4.2. Eradication of forced labour	28
4.3. Abolition of child labour	31
4.3.1. <i>Setting a minimum age for admission to domestic work</i>	32
4.3.2. <i>Prohibition of hazardous work for children</i>	34

4.4.	Elimination of discrimination in employment and occupation	35
4.4.1.	<i>Inclusive anti-discrimination and equality laws</i>	36
4.4.2.	<i>Sexual harassment and other harassment based on prohibited grounds of discrimination</i>	37
4.4.3.	<i>Pregnancy discrimination</i>	38
5.	Abuse, harassment and violence	41
6.	Living conditions	45
7.	Working time	49
7.1.	Normal hours of work.	50
7.2.	Overtime	51
7.2.1.	<i>Limitations on the amount of overtime.</i>	51
7.2.2.	<i>Compensation</i>	53
7.2.3.	<i>Record keeping</i>	53
7.3.	Rest periods and breaks	54
7.3.1.	<i>Daily and weekly rest</i>	54
7.3.2.	<i>Break time</i>	57
7.4.	Night work	59
7.4.1.	<i>Limitations on the performance of night work</i>	59
7.4.2.	<i>Compensation</i>	60
7.5.	Standby work.	61
7.6.	Leave	64
7.6.1.	<i>Paid annual leave</i>	64
7.6.2.	<i>Public holidays</i>	67
7.6.3.	<i>Sick leave</i>	69
7.6.4.	<i>Maternity leave</i>	70
7.6.5.	<i>Other types of personal leave</i>	72
8.	Remuneration.	73
8.1.	Minimum wage coverage	73
8.2.	Protection of wages	76
8.2.1.	<i>Regular, direct and full payment</i>	77
8.2.2.	<i>Payment in kind</i>	78
8.2.3.	<i>Deductions</i>	81
8.2.4.	<i>Wage statements</i>	84
9.	Protection of child domestic workers.	87
9.1.	General provisions.	88
9.2.	Contract requirements.	89
9.3.	Working time limitations.	90
9.4.	Restrictions regarding excessively demanding tasks.	92
9.5.	Registration and records of employment	92

10. Recruitment and placement by private employment agencies	95
11. Ensuring compliance	97
Appendix I:	
List of references to national laws and regulations	103
Appendix II:	
Tools and publications	109
Publications and working papers	109
ILO databases and tools	109
Appendix III:	
ILO instruments on domestic workers	
Convention No. 189	111
Recommendation No. 201	118





PREFACE

In June 2011, the International Labour Conference of the International Labour Organization (ILO) adopted the Domestic Workers Convention, 2011 (No. 189) and its supplementing Recommendation (No. 201). This is the first time that the ILO has formulated international labour standards dedicated to this particular group of workers, which are to a large majority women.

Often referred to as historic, these new instruments give a fresh impetus to the promotion and protection of domestic workers' rights at work by setting out a framework of measures and principles which can guide action to strengthen national laws, polices and institutions concerned.

This guide focuses on labour law as a mean to ensure the effective protection of domestic workers. Labour law coverage for domestic workers is often weak or absent, but there are also a range of countries that have already taken legislative steps in this regard. Hence, the guide seeks to present various examples of national legal provisions addressing the matters set out in Convention No. 189 and Recommendation No. 201. It is hoped that this information will be usefully assisting ILO constituents and other interested stakeholders in considering legal reform initiatives to promote decent work for domestic workers.

The publication is the result of a collaboration between the Conditions of Work and Employment Branch (TRAVAIL) and the Industrial and Employment Relations Department (DIALOGUE) of the International Labour Office. It was prepared by Martin Oelz (TRAVAIL), Angelika Muller (DIALOGUE) and Rachel Preiser (during her secondment to the ILO from the National Labour Relations Board, USA).

Moussa Oumarou

Director,
Industrial
and Employment Relations
Department

Philippe Marcadent

Chief,
Conditions of Work
and Employment Branch
Labour Protection Department





ABOUT THIS GUIDE

The purpose of this guide is to assist those involved in the review and formulation of labour laws and regulations that aim to protect domestic workers. They may be legislators, labour ministry officials, representatives of workers' or employers' organizations, or their technical staff and legal advisers.

There is a wide range of aspects of employment relationships that labour legislation could cover. This guide covers the following themes: legal definitions and the scope of labour laws, written contracts or particulars of employment, fundamental principles and rights at work, protection against abuse, harassment and violence, the living conditions of domestic workers, working time and remuneration, and the protection of young workers. In addition, the guide provides an entry point as regards regulating employment agencies and establishing compliance mechanisms.¹

The guide is organized by themes. Each thematic section contains:

- the rationale for establishing statutory standards and for regulating a particular aspect of the employment relationship;
- references to the relevant provisions of the Domestic Workers Convention, 2011 (No. 189) and its supplementing Recommendation (No. 201); and
- examples of provisions of national laws and regulations in order to illustrate how some countries have addressed the aspect of domestic work concerned.

The guide does not intend to be comprehensive on the subjects presented, nor does it suggest that the law of countries whose legislation is cited is in all respects exemplary or in full compliance with relevant international labour standards. Rather, the examples are presented in order to enable participants in the process of designing labour laws to draw on existing legislation on various topics across a wide range of countries. All examples of legislative provisions are provided for information purposes only and are not meant to replace consultation of the original texts (see Appendix II). This applies particularly to the examples that were not originally written in English, some of which are taken from government sources and some of which have been translated by the ILO.

.....
¹ The guide does not cover the areas of occupational safety and health and social security. Although it addresses certain issues regarding the regulation of private employment agencies and labour migration, it does not cover these areas comprehensively.

The guide can be used together with a range of other ILO tools and information sources (see Appendix I). Users of the guide who wish to study the examples presented in their original context can access these laws and regulations in the original language, and in some cases translated into English, in the ILO database NATLEX.²

Appendix III contains the full text of Convention No. 189 and Recommendation No. 201 in English. The French, Spanish, Arab, German, Russian and Chinese versions of these instruments are available at ILO's NORMLEX database.

.....
² Specific laws and regulations governing the employment of domestic workers can be searched in NATLEX by subject ("domestic workers"). Legislation applicable to workers generally, including domestic workers, can be found under the subject headings concerned.



1. REGULATING DOMESTIC WORK: CONTEXT AND RATIONALE

1.1. DECENT WORK FOR DOMESTIC WORKERS: THE CASE FOR INCLUSIVE LABOUR LAW³

Domestic work is one of the world's oldest occupations. Domestic workers may cook or clean, or care for children, the elderly or the disabled, tasks that have been traditionally assigned to women in the vast majority of societies and that have been largely uncompensated. However, domestic work may also include gardening, chauffeuring or providing security services, tasks more often performed by men.

In developing and developed countries alike, the domestic work sector work absorbs significant numbers of workers, many of whom belong to the poorest segments of society with little access to other work or employment, generally as a result of limited educational opportunities.⁴ In many countries, domestic work is performed to a large extent or even exclusively by migrant workers, mainly women, who migrate in order to earn money to support their families in their home countries.

According to the most recent global and regional estimates produced by the ILO, at least 52.6 million women and men above the age of 15 were domestic workers in their main job. This figure represents some 3.6 per cent of global wage employment. Women comprise the overwhelming majority of domestic workers: 43.6 million workers or some 83 per cent of the total. Domestic work is an important source of wage employment for women, accounting for 7.5 per cent of female employees worldwide.⁵ These figures are estimates based on available official statistical data, which means that the actual number of domestic workers is likely to be much higher. Available data show, that domestic work is a growing economic sector.

.....
³ Decent work has been defined by the ILO and endorsed by the international community as being productive work for women and men in conditions of freedom, equity, security and human dignity. Decent work involves opportunities for work that is productive and delivers a fair income; provides security in the workplace and social protection for workers and their families; offers better prospects for personal development and encourages social integration; gives people the freedom to express their concerns, to organize and to participate in decisions that affect their lives; and guarantees equal opportunities and equal treatment for all. See ILO: *Toolkit for mainstreaming employment and decent work* (Geneva, 2007), p. vi.

⁴ ILO: *Report of the Committee on Domestic Workers*, Provisional Record No. 12, International Labour Conference, 99th Session, Geneva, 2010, paras 204–211.

⁵ ILO: *Global and regional estimates on domestic workers*, Domestic Work Policy Brief No. 4 (Geneva, 2011).

The increased participation of women in the workforce, the intensification of work, and the absence of strong social policies permitting the balancing of work and family life, ensure the on-going importance of, and increased demand for, domestic workers in most developed and developing economies. Yet domestic work tends to be undervalued and poorly regulated, manifesting the lack of decent working conditions that is particularly characteristic of the informal economy. Thus, domestic workers have enabled many other workers, particularly women with families, to participate and advance in the productive, formal economy, thereby achieving greater affluence; however, they themselves often do not have the rights and protections necessary to ensure that they enjoy conditions of decent work.

The entrenchment of domestic work in the informal economy is due in significant part to the highly particular nature of domestic work – specifically, the fact that it is performed in the home of a private individual, often in the absence of co-workers, and frequently in the absence of a written contract of employment or any external monitoring. Because domestic work has been viewed as outside “productive” labour market activity, it has often been excluded from labour and employment legislation, either explicitly or implicitly.⁶ Yet similar tasks performed outside the household are treated differently.

As stated by the International Labour Conference, “the challenge of reducing decent work deficits is greatest where work is performed outside the scope or application of the legal and institutional frameworks.”⁷ Legislation and regulatory policy are hence essential tools for eliminating the negative aspects of informality in the domestic work sector while at the same time ensuring that opportunities for decent work and employment offered by domestic work are not compromised. Extending the reach of labour law to domestic workers is an important means of bringing them within the formal economy.⁸ Other fields of law such as civil law, criminal law or human rights law also offer protection to domestic workers, but cannot replace legislation more specifically addressing their working conditions and social protection.

Labour law governing domestic work is relevant for both domestic workers and their employers. It facilitates the formation and formalization of employment relationships. It can facilitate worker–employer relations by providing a binding reference, thus lowering transaction costs and addressing the power imbalance between the parties. Statutory entitlements provide a minimum level of protection to be enjoyed by all workers, and which are ultimately enforceable in court. From a public policy point of view, the inclusion in labour law of domestic workers, who tend to belong to the most disadvantaged and vulnerable segments of society, can make a substantial contribution to the creation of decent

.....
⁶ See ILO: *Decent work for domestic workers*, Report IV(1), International Labour Conference, 99th Session, Geneva, 2010; and ILO: *Coverage of domestic workers by key working conditions laws*, Domestic Work Policy Brief No. 5 (Geneva, 2011).

⁷ ILO: Resolution concerning decent work and the informal economy, adopted at the 90th session of the International Labour Conference, Geneva, 2002, Para. 2.

⁸ ILO: *Extending the scope of application of labour laws to the informal economy: Digest of comments of the ILO's supervisory bodies related to the informal economy* (Geneva, 2010), pp. 68–69.

work opportunities and the professionalization of the domestic work sector, which is of growing importance.

Bringing domestic workers, who are to a large majority women and migrants, under the protection of labour legislation is a matter of gender equality and equal protection under the law: a question of human rights. As the United Nations Committee on Economic, Social and Cultural Rights affirms in the context of Article 6 (right to work) of the International Covenant on Economic, Social and Cultural Rights, “domestic work ... must be properly regulated by national legislation so that domestic ... workers enjoy the same level of protection as other workers.”⁹

1.2. **SPECIFIC FEATURES OF DOMESTIC WORK TO KEEP IN MIND**

Given that a large majority of domestic workers are women, labour law reform to address decent work deficits in this sector needs pay particular attention to the issues and conditions faced by female domestic workers. Among the areas that require particular attention are protection from abuse, harassment and violence, gender-based pay discrimination, maternity protection and measures to facilitate the balancing of work and family responsibilities.

The ILO encourages member States to adopt contemporary legislative drafting techniques, which emphasize the desirability of using gender-neutral terminology in statutory language. This is important from a policy perspective to set an example and encourage the rejection of discriminatory language and behaviour. It is also necessary to use gender-neutral language to ensure equality in access to and application of the law.¹⁰

In many countries, domestic work is to a large extent done by migrant workers who very often reside in the household for which they work (so-called “live-in” domestic workers). Live-in arrangements also exist for workers engaged in domestic work in their own country. A number of specific issues arise in respect to live-in arrangements, including the need to ensure decent living conditions, transparent and fair working time arrangements, and freedom of movement and communication.

The physical proximity of domestic workers to household members poses a heightened risk of abuse and harassment. This risk is further enhanced for live-in domestic workers, who are present in the household all the time, and for migrant domestic workers, whose legal status of residence is often inextricable

.....
⁹ UN Committee on Economic, Social and Cultural Rights: The Right to Work, General Comment No. 18 regarding Article 6 of the International Covenant on Economic, Social and Cultural Rights, E/C.12/GC/18, 6 February 2006, Para. 10. The Covenant has been ratified by 160 States.

¹⁰ Several examples of conversion into gender-neutral language are presented in Chapter X, “Drafting rules”, of the ILO’s Labour legislation guidelines, accessible online at: <http://www.ilo.org/legacy/english/dialogue/ifpdial/llg/main.htm>.

from the employment relationship and who are therefore highly dependent on their employer.

According to ILO estimates, at least 15.5 million children¹¹ aged 5 to 17 years were engaged in domestic work in 2008.¹² Regulating domestic work and combating child labour through appropriate legislation are related efforts. However, the performance of domestic work by children (that is, persons under the age of 18) does not always amount to child labour (see section 4.3). Legislation should therefore include both provisions to prohibit child labour as well as provisions to ensure the protection and satisfy the developmental needs of young domestic workers above the minimum age for admission to work (see Chapter 9).

In most countries, employers of domestic workers are individual household members, who are less used to dealing with laws and regulations than other employers. Hence, provisions should, as far as possible, be drafted in an accessible manner and accompanied by tools and strategies for their communication and dissemination. Workers will benefit equally from such measures, as in many instances, they will be unfamiliar with applicable laws and regulations that may protect them.

Finally, the mechanisms and methodologies available to ensure compliance with the applicable legislation need to be adapted to the specific context of domestic work. Prevention of transgression, accessible assistance and complaints procedures, and other measures for the protection of victims are important for all domestic workers, and particularly so in the case of migrant domestic workers engaged under live-in arrangements.

1.3. THE ROLE OF INTERNATIONAL LABOUR STANDARDS

International labour standards, that is, ILO Conventions and Recommendations, play an important role in the design of labour law for domestic workers. These instruments provide authoritative guidance on law and policy regarding domestic workers. Where Conventions have been ratified they also entail international law obligations for the countries concerned. International labour standards are prepared and adopted by the International Labour Conference, the ILO's main decision-making body comprised of government, worker and employer delegates.¹³

.....
¹¹ In line with the Worst Forms of Child Labour Convention, 1999 (No. 182), a "child" is a person under the age of 18. Article 2 of Convention No. 182 provides that for the purpose of the Convention the term "child" shall apply to all persons under the age of 18.

¹² This estimate was produced by the ILO Statistical Information and Monitoring Programme on Child Labour (IPEC/SIMPOC). See ILO: *Global and regional estimates on domestic workers*, Domestic Work Policy Brief No. 4 (Geneva, 2011), p. 9.

¹³ The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the Committee on the Application of Standards (CAS) of the International Labour Conference issue comments and observations to countries that have ratified these Conventions.

In June 2011, the International Labour Conference adopted the Convention concerning decent work for domestic workers and a Recommendation supplementing it, also referred to as the Domestic Workers Convention (No. 189) and Recommendation (No. 201), 2011. While these two instruments contain specific standards and minimum protection for domestic workers, all other international labour standards also apply to domestic workers, if not provided otherwise.¹⁴

The eight fundamental Conventions, which are close to universal ratification, address the following fundamental principles and rights at work: freedom of association and the effective recognition of the right to bargain collectively, the eradication of forced labour, the effective abolition of child labour, and the elimination of discrimination in employment. Recognition and protection of these rights for domestic workers is an essential step in breaking domestic work away from the informal economy with its perpetuation of exploitation and inadequate working conditions. The eight fundamental Conventions are the following:

- the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), and the Right to Organize and Collective Bargaining Convention, 1949 (No.98);
- the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105);
- the Equal Remuneration Convention, 1951 (No. 100), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111);
- the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999, (No. 182).

Other ILO Conventions also include standards relevant to the regulation of domestic work.¹⁵ These include:

- the Wage-Fixing Machinery Convention, 1928 (No. 26), and the Minimum Wage Fixing Convention, 1970 (No. 131);
- the Protection of Wages Convention, 1949 (No. 95);
- the Maternity Protection Convention, 2000 (No. 183);
- the Workers with Family Responsibilities Convention, 1981 (No. 156);
- the Termination of Employment Convention, 1982 (No. 158);
- the Private Employment Agencies Convention, 1997 (No. 181);
- the Migration for Employment Convention (Revised), 1949 (No. 97) and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).

¹⁴ Some ILO Conventions allow ratifying members to exclude domestic workers from their scope.

¹⁵ The text of ILO Conventions and Recommendations may be found on the ILO Labour standards web page at <http://www.ilo.org/global/standards/lang--en/index.htm>.

1.4. THE DOMESTIC WORKERS CONVENTION, 2011 (No. 189) AND RECOMMENDATION (No. 201)

The adoption of an ILO Convention and Recommendation concerning decent work for domestic workers, testifies to a shift in policy thinking on the labour regulation for this sector, based on the conviction that domestic workers are workers like other workers and therefore are equally entitled to respect of their rights and dignity.

Domestic Workers Convention, 2011 (No. 189)

Article 3(1)

Each Member shall take measures to ensure the effective promotion and protection of the human rights of all domestic workers, as set out in this Convention.

Article 6

Each Member shall take measures to ensure that domestic workers, like workers generally, enjoy fair terms of employment as well as decent working conditions and, if they reside in the household, decent living conditions that respect their privacy.

The Domestic Workers Convention (No. 189) and Recommendation (No. 201), 2011, are the result of a comprehensive preparatory process, which included research into existing law and practice relating to domestic work in ILO member States,¹⁶ and consultations¹⁷ and negotiations among the ILO's tripartite constituents (that is, representatives of governments, and workers' and employers' organizations) at the International Labour Conference in 2010 and 2011.¹⁸ The texts of both instruments were arrived at through consensus and were adopted by the Conference with overwhelming support.¹⁹

The Convention and the Recommendation set out areas in respect to which domestic workers should enjoy labour and social protection, with particular attention being given to migrant domestic workers, live-in domestic workers and young domestic workers.²⁰ The Convention provides for global minimum standards, while leaving unaffected more favourable standards for domestic workers, as these may be available to them under other international labour

¹⁶ ILO: *Decent work for domestic workers*, Report IV(1), op. cit.

¹⁷ ILO: *Decent work for domestic workers*, Report IV(2), International Labour Conference, 99th Session, Geneva, 2010; ILO: *Decent work for domestic workers*, Report IV(2A), International Labour Conference, 100th Session, Geneva, 2011.

¹⁸ ILO: *Report of the Committee on Domestic Workers*, Provisional Record No. 12, op. cit.; ILO: *Report of the Committee on Domestic Workers*, Provisional Record No. 15, International Labour Conference, 100th Session, Geneva, 2011.

¹⁹ ILO: *Twenty-first sitting*, Provisional Record No. 30, International Labour Conference, 100th Session, Geneva, 2011, p. 42.

²⁰ For an overview of provisions of the Convention and Recommendation, see ILO: *Convention No. 189 and Recommendation No. 201 at a glance* (Geneva, 2011).

Conventions and national laws and regulations. While the Convention is drafted in general terms providing for basic principles and measures, the Recommendation provides for more detailed guidance on legal, policy and practical measures for promoting decent work for domestic workers.

Convention No. 189 identifies laws and regulations as central means for implementation. Social dialogue through consultations with workers' and employers' organizations is stressed throughout both instruments.

Convention No. 189, Article 18

Each Member shall implement the provisions of this Convention, in consultation with the most representative employers' and workers' organizations, through laws and regulations, as well as through collective agreements or additional measures consistent with national practice, by extending or adapting existing measures to cover domestic workers or by developing specific measures for them, as appropriate.





2. PREPARING TO DESIGN LABOUR LAW FOR DOMESTIC WORKERS

2.1. PRELIMINARY CONSIDERATIONS

Where efforts to enhance the protection of domestic workers' rights through labour law are envisaged, careful consideration should be given to the various steps required in the course of such a reform process. Firstly, it is important to analyse the domestic work sector in the country concerned to obtain a good understanding of its magnitude, the characteristics of domestic workers and their employers and the prevailing patterns and arrangements under which domestic work is performed (for example, live-in or live-out arrangements). Secondly, an analysis of existing national law is required to identify the legal provisions that may already be applicable to domestic workers. Taking into account both the actual conditions of domestic workers and the areas identified where better protection is needed, a regulatory initiative based on defined policy objectives can be prepared.

The legal protection of domestic workers may be achieved through a range of regulatory instruments. Most commonly, national labour laws applicable to domestic workers take the form of statutes and decrees. In addition, in some countries, collective agreements addressing the conditions of domestic workers have been concluded and constitute important elements of legal protection of domestic workers' rights. Some countries have also concluded bi-lateral and multilateral agreements to protect the rights of migrant domestic workers.

While it is desirable to include domestic workers within the scope of generally applicable national labour laws, the specific characteristics of domestic work may also warrant amendments to existing laws or the enactment of supplemental legislation designed to protect the labour rights of domestic workers more specifically. Where a combination of legislative instruments is used to create a regulatory framework for the protection of domestic workers, States may wish to clarify the relationship between these instruments.

EXAMPLES

CLARIFYING THE RELATIONSHIP BETWEEN LEGISLATIVE INSTRUMENTS

In **France**, the Labour Code defines domestic workers and clarifies the provisions applicable to them (article L7221), while comprehensive standards regarding domestic workers are contained in a collective agreement which has the force of law (the National Collective Agreement of Employees of Individual Employers of 24 November 1999). For its part, the collective agreement makes certain provisions of the Labour Code applicable to domestic workers, for example, those regarding fixed-term contracts. Rural domestic workers and gardeners/guards are covered by specific national collective agreements separate from the national collective agreement of 24 November 1999. Employment of domestic workers by enterprises or associations is governed by general labour law and the applicable sectoral collective agreements.

In **Mali**, Decree No. 96-178/P-RM of 13 June 1996, issued under the Labour Code, addresses, among other things, conditions of work and social protection for domestic workers. It incorporates a reference to coverage of domestic workers afforded by generally applicable legislation, in article D.86-40:

For all matters not expressly provided for in articles D.86-1–D.86-39, the provisions of the Labour Code, the Code of Social Welfare and the respective regulations in force are applied.

In 2006, **Uruguay** passed Act No. 18.065 which extended a range of labour protection measures to domestic workers and on 25 June 2007 a Presidential Decree was issued under the Act, conferring workplace rights specific to domestic employment.

In **South Africa**, the Basic Conditions of Employment Act, 1997, provides labour rights protection to employees generally, while a binding “sectoral determination” made under the Act, Sectoral Determination 7, establishes detailed and comprehensive standards specifically for employees in the domestic work sector. Sectoral Determination 7, part A, section 4, in defining the scope of its coverage, states:

The provisions of the Basic Conditions of Employment Act apply to all domestic workers covered by this determination and their employers in respect of any matter not regulated by this sectoral determination.

As the examples presented throughout this guide illustrate, there is no single correct approach to regulating domestic work. Regulatory choices have to be made within the context of each country, taking into account existing laws and prevailing legislative practices, the country's industrial relations system, and obligations under relevant international labour and human rights law.

Throughout labour law reforms on domestic work, consultations with workers' and employers' organizations, including organizations of domestic workers and those of employers of domestic workers, where they exist, are desirable and required under Convention No. 189.

2.2. DEFINITIONS AND SCOPE OF APPLICATION OF LABOUR LAWS

Convention No. 189 and Recommendation No. 201 aim at the protection of workers performing domestic work within an employment relationship. The Convention defines “domestic work” as “work performed in or for a household or households.”²¹ These instruments call for legal protection of all domestic workers, irrespective of whether they are employed by private individuals and householders or enterprises or other organizations. The instruments cover part-time and full-time workers, and nationals and non-nationals, whether employed under live-in or live-out arrangements.

Although the national legislation protecting domestic workers may cover different groups of workers through different laws or regulations, taken in its entirety, the legislation should cover all categories and types of domestic workers.²² A key aim of effective legislative design aiming at the protection of domestic workers is to ensure clarity as regards legal terminology, definition of terms and the scope of the specific laws and regulations concerned.

Where the general labour laws are meant to apply to domestic workers, it is important to ensure that legislative approach and design do not have the effect of implicitly excluding domestic workers from their scope. For instance, the definitions of the terms such as “employer” or “workplace” can amount to implicit exclusion of domestic workers.²³ Where certain aspects of working conditions or labour protection for domestic workers or particular groups of domestic workers are regulated by specific enactments or provisions applicable to them, it is advisable to draw up provisions explicitly defining or describing the intended scope of the norm.

Legal definitions and provisions delineating the scope of legislation applicable to domestic workers, or parts thereof, may be more or less detailed depending on the specific regulatory context. In defining domestic work, domestic workers or the domestic work employment relationship, provisions may rely on various elements, including the following:

- the location where the work is performed (the household) or the beneficiaries of the services rendered (the household members);

.....
²¹ See Article 1 of Convention No. 189. The formulation “in or for” a household or households takes into account that the actual work or services are sometimes delivered outside the household premises as such (e.g. taking children to school or chauffeuring). The reference to “a household or households” hints at the fact that domestic workers may work for multiple employers or be employed to perform domestic work in more than one household (e.g. domestic workers employed by agencies).

²² In this connection it should be noted, however, that Article 1(c) of the Convention No. 189 provides, for the purpose of the Convention, that “a person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker”. The expression “and not on an occupational basis” was included in this provision to ensure that day labourers and similar precarious workers remained included in the definition of “domestic worker”. See ILO: *Decent work for domestic workers*, Report IV(1), International Labour Conference, 100th Session, Geneva, 2011, p. 5. As regards the scope of application of Convention No. 189, it should be noted that in accordance with Article 2, ratifying Members may exclude, under the conditions set out in that Article, certain categories of workers from the Convention’s scope.

²³ For instance, where legislation applies to employers with a minimum of five employees. Most domestic workers employed by households would be excluded given that households with five employees are rare.

- the nature and kind of tasks involved (described either generically or through an illustrative list of tasks or occupations);
- the non-profit-making nature of domestic work (that is, there is no generation of direct profits for the household relying on it);
- the kinds of employer (private individuals or organizations);
- elements clarifying the existence of and parties to the employment relationship;²⁴ and
- clauses excluding specified forms of domestic work which are covered by different laws and regulations.

EXAMPLES

DEFINING TERMS AND CLARIFYING SCOPE

In **Austria**, the Federal Act Governing Domestic Help and Domestic Employees, section 1(1), reads as follows:

The provisions of this Federal Act shall apply to the employment relationship of employees who provide domestic services for their employer or members of such employer's household, regardless of whether or not they are residing in the employer's household.

Section 1(3) includes in this definition households run by a corporate entity:

[N]o difference shall be made whether the household is managed by a natural person or a legal person for its members or for a third party.

However, this does not apply when the domestic work performed by an employee of a legal person is covered by a collective agreement.

In **Belarus**, chapter 26, articles 308 to 314, of the Labour Code of 1999 deals with the specific conditions of employment of domestic workers. In article 308, domestic workers are defined as persons who, under a contract of employment, work in a household of people, by providing services foreseen by law. Article 308(2) adds that people taking care of persons disabled during their military service, people with disabilities, people over 80, children under 18 and people with HIV/AIDS are not domestic workers and are covered by a separate regulation. Article 310 further details that contracts of employment for domestic services with close family members are prohibited.

The Domestic Employees Act of 1 July 1961 of **Barbados**, section 2, defines a "domestic employee" as "[a]ny person employed for reward for the purpose of performing household duties in a private dwelling-house". The Act recognizes that the employment relationship of the domestic worker may involve a private individual, an agent, or both, defining the employer as follows:

any person employing one or more domestic employees [including] any agent, manager, or representative of such person, who is responsible directly or indirectly for the payment, in whole or in part, of remuneration to a domestic employee.

²⁴ The Employment Relationship Recommendation, 2006 (No. 198), provides specific guidance in this regard.

Burkina Faso's Decree No. 2010-807/PRES/PM/MTSS of 31 December 2010 establishing the working conditions of household employees defines its scope of application in the following way:

The following are regarded as domestic workers: workers attached to the service of a household or working in a house for one more employers not pursuing a profit through this work.

In **Cambodia**, the Labour Code, article 4, defines domestic and household workers as follows:

Those workers who are employed to take care of the homeowner or of the owner's property in return for remuneration. This group includes maids, guard, chauffeurs, gardeners, and other similar occupations, as long as a 'home owner' employs them to work directly at his or her residence.

In **France**, the Labour Code, article L7221-1 sets out the following definition: "A domestic employee is a person employed by individuals for domestic work." The National Collective Agreement of Employees of Individual Employers, article 1(a), reflects the range of part-time and full-time employment encompassed by domestic work, describing the employment relationship as follows:

The specific nature of this occupation is to work in the individual employer's private home ... The employee can be any person working full time or part time, performing all or part of the household tasks related to cleaning or family. ... The individual employer cannot pursue profit through this work.

The Labour Code of **Kazakhstan**, article 214(1) states that domestic workers are those performing work (services) in the homes of employers (physical persons). While the Labour Code in general applies to domestic workers, chapter 22 (articles 214–218) sets out a number of provisions specifically relating to them.

Similarly, the Labour Codes of **Kyrgyzstan**, the **Republic of Moldova**, the **Russian Federation**, and **Turkmenistan** each devote a chapter to workers employed by "employers (physical persons)".

The Labour Code of the **Philippines**, article 141, defines "domestic or household service" as

service in the employer's home which is usually necessary or desirable for the maintenance and enjoyment thereof and includes ministering to the personal comfort and convenience of the members of the employer's household.

In **South Africa**, Sectoral Determination 7, section 1, expressly covers domestic workers "employed or supplied by employment services". Section 29(1) further clarifies this kind of employment relationship:

A domestic worker whose services have been provided by an employment service is employed by that employment service ... if the employment service pays the domestic worker.

In **Spain**, article 1 of Royal Decree 1620/2011 of 14 November 2011 defines the domestic work employment relationship as follows:

(2) The special employment relationship of household workers shall be deemed to be that concluded between a householder, as employer, and an employee who, working for that employer in a dependent employment relationship, performs a paid service in the household.

(3) For the purposes of this special employment relationship, the employer shall be deemed to be the householder, who may be the homeowner or the resident in whose name the home or place of residence where the domestic services are performed is owned or rented. If these services are performed for two or more persons who live together in the same housing unit, but do not constitute a family or a legal entity, the householder is deemed to be either the resident of the housing unit or the person representing the residents, a status which may be held successively by each member of the group.

(4) This special employment relationship covers the performance of services or activities for the household, which may be any type of household task, such as housekeeping or home care duties with regard to the entire household or part of it, or caring for family members or persons who are part of the household or family circle, as well as other duties performed as part of general household tasks, such as child-care, gardening, driving vehicles or similar activities.

Article 2 contains provisions explicitly excluding certain employment relationships from the coverage of the Decree because they are covered by other laws (domestic workers employed by juridical persons), and certain forms of work in private homes (for example, benevolent work, neighbourly services or unpaid work performed by a family member).

In **Armenia**, Article 97 of the Labour Code of 2004 was devoted to the contracts of employment under which a worker was providing services of a personal nature within the household. This particular provision was deleted in 2010 in order to put domestic workers under the general scope of application of labour law in Armenia.

3. FORMALIZING THE EMPLOYMENT RELATIONSHIP

Labour law can make a considerable contribution to moving domestic workers from informal and often uncertain work arrangements to a formalized employment relationship. A written contract of employment is viewed as significant in this regard. Even where no express requirement of a written contract exists in law, legislative instruments may nevertheless play an important role in clarifying the rights, entitlements and obligations of parties to the employment relationship by requiring that certain terms and conditions of employment be set out in writing at the commencement of the employment and provided to the worker (for example, in form of a statement of particulars or letter of appointment). In addition to encouraging written contracts or terms and conditions of employment, it is also important to take measures to ensure that the domestic worker has an understanding of these.

Convention No. 189, Article 7

Each Member shall take measures to ensure that domestic workers are informed of their terms and conditions of employment in an appropriate, verifiable and easily understandable manner and preferably, where possible, through written contracts in accordance with national laws, regulations or collective agreements, in particular:

- (a) the name and address of the employer and of the worker;*
- (b) the address of the usual workplace or workplaces;*
- (c) the starting date and, where the contract is for a specified period of time, its duration;*
- (d) the type of work to be performed;*
- (e) the remuneration, method of calculation and periodicity of payments;*
- (f) the normal hours of work;*
- (g) paid annual leave, and daily and weekly rest periods;*
- (h) the provision of food and accommodation, if applicable;*
- (i) the period of probation or trial period, if applicable;*
- (j) the terms of repatriation, if applicable; and*
- (k) terms and conditions relating to the termination of employment, including any period of notice by either the domestic worker or the employer.*

Domestic Workers Recommendation, 2011 (No. 201)**Paragraph 6**

(1) Members should provide appropriate assistance, when necessary, to ensure that domestic workers understand their terms and conditions of employment.

(2) Further to the particulars listed in Article 7 of the Convention, the terms and conditions of employment should also include:

- (a) a job description;*
- (b) sick leave and, if applicable, any other personal leave;*
- (c) the rate of pay or compensation for overtime and standby consistent with Article 10(3) of the Convention;*
- (d) any other payments to which the domestic worker is entitled;*
- (e) any payments in kind and their monetary value;*
- (f) details of any accommodation provided; and*
- (g) any authorized deductions from the worker's remuneration.*

3.1. WRITTEN CONTRACTS OR PARTICULARS OF EMPLOYMENT

Requiring a written contract for domestic workers may be a significant step in resituating domestic work from the informal to the formal economy. A written contract vitiates difficulties in proving the existence of the employment relationship and its agreed-upon terms, should a dispute arise between the parties. Given the isolation and vulnerability of domestic workers and the greater likelihood of domestic workers being unfamiliar with their legal rights, the written employment contract plays an important role in empowering domestic workers within the employment relationship.

Some countries apply a requirement for written contracts in the domestic work sector in combination with making available model contracts to facilitate compliance (see section 3.2). Written contracts are sometimes mandatory for certain categories of domestic workers with increased protection needs, such as migrant domestic workers or those employed by employment agencies.²⁵

²⁵ See the Private Employment Agencies Recommendation, 1997 (No. 188), Para. 5, and Convention No. 97, Annex 1, Article 5. These instruments stipulate contracts of employment in writing for agency and migrant workers respectively.

EXAMPLES

SETTING OUT REQUIREMENTS FOR WRITTEN CONTRACTS

In France, **Article 7** of the National Collective Agreement of Employees of Individual Employers states:

The agreement between the employer and the worker is laid down in a written contract, which is established either at the time of recruitment or at the end of the probation period at the latest.

In **Belarus**, all contracts of employment must be in writing. However, Article 309 of the Labour Code of 1999 provides that a contract of employment with a domestic worker is not necessary if the work is of short duration (up to ten days within one month). The contract of employment with a domestic worker must be registered at the local municipality within seven days of being signed.

In the **Republic of Moldova**, the Labour Code of 2003, Article 283, stipulates that any contract of employment with the employer (physical person) must be in writing and contain all the provisions required under the general conditions for any contract of employment. The employer has to register the contract of employment at the local public administration, which forwards a copy to the local labour inspection.

In **Spain**, Royal Decree 1620/2011 of 14 November 2011, article 5 defines the domestic work employment relationship as follows:

(1) Employment contracts may be concluded orally or in writing. They must be concluded in writing in cases where the law requires a written contract for a specific type of work. In any case, fixed-term contracts covering periods of four weeks or more shall be concluded in writing.

(2) In the absence of a written contract, an open-ended, full-time employment contract is presumed to exist for contractual periods of longer than four weeks, unless proof can be provided of the temporary or part-time nature of the services performed.

Some countries have legislation that, while not expressly requiring a written contract, nevertheless requires the employer to provide the domestic worker with a written statement of particulars specifying the terms and conditions of the employment.

EXAMPLES

SETTING OUT REQUIREMENTS FOR WRITTEN TERMS AND CONDITIONS

In **Austria**, the Domestic Help and Domestic Employees Act, section 2(1) provides that

[u]pon entering into the employment relationship, the principal rights and duties arising from this relationship shall be recorded in a so-called Dienstschein [letter of appointment] The Dienstschein shall be signed by the employer and employee, or, in the case of an under-age employee, his/her legal representative; a copy of the Dienstschein shall be handed over to the employee.

South Africa's Sectoral Determination 7 requires comprehensive written particulars at the outset of the employment relationship (see section 9(1)). Similarly, the **United Republic of Tanzania's** Employment and Labour Relations Act, 2004, requires the provision of extensive written particulars at the beginning of employment (see section 15(1)).

A noteworthy feature of the legislation of both the United Republic of Tanzania and South Africa is that in both cases the employer must ensure that the terms are explained to the domestic worker in a manner that she or he understands. Such provisions may be an important corollary to the requirement for a contract in writing, as such a legal requirement is only of practical value if the worker, who may or may not be literate, fully understands the terms. Provisions of this kind may also appear in legislative instruments or bilateral agreements concerned specifically with written contracts for migrant workers (see section 3.4. 'Migrant domestic workers').

A written employment contract has the benefit of easing difficulties in proving the existence of the employment relationship (and its specific terms), should a dispute arise between the parties. The domestic worker's ability to assert her or his rights within the employment relationship may be further protected through legislation that clearly places the burden of proof of the existence of the employment relationship or its specific terms on the party best situated to take it on (see, the example of the United Republic of Tanzania below).²⁶ Requirements for written contracts or statements of particulars can be combined with a requirement for the registration of the employment relationship with a competent authority (see the example of Mali below).

²⁶ See the Employment Relationship Recommendation, 2006 (No. 198), Paras 9–15.

EXAMPLES

REGISTERING THE EMPLOYMENT RELATIONSHIP OR ESTABLISHING PROOF THAT IT EXISTS

The United Republic of Tanzania's Employment and Labour Relations Act, section 15(6), places the burden of proof on the employer regarding a term of employment, in the absence of a written contract or written particulars:

If in any legal proceedings, an employer fails to produce a written contract or the written particulars prescribed in subsection (1), the burden of proving or disproving an alleged term of employment stipulated in subsection (1) shall be on the employer.

In **Mali**, Decree No. 96-178/P-RM of 13 June 1996, issued under the Labour Code, provides as follows:

Art.D.86-5.- A fixed-term contract must be made in writing and issued in three copies. If the contract concluded for a period exceeding three months, one of the copies of the contract must be filed with the Labour Inspectorate. ...

Art.D.86-6.- When the contract is concluded for an indefinite period, the employer shall provide the worker at the beginning or at the latest at the end of the probation period, with a letter of appointment specifying the conditions of employment, including those relating to working hours, weekly rest, compensation and, where applicable, allowances in kind.

Three copies of this letter of appointment are issued and signed by the employer, who keeps the original. One copy is provided to the worker and one to the labour inspector concerned.

In **Kazakhstan**, the Labour Code of 2007, article 214(3) states that: "The employment of a domestic worker is confirmed by the contract of employment."

In **Kyrgyzstan**, article 357 of the Labour Code of 2004, amended in 2009 (which concerns employment by "physical persons"), provides as follows:

The document confirming the period of employment by the employer (physical person) is a written contract of employment or a mention in the work book.

The employer (physical person), who is registered as an individual entrepreneur and has a stamp, is entitled to make official mentions in the work book of the worker.

With reference to Article 7(i) of Convention No. 189, a contract of employment with a domestic worker should detail the conditions of the trial or probationary period. Pursuant to the Termination of Employment Convention, 1982 (No. 158), in its Article 2(b), this period should be defined in advance and of reasonable duration.²⁷

²⁷ Several legal examples of regulation on the probationary period are presented in EPLex, the ILO Database on employment protection legislation.

3.2. MODEL CONTRACTS

Model contracts are templates that assist domestic workers and their employers in formalizing their employment relationships through a written agreement. Model contracts set out standard clauses regarding the terms and conditions of employment and other matters to be included in the contract of employment, while leaving it to the parties to supplement or adapt the clauses in line with the agreement they have reached.

Model contracts help employers to comply with statutory requirements regarding working conditions and entitlements of domestic workers, which they may incorporate. At the same time, they can draw the worker's attention to his or her rights under the legislation. Importantly, model contracts can assist the parties in discussing, agreeing upon and laying down understandings regarding the organization of working time, remuneration, social benefits and other crucial terms and conditions.

Recommendation No. 201, Paragraph 6(3) and (4)

(3) Members should consider establishing a model contract of employment for domestic work, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers.

(4) The model contract should at all times be made available free of charge to domestic workers, employers, representative organizations and the general public.

EXAMPLES

USE OF MODEL CONTRACTS OR WRITTEN PARTICULARS

In **Austria**, a model statement of particulars to be signed by both parties is attached to the Act on Domestic Help and Domestic Employees.

In **France**, a model contract has been included as an annex to the national collective agreement that covers domestic work.

In **South Africa**, sample written particulars are annexed to Sectoral Determination 7.

3.3. MIGRANT DOMESTIC WORKERS

The requirement of a written contract takes on particular significance for domestic workers who cross national borders in search of work. These are among the most vulnerable of the world's domestic worker population. For these workers, having a detailed understanding of the work they will be expected to perform in the country of employment and the applicable terms and conditions of employment is particularly important.

Convention No. 189, Article 8(1)

National laws and regulations shall require that migrant domestic workers who are recruited in one country for domestic work in another receive a written job offer, or contract of employment that is enforceable in the country in which the work is to be performed, addressing the terms and conditions of employment referred to in Article 7, prior to crossing national borders for the purpose of taking up the domestic work to which the offer or contract applies.

Legal requirements for written employment contracts for migrant workers may be set out in the legislation of the country of origin, possibly in combination with a system of contract supervision (for example, Sri Lanka's Bureau of Foreign Employment Act No. 21 of 1985, or the Migrant Workers and Overseas Filipinos Act of 1995, Republic Act No. 8042). National legislation on this matter is often reinforced and operationalized through bilateral agreements.

EXAMPLE**BILATERAL AGREEMENT ON CONTRACTS BETWEEN MIGRANT WORKERS AND THEIR EMPLOYERS**

The **Agreement between Philippines and Qatar of 10 May 1997**¹ regarding the employment of Filipino workers in Qatar requires that the employment contract specify terms and conditions of employment consistent with the Qatari Labour Act (article 6) but must additionally state in detail the employer's obligations regarding the worker's accommodation and medical treatment (article 7). The contract must be certified by the Qatari authorities (Department of Labour) and verified and authenticated by the Philippine embassy or consulate in Qatar (article 9). Upon conclusion of the contract in the Philippines, it is subject to attestation by the Philippine Overseas Employment Administration and verification and authentication by the embassy or consulate of Qatar accredited in the Philippines.

¹ The Agreement can be found at: http://www.poea.gov.ph/lmi_kiosk/Bilateral%20Agreements/BLA-QATAR.pdf

In the context of labour migration, legal provisions can place a responsibility to explain the employment contract on employment agencies or labour authorities in the country of origin.

EXAMPLES

ASSIGNING RESPONSIBILITY TO EXPLAIN A CONTRACT TO A MIGRANT WORKER

Sri Lanka's Bureau of Foreign Employment Act No. 21 of 1985 requires that the contract be forwarded to and certified by the Bureau prior to the departure of the worker. Section 40(1) provides as follows:

The contract of employment between the employer abroad and the person recruited for employment by such employer shall, before it is signed by such employer or his [or her] agent and such person, be read and explained to such person in a language that he [or she]¹ understands.

Indonesia and the **Republic of Korea** concluded a Memorandum of Understanding on 30 July 2004 concerning the sending of Indonesian workers to the Republic of Korea, which provides in paragraph 5 that the

Sending Agency [here a government agency] will explain to the Workers the content of a labour contract (draft) sent by an employer in the Republic of Korea so that they can fully understand the contract.

¹ The ILO notes that the legislative provision cited is not expressly gender inclusive and reiterates that legislation should to the greatest possible extent be drafted in a manner that is clearly inclusive of both genders. This is particularly important in the area of domestic work, which is largely performed by women.

At the same time, a written contract of employment in the case of migrant domestic workers may be required under the laws of the country of employment. A number of States have introduced standardized contracts, developed for mandatory use through legislation and government regulations, which may be a means of ensuring that domestic workers recruited abroad have clear and enforceable terms and conditions of employment that are consistent with national laws.

EXAMPLES

USE OF STANDARDIZED CONTRACTS FOR MIGRANT WORKERS

In **Canada**, foreign live-in care givers and their employers are required to sign a written employment contract to be submitted to the authorities under the procedures for granting a work permit and visa. The contract must contain a set of mandatory clauses regarding employer-paid benefits, job duties, hours of work, wages, accommodation, leave entitlements and termination of employment. To facilitate compliance a contract template is made available.¹

In **Hong Kong, China**, a standard employment contract issued by the Department of Immigration is used in regard to domestic workers recruited from abroad, containing detailed substantive provisions, including that the employer must pay the cost of repatriation upon the expiration of the contract. The contract incorporates by reference certain labour standards set forth in the Employment Ordinance.²

¹ The employment contract template is available at: <http://www.cic.gc.ca/english/work/caregiver/sample-contract.asp>

² The standard employment contract is available at: <http://www.immd.gov.hk/ehtml/id407form.htm>

While in some instances, standardized contracts and bilateral agreements may serve a regulatory function, filling in gaps in legislation applicable to domestic workers, their usefulness in this regard should not overshadow the importance of developing comprehensive legislative frameworks for the protection of domestic workers in the country of employment. Nevertheless, they may serve the valuable function of making the requirements of such legal regimes familiar to and practicable for domestic workers and their employers.



4 *FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK*

Labour legislation should give due attention to protecting the principles and rights referred to in the ILO Declaration on Fundamental Principles and Rights at Work, 1998. These are freedom of association and the right to collective bargaining, the elimination of child labour, the effective abolition of forced labour and the elimination of discrimination in employment and occupation. These principles and rights are embodied in the ILO eight fundamental Conventions, which apply to all workers.²⁸ Convention No. 189 refers to them in Article 3(2), highlighting their relevance and importance in the context of domestic work.

Convention No. 189, Article 3(2)

Each Member shall, in relation to domestic workers, take the measures set out in this Convention to respect, promote and realize the fundamental principles and rights at work, namely:

- (a) freedom of association and the effective recognition of the right to collective bargaining;*
- (b) the elimination of all forms of forced or compulsory labour;*
- (c) the effective abolition of child labour; and*
- (d) the elimination of discrimination in respect of employment and occupation.*

Domestic workers are particularly vulnerable to violations of these fundamental rights at work, given the historic links between domestic work and slavery and other forms of servitude, persisting patterns of discrimination based on sex, ethnicity, social origin and other grounds, and the fact that domestic work is often performed informally. Legislative measures ensuring respect for and the full realization of the fundamental principles and rights in the domestic work context are essential to empower domestic workers and ensure conditions of decent work for them.

The present chapter does not attempt to provide comprehensive guidance on how to legislate on fundamental principles and rights at work, which would be beyond the purpose and scope of these guidelines.²⁹ However, the sec-

²⁸ Conventions Nos. 29, 87, 98, 100, 105, 111, 138 and 182. See section 1.4 for a list including titles.

²⁹ In this regard see also the ILO's Labour legislation guidelines available at: <http://www.ilo.org/legacy/english/dialogue/ifpdial/lhg/main.htm>.

tions below highlight certain areas in which domestic workers need specific protection and present a selected number of examples of legal provisions addressing them.

4.1. FREEDOM OF ASSOCIATION AND THE RIGHT TO COLLECTIVE BARGAINING

The isolation of the domestic worker and the usual absence of co-workers are practical challenges to domestic worker's exercise of the right of freedom of association. Obstacles to freedom of association may also exist in the legal sphere. While forming and joining workers' or employers' organizations is a matter for the workers and employers concerned, the State has a responsibility to protect the right of domestic workers to freedom of association. Indeed, the realization of the right to collective bargaining requires, in the first place, the existence of workers' and employers' organizations to represent domestic workers and their employers.

Convention No. 189, Article 3(3)

In taking measures to ensure that domestic workers and employers of domestic workers enjoy freedom of association and the effective recognition of the right to collective bargaining, Members shall protect the right of domestic workers and employers of domestic workers to establish and, subject to the rules of the organization concerned, to join organizations, federations and confederations of their own choosing.

Recommendation No. 201, Paragraph 2

In taking measures to ensure that domestic workers enjoy freedom of association and the effective recognition of the right to collective bargaining, Members should:

(a) identify and eliminate any legislative or administrative restrictions or other obstacles to the right of domestic workers to establish their own organizations or to join the workers' organizations of their own choosing and to the right of organizations of domestic workers to join workers' organizations, federations and confederations;

(b) give consideration to taking or supporting measures to strengthen the capacity of workers' and employers' organizations, organizations representing domestic workers and those of employers of domestic workers, to promote effectively the interests of their members, provided that at all times the independence and autonomy, within the law, of such organizations are protected.

4.1.1. ENSURING EFFECTIVE LEGAL COVERAGE

It is important that legislation guaranteeing freedom of association should include domestic workers and their employers in its coverage. In many jurisdictions, domestic workers are indeed formally covered by legal provisions

on freedom of association.³⁰ Some States have reiterated the applicability of constitutional rights in the area of freedom of association to domestic workers.

EXAMPLES

REAFFIRMING EXISTING RIGHTS TO FREEDOM OF ASSOCIATION

Ireland's Code of Practice for Protecting Persons Employed in Other People's Homes, section 5.12, reiterates the applicability to domestic workers of the constitutional right of workers to choose whether to be represented by a union:

In accordance with Irish law, the employer shall not restrict the employee's right to trade union membership consistent with the employee's Constitutional right to join or not to join a trade union.

In **Mali**, Decree No. 96-178/P-RM of 13 June 1996, issued under the Labour Code, at article D.86-1, provides as follows:

Personnel employed in households enjoy freedom of opinion and of the full exercise of the right to organize, in accordance with the provisions of the Labour Code.

In some instances, the guarantees regarding freedom of association and the right to collective bargaining are embodied in legislation that excludes domestic workers. In such cases, consideration should be given to amending the legislation in order to cover domestic workers.

EXAMPLE

AMENDING LEGISLATION THAT EXCLUDES DOMESTIC WORKERS' RIGHT TO COLLECTIVE BARGAINING

Canada (Quebec) repealed article 2(c) of its Labour Standards Act which excluded domestic workers, thereby extending labour rights protections to domestic workers, including as regards the right to organize.³¹

4.1.2. PROMOTING COLLECTIVE BARGAINING

The enjoyment by domestic workers and employers of domestic workers of the right to form and join organizations of their choosing is a prerequisite for them to exercise the right to collective bargaining. Governments can take measures, including through labour law, to encourage the development of such representation and bargaining by creating a conducive legal and institutional environment in this regard. Where collective bargaining in the domestic work

³⁰ ILO: *Decent work for domestic workers*, Report IV(1), International Labour Conference, 99th Session, Geneva, 2010, p. 17.

³¹ See ILO: *Decent work for domestic workers*, Report IV(1), op. cit., para. 277.

sector exists, collective agreements concluded have significantly contributed to improving domestic workers' conditions of employment. Standards developed through collective bargaining benefit from the expertise developed by social partners and have the potential to adapt the legal framework to the specificities of the sector.

EXAMPLES

LEGISLATIVE MEASURES PROMOTING COLLECTIVE BARGAINING

In **California, United States**, state laws enacted in 1992 and 1993 permitted individual counties in California to issue public authority ordinances, enabling the establishment of public authorities to represent the state agency that was funding elder care services provided by homecare workers. As a result of this legislation, the Union representing the homecare workers in several counties was able to engage in collective bargaining on the workers' behalf with the public authorities established by those counties, which represented the state as employer for purposes of bargaining.¹

In **Uruguay**, Act No. 18.065, article 6, states that the minimum wage for domestic workers will be determined in accordance with Act No 10.449 of 12 November 1943, which provides for the creation of Wage Boards. As a result, a new tripartite wage board was established to negotiate wages and other conditions for domestic workers, prompting the consolidation of workers' and employers' organizations representing domestic workers and their employers, specifically the National Confederation of Domestic Workers and the Housewives' League of Uruguay, respectively.²

¹ L. Delp and K. Quan: "Homecare worker organizing in California: An analysis of a successful strategy", in *Labour Studies Journal* (2002, Vol. 27, No. 1, p. 23) (cited in ILO: *Decent work for domestic workers*, Report IV(1), op. cit., para. 26).

² ILO: *Decent work for domestic workers*, Report IV(1), para. 268.

4.2. ERADICATION OF FORCED LABOUR

Enacting appropriate legislation is crucial in protecting domestic workers from forced or compulsory labour practices, to which they are particularly vulnerable because of their isolated circumstances within private homes and as consequence of abusive or fraudulent recruitment practices.³² Convention No. 29 defines forced or compulsory labour as meaning all work or service which is exacted from any person under the menace of any penalty and for

³² See *Decent work for domestic workers*, Report IV(1), op. cit., paras 64–68; and ILO: *The cost of coercion. Global report under the follow-up to the ILO declaration on fundamental Principles and Rights at Work*, Report of the Director-General, International Labour Conference, 98th Session, Geneva, 2009, paras 139–144.

which the said person has not offered herself or himself voluntarily.³³ The exacting of forced or compulsory labour must be punishable as a penal offence.³⁴

National legislation prohibiting forced labour should cover domestic workers. Laws or regulations dedicated to the protection of domestic workers may reiterate prohibitions of forced labour contained in the generally applicable legislation.

EXAMPLES

PROHIBITING FORCED LABOUR

In **Cambodia**, the Labour Code includes a general prohibition of forced and compulsory labour in article 15, which explicitly states that the prohibition applies to everyone, including domestic workers.

The **United Republic of Tanzania**'s Employment and Labour Relations Act, 2004, which applies to domestic workers, treats forced labour as an offence, in sub-part B(6). The provisions are modelled on the ILO's forced labour Conventions.

South Africa's Sectoral Determination 7, section 23(4), reiterates the prohibition of forced labour set out in the Constitution and the Basic Conditions of Employment Act (section 48) and applies the penalties established in section 93 of the Act (maximum three years imprisonment).

Even where the domestic worker may have voluntarily entered in an employment relationship, the employment may become compulsory in character under certain conditions, particularly those which interfere with the domestic workers' ability to withdraw from the employment relationship.³⁵ Conditions that may transform a domestic worker's voluntarily undertaken employment into forced labour include physical confinement in the work location, psychological compulsion in the form of credible threats of penalties (such as loss of employment), physical or sexual abuse, induced indebtedness, deception regarding nature or terms of employment, withholding of wages, and retention of identity documents.³⁶

³³ Convention No. 29, Article 2(1).

³⁴ Ibid., Article 25.

³⁵ ILO: Eradication of Forced Labour. General Survey concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105), Report III (Part 1B), Geneva, 2007, paras 37–41.

³⁶ Ibid. The CEACR, in a recent individual observation issued in relation to Convention No. 29 acknowledged the "vulnerable situation of migrant workers, particularly migrant domestic workers, who are often confronted with employment policies such as the visa 'sponsorship' system and subjected to abusive employer practices, such as retention of passports, non-payment of wages, deprivation of liberty, and physical and sexual abuse, which cause their employment to be transformed into situations that could amount to forced labour." See ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III, (Part IA), International Labour Conference, 99th Session, Geneva, 2010, p. 265.

Convention No. 189 and Recommendation No. 201 set out a number of measures to prevent situations that may amount to forced or compulsory labour, including the provision of information on terms and conditions to domestic workers,³⁷ protection from all forms of harassment abuse and violence,³⁸ protection of wages,³⁹ freedom of movement,⁴⁰ the domestic worker's right to keep in their possession their travel and identity documents,⁴¹ and protection against abusive or fraudulent practices by private employment agencies.⁴²

Protecting the personal liberty and freedom of movement of domestic workers may require legislative efforts at the level of criminal law. Acknowledging the heightened risk of the violation of these rights under the particular circumstances of domestic employment, some countries have established criminal offences and penalties specifically addressing the domestic work context, which may serve as a powerful deterrent to employers.

Like physical confinement, an employer's interference with the domestic worker's communication with friends, family and others outside the workplace may have the effect of cutting a worker off from resources and support that might otherwise enable her or him to leave an unsuitable or exploitative employment situation. Some countries have taken legislative and regulatory measures that recognize the need to protect domestic workers' ability to communicate with people and institutions outside the workplace.

EXAMPLES

PROTECTING FREEDOM OF MOVEMENT AND COMMUNICATION

Singapore's Penal Code includes a provision (section 73) making "*wrongful confinement*" of a domestic worker a punishable offence subject to an enhanced penalty of 1.5 times the usual punishment – a fine and one to three years in prison depending on the length of the confinement –whether the offence is committed by the employer or a member of the employer's household.

Ireland's Code of Practice for Protecting Persons Employed in Other people's Homes, section 5.8, states:

The employer shall not withhold any personal documentation belonging to the employee (for example, passport, visa, identity cards or bank account documentation). For the avoidance of doubt, the employer can retain copies of these documents where such copies are required to ensure compliance with other legislation.

³⁷ Articles 7 and 8 of Convention No. 189 and Para. 6 of Recommendation No. 201. See also Chapter 3.

³⁸ Article 5 of Convention No. 189 and Para. 7 of Recommendation No. 201. See also Chapter 5.

³⁹ Articles 12 and 15(1)(2) of Convention No. 189 and Paras 14 and 15 of Recommendation No. 201. See also Chapter 8, section 2.

⁴⁰ Article 9(b) of the Convention No. 189. See also Chapter 7.

⁴¹ Article 9(c) of Convention No. 189. See also Chapter 7.

⁴² Article 15 of Convention No. 189. See also Chapter 10.

In **Singapore**, the Employment of Foreign Manpower (Work Passes) Regulations, section 24, provide as follows:

The employer shall not retain possession of the foreign employee's original Work Permit and visit pass and shall allow the foreign employee to retain possession of the foreign employee's Work Permit and visit pass.

Jordan's Regulation for Domestic Workers, Cooks, Gardeners and Similar Workers 90/2009 of 1 October 2009, article 4(e), imposes on the employer an obligation to assist the domestic worker in maintaining regular contact with her or his family abroad as follows:

The employer shall commit to the following:

...

(e) Allowing the worker to contact his or her family abroad by phone once a month and at the employer's expense; the worker is entitled to additional phone calls at his or her own expense; he or she is also entitled to correspond with them in writing.

4.3. ABOLITION OF CHILD LABOUR

International law regarding child labour defines children as persons under the age of 18.⁴³ Child labour in domestic work is widespread, particularly among girls.⁴⁴

Employment of persons under 18 in domestic work is not per se inconsistent with international standards but amounts to child labour under certain circumstances: when such work is performed either by children below the legal minimum age for admission to employment or work or by children above the minimum age if such work amounts to a "worst form of child labour", for example, hazardous work.⁴⁵ The present section of the guide therefore looks at the setting of a minimum age for admission to domestic work and the identification and prohibition of hazardous work.

Where persons above the minimum age and below 18 are legally permitted to be engaged in domestic work, safeguards should be put into place to ensure that they are appropriately protected (see Chapter 10). In the absence of such protection, domestic work performed by adolescents may in fact become hazardous and thus amount to a worst form of child labour.

⁴³ Convention No. 182, Article 2; UN Convention on the Rights of the Child, Article 1.

⁴⁴ According to estimates for 2008 by ILO Statistical Information and Monitoring Programme on Child Labour (IPEC/SIMPOC) some 15.5 million children aged 5 to 17 are in domestic work; 11.3 million (73 per cent of them) are girls.

⁴⁵ See Convention No. 182, Article 3; and UN Convention on the Rights of the Child, Article 32. For more information on hazardous child labour, see ILO and IPEC: *Children in hazardous work. What we know and what we need to do* (Geneva, 2011).

4.3.1. SETTING A MINIMUM AGE FOR ADMISSION TO DOMESTIC WORK

With a view to the elimination of child labour in the domestic work sector, setting a minimum age for admission to work or employment in domestic work is a key regulatory measure. Existing laws against child labour may not yet cover domestic work.

Convention No. 189, Article 4(1)

Each Member shall set a minimum age for domestic workers consistent with the provisions of the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182), and not lower than that established by national laws and regulations for workers generally.

Convention No. 138 provides that the minimum age for admission to employment or work shall not be less than the age of completion of compulsory schooling, and in any case not lower than 15 years.⁴⁶ National laws and regulations may permit children below the minimum age to carry out so-called “light work”.⁴⁷ Where this is allowed, legislative provisions should strictly limit its nature and duration.

EXAMPLES

SETTING A MINIMUM AGE FOR ADMISSION TO DOMESTIC WORK

In **Côte d’Ivoire**, Decision No. 009 MEMEASS/CAB of 19 January 2012 prohibits the employment of children below 16 years in domestic work. Where domestic work is performed as part of vocational training, children may perform it as of 14 years (section 6).

Uruguay’s Act No. 18.065, section 11, establishes a minimum age of 18 for domestic service, while permitting a competent authority to authorize employment as of 15 years of age in individual cases:

The minimum age for employment as a domestic worker is set at 18 years. Without prejudice to the foregoing, the Uruguayan Institute for Children and Adolescents (INAU) may authorize the employment of young people aged 15 or above, where there are justified grounds for doing so.

⁴⁶ Convention No. 138, Article 2(3). Ratifying countries may initially determine 14 years as legal minimum age, under the certain conditions specified in Article 2(4) and (5).

⁴⁷ Ibid., Article 7(1), defines “light work” as activities that are not harmful to a child’s health and development and do not prejudice attendance at school and participation in vocational training, nor “the capacity to benefit from the instruction received”.

South Africa's Sectoral Determination 7, provides in section 23(1), for a minimum age for admission to domestic work that is the same as that established in the generally applicable labour law and consistent with compulsory education requirements:

- (1) *No person may employ as a domestic worker a child*
 - (a) *who is under 15 years of age; or*
 - (b) *who is under the minimum school leaving age in terms of any law, if this is 15 or older.*

EXAMPLES

REGULATING "LIGHT WORK" DONE BY CHILDREN BELOW THE MINIMUM AGE FOR ADMISSION TO WORK

France's National Collective Agreement of Employees of Individual Employers, article 24, strictly limits the duration and kinds of tasks performed by children between the ages of 14 and 16 engaged in domestic work:

- (a) *Adolescents from 14 to 16 years old may be hired only for half of their school holidays, and only for light work. ...*

Finland's Young Workers' Act, sections 2 and 4, allows for the employment of young workers below the age of 15 as well as those in school but limits the timing, duration, and kind of work:

2. Admission to work

A person may be admitted to work if he [or she] has reached the age of 15 and is not liable to compulsory school attendance.

Furthermore, a person may be admitted to work if he has reached the age of 14 years or will reach that age in the course of the calendar year and if the work in question consists of light work that is not hazardous to his health or development and does not hinder school attendance, as follows:

- (1) *for at most half of the school holidays, and*
- (2) *temporarily during schoolwork or otherwise, for individual work performances of a short duration*

...

(4) Regular working hours

... During the school year, the daily working hours of a person of school age shall not exceed seven hours on days when there is no school and two hours on school days. The total length of the school day and working hours cannot, however, exceed eight hours or the weekly working hours 12 hours.

In addition, the Act sets out special working time restrictions for workers aged 14 years (see chapter 2 of the Act).

4.3.2. PROHIBITION OF HAZARDOUS WORK FOR CHILDREN

Hazardous work is “work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children”.⁴⁸ Hazardous work is one of the worst forms of child labour and measures must be taken to prohibit and eliminate it.⁴⁹

International law not only establishes a higher minimum age (18 years) for forms of employment deemed to be potentially harmful to the health, safety or morals of young people, but countries bound by Convention No. 182 also have an obligation to determine which types of work are considered to be hazardous and periodically to examine and revise the list of types of hazardous work.⁵⁰

Recommendation No. 201, Paragraph 5(1)

Taking into account the provisions of the Worst Forms of Child Labour Convention, 1999 (No. 182), and Recommendation (No. 190), Members should identify types of domestic work that, by their nature or the circumstances in which they are carried out, are likely to harm the health, safety or morals of children, and should also prohibit and eliminate such child labour.

Although the relevant international labour Conventions do not provide a definitive list of the types of work that fall within the category of hazardous work, the Worst Forms of Child Labour Recommendation, 1999 (No. 190), provides criteria that should be taken into consideration by Members when determining what constitutes hazardous work for children and prohibiting it.⁵¹

Domestic work, with the wide range of duties it encompasses, may indeed involve hazardous conditions incompatible with international standards on the abolition of child labour, such as particularly difficult or strenuous conditions, including long hours, night work, heavy lifting, using toxic chemicals or sharp knives, exposure to fire or hot stoves, confinement within the workplace and deprivation of education.⁵² Some countries have therefore classified domestic work as “hazardous work” and accordingly put in place regulatory instruments prohibiting such work for children.

⁴⁸ Convention No. 182, Article 3(d); see also Convention No. 138, Article 3(1).

⁴⁹ Convention No. 182, Article 1.

⁵⁰ Ibid., Article 4.

⁵¹ See Recommendation No. 190, Paragraph 3.

⁵² ILO and IPEC: *Children in hazardous work*, op. cit.

EXAMPLES**CLASSIFYING DOMESTIC WORK AS HAZARDOUS TO CHILDREN AND REGULATING IT ACCORDINGLY**

In **Brazil**, Decree No 6.481 of 12 June 2008 contains a hazardous list work determined in line with Convention No. 182, which includes domestic service. This work is therefore generally prohibited for persons under the age of 18. However, domestic work may be carried out by children above the legal minimum age after the Ministry of Labour has made a careful assessment of whether sufficient protection of the young worker's safety, health or morals is provided. The hazardous work list describes the risks and repercussions of domestic work.

Panama's Executive Decree No. 19 of 12 June 2006, section 3(11), includes a list of the worst forms of child labour, which recognizes domestic work in private households, both under live-in and live-out arrangements, as a potentially hazardous activity, particularly when it involves limited rest, long hours, and care of persons or property.

In **Paraguay** Decree No 4.951/05 issued pursuant to Act No. 1657/2001 on the approval and implementation of the Convention and Recommendation on the Worst Forms of Child Labour, identifies a list of hazardous work including child domestic work. The Decree allows that such work may be deemed permissible for workers of 16 and 17 years of age by the competent authority if sufficient protections are provided to the young domestic worker, including proper training. The Childhood and Adolescence Code (Act No 1.680/01) recognizes the enhanced vulnerability of young migrant workers to hazardous and exploitative employment situations. Section 67 of the Code proscribes the recruitment of adolescents – defined as persons under the age of 18 – for domestic work abroad.

In **Côte d'Ivoire**, Order No. 009 MEMEASS/CAB of 19 January 2012 prohibits children under 18 to be engaged in guarding in urban areas, which is considered as hazardous domestic work. More broadly, **Togo's** Order No. 1464 MTEFP/DGTLs of 12 November 2007 prohibits as hazardous any domestic work carried out in urban centres.

4.4. ELIMINATION OF DISCRIMINATION IN EMPLOYMENT AND OCCUPATION

Domestic workers are predominantly women, migrant workers or persons belonging to particular ethnic groups or disadvantaged social groups and communities, who are particularly vulnerable to discrimination in respect of conditions of work and employment. In other words, because of their sex, race or social origin, or on other grounds, they are treated less favourably than other workers.

Labour legislation effectively promoting and ensuring decent work for domestic workers should ensure that domestic workers enjoy legal protection from discriminatory treatment. Anti-discrimination laws, including provisions for equal remuneration for work of equal value and protection against discriminatory harassment, should therefore be extended to domestic workers. The ILO bodies responsible for the supervision of the application of international standards have drawn attention to the need to close legislative gaps in this regard, in line with Convention No. 111.⁵³

Overcoming the exclusion of domestic workers from labour laws more generally also contributes to addressing discrimination faced by domestic workers. In Quebec, Canada, the exclusion of domestic workers from the scope of the Act Respecting Labour Standards was considered to amount to indirect discrimination based on sex, and therefore ended.⁵⁴ Among the considerations for the adoption of the New York Bill of Rights for Domestic Workers, 2010, was that “many domestic workers in the state of New York are women of color who, because of race and sex discrimination, are particularly vulnerable to unfair labour practices.”⁵⁵

While this guide as whole provides guidance for the inclusion of domestic workers with the reach of labour laws, the present section addresses legal protection from discrimination more specifically.

4.4.1. INCLUSIVE ANTI-DISCRIMINATION AND EQUALITY LAWS

Existing anti-discrimination and equality legislation may not yet cover domestic workers for various reasons. For example, although a prohibition of discrimination may be part of a country’s Labour Code, it might explicitly exclude domestic workers. In other cases, existing anti-discrimination provision or legislation may not apply to domestic workers because workplaces without a certain minimum number of employees are excluded from the scope of the law. Exclusions can also result from the way the law defines the “worker” and “employer”. Efforts to design effective labour laws for domestic workers should ensure that domestic workers are included in legal protection against discrimination.

.....
⁵³ See ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III, (Part 1B), International Labour Conference, 98th Session, Geneva, 2009, para. 110.

⁵⁴ See the Direct Request to Canada formulated by the ILO Committee of Experts on the Application of Conventions and Recommendations at the 73rd Session, 2004, para. 9. Comments addressed by the Committee of Experts to ILO Members are available through the ILO’s NORMLEX database.

⁵⁵ New York Bill of Rights for Domestic Workers, section 1. For more information on the Bill of rights can be found at <http://www.labor.ny.gov/legal/domestic-workers-bill-of-rights.shtm>.

EXAMPLES

INCLUDING DOMESTIC WORKERS IN ANTI-DISCRIMINATION LEGISLATION

In **Namibia**, Labour Act, 2007, defines the term “employee” broadly so as to implicitly cover domestic workers. The Act contains extensive non-discrimination provisions, as well as procedures for bringing complaints.

In **Peru**, the Act on Equal Opportunities for Men and Women (Act No. 28983 of 2007) goes beyond prohibiting discrimination and sets out measures to be taken by the public authorities to bring about gender equality in practice, with specific attention to female domestic workers. Article 6 provides:

The Executive Branch and regional and local governments shall adopt policies, plans and programmes in all sectors mainstreaming the principles of this Act. The applicable guidelines are as follows:

...

(f) To guarantee the right to productive employment, in conditions of freedom, equity, security and human dignity, incorporating measures to avoid any kind of labour discrimination between women and men, in terms of access to employment, training, promotion or working conditions, and ensure equal remuneration for work of equal value. Labour rights include protection from sexual harassment and establishing a balance between professional and family responsibilities.

(g) To promote measures to integrate workers in the urban and rural informal economy into the formal economy.

(h) To guarantee non-discriminatory treatment of domestic workers.

In **Spain**, Royal Decree 1620/2011, article 4, addresses protection against discrimination by public and private employment services in respect of domestic workers.

(2) In accordance with the provisions of section 22 (2) of the Employment Act, No. 56/2003, of 16 December, public employment services and recruitment agencies shall guarantee, within their field of activity, the principle of equal access to employment, and shall not discriminate in any way on the basis of origin, including racial or ethnic origin, sex, age, civil status, religion or beliefs, political opinion, sexual orientation, trade union membership, social status, language within the State or disability, provided that the worker is fit to carry out the work or duties concerned.

(3) Discrimination on any of the above-mentioned grounds is prohibited in vacancy announcements relating to domestic work.

4.4.2. SEXUAL HARASSMENT AND OTHER HARASSMENT BASED ON PROHIBITED GROUNDS OF DISCRIMINATION

Protection against sexual harassment and other forms of discriminatory harassment forms part of the legal protection that domestic workers should enjoy. This is particularly important for domestic workers, given their physical proximity to household members, living arrangements that do not secure privacy, the isolation of the workplace and the absence of co-workers.

EXAMPLES

PROTECTING DOMESTIC WORKERS FROM SEXUAL AND OTHER FORMS OF DISCRIMINATORY HARASSMENT

In **New York State, United States** the 2010 Domestic Workers Bill of Rights recognizing the rights protection deficits for these workers, introduced protection from sexual harassment and harassment based on gender, race, national origin and religion, as follows:

S 296-B. Unlawful discriminatory practices relating to domestic workers.

...

2. *It shall be an unlawful discriminatory practice for an employer to:*

(a) Engage in unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature to a domestic worker when:

(i) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

(ii) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

(iii) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, or offensive working environment.

(b) Subject a domestic worker to unwelcome harassment based on gender, race, religion or national origin, where such harassment has the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile or offensive working environment.

4.4.3. PREGNANCY DISCRIMINATION

Female domestic workers face many forms of sex discrimination, including discrimination based on pregnancy. It is not uncommon for a domestic worker's employer to terminate the employment upon learning that the domestic worker is pregnant.

Where domestic workers are not yet covered by legal protection from discrimination based on pregnancy, consideration should be given to introducing such provision. The Termination of Employment Convention, 1982 (No. 158), in Article 5(d), explicitly declares pregnancy as invalid reason for dismissing a worker. In most countries this rule is part of the generally applicable labour laws.⁵⁶ In addition, the Maternity Protection Convention, 2000 (No. 183), provides guidance on legislation protecting domestic workers from discrimination through employment termination and exclusion, including through a prohibition of pregnancy testing (Articles 8 and 9).

⁵⁶ Several legal examples may be found in EPLex, the ILO Database on employment protection legislation.

EXAMPLES**PROTECTING DOMESTIC WORKERS FROM PREGNANCY DISCRIMINATION**

South Africa's Sectoral Determination 7, section 22, contains detailed provisions in regard to maternity leave for domestic workers and a footnote attached to these provisions draws attention to the applicable provisions of the Labour Relations Act regarding unfair dismissal:

In terms of section 187(1)(e) of the Labour Relations Act, 1995, the dismissal of an employee on account of her pregnancy, intended pregnancy, or any reason related to her pregnancy, is automatically unfair. The definition of dismissal in section 186 of the Labour Relations Act, 1995, includes the refusal to allow an employee to resume work after she has taken maternity leave in terms of any law, collective agreement or her contract. With effect from 1 April 2003, domestic workers will be covered by the Unemployment Insurance Act, 2001 and will be entitled to claim maternity benefits in terms of that Act.

Brazil's Act No. 11.324, section 4(a), prohibits dismissal of a domestic worker without just cause from the time a pregnancy is discovered until five months after the delivery.





5. ABUSE, HARASSMENT AND VIOLENCE

While Chapter 4 ('Fundamental principles and rights at work') deals with some specific forms of harassment and abuse, such as sexual harassment or confinement, the present chapter discusses abuse more generally and some of the legislative measures, both preventative and punitive, that may be taken to diminish the prevalence of abuse, harassment and violence in the domestic work sector.

Domestic workers, whether working in their home countries or abroad, are vulnerable to many forms of abuse, harassment and violence, in part because of the intimacy and isolation of the workplace. Migrant domestic workers, in particular women and girls, may be even more vulnerable owing to a number of constraints, including lack of awareness of their rights, lack of support, gender discrimination and employer-tied immigration status. The most severe forms of abuse faced by domestic workers include sexual, psychological and physical abuse, including violence, food deprivation and confinement. Convention No. 189 explicitly calls for the effective protection of domestic workers against such conduct.⁵⁷

Convention No. 189, Article 5

Each Member shall take measures to ensure that domestic workers enjoy effective protection against all forms of abuse, harassment and violence.

Criminal law will usually address certain forms of abuse and violence to which domestic workers may be exposed, including by establishing penalties for offences such as forced labour, confinement, bodily injury and sexual crimes. However, abuse and harassment faced by domestic workers may not always amount to criminal behaviour, but may nevertheless infringe on the worker's dignity and create a hostile and intimidating working environment (for instance, verbal abuse and intimidation) and can often lead domestic workers to accept violations of their labour rights or to quit their positions altogether. Legislation, in particular labour laws, can also address these forms of abuse and harassment.

.....
⁵⁷ Recommendation No. 201 provides guidance on action that might be taken, including in terms of legislation and its enforcement (Paras 7, 21 and 24).

Legal provisions for protection from abuse, harassment and violence may fulfil the following functions:

- define what constitutes abuse, harassment and violence;
- prohibit of abusive, harassing or violent conduct;
- establish dissuasive sanctions;
- assign responsibility for prevention and protection;
- provide for preventative measures;
- assign responsibility for monitoring and enforcement.

EXAMPLES

PROTECTING DOMESTIC WORKERS FROM ABUSE HARASSMENT AND VIOLENCE

The **Plurinational State of Bolivia's** Household Workers Act, 2003, article 21, setting out various obligations of the employer, includes a clause regarding respectful treatment and refraining from abuse:

Employers shall be obliged to:

(a) treat household workers with consideration and respect, in keeping with human dignity, refraining from physical or verbal abuse. ...

Section 23 of the Act assigns responsibility for investigating complaints from domestic workers regarding abuses to specific public authorities:

The Brigade for the Protection of Women and the Family, the Police Force, the Public Prosecutor's Office and the competent authorities shall receive complaints or claims lodged by household workers concerning abuse, physical assault and sexual or other harassment by employers, children, relatives or others, and the appropriate investigations shall be initiated by the competent authorities.

The institution which prosecutes or investigates the complaint shall immediately inform the Labour Inspectorate of the facts of the case so that wages and social benefits may be duly paid without the legal actions being suspended. ...

Criminal acts shall be referred to the Public Prosecutor's Office for prosecution.

Austria's Federal Act Governing Domestic Help and Domestic Employees, section 22, permits the authorities to prohibit the employment of domestic workers younger than 18 years of age, where the employers or other members of the household who have been convicted of certain criminal acts:

§ 22. (1) If a person has been finally convicted of a criminal act directed against the life, health or physical safety of people or offending against morality, the district administrative authority may forbid the convicted person and the persons living in the same household with such persons for a specified period or forever to employ persons under age if, given the circumstances of the case, it is feared that such persons may be at risk.

(2) An employer against whom a ban within the meaning of para (1) above is imposed shall be obliged to promptly terminate any existing employment relationship with an employee who is under age.

In **Singapore**, the Employment of Foreign Manpower (Work Passes) Regulations, which establish conditions to be complied with by employers of foreign domestic workers, provide the following:

(10) The employer shall not ill-treat the foreign employee, and shall not cause or knowingly permit the foreign employee to be ill-treated by any other person. A foreign employee is ill-treated if

(a) the foreign employee is subjected to physical or sexual abuse, or to criminal intimidation;

(b) the employer or other person does, or causes the foreign employee to do, any act which causes or is likely to cause injury to the health or safety of the foreign employee;

(c) the employer or other person neglects or abandons the foreign employee in circumstances which cause or are likely to cause injury to the health or safety of the foreign employee; or

(d) the employer or other person commits an act detrimental to the welfare of the foreign employee.

In addition, the Penal Code of Singapore, section 72, provides for specific offences against the integrity of domestic workers, such as causing hurt or grievous hurt, wrongful confinement, assault or using criminal force, or acts intended to insult the worker's modesty. Penalties imposed on employers or other household members for such crimes can be 1.5 times as severe as they would have been had that offence been committed against a person other than a domestic worker.

Employers found guilty of psychological or physical abuse, exploitation or ill-treatment or other criminal offences against domestic workers will be barred from employing further domestic workers.⁵⁸ The Ministry of Manpower (MOM) requires any employer who has employed four different foreign domestic workers in one year, and is applying for a fifth permit, to attend an orientation programme. To obtain a sixth permit, the employer must attend an interview with a MOM officer. Further changes may result in the rejection of the employer's work permit application, unless a satisfactory explanation is given.

.....
⁵⁸ See the Ministry of Manpower's website at <http://www.mom.gov.sg/foreign-manpower/passes-visas/work-permit-fdw/before-you-apply/Pages/default.aspx#abuse> and <http://www.mom.gov.sg/foreign-manpower/passes-visas/work-permit-fdw/before-you-apply/Pages/employer-requirements.aspx>.



6. *LIVING CONDITIONS*

As a matter of principle, domestic workers should be free to reach an agreement with their employer or potential employer on whether to reside in the household. Where domestic workers reside in the household for which they provide services (“live-in” domestic workers), standards regarding living conditions are an essential aspect of promoting decent work for them. Live-in arrangements continue to exist in many countries and even more so in countries where domestic workers are predominantly migrant workers. Hence efforts to ensure decent living conditions for the workers concerned may involve setting out the employer’s obligations on these matters in the law.

Aspects to be addressed include the nature of the accommodation, the worker’s privacy and the quantity and quality of food. Legislative provisions can also address access to means of communication,⁵⁹ the freedom to leave the workplace outside working hours and domestic workers’ right to keep their travel and identity documents in their possession. Addressing these matters through legislation contributes to preventing the occurrence of forced labour situations.⁶⁰

Convention No. 189

Article 6

Each Member shall take measures to ensure that domestic workers, like workers generally, enjoy fair terms of employment as well as decent working conditions and, if they reside in the household, decent living conditions that respect their privacy.

Article 9

Each Member shall take measures to ensure that domestic workers:

- (a) are free to reach agreement with their employer or potential employer on whether to reside in the household;*
- (b) who reside in the household are not obliged to remain in the household or with household members during periods of daily and weekly rest or annual leave; and*
- (c) are entitled to keep in their possession their travel and identity documents.*

⁵⁹ See Chapter 4, section 2.

⁶⁰ See Chapter 4, section 2.

Recommendation No. 201, Paragraph 17

When provided, accommodation and food should include, taking into account national conditions, the following:

- (a) a separate, private room that is suitably furnished, adequately ventilated and equipped with a lock, the key to which should be provided to the domestic worker;*
- (b) access to suitable sanitary facilities, shared or private;*
- (c) adequate lighting and, as appropriate, heating and air conditioning in keeping with prevailing conditions within the household; and*
- (d) meals of good quality and sufficient quantity, adapted to the extent reasonable to the cultural and religious requirements, if any, of the domestic worker concerned.*

In the case of live-in workers, accommodation and food are among the terms and conditions about which the workers should be informed, preferably through written contracts (see Article 7 of Convention No. 189). In the case of recruitment of a domestic worker abroad, the worker should receive this information before crossing national borders (see Article 8 of Convention No. 189). Where employer-provided accommodation and food are conceptualized as part of the remuneration, laws should also ensure that such payments are only permitted under strict conditions (see section 8.2.2).

EXAMPLES**PROVISION OF ACCOMMODATION AND FOOD**

In **Austria**, the Act Governing Domestic Help and Domestic Employees of 1962, section 4, provides as follows:

(1) If the employee resides in the household and is assigned a separate [room] of his/her own, such room shall comply with the health, construction and fire regulations and shall be designed so as not to harm the employee's morals; it shall be possible to heat such room during the period when outdoor temperatures require heating, also to lock it from in- and outside, and it shall have the requisite fittings, including, in particular, a cupboard with a lock.

(2) If the employee cannot be assigned a separate living room of his/her own but is only given a bed, the provisions of paragraph (1) above shall apply to the room in which such bed is placed; except that it is only necessary to make provision for locking such room from inside.

(3) Employees whose compensation also includes the board shall be given healthy and adequate food which generally corresponds to the food given to the adult healthy family members.

In the **Plurinational State of Bolivia**, the Household Worker's Act, 2003, in article 21, includes obligations of the employer as regards accommodation and food:

The employer shall be obliged to:

...

(b) provide those workers living in the household in which they perform services with: adequate and hygienic accommodation; access to a toilet and shower for personal hygiene; the same food as the employer ...

In **Uruguay**, the Ministry of Labour and Social Welfare Decree of 25 June 2007, issued under Act No. 18.065, regulates employer-provided accommodation and food as follows:

Section 11. (Right to food and accommodation). *Any employer who hires staff to carry out domestic work on a "live-in" basis shall provide food and accommodation.*

The food shall be wholesome and sufficient, and shall include, as a minimum, breakfast, lunch and dinner, in accordance with the practices and customs of the household. The accommodation shall be private, furnished and hygienic.

In **Singapore**, legislation contains detailed obligations for employers of migrant domestic workers. The Employment of Foreign Manpower (Work Passes) Regulations, first schedule, part I, section 4, provide as follows:

The employer shall be responsible for and bear the costs of the foreign employee's upkeep and maintenance in Singapore. This includes the provision of adequate food, as well as medical treatment. ... The employer shall also provide acceptable accommodation for the foreign employee. Such accommodation must be consistent with any written law, regulation, directive, guideline, circular or other similar instruments issued by the Government of Singapore.

In **Hong Kong, China**, the Standard Employment Contract for domestic workers recruited from abroad stipulates an obligation on the part of the employer to provide food and lodging free of charge, although instead of providing food, an allowance can be paid. The Schedule of Accommodation and Domestic Duty attached to the contract, sets forth a minimum standard of decency in regard to accommodation provided, including examples of unsuitable accommodation ("sleeping on made-do beds in the corridor with little privacy and sharing a room with an adult/teenager of the opposite sex").¹ The nature and size of the accommodation and related facilities have to be specified on the schedule, which is to be signed by both parties.

Note: The standard employment contract is available at: <http://www.immd.gov.hk/ehhtml/id407form.htm>

EXAMPLES

DOMESTIC WORKERS' RIGHT TO PRIVACY OF COMMUNICATION

Ireland's Code of Practice for Protecting Persons Employed in Other People's Homes, section 5.2.1, protects the privacy of the domestic worker's personal telephone calls and personal and permits employer surveillance of the workplace only if agreed upon in the written terms and conditions of employment provided by the employer :

Where an employer intends to conduct surveillance of the workplace in the home, a statement to this effect must be included in the statement of terms and conditions of employment specified at point 5.1 above. Searches of the employee's personal belongings may only be conducted where such permission to search is provided for in the written statement of terms and conditions of employment. Such searches shall be exceptional and conducted in the employee's presence. The permission to search in accordance with the written statement of terms and conditions of employment does not extend to reading the employee's personal mail or listening in on personal phone calls.

Like any other workers, domestic workers have the right to have their working hours limited.⁶¹ Working time regulation is indispensable in ensuring this right, given that some employers may expect domestic workers to be at their disposal at all times, particularly where the workers reside in the household for which they work (“live-in workers”). Since domestic workers often provide care for children, the sick or the elderly, appropriate working time regulation is a tool to ensure that such services do not involve excessively long hours. Limitation of working hours is a means of protecting the domestic worker’s health, as well as her or his ability to maintain a work–life balance.

Where regulation of working time is absent, domestic workers may not be fairly or consistently compensated for their work. Regulating working time creates transparency regarding the remuneration of domestic workers and is crucial for avoiding both the intentional and the inadvertent exploitation of domestic workers. Delineating hours of work from non-work time also contributes to ensuring the worker’s freedom of movement and participation in trade union activities.⁶²

The heterogeneity of tasks covered by domestic work and the fact that some tasks may have to be performed outside and beyond regular hours of work make regulation in this area complex. In order to limit hours of work effectively, legislative and regulatory instruments should address these complexities in a clear and comprehensive manner.⁶³

Convention No. 189 emphasizes the importance of setting standards on hours of work, as well as overtime, daily and weekly rest, paid annual leave, and standby periods, with the aim of achieving levels of protection for domestic workers equal to those enjoyed by other workers. In this regard, the Convention stresses the need to take into account the characteristics of domestic work – which may vary from country to country – in the design of such regulations. Recommendation No. 201 provides further guidance on working time.⁶⁴

.....
⁶¹ Universal Declaration of Human Rights, Article 24.

⁶² Article 9(b) of Convention No. 189 requires measures to ensure that live-in domestic workers are not obliged to remain in the household or with household members during periods of daily and weekly rest or annual leave.

⁶³ Further information and guidance on regulating working time for domestic workers can be found in D. McCann and J. Murray: *The legal regulation of working time in domestic work*, Conditions of Work and Employment Series No. 27, (Geneva, ILO, 2011).

⁶⁴ Relevant provisions are cited throughout this chapter.

Convention No. 189, Article 10

1. *Each Member shall take measures towards ensuring equal treatment between domestic workers and workers generally in relation to normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave in accordance with national laws, regulations or collective agreements, taking into account the special characteristics of domestic work.*
2. *Weekly rest shall be at least 24 consecutive hours.*
3. *Periods during which domestic workers are not free to dispose of their time as they please and remain at the disposal of the household in order to respond to possible calls shall be regarded as hours of work to the extent determined by national laws, regulations or collective agreements, or any other means consistent with national practice.*

7.1. NORMAL HOURS OF WORK

Regulating “normal hours of work” by determining daily and weekly limits on hours worked is an important and widely recognized method of ensuring that the workers concerned enjoy this right. The notion of “normal working hours” refers to a maximum number of hours worked over a specified period of time, beyond which overtime standards apply.⁶⁵

EXAMPLES**LIMITS ON NORMAL HOURS OF WORK**

In **France**, the National Collective Agreement of Employees of Individual Employers, article 15(a) sets the normal work hours for domestic workers at 40 per week.

In **Kazakhstan**, the Labour Code provides, at section 215(1) that *“The working time and rest time duration standards set by this Code shall apply to domestic staff”*. Accordingly, amongst other working time rules, normal working hours must not exceed 40 hours per week (section 77) and eight hours a day (section 82).

.....
⁶⁵ “Normal working hours” are thus to be distinguished from the work schedule agreed between employers and workers, which determines how hours of work are arranged or distributed over the day or week. See also the Reduction of Hours of Work Recommendation, 1962 (No. 116), which provides at Paragraph 11 as follows: “Normal hours of work shall mean, for the purpose of this Recommendation, the number of hours fixed in each country by or in pursuance of laws or regulations, collective agreements or arbitration awards, or, where not so fixed, the number of hours in excess of which any time worked is remunerated at overtime rates or forms an exception to the recognized rules or custom of the establishment or of the process concerned.”

In **Portugal**, the Legislative Decree establishing the legal regime for employment relationships arising out of contracts for domestic work, DL 235/92 of 24 October 1992, article 13(1) and (3), sets total weekly hours for domestic workers at 44 per week and additionally permits the required weekly hours of work to be achieved through an average over different weeks.

In the **Russian Federation**, article 305 of the Labour Code of 2002, which applies to domestic workers, provides that the working time and schedule are defined upon agreement by the worker and the employer (physical person). However, the duration of the working week cannot exceed the normal weekly hours established by the Labour Code.

South Africa's Sectoral Determination 7, section 10, regulates the normal hours of domestic workers daily and weekly, but additionally regulates maximum hours worked per day in accordance with the number of days worked per week:

An employer may not require or permit a domestic worker to work more than (a) 45 hours in any week; and (b) nine hours on any day if the domestic worker works for five days or less in a week; or (c) eight hours in any day if the domestic worker works on more than five days in any week.

The **United Republic of Tanzania's** Employment and Labour Relations Act, section 19(1), which covers domestic workers, provides that

the maximum number of ordinary days or hours that an employee may be permitted or required to work are: (a) six days in any week; (b) 45 hours in any week; and (c) nine hours in any day.

Uruguay's Act No. 18.065, article 2, establishes that

the hours of work of domestic workers shall be limited to a legal maximum of eight hours a day and 44 hours a week.

7.2. OVERTIME

In order for provisions in regard to normal hours of work to provide realistic protection to domestic workers, attention should be given in legislative and regulatory instruments to establishing criteria and limitations regarding overtime.

7.2.1. LIMITATIONS ON THE AMOUNT OF OVERTIME

One important aspect of the legislative regulation of overtime worked by domestic workers is the establishment of a maximum number of permissible overtime hours. In some cases, such regulation exists in generally applicable legislation that covers domestic workers, while in other cases provisions regarding overtime for domestic workers are developed in legislation that specifically relates to domestic work.

EXAMPLES
LIMITING THE AMOUNT OF OVERTIME WORKED

France's national collective agreement covering domestic work, section 15(b)(3), limits overtime to no more than ten hours in any one-week period and to an average of eight hours per week in any consecutive 12-week period.

Under **South Africa's** Sectoral Determination 7, section 11, an employer may not require or permit an employee to work more than 12 hours, including overtime, in any day or to work in excess of 15 hours of overtime in any week.

Austria's Federal Act Governing Domestic Help and Domestic Employees, section 5(5), provides that *"The [normal] working hours as provided ... above may be exceeded in exceptional cases only."*

An important feature of legislative provisions regulating overtime is the consensual nature of overtime. However, some laws also allow employers to require workers to do overtime work in emergency situations, within precisely defined limits.

EXAMPLE
OVERTIME IN EMERGENCIES

Finland's Act on the Employment of Household Workers (951/1977), section 8, permits departure from normal hours of work as follows:

When an accident, sudden case of illness or other similar, unforeseeable event in the employer's household, has put or seriously threatens to put life, health or property at risk, workers can be required to carry out emergency work necessary in the circumstances outside the regular working hours On any one occasion, emergency work is allowed during a period not exceeding two weeks and for a time not exceeding 20 hours.

Notably, Finland's Act requires employers who demand emergency work of the domestic worker to notify the competent occupational safety and health authority immediately in writing of the extension of working hours and of its cause, scale and probable duration. Moreover, the Act provides that such authority may limit or discontinue the emergency work after investigation. In so doing, this legislation recognizes and attempts to minimize the negative impact of excessive hours on the health of domestic workers, while also recognizing the need for emergency work in some cases.

7.2.2. COMPENSATION

In addition to regulating the amount of overtime, legislation should provide a scheme of compensation. Often, States establish overtime compensation schemes that require rates of pay in excess of wages received for normal hours of work or for compensation in the form of time off or some combination of time off and pay.

EXAMPLES

COMPENSATION FOR OVERTIME WORK

France's National Collective Agreement of Employees of Individual Employers, section 15(b)(3) provides for compensation or time off at two different increased rates, according to the amount of overtime hours worked:

[Overtime] will be compensated in the form of remuneration or time off, at an increased rate of 25 per cent (for the first eight hours) and 50 per cent (for overtime beyond eight hours).

Austria's Federal Act Governing Domestic Help and Domestic Employees, section 5(5) provides as follows:

If no compensatory period of rest is granted for [such] excessive working hours within the next two calendar weeks, a special payment shall be due for such additional working hours. The payment shall be the remuneration for these working hours plus a surcharge amounting to the applicable minimum rates.

South Africa's Sectoral Determination 7, part D, section 12, provides for monetary compensation or for a combination of monetary compensation and time off on the agreement of the parties:

(1) An employer must pay a domestic worker at least one and one-half times the domestic worker's wage for overtime worked.

(2) Despite sub-clause (1), an agreement may provide for an employer to

(i) pay a domestic worker not less than the domestic worker's ordinary wage for overtime worked and grant the domestic worker at least 30 minutes' time off on full pay for every hour of overtime worked; or

(ii) grant a domestic worker at least 90 minutes' paid time off for each hour of overtime worked.

7.2.3. RECORD KEEPING

Keeping track of a domestic worker's overtime hours is critical to the effective implementation of overtime limitations established by law and ensuring that domestic workers are fairly compensated for any extra hours worked. Thus, legislation that includes a requirement for employers to document the domestic

worker's work schedule as well as any extra hours worked is an important component of regulating the hours of domestic workers. Such provision can also provide that these records are accessible to the worker and the authorities charged with supervising compliance with the legislation, such as labour inspectorates.

Recommendation No. 201, Paragraph 8(1)

Hours of work, including overtime and periods of standby consistent with Article 10(3) of the Convention, should be accurately recorded, and this information should be freely accessible to the domestic worker.

EXAMPLES

KEEPING RECORDS OF OVERTIME HOURS WORKED

Finland's Act on the Employment of Household Workers, section 31, requires the employer keep track of extra hours worked by domestic workers:

Employers shall draw up a work schedule indicating the beginning and end of working hours, the break ... and the weekly rest period.

Employers shall keep a separate register on any emergency work and overtime and the increased wages paid on them. Any Sunday work and the increased wages paid on it, and any work performed during weekly rest period and the resulting reduction in regular working hours or separate remuneration paid for it must also be recorded in the register.

The work schedule and register referred to in this section must be kept available for inspection by the worker and, on request, made available for inspection by the occupational safety and health authority. Employers must on request provide the worker or his or her representative with a written report on the records concerning the workers in the said register.

7.3. REST PERIODS AND BREAKS

Regulation of rest periods and break is also important in providing decent working conditions for domestic workers, complementing the setting of normal hours of work and the regulation of overtime discussed above.

7.3.1. DAILY AND WEEKLY REST

A period of daily rest is an extended rest within each 24 hours, while weekly rest is a longer rest period, to be enjoyed on a fixed day in every seven-day period. Convention No. 189 addresses daily and weekly rest in Article 10(1) and (2), while Recommendation No. 201 gives further guidance on weekly rest. Indeed, working time legislation in many countries contains provisions setting out minimum hours of daily and weekly rest for domestic workers.

Recommendation No. 201, Paragraph 11(2)

The fixed day of weekly rest should be determined by agreement of the parties, in accordance with national laws, regulations or collective agreements, taking into account work exigencies and the cultural, religious and social requirements of the domestic worker.

EXAMPLES**SETTING MINIMUM HOURS FOR DAILY AND WEEKLY REST**

Ireland's Code of Practice for Protecting Persons Employed in Other People's Homes, section 5.1, incorporates by reference the generally applicable rest period requirements for all workers, as stated in the Organisation of Working Time Act of 1997, thereby conferring on domestic workers an equal entitlement to periodic rest.

South Africa: Sectoral Determination 7, section 16, regulates daily and weekly rest periods as follows:

- (1) *An employer must grant a domestic worker*
 - (a) *a daily rest period of at least twelve consecutive hours between ending work and starting work the next day;*
 - (b) *[a] weekly rest period of at least 36 consecutive hours which, unless otherwise agreed, must include a Sunday.*
- (2) *A daily rest period in terms of sub-clause (1)(a) may, by written agreement, be reduced to ten hours for a domestic worker*
 - (a) *who lives at the workplace ... ; and*
 - (b) *whose meal interval lasts for at least three hours.*

Austria: The Federal Act Governing Domestic Help and Domestic Employees, section 5(3) and (4), provides differing rest periods for live-in and live-out domestic workers but, in both cases, requires that the rest period include the hours from 9 p.m. to 6 a.m. (More protective rest periods are granted to workers under 18 years.)

- (3) *Employees residing in the employer's household who have completed their 18th year of age shall be granted a period of rest of at least 10 hours which period shall include the time between 9 pm and 6 am ...*
- (4) *Employees not residing in the employer's household who have completed their 18th year of age shall be granted a period of rest of at least 13 hours, which period shall include the time between 9 pm and 6 am.*

In **Spain**, Royal Decree 1620/2011, in article 9(4) provides rules regarding daily rest: *A worker shall have a minimum of 12 hours of rest between the end of one working day and the start of the next. The rest periods for live-in employees may be reduced to ten hours, with the difference [between 12 hours and the actual rest period] to be recouped within a period of four weeks.*

Live-in household workers shall be allowed at least two hours per day for main meals, and this time shall not count as working time.

Uruguay's Act No. 18.065 provides for 36 hours of weekly uninterrupted rest and at least ten hours of rest between work days and specifies that live-in domestic workers must have a minimum of nine hours of uninterrupted rest at night (section 5).

In order to be effective in practice, working time standards applicable to domestic workers may need to provide for the grounds on which work may be performed during periods of daily and weekly rest on an exceptional basis.

Recommendation No. 201, Paragraph 12

National laws, regulations or collective agreements should define the grounds on which domestic workers may be required to work during the period of daily or weekly rest and provide for adequate compensatory rest, irrespective of any financial compensation.

In some States, legislation thus permits derogation from prescribed rest periods in special limited circumstances or by agreement between the parties and, in general, including monetary compensation, compensatory time off or both.

EXAMPLES

DEFINING THE CIRCUMSTANCES IN WHICH WORK MAY BE DONE DURING DAILY AND WEEKLY REST PERIODS

Austria's Federal Act Governing Domestic Help and Domestic Employees, section 5(6), provides for departures from daily rest and break requirements in exceptional or urgent circumstances and requires monetary compensation, paid time off or both:

(6) The breaks and periods of night's rest as provided in paragraphs (3) and (4) above may be interrupted only when the employee's work is required during such periods for urgent, undeferrable or unpreventable reasons. A surcharge is due for such work, regardless of whether or not time is granted to compensate for the reduction in the breaks or periods of night's rest.

Finland's Act on the Employment of Household Workers, Section 11, provides that the parties may consent to deviate from weekly rest requirements, on an exceptional basis, as long as specified monetary compensation or compensatory reduction in hours is provided:

If a weekly rest period is temporarily shortened with the worker's consent in cases other than emergency work, the time by which the rest period was reduced must be deducted from the worker's regular working hours no later than the next calendar month or, with the worker's consent, remunerated as provided below [at double the normal rate].

In some cases it has been considered appropriate to allow the weekly rest entitlement to be accumulated over periods of two weeks.

Recommendation No. 201, Paragraph 12(3)

Where national laws, regulations or collective agreements provide for weekly rest to be accumulated over a period longer than seven days for workers generally, such a period should not exceed 14 days for domestic workers.

EXAMPLE

PERMITTING WEEKLY REST PERIODS TO BE ACCUMULATED

South Africa's Sectoral Determination 7, section 16, while providing for 36 hours of weekly rest, also permits some specified deviation from this requirement by agreement between the parties, stating that "... an agreement in writing may provide for a rest period of at least 60 consecutive hours every second week". Compensation for work on Sundays or public holidays that occurs on an exceptional basis is provided for under sections 17 and 18.

7.3.2. BREAK TIME

In ensuring the domestic worker's right to decent work, legislative provisions for break time during periods of work are also essential. The number and length of rest breaks should be determined with due regard to the number of continuous hours worked. The purpose of breaks is not only to ensure that workers can take meals, but also to ensure appropriate rest, which is particularly relevant in the case of overtime hours.

Recommendation No. 201, Paragraph 10

Members should take measures to ensure that domestic workers are entitled to suitable periods of rest during the working day, which allow for meals and breaks to be taken.

EXAMPLES

NUMBER AND LENGTH OF REST BREAKS

Zimbabwe's Labour Relations (Domestic Workers) Employment Regulations, 1992, section 5(3), provides as follows:

No employer shall require or permit a domestic worker to work a continuous period of six and a half hours without a meal-break of at least thirty minutes, a lunch break of at least one hour, and a tea break of at least fifteen minutes.

South Africa's Sectoral Determination 7, section 15(1), provides all domestic workers with a break period, stating

[a]n employer must give a domestic worker who works continuously for more than five hours a meal interval of at least one continuous hour.

Austria's Federal Act Governing Domestic Help and Domestic Employees, section 5(3) provides for a total of three hours of break time, including two uninterrupted periods of 30 minutes each for meals for live-in workers, while for live-out workers section 5(3) provides for breaks dependent on total daily hours:

The daily working hours shall, ... "if they exceed 4.5 hours, be interrupted by one or more predefined breaks of a minimum duration as specified below. Such breaks shall be at least:

<i>for 4.5 to 6 working hours</i>	<i>20 minutes,</i>
<i>for 6 to 8 working hours</i>	<i>30 minutes,</i>
<i>for 8 to 9 working hours</i>	<i>45 minutes,</i>
<i>for more than 9 working hours</i>	<i>60 minutes.</i>

In some States, derogation from the prescribed break time is permitted in special limited circumstances or by agreement between the parties and where monetary compensation, compensatory time off, or both, are provided.

EXAMPLE

DEROGATION FROM PRESCRIBED BREAK TIMES

South Africa's Sectoral Determination 7, Section 15, paragraph 2 strictly limits deviations from the domestic worker's break/meal time:

During a meal interval, a domestic worker may be required or permitted to perform only duties that cannot be left unattended and cannot be performed by another domestic worker.

Legislation may also specify whether breaks during the working day are considered working time and whether they require remuneration. Breaks during which the worker is required to remain available for work should be part of working time and be remunerated.⁶⁶

⁶⁶ See ILO: *Hours of work: From fixed to flexible*, General Survey by the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution), Report 93 III (Part 1B), Geneva, 2005, para. 47.

EXAMPLES
DEFINING BREAK TIME

Finland's Act on the Employment of Household Workers, section 6, provides that *breaks of a minimum of one hour during which the worker is released from his or her duties and allowed to leave the workplace freely are excluded [from remunerated working time].*

In **Malta**, The Domestic Service Wages Council Wage Regulation Order 1976, as amended, defines *"hours of work"* as *the time on any day during which employees are at the disposal of the employer, exclusive of the intervals allowed for meals and rest.*

7.4. NIGHT WORK

Night work is a reality for many domestic workers. Regulating night work goes hand in hand with statutory daily rest period requirements in protecting domestic workers from excessive hours and insufficient rest.

A domestic worker may perform night work on an exceptional basis. For instance, this may occur in case of illness of household members, or absence of parents, or other unforeseen situations. These situations are usually addressed through allowing exceptions, under strict conditions, to the daily rest period (see section 7.3.1 above). As regards situations where the domestic worker's normal duties are performed at night, Recommendation No. 201 provides for measures comparable to those aimed at avoiding protecting workers generally from the negative effects of standby work, that is, measures to establish a maximum number of permitted hours of night work, as well as rules regarding rest and remuneration.⁶⁷

7.4.1. LIMITATIONS ON THE PERFORMANCE OF NIGHT WORK

Several countries have incorporated limits on night work into legislative and regulatory instruments specifically concerned with domestic workers. In some cases, a worker's consent is required, or, where no such requirement exists, the law places strict limitations on the circumstances in which such work may be imposed.

⁶⁷ Recommendation No. 201, Paragraph 9(2).

EXAMPLES
LIMITATIONS ON NIGHT WORK

Zimbabwe's Labour Relations (Domestic Workers) Employment Regulations, 1992, section 5(2), provides that

a domestic worker residing outside the premises of the employer shall not be required to work beyond 7:00 p.m.

Finland's Act on the Employment of Household Workers, section 9, limits work between the hours of 11 p.m. and 6 a.m., requiring the worker's consent, except in cases of emergency:

Employers can require work to be carried out between 6.00 and 23.00. ...

At other times of day [that is, during the night], workers can be required to work only in the following cases:

- (1) to carry out emergency work ... ;*
- (2) with the worker's consent, in a stand-by function or to carry out related work ... ; or*
- (3) with the worker's consent, temporarily if required for a compelling special cause.*

France's National Collective Agreement of Employees of Individual Employers recognizes certain kinds of night work performed by domestic workers as incompatible with full-time day work. Thus, articles 3(b)(7) and 6(b)(1), refer to the circumstances in which a domestic worker who has no private room at the workplace may be charged with remaining with a sick person during the night in a situation where intervention may be needed at any moment. The provisions state that such employment is not compatible with a full-time position during daytime hours.

7.4.2. COMPENSATION

Standards on night work applicable to domestic workers often provide for compensation specific to the assignment of night work, including but not limited to monetary compensation, time off or both.

EXAMPLE
COMPENSATION FOR NIGHT WORK

South Africa's Sectoral Determination 7, section 13, requires a written agreement regarding night work, and includes provision for an allowance agreed between the employer and the worker, as well as transportation to and from the domestic worker's residence if it is not the home of the employer. If the employer requires the domestic worker to perform work for a period of

longer than one hour after 22:00 pm and before 6:00 am the next day at least five times per month or 50 times per year,

the employer must comply with the detailed provisions on night work contained in sections 17(3) and (4) of the Basic Conditions of Employment Act.

7.5. STANDBY WORK

Domestic workers, particularly those who take care of young children or sick or disabled persons, may be asked to be available for work at times other than ordinary work hours. Such periods, during which the worker remains at the disposal of the employer, are commonly referred to as standby or on-call periods. The development of a legislative framework for compensating and limiting these hours is an important part of closing the gaps in protection regarding domestic workers' hours of work. Legislative provisions for standby periods for domestic workers thus acknowledge the need for flexibility that may be particular to certain aspects of domestic work, while protecting domestic workers from abuses of this flexibility that result in "never-ending" hours of work.

Convention No. 189, Article 10(3)

Periods during which domestic workers are not free to dispose of their time as they please and remain at the disposal of the household in order to respond to possible calls shall be regarded as hours of work to the extent determined by national laws, regulations or collective agreements, or any other means consistent with national practice.

Recommendation No. 201, Paragraph 9(1)

With respect to periods during which domestic workers are not free to dispose of their time as they please and remain at the disposal of the household in order to respond to possible calls (standby or on-call periods), Members, to the extent determined by national laws, regulations or collective agreements, should regulate:

- (a) the maximum number of hours per week, month or year that a domestic worker may be required to be on standby, and the ways they might be measured;*
- (b) the compensatory rest period to which a domestic worker is entitled if the normal period of rest is interrupted by standby; and*
- (c) the rate at which standby hours should be remunerated.*

Aspects of regulation of standby periods include the following: (1) identifying certain types of work or services in respect to which standby periods are permitted; (2) determining the level of remuneration; (3) limiting the number of standby periods; and (4) requiring a written agreement between the employer and the worker regarding on-call periods. In some cases, States have legislative provisions regulating standby hours specifically in the context where those

hours occur during the night. In other cases, legislation may limit standby hours altogether to hours worked at night.

EXAMPLES

REGULATING STANDBY HOURS

In the **Czech Republic**, the Labour Code No. 262/2006, section 95, requires the agreement of both parties for the performance of standby and provides that work performed during a standby period should be paid:

(1) The employer may only require standby from his [or her] employee if standby has been agreed with this employee. The employee is entitled to remuneration [of at least 10 per cent of his average earnings, unless it has been agreed otherwise in the relevant collective agreement] for his [or her] standby.

(2) Where an employee performs work during standby, he [or she] is entitled to a wage or salary ... Work performance during standby above normal weekly working hours is overtime work

In **Finland**, the Act on the Employment of Household Workers, section 6, provides as follows:

In cases where workers are obliged by contract to remain at home in order to be available if they are called to work comprising child minding or care of a sick family member or another member of the household, no less than half such stand-by time shall count as working hours or such stand-by shall be remunerated [at at least half the worker's basic wage payable for an equal number of hours].

In **France**, fairly detailed regulation in regard to "hours of responsible presence" of domestic workers taking care of children, the elderly and the disabled is set out in the National Collective Agreement of Employees of Individual Employers. "Hours of responsible presence" are defined as follows:

Hours of responsible presence are those during which the employee can use his or her time for himself or herself, while being ready to intervene if necessary.

In terms of remuneration, one hour of responsible presence counts for two-thirds of an ordinary hour (Article 3(a)). Article 6 addresses the situation in which a domestic worker is asked to sleep at the employer's house in order to be available during the night if needed ("night presence"):

Night presence, compatible with a daytime job, refers to the obligation for the employee to sleep on site in a separate room, not actually working, but being ready to intervene if necessary as part of his or her duties. Night presence cannot exceed 12 hours. It shall not be requested more than five consecutive nights, except in exceptional cases.

Night presence is remunerated at not lower than one-sixth of the normal rate of pay, depending on the number and nature of the interventions needed. If several interventions are needed each night, all night hours are considered hours of responsible presence. Night presence and hours of responsible presence are to be agreed upon in writing.

In **Spain**, Royal Decree 1620/2011 regulates standby (“Tiempos de presencia”) in Article 9(1) and 9(2) as follows:

(1) Normal weekly hours of work shall not exceed 40 hours of actual work, not including standby time, the periods during which an employee remains at the employer’s disposal and which may be agreed between the parties. The work schedule shall be agreed between the worker and the employer.

Once the daily hours of work and any agreed standby hours have been completed, a worker shall not be obliged to remain in the household.

(2) Provided that the maximum hours of work and minimum rest periods are observed, the length of standby periods, and any remuneration or compensation for such periods, shall be agreed between the parties. In any case, except for where it has been agreed that the worker will be compensated with rest periods in lieu, standby time shall not exceed an average of 20 hours per week in any given month, and shall be remunerated at least at the same rate as normal hours of work.

South Africa’s Sectoral Determination 7, section 14, defines standby in terms of work performed at night. Workers can only be called upon for work which is urgent:

(1) ... [Standby] means any period between 8:00 pm and 6:00 am the next day when a domestic worker is required to be at the workplace and is permitted to rest or sleep but must be available to work if necessary.

(2) An employer may only require or permit a domestic worker to be on standby if it is agreed in writing and if the domestic worker is compensated by the payment of an allowance of at least R20,00 per shift.

(3) An employer may not require or permit a domestic worker to be on standby more than five times per month or 50 times per year.

(4) An employer may only require or permit a domestic worker to perform work which is required to be done without delay [while on standby]

By expressly defining standby hours as night hours, South Africa’s legislation prevents standby hours from undercutting limitations and compensation requirements pertaining to normal hours of work. Where the work to be performed during the standby period exceeds three hours, overtime pay or compensatory time off is due (section 14(4)), in addition to the allowance per standby shift.

7.6. LEAVE

Annual leave and the right to enjoy public holidays are further important elements of working time regulation that should apply to domestic workers. Such leave provides domestic workers not only with necessary rest and leisure time, but also with an opportunity to attend to family responsibilities and achieve work–life balance more generally. Such leave periods may have particular importance for international and internal migrants who leave behind their families. The subsections below also provide some examples of how States have addressed sick leave and maternity leave.

7.6.1. PAID ANNUAL LEAVE

Legislative provisions regarding paid annual leave should specify the minimum duration of paid leave to which domestic workers are entitled, which should not be less than that the annual leave entitlements enjoyed by other workers.⁶⁸

In addition to determining the length of paid annual leave, legislation may regulate when the leave entitlement begins, when the leave may be taken, the amount of leave which may be taken in a continuous block, and/or other modalities regarding the granting of leave. Annual leave provisions may also specify that leave periods are to be taken and that the employer may not request work to be performed during annual leave. They may also make it clear that time spent with the employer's family at the employer's request does not count as annual leave.

Recommendation No. 201, Paragraph 13

Time spent by domestic workers accompanying the household members on holiday should not be counted as part of their paid annual leave.

.....
⁶⁸ See Article 10(1) of Convention No. 189.

EXAMPLES

REGULATING ANNUAL LEAVE

In **Belarus**, Article 312(3) of the Labour Code of 1999 states that domestic workers are entitled to annual paid leave of at least 21 calendar days under general conditions established by the Labour Code (article 155).

France's National Collective Agreement of Employees of Individual Employers, article 16, provides for four weeks of paid annual leave accrued in monthly intervals, and imposes certain conditions regarding the timing and continuity of leave:

(a) Acquisition

The right to paid annual leave is granted to employees (full-time or part-time) who, during the reference year (1 June of the previous year to 31 May of the current year), have been employed by the same employer for a period equivalent to at least one month of presence at work.

(b) Length of leave

The length of paid annual leave is two-and-a-half days per month spent at work (or per four-week period or period equivalent to 24 days), regardless of the usual work schedule. ...

Unless otherwise agreed between the parties, the starting date of leave is determined by the employer, with sufficient notice (at least two months) to be specified in the contract, in order to allow the employee to organize her or his holidays.

(c) Taking of leave

Annual leave must be taken.

A leave period of two consecutive weeks (or 12 consecutive working days) should be granted during the period from 1 May to 31 October, unless otherwise agreed between the parties.

When the rights acquired amount to less than 12 working days, leave must be taken in full and continuously.

South Africa's Sectoral Determination 7, section 19 provides for paid leave to be granted either annually or at other specified intervals on agreement between the parties, while requiring that the leave be granted in one continuous block if the worker so requests:

(1) An employer must grant a domestic worker

(a) at least three weeks annual leave on full pay in respect of each 12 months of employment (the "annual leave cycle");

(b) by agreement, at least one day of annual leave on full pay for every 17 days on which the domestic worker worked or was entitled to be paid; or

(c) by agreement, one hour of annual leave on full pay for every 17 hours during which the domestic worker worked or was entitled to be paid.

...

(4) An employer must grant

(a) at least three weeks annual leave on full pay in respect of each 12 months of employment (the "annual leave cycle") not later than six months after the end of the annual leave cycle or the year in which the leave was earned;

(b) the leave earned in one year over a continuous period, if requested by the domestic worker.

...

(7) An employer may not require or permit a domestic worker to work for the employer during any period of annual leave.

(8) An employer may not pay a domestic worker instead of granting paid leave in terms of the clause except on termination of employment in terms of clause 25.

In **Turkmenistan**, pursuant to article 292 of the Labour Code of 2009, the working time and the annual paid leave are defined upon agreement by the worker and the employer. The duration of the paid annual leave cannot be less than that established by the Labour Code.

Provisions clarifying the modalities for payment of compensation during periods of annual leave are also appropriate. For instance, the provisions may require compensation to be paid to the domestic worker prior to the commencement of the leave or may provide for an allowance or bonus. In addition, for domestic workers who receive certain forms of payment in kind from which they do not benefit during their leave period, the payment of the equivalent in cash may be required as well.

EXAMPLES

MODALITIES OF PAYMENT DURING ANNUAL LEAVE PERIODS

Zimbabwe's Labour Relations (Domestic Workers) Employment Regulations, 1992, requires that the domestic worker receive payment for the leave period prior to departure, stating that

[a] domestic worker proceeding on vacation leave shall be paid his [or her] current wages for the period of such leave prior to his [or her] proceeding on leave.

In **France**, article 16(e) of the national collective agreement that covers domestic workers states:

Leave periods are paid when taken ... Benefits in kind, to which the employee is not entitled during his leave, will not be deducted from the salary.

Austria's Act Governing Domestic Help and Domestic Employees, section 9(2) similarly provides that during annual leave, workers are entitled to cash payments for in-kind benefits which they do not enjoy during the leave. The same section provides that, in addition to the normal monetary remuneration, a holiday bonus is to be given to the domestic worker in an amount varying according to length of service:

... This holiday bonus shall be double the monthly monetary remuneration if the employee's service counting towards the holiday entitlement is less than 20 years or 2.5 times the monthly monetary remuneration if such period exceeds 20 years.

7.6.2. PUBLIC HOLIDAYS

Ensuring that public holidays enjoyed by workers generally also apply to domestic workers is not only in line with other efforts to ensure equal access of domestic workers to decent working conditions, but also constitutes a recognition that these workers are members of the societies in which they live. In some countries, the legislation covering domestic workers provides the right to public holidays while expressly recognizing that the domestic worker may consent to work during such holidays. In such cases, legislation often provides for specified monetary compensation above the worker's normal wage or for compensatory time off.

EXAMPLES
ENTITLEMENT TO PUBLIC HOLIDAYS

Zimbabwe's Labour Relations (Domestic Workers) Employment Regulations, 1992, provides in section 14:

(1) A domestic worker shall be granted leave of absence on public holidays and shall be paid his [or her] current daily wage for every public holiday:

Provided that where a domestic worker consents to work on a public holiday, he [or she] shall, in addition to the payment referred to in subsection (1), be paid an allowance in terms of section 8 [Overtime] in respect of the time worked.

(2) Any public holiday worked by a domestic worker may not be set off against or exchanged for a regular work day without the consent of the domestic worker:

Provided that where a domestic worker gives his consent, he [or she] shall be entitled to at least two days off for each public holiday or half of a public holiday worked or a day off for any lesser part of the public holiday worked.

South Africa's Sectoral Determination 7, section 18, similarly provides a scheme of compensation for a domestic worker who agrees to work for all or part of a public holiday:

(1) An employer may not require a domestic worker to work on a public holiday, except in accordance with an agreement.

(2) If a public holiday falls on a day on which a domestic worker would otherwise have worked, an employer must pay a domestic worker ... who does work on the public holiday at least double the daily wage.

(3) If a domestic worker ... works on a public holiday on which the domestic worker would not normally work, the employer must pay that domestic worker an amount equal to

(a) the domestic worker's daily wage; plus

(b) the domestic worker's hourly wage for each hour worked on the public holiday.

(4) An employer must pay a domestic worker for a public holiday on the domestic worker's normal pay day.

7.6.3. SICK LEAVE

Legislative provisions in regard to sick leave may determine the amount of leave provided and define the qualifying requirements for such leave. Temporary absence from work because of illness or injury should not constitute a valid reason for termination of employment.⁶⁹ Social security, including sickness benefits, to ensure income during sick leave should be gradually extended to domestic workers, where this is not yet the case.⁷⁰ As appropriate, the duty to remunerate or provide other forms of support to the worker during sickness may be placed on the employer.

EXAMPLES

ENTITLEMENT TO SICK LEAVE

Austria's Act Governing Domestic Help and Domestic Employees, Section 10, provides as follows:

(1) If, after commencing his/her employment, the employee is prevented from working due to illness (accident) without having caused such prevention intentionally or by gross negligence, the employee shall retain his/her claim for remuneration for a period of up to six weeks. The claim for remuneration shall be prolonged to eight weeks when the employment relationship has already existed for five years; to ten weeks for an employment relationship of 15 years; and to twelve weeks for an uninterrupted employment relationship of 25 years. In each case, the employee shall be entitled to claim half the remuneration for an additional four weeks.

...

(4) If the employee is prevented from working due to an accident sustained at work or an occupational disease within the meaning of the regulations by the statutory accident insurance institution, he/she shall be entitled to continue receiving his/her remuneration for up to eight weeks [right] from the start of the employment relationship. The claim for remuneration shall increase to ten weeks when the employment relationship has lasted uninterrupted for 15 years. ...

Notably, the Act also specifies that in the circumstances referred to in section 10, domestic workers may not be dismissed (see section 11).

⁶⁹ This is envisaged in Article 6(1) of Convention No. 158. In accordance with this Convention, the definition of what constitutes temporary absence from work, the extent to which medical certification is required and possible limitations to the application of the principle set out in Article 6(1) are to be determined by national laws or regulations, collective agreements, arbitration awards or court decisions, or in any other manner consistent with national practice. See Article 6(2) of Convention No. 158 in conjunction with Article 1 of the same Convention.

⁷⁰ See Article 14 of Convention No. 189.

Viet Nam's Labour Code, article 139(2) imposes on the employer a general requirement to provide care for the domestic worker who becomes sick or injured:

An employer must respect the honour, dignity and welfare of a domestic servant and shall be responsible for the provision of care when the person falls ill or is injured in an accident.

In **Zambia**, The Minimum Wages and Conditions of Employment (Domestic Workers) Order, 2011, section 8, provides as follows:

An employer shall grant to a domestic worker leave of absence on full pay ... of not less than two days per month, subject to, and in accordance with, the following conditions:

(a) except on termination of domestic worker's service, the domestic worker shall be entitled to leave only on the completion of six months' continuous service with that employer;

(b) paid holidays and Sundays shall not be included when computing the period of leave; and

(c) the employer shall have the right to give reasonable consideration to the exigencies and interests of the household in agreeing to the dates when such leave may be taken.

7.6.4. MATERNITY LEAVE

The provision of maternity leave has particular importance in the domestic work sector because a large majority of domestic workers are women. The legislation should thus extend the same protection in regard to maternity to domestic workers as is provided to employees in other sectors.⁷¹

While this section focuses on maternity leave, it should be kept in mind that maternity protection for domestic workers should also cover other issues, including protection from discrimination based on pregnancy or maternity (particularly discriminatory dismissal),⁷² and a system of cash benefits for women who are on maternity leave. Convention No. 189 calls for measures ensuring conditions for domestic workers that are not less favourable than those applicable to workers generally, regarding social security protection, including with respect to maternity.⁷³

⁷¹ Convention No. 183 states that the maternity protection measures contained in it should cover all employed women, including those in "atypical forms of dependent work".

⁷² See Convention No. 183, Articles 8 and 9, as well as Convention No. 158, Article 5(d) and (e).

⁷³ See Article 13 of Convention No. 189.

EXAMPLES

ENTITLEMENT TO MATERNITY LEAVE

France's National Collective Agreement of Employees of Individual Employers, article 23, states in regard to maternity, the adoption of a child and parental leave that *“the employee employed an individual benefits from the specific rules laid down by the Labour Code”*.

Zimbabwe's Labour Relations (Domestic Workers) Employment Regulations, 1992, states in article 21(1):

For the avoidance of doubt, every female domestic worker shall, in terms of section 19, of the Labour Relations Act, 1985, be entitled to maternity leave.

South Africa's Sectoral Determination 7, section 22 lays out specific requirements regarding maternity leave afforded to domestic workers, both as to the amount and the timing of such leave:

- (1) *A domestic worker is entitled to at least four consecutive months' maternity leave.*
- (2) *A domestic worker may commence maternity leave*
 - (a) *at any time from four weeks before the expected date of birth, unless otherwise agreed; or*
 - (b) *on a date from which a medical practitioner or a midwife certifies that it is necessary for the domestic worker's health or that of her unborn child.*
- (3) *A domestic worker may not work for six weeks after the birth of her child, unless a medical practitioner or midwife certifies that she is fit to do so.*
- (4) *A domestic worker who has a miscarriage during the third trimester of pregnancy or bears a stillborn child is entitled to maternity leave for six weeks after the miscarriage or stillbirth, whether or not the domestic worker had commenced maternity leave at the time of the miscarriage or stillbirth.*

Notably, South Africa's sectoral Determination 7 also states that the dismissal of an employee on account of her pregnancy, intended pregnancy, or any reason related to her pregnancy, as well as the refusal to permit an employee returning from maternity leave to resume work, is automatically unfair, under the Labour Relations Act, 1995. Such provisions extend discrimination protection to female domestic workers in an area of particular need.

Convention No. 158, in Article 5(e), provides that absence from work during maternity leave cannot constitute a valid reason for termination of employment. This rule is adopted in the labour laws of many countries in all the parts of the world.⁷⁴

⁷⁴ Examples from comparative labour law may be found in EPLex, the ILO Database on employment protection legislation. On this topic, see also Article 8 of Convention No. 183.

7.6.5. OTHER TYPES OF PERSONAL LEAVE

Consideration may also be given to providing for additional paid or unpaid leave for certain life events, such as the marriage, or death, birth, or illness of certain family members, or to attend to urgent family matters more generally. Recommendation No. 201 encourages policies and programmes to address the work–life balance needs of domestic workers and the inclusion of domestic workers in general efforts to reconcile work and family responsibilities.⁷⁵

Burkina Faso's Decree No. 2010-807/PRES/PM/MTSS of 31 December 2010 establishing the working conditions of household employees, section 14, provides for paid personal days not exceeding ten per year for domestic workers with a tenure of more than six months in specified circumstances and where appropriate documentation is provided to the employer.

South Africa's Sectoral Determination 7, section 21, provides for five days of paid "*family responsibility leave*" in the event of childbirth, or illness or death of certain family members for domestic workers with a minimum tenure and who work a threshold number of days per week for the employer.

.....
⁷⁵ See Para. 25(1), (b) and (c).



8.

REMUNERATION

Domestic work is among the lowest paid work in any labour market. It tends to be undervalued and undercompensated, in part because of the fact that it mirrors tasks traditionally performed by female household members without pay and thus is perceived as unskilled and lacking in value.⁷⁶

Domestic workers tend to have little bargaining power regarding the terms and conditions of their employment, including regarding remuneration, and collective agreements are frequently not present. Migrant domestic workers recruited through intermediaries, in particular, are prevented from making their skills and motivation part of the equation. A domestic worker's pay is thus in many cases effectively determined by what the householder is willing to pay.⁷⁷ Moreover, domestic workers may face abusive practices regarding wages, including incomplete or delayed payment.⁷⁸

Legislation addressing minimum wage levels and the protection of wages can play an important role in promoting decent work in the domestic work sector. Convention No. 189 and Recommendation No. 201 contain specific guidance on these issues, supplementing other relevant international labour standards on minimum wage setting⁷⁹ and the protection of wages.⁸⁰

8.1. MINIMUM WAGE COVERAGE

Including domestic workers in minimum wage coverage is one of the means of addressing inappropriately low wages in this sector.

.....
⁷⁶ On this topic see also ILO: *Remuneration in domestic work*, ILO Domestic Work Policy Brief (Geneva, 2011).

⁷⁷ ILO: Decent work for domestic workers, Report IV(1), International Labour Conference, 99th Session, Geneva, 2010, paras 25, 49–50 and 139.

⁷⁸ *Ibid.*, paras 23–24.

⁷⁹ See Convention No. 26, ratified by 103 ILO Members, Convention No. 131, ratified by 51 ILO Members, and the accompanying Recommendation to Convention No. 131, the Minimum Wage Fixing Recommendation (1970), No. 135.

⁸⁰ See Convention No. 95, ratified by 96 ILO Members, and its accompanying Recommendation, the Protection of Wages Recommendation, 1949 (No. 85). Article 2(2) allows for the exclusion of persons employed in domestic service from the application of all or any provision of Convention No. 95. However, where such exclusions have not been notified to the ILO in the member State's first report under Article 22 of the Constitution of the ILO, the ratifying Member is bound to give effect to the Convention's provisions in respect of these workers.

Convention No. 189, Article 11

Each Member shall take measures to ensure that domestic workers enjoy minimum wage coverage, where such coverage exists, and that remuneration is established without discrimination based on sex.

The minimum wage laws of different countries approach minimum wages for domestic workers in different ways. However, two main options can be identified: (1) coverage by a generally applicable national minimum wage rate; and (2) coverage by a sectoral or occupational rate or rates. There are also variations as to the machinery used to set minimum wage rates and as regards the involvement of workers' and employers' organizations. The type of coverage, the machinery for setting and adjusting minimum wage rates, and the criteria for and the actual levels of the rates applicable to domestic workers need to be determined in the context of each particular country.

The mechanism and procedures to set minimum wages covering domestic workers may be the same as those for setting minimum wages applicable to other workers. Some countries with no general minimum wage machinery nevertheless provide for the setting of minimum wages for a limited number of occupations or sectors vulnerable to low pay and lacking collective agreements, domestic work often being one of them (for example, Finland and Switzerland – see below).

Irrespective of the manner in which minimum wage coverage is achieved, it is important to relate wage rates to a specified number of hours (for example, a monthly minimum wage based on 40 hours per week) and to allow for the calculation of rates on an hourly basis. This facilitates compliance with minimum rates where domestic workers are engaged for a few hours by one or more employers, which is often the case.

EXAMPLES**COVERAGE BY A GENERALLY APPLICABLE NATIONAL MINIMUM WAGE**

In the **Plurinational State of Bolivia**, the Household Workers Act of 2003, article 14, provides as follows:

Paid household work shall be remunerated ... at a rate no lower than the national minimum wage, in the case of full-time working hours. Half-time work shall be remunerated at half the national minimum wage. With regard to work performed on a task basis, or for a certain number of hours or days per week, wages shall be calculated on the basis of the national minimum wage, divided by the number of hours worked.

Wages higher than the national minimum wage may also be established by legal agreement.

Overtime shall be remunerated in accordance with the General Labour Act.

In **Spain**, Royal Decree 1620/2011, article 8(1), includes domestic workers in the coverage of the national minimum wage:

The inter-occupational minimum wage, fixed by the Government on an annual basis, also applies to this special employment relationship, in accordance with the terms and conditions set out in the general labour legislation. The minimum wage is understood to refer to full-time work, as defined in article 9(2) of this Royal Decree, and is calculated pro rata if hours of work are less than full time.

This wage may be increased by individual or collective agreement

In **Trinidad and Tobago**, separate rates for certain sectors used to exist, including one for domestic workers. The Minimum Wages Order, 2010, establishes a generally applicable national minimum wage for workers in the country.

In other countries, separate legal enactments set minimum wages for different sectors or occupations, one of them being domestic work (for example, South Africa), while sometimes a single enactment establishes rates for various occupations, domestic work being one of them (for example, Costa Rica). Labour legislation may also bestow legal force on collective agreements that establish remuneration levels, which is an approach relevant for countries where such collective bargaining is taking place in the domestic work sector (for example, France).

EXAMPLES

COVERAGE BY A SECTOR OR OCCUPATIONAL RATE

In **Finland**, Act on the Employment of Household Workers, section 12, provides the following:

If no generally binding collective agreement ... applicable to household work is in force, the Government can approve stipulations concerning minimum wages and other terms and conditions of employment it considers necessary in order to ensure an equitable and reasonable subsistence for household workers.

South Africa's Sectoral Determination 7, section 2, establishes the employer's obligation to pay a wage at least at the level of the prescribed minimum wage. Minimum rates are set for two geographic zones and according to the number of hours worked per week (with separate, proportionally higher rates, for workers below a weekly threshold of 27 hours). Section 3 regulates the periodic adjustments of the minimum wage rates, while section 4 provides rules regarding the calculation of wages.

In **Switzerland**, the Code of Obligations, article 360a, paragraph 1, provides as follows:

Where the wages that are customary for a geographical area, occupation or industry are repeatedly and unfairly undercut within a particular occupation or economic sector and there is no collective employment contract laying down a minimum wage that may be declared universally binding, on application by the tripartite commission as defined in article 360b, the competent authority may issue a fixed-term standard employment contract providing for a minimum wage varied by region and, where applicable, by locality in order to combat or prevent abusive practices.

Relying on article 360a of the Code of Obligations, the Federal Council, issued the Ordinance on the standard contract for workers in the domestic economy of 20 October 2010. The Ordinance fixes four hourly minimum rates applicable to domestic workers (differentiated on the basis of experience and formal qualifications).

8.2. PROTECTION OF WAGES

While minimum wage coverage for domestic workers aims at fair levels of remuneration, wage protection standards have the purpose of ensuring that the remuneration due is properly paid to the worker. Non-payment of wages or late or irregular payment are practices common in the domestic work sector.⁸¹

In addition to matters addressed in the present chapter, encouraging and promoting the formalization of the employment relationship through written contracts is also important for wage protection (see Chapter 3). Setting out in writing wage rates, pay intervals, the method and place of payment and any deductions that the parties have agreed upon contributes to clarifying rights and obligations and facilitating compliance.

Domestic workers may lack protection of their wages because the relevant legal provisions are set out in laws or regulations that exclude domestic workers from their scope.⁸² In order to achieve equal protection under the law, extension of the relevant legal provision to domestic workers should be considered.

⁸¹ See for example, S. Esim and M. Smith: *Gender and migration in Arab states: The case of domestic workers* (Beirut, ILO, 2004).

⁸² See, for example, the ILO Committee of Experts' comments addressed by to the Syrian Arab Republic (Direct Request made in 2007), Lebanon (Direct Request made in 2008) and Turkey (Direct Request made in 2008) in respect to Convention No. 95. In these cases domestic workers were excluded from the Labour Code, which, however, contained the provisions giving effect to the Convention. Direct Requests and observations addressed by the ILO Committee of Experts to ILO Member States can found on the ILO's database on international labour standards at <http://www.ilo.org/global/standards/lang--en/index.htm>.

8.2.1. REGULAR, DIRECT AND FULL PAYMENT

Regulation of pay intervals is a central element of wage protection legislation. Given the problems faced by many domestic workers in this regard,⁸³ legislation should require direct, regular and full payment, in legal tender, and define an upper limit for the length of pay intervals. Pay intervals should not be longer than one month.⁸⁴

Further, legislative provisions can identify permissible methods of payment, that is, payment in cash in an official currency, by bank transfer, bank or postal cheque, or by money order. Limiting the worker in any manner in her or his freedom to dispose of the wage should be prohibited.⁸⁵

Convention No. 189, Article 12(1)

Domestic workers shall be paid directly in cash at regular intervals at least once a month. Unless provided for by national laws, regulations or collective agreements, payment may be made by bank transfer, bank cheque, postal cheque, money order or other lawful means of monetary payment, with the consent of the worker concerned.

EXAMPLES

PROTECTION OF WAGES

In South Africa, the Sectoral Determination 7, section 5, provides as follows:

- (1) *An employer must pay a domestic worker*
 - (a) *in South African currency;*
 - (b) *daily, weekly, fortnightly or monthly; and*
 - (c) *in cash, by cheque or by direct deposit into an account designated by the domestic worker.*
- (2) *Any payment in cash or by cheque must be given to each domestic worker*
 - (a) *at the workplace;*
 - (b) *during the domestic worker's working hours; and*
 - (c) *in a sealed envelope which becomes the property of the domestic worker.*
- (3) *An employer must pay a domestic worker on the normal pay day agreed to by the domestic worker.*

⁸³ ILO: *Decent work for domestic workers*, Report IV(1), op. cit., paras 24–25.

⁸⁴ For guidance on intervals for the payment of wages, in addition to Convention No. 189, Article 12(1), see also Paragraph 4(a) of Recommendation No. 85 which provides that wages are paid not less often than twice a month at intervals not exceeding 16 days in the case of workers whose wages are calculated by the hour, day or week.

⁸⁵ Article 6 of Convention No. 95.

8.2.2. PAYMENT IN KIND

Historically, domestic workers were often compensated by their employers by in-kind allowances, such food and accommodation. However, it is now recognized that payments in kind for domestic workers, if any, should only be allowed under strict conditions. Loss of monetary compensation when the employer substitutes goods or services for cash wages can seriously undermine domestic workers' ability to provide for themselves and their families, particularly if the goods are not tailored to the domestic worker's personal needs.

The relevant international labour standards stipulate that safeguards against abusive practices related to payments in kind should be set out in national law, particularly if such protection is not available under a collective agreement or arbitration award.⁸⁶

Convention No. 189, Article 12(2)

National laws, regulations, collective agreements or arbitration awards may provide for the payment of a limited proportion of the remuneration of domestic workers in the form of payments in kind that are not less favourable than those generally applicable to other categories of workers, provided that measures are taken to ensure that such payments in kind are agreed to by the worker, are for the personal use and benefit of the worker, and that the monetary value attributed to them is fair and reasonable.

Recommendation No. 201, Paragraph 14

When provision is made for the payment in kind of a limited proportion of remuneration, Members should consider:

- (a) establishing an overall limit on the proportion of the remuneration that may be paid in kind so as not to diminish unduly the remuneration necessary for the maintenance of domestic workers and their families;*
- (b) calculating the monetary value of payments in kind by reference to objective criteria such as market value, cost price or prices fixed by public authorities, as appropriate;*
- (c) limiting payments in kind to those clearly appropriate for the personal use and benefit of the domestic worker, such as food and accommodation;*
- (d) ensuring that, when a domestic worker is required to live in accommodation provided by the household, no deduction may be made from the remuneration with respect to that accommodation, unless otherwise agreed to by the worker; and*
- (e) ensuring that items directly related to the performance of domestic work, such as uniforms, tools or protective equipment, and their cleaning and maintenance, are not considered as payment in kind and their cost is not deducted from the remuneration of the domestic worker.*

.....
⁸⁶ See also Convention No. 95, Articles 4, 5 and 8.

Wage protection provisions may designate permissible in-kind allowances or prohibit certain kinds of such allowances. Another regulatory tool to limit payments in kind is provision that they may not go beyond a certain proportion of the remuneration. While the relevant international standards do not specify at what level a limit for authorized payments in kind should be set, the ILO Committee of Experts on the Application of Convention and Recommendations considered that before authorizing a certain proportion of remuneration to be paid in kind, governments “should carefully assess whether such a measure is reasonable based on its possible repercussions for the workers concerned, having regard to national circumstances and the interests of the working people.”⁸⁷

Employer-provided items or services which relate to the performance of work duties should not be considered as payment in kind and, accordingly, deductions for them are prohibited. In a number of cases payments in kind have been prohibited altogether, or allowed only for remuneration above the minimum wage threshold. In other cases, food and accommodation have been conceptualized as entitlements in addition to wages. As stated in Recommendation No. 201, any payments in kind and their monetary value should be included in the terms and conditions provided to the worker.⁸⁸

EXAMPLES PAYMENTS IN KIND

Plurinational State of Bolivia: the 2003 Domestic Workers Act, article 14 prohibits payments in kind in the domestic work sector more generally:

Paid household work shall be remunerated on a monthly basis in legal tender, at a rate no lower than the national minimum wage; deferred payment or payment in kind is prohibited.

Quebec, Canada: The Act respecting labour standards provides as follows:

(51) The maximum amount that an employer may require for room and board from one of his [or her] employees is that which is fixed by regulation of the Government.

(51.0.1) Notwithstanding section 51, an employer may not require an amount for room and board from a domestic who is housed or takes meals in the employer's residence.

⁸⁷ ILO: *General Survey of the reports concerning the Protection of Wages Convention (No. 95) and the Protection of Wages Recommendation (No. 85)*, 1949, Report III (Part 1B), International Labour Conference, 91st Session, Geneva, 2003, Para. 118.

⁸⁸ See Article 7(h) of Convention No. 189 and Para. 6(2)(e) of Recommendation No. 201.

Brazil: As amended by Act 11.324 of 19 July 2006, the Act No. 5.859 of 11 December 1972 provides as follows:

Section 2-A. Employers of domestic workers shall be prohibited from deducting sums from the wages of their employees for the provision of food, clothing, hygiene or accommodation.

§ 1. The accommodation costs referred to in the opening paragraph of this section may be deducted if the accommodation is located in a place other than the place of residence in which the service is performed, provided that this possibility has been expressly agreed on by the parties.

§ 2. The costs referred to in the opening paragraph of this section shall not constitute wages, and shall not be included in remuneration for any purpose whatsoever ...

France: the National Collective Agreement of Employees of Individual Employers, section 6 provides the following:

For employees performing "night presence" [nocturnal standby duties],¹ board will not be considered as a benefit in kind, and will therefore not be deducted from net pay.

Section 20(a)(5) defines "allowances in kind" as meals or accommodation provided.

In **Spain**, Royal Decree 1620/2011, article 8(2) addresses limitation to payments in kind as follows:

Wages shall be paid by the employer in the form of legal tender, pay cheques or other similar methods of payment via banking institutions, with the prior consent of the worker. However, in cases where domestic services are performed with entitlement to benefits in kind, such as board or lodging, a percentage agreed by the parties may be deducted to that end, provided that the payment in cash of at least the monthly inter-occupational minimum wage is still guaranteed, and the various deductions do not add up to more than 30 per cent of the total wages.

South Africa: Sectoral Determination 7 prohibits that specific work-related items or services provided by the employer are considered part of the remuneration, while limiting payments in kind in the form of accommodation to 10 per cent of the wage. Section 7(1) provides:

An employer may not receive any payment directly or indirectly, or withhold any payment from a domestic worker in respect of

(a) the employment or training of that domestic worker;

(b) the supply of any work equipment or tools;

(c) the supply of any work clothing; or

(d) any food supplied to the domestic worker while the domestic worker is working or is at the workplace.

Section 8, provides:

An employer may not make any deduction from a domestic worker's pay except ...

(b) deduction of not more than 10% of the wage for a room or other accommodation supplied to the domestic worker by the employer if the accommodation

(i) is weatherproof and generally kept in good condition;

(ii) has at least one window and door, which can be locked;

(iii) has a toilet and bath or shower, if the domestic worker does not have access to any other bathroom.

Czech Republic: The Labour Code at section 119 permits payment in kind only for compensation above the minimum wage:

"Wage in kind"... may be provided by an employer only with the consent of his [or her] employee and under the conditions having been agreed with the employee, and within the scope commensurate to the employee's needs. The employer shall pay his [or her] employee a monetary wage of at least the amount of the relevant minimum wage rate (section 111) or the relevant rate of the lowest level of the guaranteed wage (section 112).

Uruguay: The Ministry of Labour and Social Welfare Decree of 25 June 2007, issued under Act No. 18.065, limits the proportion of wages that can be counted towards accommodation and food as follows:

Section 11 – (Right to food and accommodation). All employers hiring staff to carry out domestic work under a 'live-in' arrangement shall provide food and accommodation.

...

Irrespective of the type of arrangement under which the worker is employed, if he or she receives food and accommodation, 20 (twenty) per cent of the established minimum wage may be deducted for those items. If only food is provided, the deductions shall not exceed 10 (ten) per cent.

¹ See the example given for France in Chapter 7, section 5 for further details.

8.2.3. DEDUCTIONS

Regulating deductions is a means of ensuring that domestic workers receive wages due in full and that no part of the wage is withheld by the employer in an arbitrary or unlawful manner. Deductions should generally only be permitted under conditions and to the extent prescribed by national laws and regulations or fixed by collective agreements.⁸⁹

⁸⁹ See Article 8 of Convention No. 95. Further note that Article 9 of the same Convention provides that "[a]ny deduction from wages with a view to ensuring a direct or indirect payment for the purpose of obtaining or retaining employment, made by a worker to an employer or his [or her] representative or to any intermediary (such as a labour contractor or recruiter), shall be prohibited."

Legislation may prohibit specific kinds of deductions, for example, for work equipment or tools, food or accommodation, for disciplinary reasons or for recuperating fees paid by the employer to an agency. Provisions may also require that deductions be known in advance and documented on wages statements. As a matter of principle, deductions from wages should be limited to the extent necessary to safeguard the maintenance of the worker and his or her family.⁹⁰

As stated in Recommendation No. 201, any authorized deductions from the worker's remuneration should be included in the terms and conditions to be provided to the worker.⁹¹

Convention No. 189, Article 15(1)

To effectively protect domestic workers, including migrant domestic workers, recruited or placed by private employment agencies, against abusive practices, each Member shall: ...

(e) take measures to ensure that fees charged by private employment agencies are not deducted from the remuneration of domestic workers.

EXAMPLES

DEDUCTIONS FROM PAY

South Africa: Sectoral Determination 7, section 7, prohibits deductions from wages for in-kind items as well as providing for other prohibited deductions as follows:

PROHIBITED ACTS CONCERNING PAY

(1) An employer may not receive any payment directly or indirectly, or withhold any payment from a domestic worker in respect of

(a) the employment or training of that domestic worker;

(b) the supply of any work equipment or tools;

(c) the supply of any work clothing; or

(d) any food supplied to the domestic worker while the domestic worker is working or is at the workplace.

(2) An employer may not require a domestic worker to purchase any goods from the employer or from any person, shop or other business nominated by the employer.

(3) An employer may not levy a fine against a domestic worker.

(4) An employer may not require or permit a domestic worker to

(a) repay any pay except for overpayments previously made by the employer resulting from an error in calculating the domestic worker's pay; or

(b) acknowledge receipt of an amount greater than the pay actually received.

⁹⁰ Recommendation No. 85, Para. 1.

⁹¹ See Para. 6(2)(g) of Recommendation No. 201.

Ireland: The Code of Practice for Protecting Persons Employed in Other People's Homes, section 5.6, limits the financial burden borne by domestic workers arising from accidental damage she or he causes in the course of her or his employment by incorporating the requirement of the Payment of Wages Act (1991) that any such deduction be "*fair and reasonable*" taking into account, inter alia, the amount of the employee's wages. The Code of Practice provides as follows:

Employers should recognise that accidental breakages or damage will happen. Any deductions from the employee's wages shall only be made in accordance with the Payment of Wages Act 1991.

Legislative provisions indicating prohibited salary deductions may be particularly important in regard to migrant domestic workers, whose employment may involve certain costs for the employer which the employer may seek to recuperate from the worker. To the extent that national law allocates certain employment-related costs to the employer (such as recruitment or agency fees or work permit fees), legislation should also prohibit the transfer of those costs to the worker.⁹²

EXAMPLES

REGULATING DEDUCTIONS FROM PAY

In **Singapore**, the Employment of Foreign Manpower Act (chapter 91A), first schedule, sections 20 and 21, provides a list of prohibited deductions from a foreign domestic worker's salary regarding costs associated with recruiting or employing the foreign domestic worker:

20. Prohibited payments: An employer shall not deduct from any salary payable to a foreign employee, or demand or receive (directly or indirectly) from the foreign employee, any sum or other benefit

- (a) as consideration or as a condition for employing the foreign employee;*
- (b) as consideration or as a condition for continuing to employ the foreign employee; or*
- (c) as a financial guarantee related, in any way, to the employment of the foreign employee.*

⁹² Article 7(1) of Convention No. 181, provides that "private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers". Article 7(2) allows exceptions in this regard under certain conditions.

21. *Payments to be borne by employer not recoverable from foreign employee: An employer shall not deduct from any salary payable to a foreign employee, or recover (directly or indirectly) from the foreign employee, in whole or in part, any of the following sums paid or payable, or any other benefit given or to be given, by the employer:*

- (a) fees associated with the application, issuance, renewal, or reinstatement of a work permit or S pass;*
- (b) costs associated with furnishing a security deposit required by the Controller;*
- (c) costs associated with purchasing and maintaining medical insurance coverage for the foreign employee, as required by the Controller;*
- (d) costs associated with medical examinations required by the Controller;*
- (e) levy payments under the Act;*
- (f) costs associated with training a foreign employee, where the training is provided by the employer or required by the Controller;*
- (g) costs associated with repatriating a foreign employee at any time; and*
- (h) such other similar sums connected or related to the employment of a foreign employee.*

8.2.4. WAGE STATEMENTS

Legal provisions can also require that actual payments made are documented on wage statements (payslips) and provided to the worker. Similarly, the law may require the employer to keep a record of payment (for example, in the form of copies of payslips countersigned by the worker).⁹³ Like written contracts of employment, such record keeping has an important role in the formalization of domestic work. It ensures that both the employer and the employee are aware of the extent to which the actual terms and conditions of the domestic worker's employment are consistent with agreed-upon terms and statutory requirements. Documentation is also essential to resolve disputes that may arise.

EXAMPLES

REGULATIONS REGARDING WAGE STATEMENTS AND PAYSLIPS

In **Belarus**, under article 313(2) of the Labour Code, all information on the wages paid to the domestic worker is to be recorded every month in a records book. The form of the records book and related rules are defined by the Government of Belarus.

⁹³ See Para. 7 of Recommendation No. 85, regarding wage statements and payroll records.

In **Mali**, Decree No. 96-178/P-RM of 13 June 1996, issued under the Labour Code, article D.86-15, provides as follows:

A payslip detached from a counterfoil book must be given to any domestic worker when the salary is paid.

This payslip contains the particulars listed in article L.105 of the Labour Code. The period and the number of hours worked must be indicated, mentioning, if applicable, the normal hours and the overtime.

A copy of the payslips, signed off by the employee, must be retained by the employer for a period of five years

South Africa's Sectoral Determination 7, section 6, provides for detailed documentation of payment to be provided to the domestic worker:

(1) On every pay day, the employer must give the domestic worker a statement showing

- (a) the employer's name and address;*
- (b) the domestic worker's name and occupation;*
- (c) the period in respect of which payment is made;*
- (d) the domestic worker's wage rate and overtime rate;*
- (e) the number of ordinary hours worked by the domestic worker during that period;*
- (f) the number of overtime hours worked by the domestic worker during that period;*
- (g) the number of hours worked by the domestic worker on a public holiday or on a Sunday;*
- (h) the domestic worker's wage;*
- (i) details of any other pay arising out of the domestic worker's employment;*
- (j) details of any deductions made; and*
- (k) the actual amount paid to the domestic worker.*

(2) An employer must retain a copy or record of each statement for three years.

In addition to including provisions on the content of payslips in the regulatory text, model payslips may be annexed to such texts. For instance, in France, the collective agreement applicable to domestic workers establishes that a wage statement should be issued at least for each month, while a model statement is annexed to the agreement.



9. PROTECTION OF CHILD DOMESTIC WORKERS

Where adolescents under the age of 18 are legally permitted to engage in domestic work, special consideration should be given to their particular needs and vulnerabilities in the light of the nature and characteristics of domestic work. Legislative provisions protecting young domestic workers should aim at ensuring that their working conditions and environment are, and remain, suitable for their age, as well as taking account of their specific needs and preventing their work from becoming hazardous.⁹⁴ Recommendation No. 201 sets out restrictions regarding working time and the performance of certain tasks, as well as mechanisms to monitor the working and living conditions of young domestic workers.

Recommendation No. 201, Paragraph 5(2)

When regulating the working and living conditions of domestic workers, Members should give special attention to the needs of domestic workers who are under the age of 18 and above the minimum age of employment as defined by national laws and regulations, and take measures to protect them, including by:

- (a) strictly limiting their hours of work to ensure adequate time for rest, education and training, leisure activities and family contacts;*
- (b) prohibiting night work;*
- (c) placing restrictions on work that is excessively demanding, whether physically or psychologically; and*
- (d) establishing or strengthening mechanisms to monitor their working and living conditions.*

In relation to access to education and training, Convention No. 189 provides as follows:

Convention No. 189, Article 4(2)

Each Member shall take measures to ensure that work performed by domestic workers who are under the age of 18 and above the minimum age of employment does not deprive them of compulsory education, or interfere with opportunities to participate in further education or vocational training.

⁹⁴ Hazardous work is one of the worst forms of child labour, as defined in Convention No. 182. See above section 4.3.2.

Legislative provision may require employers to safeguard young domestic workers from certain potentially hazardous aspects of domestic work and contribute to the realization of their right to education and personal development. In order to encourage monitoring in this area, many countries have also required employers to keep records of young persons they employ and to cooperate with public authorities. Such record keeping may ensure that employers, State institutions and other interested parties have access to information necessary to monitor and protect young domestic workers from employment that could jeopardize their health, safety or morals and interfere with opportunities to participate in further education and training.

9.1. GENERAL PROVISIONS

The legislation may generally impose on employers of domestic workers below the age of 18 the responsibility to safeguard their well-being and to protect their health, safety and morals.

EXAMPLES

PROTECTING DOMESTIC WORKERS UNDER THE AGE OF 18

South Africa's Sectoral Determination 7, section 23, provides various restrictions on a child's performance of domestic work that may jeopardize the child's well-being. The Determination applies punitive measures laid out in the Basic Conditions of Employment Act, specifically prison sentences of up to three years, to employers who violate these provisions:

(2) No person may employ a child in employment

(a) that is inappropriate for a person of that age;

(b) that places at risk the child's well-being, education, physical or mental health, or spiritual, moral or social development.

...

(6) A person who employs a child in contravention of sub-clause ... (2) ... commits an offence in terms of section 46 of the Basic Conditions of Employment Act, read with section 93 of that Act.

Austria: The Act Governing Domestic Help and Domestic Employees, section 8, establishes a general duty of care of employers for domestic workers, with an obligation to pay particular attention to the workers' age and gender:

In regulating individual services, the employer shall ensure that neither the work requested nor the working tools and environments constitute a hazard to the employee's life, health, morals and property. In complying with this obligation, the employer shall give due consideration to the employee's age, gender and general condition.

In addition, section 7 addresses more specifically the situation of workers below the age of 18:

... The employer shall take measures to safeguard the [worker's] morals as ... advisable due to the age and gender of the young people. When entering service, the young person shall be advised of any hazards which may be associated with the service and instructed of the facilities provided to ward off such hazards and their use.

France: The collective agreement that covers domestic workers, article 24(g), sets out the following:

Employers who employ young workers under 18 must ensure good morals and decency at the workplace.

9.2. CONTRACT REQUIREMENTS

Legislation establishing certain requirements when contracts are signed by young domestic workers is desirable in States that permit children below the age of majority to engage in domestic work. Specifically, legislative provisions requiring adult supervision or State oversight of a young worker's entry into a contract of employment ensure that young workers have the benefit of guidance in assessing terms and conditions of employment. States have included such requirements in legislation generally applicable to young workers or specific to domestic work.

EXAMPLES

REQUIREMENTS FOR CONTRACTS SIGNED BY MINORS

France's National Collective Agreement of Employees of Individual Employers, article 24(b), requires differing degrees of involvement by the legal representative of a young domestic worker, in regard to the conclusion of a contract for domestic employment, according to age of the worker:

Employment contracts of young workers under the age of 16 must be signed by their legal representative, after acceptance of the terms by the worker. Contracts of adolescents between 16 and 18 years may be signed by the adolescents themselves, with the permission of the legal representative.

Finland's Young Workers' Act, 998/1993, as amended, which covers domestic work, requires parental consent to employment contracts for young workers under 15 but permits young workers over the age of 15 (and under the age of 18) to enter into contracts independently. The law further provides that, in either case, the person having care and control over the young worker may rescind the contract if they consider it necessary for the young worker's health or welfare. In addition, the law permits the young worker or her or his parent or guardian to obtain the terms and conditions of the contract in writing from the employer upon request. Section 15 reads as follows:

A person aged fifteen or more may, as a worker, make a contract of employment himself or give notice on it or cancel it. For a person under 15, a guardian can make the contract of employment or, with the consent of the guardian, it can be made by the young person himself [or herself].

The person having care and control of a young worker shall have a right to rescind his [or her] contract of employment if this is necessary for the sake of the young worker's education, development or health.

At the request of a young worker or the person having care and control of him [or her], the employer shall supply the young worker with the terms of the contract of employment in writing prior to conclusion of the contract, unless the contract itself is in writing or the work only consists of one day's domestic work at the employer's home.

Paraguay's Act No 1.680/01, the Childhood and Adolescence Code, article 66, contains specific provisions regarding the performance of domestic work by adolescents, requiring written permission from a parent, guardian, or representative, granted in the presence of the Municipal Council for the Rights of Children and Adolescents (CODENI), a public entity created for the purpose of overseeing and protecting the rights of young people:

Adolescent workers must have the written authorization of their father, mother, guardian or representative in order to perform domestic services. Such permission shall be granted in the presence of the Municipal Advisory Council on the Rights of Children and Adolescents (CODENI) of the place of domicile of the adolescent.

9.3. WORKING TIME LIMITATIONS

Excessively long hours of work have a detrimental effect on domestic workers and this is particularly the case for workers under the age of 18, who require sufficient rest for their healthy physical growth and mental development. Legislation may thus set out specific requirements or limitations in relation to working time. In addition to addressing physical health concerns, working time restrictions play also a crucial role in ensuring access to education and training. The examples given below address a range of issues, from the limitation of weekly and daily hours, the prohibition of night work and restrictions on overtime, to provisions granting additional rest periods and breaks.

EXAMPLES

LIMITATIONS ON THE WORKING TIME OF YOUNG DOMESTIC WORKERS

Austria's Act Governing Domestic Help and Domestic Employees, section 5, provides for enhanced daily rest periods for domestic workers below the age of 18:

(3) Employees residing in the employer's household who have completed their 18th year of age shall be granted a period of rest of at least 10 hours, which period shall include the time between 9 pm and 6 am, or, if they have not yet completed their 18th year of age, a period of rest of at least 12 hours, which period shall include the time between 8 pm and 7 am. ...

(4) Employees not residing in the employer's household who have completed their 18th year of age shall be granted a period of rest of at least 13 hours, which period shall include the time between 9 pm and 6 am, or, if they have not yet completed their 18th year of age, a period of rest of at least 15 hours, which period shall include the time between 8 pm and 7 am. ...

In **Cambodia**, the Prakas on the Prohibition of Hazardous Child Labour of 28 April 2004, provides in article 2 that a child who has attained 12 years of age, but not 15 years of age shall not be employed during school hours and for more than eight hours a day including schooling hours. Further, they must enjoy a daily rest period of 12 uninterrupted hours, including the interval between 21:00 pm and 06:00 am, and they may not work on Sundays and public holidays.

Finland's Young Workers' Act includes the several provisions regarding young workers aged 15 to 18, including the following:

Section 8. Periods of rest.

A person of 15 years or older shall be granted at least 12 consecutive hours of rest in every 24. ...

Where the daily working hours of young workers are in excess of four hours thirty minutes, said employees shall be granted a rest period of at least thirty minutes in the course of their work, during which they shall be free to leave the workplace. ...

Young workers shall be granted a weekly break of at least 38 consecutive hours.

In **Spain**, Royal Decree 1620/2011, article 9(8) reiterates the working time limitations for workers under 18 years under the Labour Code as applicable to domestic workers:

(a) Minors may only work for eight hours a day, with a break of 30 minutes for working days longer than four-and-a-half hours. If a minor works for more than one employer, the hours worked for each employer shall be taken into account when calculating the above-mentioned eight hours.

(b) Minors shall not work overtime or perform night work, i.e. work between 10 p.m. and 6 a.m.

(c) The period of rest between working days shall be at least 12 hours.

(d) Weekly rest periods shall be at least two consecutive days.

9.4. RESTRICTIONS REGARDING EXCESSIVELY DEMANDING TASKS

Young domestic workers should not perform work that is excessively demanding for them, whether physically or psychologically, nor should they engage in tasks that are otherwise dangerous or harmful for them.

EXAMPLES

RESTRICTIONS ON THE PERFORMANCE OF DEMANDING OR DANGEROUS TASKS BY MINORS

France: The collective agreement covering domestic workers, article 24, sets out the following:

(d) It is prohibited to employ adolescents under the age of 18 for work beyond their strength and for handling hazardous substances.

Finland: The Young Workers' Act, section 9, requires that:

The employer shall see to it that the work ... does not require more exertion or responsibility than can be considered reasonable with respect to [the young person's] age and strength.

Austria: The Act Governing Domestic Help and Domestic Employees, section 7, provides that “[w]hen young people are employed, special consideration shall be given to their physical capacities”.

9.5. REGISTRATION AND RECORDS OF EMPLOYMENT

Legislative provisions may require employers to maintain records regarding young domestic workers and/or to register their employment with appropriate regulatory authorities to enable monitoring of the employment of children in domestic work.

EXAMPLES

REQUIRING EMPLOYERS TO KEEP RECORDS REGARDING WORKERS UNDER 18

In **Cambodia**, the employment of children of less than 15 years in domestic work must be notified to the Ministry of Labour or one of its local offices. The employer and the child's parents are jointly and individually responsible for ensuring registration prior to the employment (article 4 of the Prakas on the Prohibition of Hazardous Child Labour of 28 April 2004).

Paraguay's Act No. 1.680/01, the Childhood and Adolescence Code, establishes an Advisory Council for the Rights of Children and Adolescents (CODENI) tasked with maintaining a special register of adolescent workers. The law further requires that employers maintain and provide to CODENI detailed records regarding all adolescent workers employed by them:

Section 60. – ON THE EMPLOYER'S OBLIGATION CONCERNING REGISTRATION. Employers of adolescent workers are obliged to keep a register recording:

- (a) The first name and surname, place and date of birth, address and place of residence of the adolescent worker;*
- (b) The first name and surname and place of residence of the mother, father, guardian or person responsible for the adolescent;*
- (c) The date on which the worker entered service, the duties performed, remuneration received, work timetable and social security registration number;*
- (d) The educational establishment attended by the worker and class timetable; and*
- (e) Other relevant information.*

...

Section 61. ON THE OBLIGATION TO REPORT ON EMPLOYMENT OF ADOLESCENTS: All employers are obliged to provide the information required by the Ministry of Justice and Labour and the Municipal Advisory Council for the Rights of Children and Adolescents (CODENI), as well as to register the employment of an adolescent within 72 hours.

Finland's Young Workers' Act, which covers all persons under 18 in an employment relationship provides, in sections 12 and 13, that such workers produce evidence of their age and liability to compulsory schooling prior to commencing work and that the employer of such young workers keep records regarding such employees, which include the job description and "the name and address of the person having care and control of the worker".





10. RECRUITMENT AND PLACEMENT BY PRIVATE EMPLOYMENT AGENCIES

In certain countries, private employment agencies play a role in the recruitment and placement of domestic workers. Some agencies offer services to assist households in identifying candidates for employment, and to help domestic workers find a job. Alternatively, agencies may employ domestic workers themselves, with a view to making them available to households. Where domestic workers are recruited in one country for employment in another, agencies usually play a role both in the country of origin and the country of employment.

The regulation of the activities of employment agencies is generally seen as a necessary means of ensuring the protection of domestic workers and the prevention of fraudulent and abusive practices, including labour exploitation and forced labour.⁹⁵ Practices such as imposing exorbitant recruitment fees that create insurmountable debt for domestic workers and misrepresentation of the nature or terms of the employment at the time of the recruitment, if not regulated by sending and receiving countries, may have the consequence of causing the worker enter into employment without an accurate understanding of terms and conditions or effectively binding the worker within the employment relationship in order to repay excessive fees.

Legislative efforts in this area can draw on Convention No. 181 and Recommendation No. 188, and the ILO's *Guide to private employment agencies: Regulation, monitoring and enforcement*.⁹⁶ In addition, Convention No. 189 also contains relevant guidance.

.....
⁹⁵ ILO: *The cost of coercion. Global report under the follow-up to the ILO declaration on fundamental Principles and Rights at Work*, Report of the Director-General, International Labour Conference, 98th Session, Geneva, 2009, paras 102–133.

⁹⁶ Geneva, 2007. The Guide includes a range of examples of legal provisions.

Convention No. 189, Article 15(1)

1. To effectively protect domestic workers, including migrant domestic workers, recruited or placed by private employment agencies, against abusive practices, each Member shall:

(a) determine the conditions governing the operation of private employment agencies recruiting or placing domestic workers, in accordance with national laws, regulations and practice;

(b) ensure that adequate machinery and procedures exist for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of private employment agencies in relation to domestic workers;

(c) adopt all necessary and appropriate measures, within its jurisdiction and, where appropriate, in collaboration with other Members, to provide adequate protection for and prevent abuses of domestic workers recruited or placed in its territory by private employment agencies. These shall include laws or regulations that specify the respective obligations of the private employment agency and the household towards the domestic worker and provide for penalties, including prohibition of those private employment agencies that engage in fraudulent practices and abuses;

(d) consider, where domestic workers are recruited in one country for work in another, concluding bilateral, regional or multilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment; and

(e) take measures to ensure that fees charged by private employment agencies are not deducted from the remuneration of domestic workers.

Legislation protecting domestic workers, particularly migrant domestic workers, from abusive or fraudulent practices can:

- provide for the establishing for a system of agency licensing or certification;
- require agencies to accurately inform workers of their labour rights;
- provide for the supervision of contracts by a public authority;
- prohibit agencies from charging fees to the worker, or, where permitted, strictly limit such fees;⁹⁷
- prohibit deductions of fees charged by agencies from the worker's remuneration;
- specify respective obligations of the agency and the household vis-à-vis the worker;
- provide for appropriate sanctions or penalties for agencies infringing the law, including the prohibition of agencies engaging in fraudulent practices and abuses; and
- require agencies to report on their activities to the labour inspectorate or other competent authority.

⁹⁷ Article 7(1) of Convention No. 181 provides that private employment agencies "shall not charge directly or indirectly, in whole or in part, any fees or costs to workers". It allows for exceptions to this principle in respect of certain categories of workers and specified types of services by employment agencies (Article 7(2)).

11. ENSURING COMPLIANCE

In addition to setting out substantive rights and protections for domestic workers in law, the overall framework for achieving decent work for domestic workers also needs to entail measures for ensuring compliance. In fact, compliance issues should be considered as part and parcel of designing laws and regulations for protecting domestic workers' rights. Legal provisions favouring the formalization of the employment relationship, such as requirements for written contracts or particulars, wage statements and the recording of hours of work, and simplified systems for the payment for social security contributions, favour compliance and facilitate supervision.

Ensuring compliance goes beyond action by public authorities in case of violations of the legislation. It comprises a range of possible measures to bring about respect for the applicable norms. Ensuring compliance thus includes dissemination of information and awareness raising, as well as assistance to domestic workers and their employers, workers' and employers' organizations, employment agencies and other stakeholders. In order to be effective, compliance mechanisms should take the specific characteristics of domestic work into account.

Convention No. 189 highlights the access of domestic workers to courts, tribunals and other dispute-settlement mechanisms, and also accessible complaints procedures, labour inspection measures and penalties. Recommendation No. 201 proposes the provision of information and the raising of awareness regarding applicable laws and the obligations arising from them, as well as assistance for domestic workers seeking to enforce their rights.

Convention No. 189

Article 16

Each Member shall take measures to ensure, in accordance with national laws, regulations and practice, that all domestic workers, either by themselves or through a representative, have effective access to courts, tribunals or other dispute resolution mechanisms under conditions that are not less favourable than those available to workers generally.

Article 17

1. *Each Member shall establish effective and accessible complaint mechanisms and means of ensuring compliance with national laws and regulations for the protection of domestic workers.*
2. *Each Member shall develop and implement measures for labour inspection, enforcement and penalties with due regard for the special characteristics of domestic work, in accordance with national laws and regulations.*
3. *In so far as compatible with national laws and regulations, such measures shall specify the conditions under which access to household premises may be granted, having due respect for privacy.*

When it comes to designing appropriate mechanisms and procedures for the supervision and enforcement of laws and regulations for the protection of domestic workers, there is no “one-size-fits-all” approach. However, systems combining different approaches are more likely to take the specific characteristics of domestic work into account and, hence are more likely to give satisfactory results in dealing with disputes and non-compliance in this sector. Particular attention needs to be given to the fact that domestic workers and their employers may not be familiar with applicable laws and may lack the ability to engage with complex procedures.

Approaches to monitoring and enforcing labour laws in the domestic work sector may include the following:

- *Conciliation and mediation.* Uncertainty about the respective rights and obligations of the parties to the employment relationship are frequent in the context of domestic work. Mechanisms providing information, advice and recommendations on how to address disagreements, which can be approached by workers and employers in a non-formal manner and which work expediently, offer an opportunity to settle disputes in a consensual manner while preserving the employment relationship.
- *On-going supervision.* Responsibility for supervising the application of labour laws protecting domestic workers should be formally assigned to the authorities responsible for labour matters. Registration of domestic work contracts with the labour administration or the social security institutions, including through internet-based facilities, allows for on-going supervision of working conditions, including remuneration. Routine supervision can be based on records kept by households, as may be required under the law, as well as on questionnaires for employers and workers. Where visits by labour inspectors to private homes are envisaged, an appropriate legal framework should be in place to ensure respect for privacy rights.
- *Complaints-based approaches.* As a matter of last resort, judicial and administrative complaints mechanisms can ensure the right to access to justice. The advantage of these is that they result in enforceable decisions.

EXAMPLES

PROVISION OF INFORMATION ABOUT LAWS AND AGREEMENTS TO DOMESTIC WORKERS

Argentina's Legislative Decree 326/56 on Domestic Service, article 11, requires that a domestic worker be given a work book provided by the Ministry of Labour and Welfare that includes a copy of all relevant laws in place at the time of the employment.

Austria's Federal Act Governing Domestic Help and Domestic Employees, section 2(2), requires the employer of a domestic worker, at the commencement of the employment relationship, to provide the worker with a copy of applicable laws, including minimum wage laws, and collective agreements, or with material published for this purpose by the workers' organization concerned.

South Africa's Sectoral Determination 7, section 30, requires that employers of domestic workers make a copy of the law or an official summary accessible to the domestic worker in the workplace:

Every employer on whom this sectoral determination is binding must keep a copy of the sectoral determination or an official summary available in the workplace in a place to which the domestic worker has access.

Jordan's Regulation 90/2009 of 1 October 2009, regulating domestic workers, provides in article 10, that the Ministry of Labour will be responsible for offering guidance and education to domestic workers and their employers:

The Ministry [of Labour] shall be responsible for offering guidance, advice, and awareness-raising to ensure a healthy work relationship between the employer and the worker by holding meetings with employers and workers at the Ministry, the employer's house or the Agency's office.

In **New York State, United States**, The Domestic Workers Bill of Rights, 2010, section 10, requires the Commissioner of Labour to report to the Governor, Senate and Assembly on measures to provide easily accessible educational and informative material on legislation governing domestic work.⁹⁸

⁹⁸ The first such report is available at the New York State Department of Labor's website at http://www.labor.ny.gov/sites/legal/laws/pdf_word_docs/domestic-workers/report-to-governor-outreach.pdf.

EXAMPLES

LABOUR INSPECTION

In **South Africa**, the labour inspection services are responsible for monitoring compliance with Sectoral Determination 7. Under the BCEA, section 65(2), labour inspectors have the right to enter private homes following authorization by the Labour Court. While the possibility to apply for such an authorization is rarely used, labour inspectors have carried out campaigns targeting domestic work since 2005. Households in certain designated areas during a specified period of time were contacted in advance and invited to receive labour inspectors. Depending on the extent of a given campaign, several hundred households were visited each time. Questionnaires for employees used by the inspectors included 20 questions on working conditions and social security. For example, in January 2011 labour inspectors visited some 200 households in the Western Cape province, out of which roughly half were fully compliant with the applicable legislation. During follow-up inspection, previously non-compliant employers were generally found to be compliant.¹

Uruguay's Act No. 18.065, article 13, requires the labour authorities to enforce the provisions of the law and provides for home inspection when there is a "presumed non-compliance" of labour norms:

Inspection and labour violations – The Ministry of Labour and Social Security, through the General Labour and Social Security Inspectorate, shall monitor compliance with this Act.

To that end, it may carry out home inspections in cases of presumed non-compliance with labour and social security regulations, provided that it has obtained a court order issued by a Labour Court of First Instance or a Court of First Instance of the Interior in full possession of the facts; testimony concerning the action taken shall be presented to the competent court within 48 hours.

Failure to comply with the obligations laid down in this Act shall be punished in accordance with the provisions of section 289 of Act no. 15.903 of 10 November 1987, in the version established in section 412 of Act No. 16.736 of 5 January 1996, and the regulations issued under it.

The labour inspectorate has created a special section in charge of monitoring provisions on domestic work and coordinating with labour courts and other government entities to protect domestic workers.

¹ See E. Sjöberg: *Enforcement of laws and regulating domestic work – A case study of South Africa* (Master thesis, University of Lund, South Africa, Faculty of Law, Spring 2011), p. 30; and 'Enforcing the unenforceable: From enforcement to compliance', Chapter 2 of the 2010 interim Conference report, *Domestic Workers Research Project*, University of the Western Cape, p. 31, www.dwrp.org.za/index.php/2010-conference.

EXAMPLES

ACCESS TO COURTS BY DOMESTIC WORKERS

In **Kazakhstan**, with respect to article 217 of the Labour Code, *individual labour disputes between the domestic worker and the employer are resolved by agreement of the parties and (or) in the court.*

In the Labour Codes of **Kyrgyzstan** (article 356), the **Republic of Moldova** (article 288) and the **Russian Federation** (article 308), individual labour disputes between the worker and the employer (physical person), which cannot be resolved upon mutual agreement are brought to the court under the procedure established by the labour law.

EXAMPLE

LEGAL ASSISTANCE TO DOMESTIC WORKERS

The **Philippines'** Migrant Workers and Overseas Filipinos Act, sections 24 to 26, creates a Legal Assistant for Migrant Worker Affairs within the Department of Foreign Affairs, who is charged with overseeing the provision of legal services to Filipino migrant workers and establishes a Legal Assistance Fund for the provisions of legal services to Filipino migrant workers in distress:

SEC. 24. LEGAL ASSISTANT FOR MIGRANT WORKERS AFFAIRS. There is hereby created the position of Legal Assistant for Migrant Workers Affairs under the Department of Foreign Affairs who shall be primarily responsible for the provision and overall coordination of all legal assistance services to be provided to Filipino migrant workers as well as overseas Filipinos in distress. ...

Among the functions and responsibilities of the aforesaid Legal Assistant are:

- (a) To issue the guidelines, procedures and criteria for the provisions of legal assistance services to Filipino migrant workers;*
- (b) To establish close linkages with the Department of Labour and Employment, ... and other government agencies concerned, as well as with non-governmental organizations assisting migrant workers, to ensure effective coordination and cooperation in the provision of legal assistance to migrant workers;*
- (c) To tap the assistance of reputable law firms and the Integrated Bar of the Philippines and other bar associations to complement the government's efforts to provide legal assistance to migrant workers;*
- (d) To administer the Legal Assistance Fund for migrant workers established under Section 25 hereof and to authorize disbursements therefrom in accordance with the purposes for which the fund was set up; ...*

SEC. 25. LEGAL ASSISTANCE FUND. There is hereby established a legal assistance fund for migrant workers, hereinafter referred to as Legal Assistance Fund, ...

SEC. 26. USES OF THE LEGAL ASSISTANCE FUND. The Legal Assistance Fund created under the preceding section shall be used exclusively to provide legal services to migrant workers and overseas Filipinos in distress in accordance with the guidelines, criteria and procedures promulgated in accordance with Section 24(a) hereof. ...





APPENDIX I

LIST OF REFERENCES TO NATIONAL LAWS AND REGULATIONS

Argentina

Legislative Decree 326/56 on domestic service, dated 14 January 1956, and the related Decree 7979/56, dated 30 April 1956.

Armenia

Labour Code of 9 November 2004, as amended.

Austria

Federal Act Governing Domestic Help and Domestic Employees, Act No. 60, dated 23 July 1962, as amended.

Barbados

Domestic Employees Act, dated 1 July 1961.

Belarus

Labour Code, dated 26 July 1999, as amended (in Russian).

Bolivia, Plurinational State of

Domestic Workers Act, dated 3 April 2003.

Brazil

Domestic Work Act (No 5.859), dated 11 December 1972, as amended by Act No. 11.324, dated 19 July 2006.

Decree No. 6.481, dated 12 June 2008.

Burkina Faso

Decree No. 2010-807/PRES/PM/MTSS establishing the working conditions of domestic workers, dated 31 December 2010.

Cambodia

Labour Code, General laws on work or employment, dated 10 January 1997.

Prakas on the Prohibition of Hazardous Child Labour of 28 April 2004.

Canada (Quebec)

Act Respecting Labour Standards.

Costa Rica

Decree No. 36637-MTSS on minimum wages in the private sector (for the second semester 2011), of 21 June 2011.

Cote d'Ivoire

Order No. 009 MEMEASS/CAB of 19 January 2012, amending Decision No. 2250 of 14 March 2005 determining the list of dangerous work prohibited for children less than 18 years.

Czech Republic

Labour Code No. 262/2006 Coll., effective 1 January 2007.

Finland

Act on the Employment of Household Workers, Act No. 951 of 1977 (as amended up to Act No. 73 of 2001).

Young Workers Act, Act No. 998 of 1993 (as amended up to Act No. 754 of 1998).

France

National Collective Agreement of Employees of Individual Employers, dated 24 November 1999.

Ireland

Industrial Relations Act 1990, SI No. 239 (Code of Practice for Protecting Persons Employed in Other People's Homes),(Declaration) Order 2007, dated 18 May 2007.

Organisation of Working Time Act of 1997 (Records), Regulations 2001 (SI 473 of 2001).

Jordan

Regulation for Domestic Workers, Cooks, Gardeners and Similar Workers, No. 90, dated 1 October 2009.

Kazakhstan

Labour Code of the Republic of Kazakhstan, 15 May 2007, as amended.

Kyrgyzstan

Labour Code of 4 August 2004, as amended.

Malta

The Domestic Service Wages Council Wage Regulation Order 1976, as amended

Mali

Decree No. 96-178/P-RM, dated 13 June 1996.

Moldova, Republic of

Labour Code of 28 March 2003, as amended.

Namibia

Labour Act No. 11 of 2007, dated 31 December 2007.

Panama

Executive Decree No. 19, dated 19 June 2006.

Paraguay

Childhood and Adolescence Code, Act No. 1.680/01, dated 30 May 2001.
Decree No. 4.951/05, issued pursuant to Act No. 1657/2001, dated 10 January 2001, ratifying Convention No. 182.

Peru

Act on equal opportunities between men and women (No. 28983 of 2007).

Philippines

Labour Code, Presidential Decree No. 442, dated 1 May 1974 (as amended).
Migrant Workers and Overseas Filipinos Act of 1995, Republic Act No. 8042.

Portugal

Legislative Decree No. 235/92 establishing the legal regime for employment relationships arising out of contracts for domestic work, 24 October 1992 (as amended up to Act No.114/99, dated 3 August 1999).

Russian Federation

Labour Code of 30 December 2011, as amended.

Singapore

Employment of Foreign Manpower (Work Passes) Regulations.
Penal Code, as amended by Act 18, commencing 15 May 1998.

South Africa

Basic Conditions of Employment Act, Act No. 75 of 1997.
Sectoral Determination 7: Domestic Worker Sector, binding as of 1 September 2002.

Spain

Royal Decree 1620/2011 governing the special employment relationship of household workers, 14 November 2011.

Sri Lanka

Bureau of Foreign Employment Act No. 21 of 1985.

Switzerland

Code of Obligations, 1911 (as amended).
Ordinance on the standard contract for workers in the domestic economy of 20 October 2010.

Tanzania, United Republic of

Employment and Labour Relations Act, 2004.

Togo

Order No. 1464 MTEFP/DGTLS of 12 November 2007 determining work prohibited for children in accordance with article 151(4) of the Labour Code of 13 December 2006.

Trinidad and Tobago

Minimum Wages Order, 2010.

Turkmenistan

Labour Code of 18 April 2009.

United States (New York State)

Domestic Workers Bill of Rights, dated 31 August 2010.

Uruguay

Act No. 18.065 of 15 November 2006.
Decree No. 224/007 of 25 June 2007.

Viet Nam

Labour Code of the Socialist Republic of Viet Nam, dated 23 June 1994.

Zambia

The Minimum Wages and Conditions of Employment (Domestic Workers) Order, 2011.

Zimbabwe

Labour Relations (Domestic Workers) Employment Regulation, 1992.



APPENDIX II

TOOLS AND PUBLICATIONS

PUBLICATIONS AND WORKING PAPERS

- Blackett, A. 1998. *Making domestic work visible: The case for specific regulation*, Labour Law and Labour Relations Programme Working Paper No. 2/1998 (Geneva, ILO).
- D'Souza, A. 2010. *Moving towards decent work for domestic workers: An overview of the ILO's work*, Working Paper No. 2/2010 (Geneva, ILO).
- ILO. 2007. *Guide to private employment agencies: Regulation, monitoring and enforcement* (Geneva)
- —. 2010. *Decent work for domestic workers*, Report IV(1), International Labour Conference, 99th Session, Geneva, 2010 (Geneva).
- —. 2011. *Convention 189 and Recommendation 201 at a glance* (Geneva).
- —. 2012. *Domestic workers across the world: Global and regional statistics and extent of legal protection* (Geneva)
- ILO and IPEC. 2011. *Children in hazardous work. What we know and what we need to do* (Geneva).
- McCann, D.; Murray, J. 2010. *The legal regulation of working time in domestic work*, Conditions of Work and Employment Series, No. 27, (Geneva, ILO).
- Ramirez-Machado, J. Maria. 2003. *Domestic work, conditions of work and employment: A legal perspective*, Conditions of Work and Employment Series No. 7 (Geneva, ILO).

ILO DATABASES AND TOOLS

- ILO global web portal on domestic workers
www.ilo.org/domesticworkers
- ILO web page on international labour standards
<http://www.ilo.org/global/standards/lang--en/index.htm>
- NORMLEX – ILO Information System on International Labour Standards
<http://www.ilo.org/dyn/normlex/en>
- NATLEX – ILO Database of national labour, social security and related human rights legislation
www.ilo.org/dyn/natlex/natlex_browse.home?p_lang=en

- Domestic work legislation in Latin America and the Caribbean
http://igenero.oit.org.pe/index.php?option=com_content&task=blogcategory&id=42&Itemid=157
- ILO Database of conditions of work and employment laws
www.ilo.org/dyn/travail/travmain.home
- EPLex – ILO Database on employment protection legislation
www.ilo.org/dyn/epl/termmain.home
- Labour legislation guidelines
<http://www.ilo.org/legacy/english/dialogue/ifpdial/llg/main.htm>

INTERNATIONAL LABOUR CONFERENCE

Convention 189

CONVENTION CONCERNING DECENT WORK FOR DOMESTIC WORKERS

- The General Conference of the International Labour Organization,
Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 100th Session on 1 June 2011, and
Mindful of the commitment of the International Labour Organization to promote decent work for all through the achievement of the goals of the ILO Declaration on Fundamental Principles and Rights at Work and the ILO Declaration on Social Justice for a Fair Globalization, and
Recognizing the significant contribution of domestic workers to the global economy, which includes increasing paid job opportunities for women and men workers with family responsibilities, greater scope for caring for ageing populations, children and persons with a disability, and substantial income transfers within and between countries, and
Considering that domestic work continues to be undervalued and invisible and is mainly carried out by women and girls, many of whom are migrants or members of disadvantaged communities and who are particularly vulnerable to discrimination in respect of conditions of employment and of work, and to other abuses of human rights, and
Considering also that in developing countries with historically scarce opportunities for formal employment, domestic workers constitute a significant proportion of the national workforce and remain among the most marginalized, and
Recalling that international labour Conventions and Recommendations apply to all workers, including domestic workers, unless otherwise provided, and
Noting the particular relevance for domestic workers of the Migration for Employment Convention (Revised), 1949 (No. 97), the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), the Workers with Family Responsibilities Convention, 1981 (No. 156), the Private Employment Agencies Convention, 1997 (No. 181), and the Employment Relationship Recommendation, 2006 (No. 198), as well as of the ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration (2006), and
Recognizing the special conditions under which domestic work is carried out that make it desirable to supplement the general standards with standards specific to domestic workers so as to enable them to enjoy their rights fully, and
Recalling other relevant international instruments such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the United Nations Convention against Transnational Organized Crime, and in particular its Protocol to Prevent,

Suppress and Punish Trafficking in Persons, Especially Women and Children and its Protocol against the Smuggling of Migrants by Land, Sea and Air, the Convention on the Rights of the Child and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and

Having decided upon the adoption of certain proposals concerning decent work for domestic workers, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention;

adopts this sixteenth day of June of the year two thousand and eleven the following Convention, which may be cited as the Domestic Workers Convention, 2011.

Article 1

For the purpose of this Convention:

- (a) the term “domestic work” means work performed in or for a household or households;
- (b) the term “domestic worker” means any person engaged in domestic work within an employment relationship;
- (c) a person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker.

Article 2

1. The Convention applies to all domestic workers.

2. A Member which ratifies this Convention may, after consulting with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers, exclude wholly or partly from its scope:

- (a) categories of workers who are otherwise provided with at least equivalent protection;
- (b) limited categories of workers in respect of which special problems of a substantial nature arise.

3. Each Member which avails itself of the possibility afforded in the preceding paragraph shall, in its first report on the application of the Convention under article 22 of the Constitution of the International Labour Organisation, indicate any particular category of workers thus excluded and the reasons for such exclusion and, in subsequent reports, specify any measures that may have been taken with a view to extending the application of the Convention to the workers concerned.

Article 3

1. Each Member shall take measures to ensure the effective promotion and protection of the human rights of all domestic workers, as set out in this Convention.

2. Each Member shall, in relation to domestic workers, take the measures set out in this Convention to respect, promote and realize the fundamental principles and rights at work, namely:

- (a) freedom of association and the effective recognition of the right to collective bargaining;

- (b) the elimination of all forms of forced or compulsory labour;
- (c) the effective abolition of child labour; and
- (d) the elimination of discrimination in respect of employment and occupation.

3. In taking measures to ensure that domestic workers and employers of domestic workers enjoy freedom of association and the effective recognition of the right to collective bargaining, Members shall protect the right of domestic workers and employers of domestic workers to establish and, subject to the rules of the organization concerned, to join organizations, federations and confederations of their own choosing.

Article 4

1. Each Member shall set a minimum age for domestic workers consistent with the provisions of the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182), and not lower than that established by national laws and regulations for workers generally.

2. Each Member shall take measures to ensure that work performed by domestic workers who are under the age of 18 and above the minimum age of employment does not deprive them of compulsory education, or interfere with opportunities to participate in further education or vocational training.

Article 5

Each Member shall take measures to ensure that domestic workers enjoy effective protection against all forms of abuse, harassment and violence.

Article 6

Each Member shall take measures to ensure that domestic workers, like workers generally, enjoy fair terms of employment as well as decent working conditions and, if they reside in the household, decent living conditions that respect their privacy.

Article 7

Each Member shall take measures to ensure that domestic workers are informed of their terms and conditions of employment in an appropriate, verifiable and easily understandable manner and preferably, where possible, through written contracts in accordance with national laws, regulations or collective agreements, in particular:

- (a) the name and address of the employer and of the worker;
- (b) the address of the usual workplace or workplaces;
- (c) the starting date and, where the contract is for a specified period of time, its duration;
- (d) the type of work to be performed;
- (e) the remuneration, method of calculation and periodicity of payments;
- (f) the normal hours of work;
- (g) paid annual leave, and daily and weekly rest periods;
- (h) the provision of food and accommodation, if applicable;
- (i) the period of probation or trial period, if applicable;
- (j) the terms of repatriation, if applicable; and
- (k) terms and conditions relating to the termination of employment, including any period of notice by either the domestic worker or the employer.

Article 8

1. National laws and regulations shall require that migrant domestic workers who are recruited in one country for domestic work in another receive a written job offer, or contract of employment that is enforceable in the country in which the work is to be performed, addressing the terms and conditions of employment referred to in Article 7, prior to crossing national borders for the purpose of taking up the domestic work to which the offer or contract applies.

2. The preceding paragraph shall not apply to workers who enjoy freedom of movement for the purpose of employment under bilateral, regional or multilateral agreements, or within the framework of regional economic integration areas.

3. Members shall take measures to cooperate with each other to ensure the effective application of the provisions of this Convention to migrant domestic workers.

4. Each Member shall specify, by means of laws, regulations or other measures, the conditions under which migrant domestic workers are entitled to repatriation on the expiry or termination of the employment contract for which they were recruited.

Article 9

Each Member shall take measures to ensure that domestic workers:

- (a) are free to reach agreement with their employer or potential employer on whether to reside in the household;
- (b) who reside in the household are not obliged to remain in the household or with household members during periods of daily and weekly rest or annual leave; and
- (c) are entitled to keep in their possession their travel and identity documents.

Article 10

1. Each Member shall take measures towards ensuring equal treatment between domestic workers and workers generally in relation to normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave in accordance with national laws, regulations or collective agreements, taking into account the special characteristics of domestic work.

2. Weekly rest shall be at least 24 consecutive hours.

3. Periods during which domestic workers are not free to dispose of their time as they please and remain at the disposal of the household in order to respond to possible calls shall be regarded as hours of work to the extent determined by national laws, regulations or collective agreements, or any other means consistent with national practice.

Article 11

Each Member shall take measures to ensure that domestic workers enjoy minimum wage coverage, where such coverage exists, and that remuneration is established without discrimination based on sex.

Article 12

1. Domestic workers shall be paid directly in cash at regular intervals at least once a month. Unless provided for by national laws, regulations or collective agreements, payment may be made by bank transfer, bank cheque, postal cheque, money order or other lawful means of monetary payment, with the consent of the worker concerned.

2. National laws, regulations, collective agreements or arbitration awards may provide for the payment of a limited proportion of the remuneration of domestic workers in the form of payments in kind that are not less favourable than those generally applicable to other categories of workers, provided that measures are taken to ensure that such payments in kind are agreed to by the worker, are for the personal use and benefit of the worker, and that the monetary value attributed to them is fair and reasonable.

Article 13

1. Every domestic worker has the right to a safe and healthy working environment. Each Member shall take, in accordance with national laws, regulations and practice, effective measures, with due regard for the specific characteristics of domestic work, to ensure the occupational safety and health of domestic workers.

2. The measures referred to in the preceding paragraph may be applied progressively, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers.

Article 14

1. Each Member shall take appropriate measures, in accordance with national laws and regulations and with due regard for the specific characteristics of domestic work, to ensure that domestic workers enjoy conditions that are not less favourable than those applicable to workers generally in respect of social security protection, including with respect to maternity.

2. The measures referred to in the preceding paragraph may be applied progressively, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers.

Article 15

1. To effectively protect domestic workers, including migrant domestic workers, recruited or placed by private employment agencies, against abusive practices, each Member shall:

- (a) determine the conditions governing the operation of private employment agencies recruiting or placing domestic workers, in accordance with national laws, regulations and practice;
- (b) ensure that adequate machinery and procedures exist for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of private employment agencies in relation to domestic workers;
- (c) adopt all necessary and appropriate measures, within its jurisdiction and, where appropriate, in collaboration with other Members, to provide adequate protection for and prevent abuses of domestic workers recruited or placed in its territory by private employment agencies. These shall include laws or regulations that specify the respective obligations of the private employment agency and the household towards the domestic worker and provide for penalties, including prohibition of those private employment agencies that engage in fraudulent practices and abuses;
- (d) consider, where domestic workers are recruited in one country for work in another, concluding bilateral, regional or multilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment; and

(e) take measures to ensure that fees charged by private employment agencies are not deducted from the remuneration of domestic workers.

2. In giving effect to each of the provisions of this Article, each Member shall consult with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers.

Article 16

Each Member shall take measures to ensure, in accordance with national laws, regulations and practice, that all domestic workers, either by themselves or through a representative, have effective access to courts, tribunals or other dispute resolution mechanisms under conditions that are not less favourable than those available to workers generally.

Article 17

1. Each Member shall establish effective and accessible complaint mechanisms and means of ensuring compliance with national laws and regulations for the protection of domestic workers.

2. Each Member shall develop and implement measures for labour inspection, enforcement and penalties with due regard for the special characteristics of domestic work, in accordance with national laws and regulations.

3. In so far as compatible with national laws and regulations, such measures shall specify the conditions under which access to household premises may be granted, having due respect for privacy.

Article 18

Each Member shall implement the provisions of this Convention, in consultation with the most representative employers' and workers' organizations, through laws and regulations, as well as through collective agreements or additional measures consistent with national practice, by extending or adapting existing measures to cover domestic workers or by developing specific measures for them, as appropriate.

Article 19

This Convention does not affect more favourable provisions applicable to domestic workers under other international labour Conventions.

Article 20

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 21

1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification is registered.

Article 22

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention within the first year of each new period of ten years under the terms provided for in this Article.

Article 23

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and denunciations that have been communicated by the Members of the Organization.

2. When notifying the Members of the Organization of the registration of the second ratification that has been communicated, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention will come into force.

Article 24

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and denunciations that have been registered.

Article 25

At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 26

1. Should the Conference adopt a new Convention revising this Convention, then, unless the new Convention otherwise provides:

- (a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 22, if and when the new revising Convention shall have come into force;
- (b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 27

The English and French versions of the text of this Convention are equally authoritative.

INTERNATIONAL LABOUR CONFERENCE

Recommendation 201**RECOMMENDATION CONCERNING
DECENT WORK FOR DOMESTIC WORKERS**

The General Conference of the International Labour Organization,
 Having been convened at Geneva by the Governing Body of the International
 Labour Office, and having met in its 100th Session on 1 June 2011, and
 Having adopted the Domestic Workers Convention, 2011, and

Having decided upon the adoption of certain proposals with regard to decent
 work for domestic workers, which is the fourth item on the agenda of the
 session, and

Having determined that these proposals shall take the form of a Recommendation
 supplementing the Domestic Workers Convention, 2011;

adopts this sixteenth day of June of the year two thousand and eleven the following
 Recommendation, which may be cited as the Domestic Workers Recommendation,
 2011.

1. The provisions of this Recommendation supplement those of the Domestic
 Workers Convention, 2011 (“the Convention”), and should be considered in
 conjunction with them.

2. In taking measures to ensure that domestic workers enjoy freedom of
 association and the effective recognition of the right to collective bargaining,
 Members should:

- (a) identify and eliminate any legislative or administrative restrictions or other
 obstacles to the right of domestic workers to establish their own organizations
 or to join the workers’ organizations of their own choosing and to the right of
 organizations of domestic workers to join workers’ organizations, federations and
 confederations;
- (b) give consideration to taking or supporting measures to strengthen the capacity
 of workers’ and employers’ organizations, organizations representing domestic
 workers and those of employers of domestic workers, to promote effectively
 the interests of their members, provided that at all times the independence and
 autonomy, within the law, of such organizations are protected.

3. In taking measures for the elimination of discrimination in respect of
 employment and occupation, Members should, consistent with international labour
 standards, among other things:

- (a) make sure that arrangements for work-related medical testing respect the principle
 of the confidentiality of personal data and the privacy of domestic workers, and
 are consistent with the ILO code of practice “Protection of workers’ personal
 data” (1997), and other relevant international data protection standards;
- (b) prevent any discrimination related to such testing; and
- (c) ensure that no domestic worker is required to undertake HIV or pregnancy
 testing, or to disclose HIV or pregnancy status.

4. Members giving consideration to medical testing for domestic workers should consider:

- (a) making public health information available to members of the households and domestic workers on the primary health and disease concerns that give rise to any needs for medical testing in each national context;
- (b) making information available to members of the households and domestic workers on voluntary medical testing, medical treatment, and good health and hygiene practices, consistent with public health initiatives for the community generally; and
- (c) distributing information on best practices for work-related medical testing, appropriately adapted to reflect the special nature of domestic work.

5. (1) Taking into account the provisions of the Worst Forms of Child Labour Convention, 1999 (No. 182), and Recommendation (No. 190), Members should identify types of domestic work that, by their nature or the circumstances in which they are carried out, are likely to harm the health, safety or morals of children, and should also prohibit and eliminate such child labour.

(2) When regulating the working and living conditions of domestic workers, Members should give special attention to the needs of domestic workers who are under the age of 18 and above the minimum age of employment as defined by national laws and regulations, and take measures to protect them, including by:

- (a) strictly limiting their hours of work to ensure adequate time for rest, education and training, leisure activities and family contacts;
- (b) prohibiting night work;
- (c) placing restrictions on work that is excessively demanding, whether physically or psychologically; and
- (d) establishing or strengthening mechanisms to monitor their working and living conditions.

6. (1) Members should provide appropriate assistance, when necessary, to ensure that domestic workers understand their terms and conditions of employment.

(2) Further to the particulars listed in Article 7 of the Convention, the terms and conditions of employment should also include:

- (a) a job description;
- (b) sick leave and, if applicable, any other personal leave;
- (c) the rate of pay or compensation for overtime and standby consistent with Article 10(3) of the Convention;
- (d) any other payments to which the domestic worker is entitled;
- (e) any payments in kind and their monetary value;
- (f) details of any accommodation provided; and
- (g) any authorized deductions from the worker's remuneration.

(3) Members should consider establishing a model contract of employment for domestic work, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers.

(4) The model contract should at all times be made available free of charge to domestic workers, employers, representative organizations and the general public.

7. Members should consider establishing mechanisms to protect domestic workers from abuse, harassment and violence, such as:

- (a) establishing accessible complaint mechanisms for domestic workers to report cases of abuse, harassment and violence;
- (b) ensuring that all complaints of abuse, harassment and violence are investigated, and prosecuted, as appropriate; and
- (c) establishing programmes for the relocation from the household and rehabilitation of domestic workers subjected to abuse, harassment and violence, including the provision of temporary accommodation and health care.

8. (1) Hours of work, including overtime and periods of standby consistent with Article 10(3) of the Convention, should be accurately recorded, and this information should be freely accessible to the domestic worker.

(2) Members should consider developing practical guidance in this respect, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers.

9. (1) With respect to periods during which domestic workers are not free to dispose of their time as they please and remain at the disposal of the household in order to respond to possible calls (standby or on-call periods), Members, to the extent determined by national laws, regulations or collective agreements, should regulate:

- (a) the maximum number of hours per week, month or year that a domestic worker may be required to be on standby, and the ways they might be measured;
- (b) the compensatory rest period to which a domestic worker is entitled if the normal period of rest is interrupted by standby; and
- (c) the rate at which standby hours should be remunerated.

(2) With regard to domestic workers whose normal duties are performed at night, and taking into account the constraints of night work, Members should consider measures comparable to those specified in subparagraph 9(1).

10. Members should take measures to ensure that domestic workers are entitled to suitable periods of rest during the working day, which allow for meals and breaks to be taken.

11. (1) Weekly rest should be at least 24 consecutive hours.

(2) The fixed day of weekly rest should be determined by agreement of the parties, in accordance with national laws, regulations or collective agreements, taking into account work exigencies and the cultural, religious and social requirements of the domestic worker.

(3) Where national laws, regulations or collective agreements provide for weekly rest to be accumulated over a period longer than seven days for workers generally, such a period should not exceed 14 days for domestic workers.

12. National laws, regulations or collective agreements should define the grounds on which domestic workers may be required to work during the period of daily or weekly rest and provide for adequate compensatory rest, irrespective of any financial compensation.

13. Time spent by domestic workers accompanying the household members on holiday should not be counted as part of their paid annual leave.

14. When provision is made for the payment in kind of a limited proportion of remuneration, Members should consider:

- (a) establishing an overall limit on the proportion of the remuneration that may be paid in kind so as not to diminish unduly the remuneration necessary for the maintenance of domestic workers and their families;
- (b) calculating the monetary value of payments in kind by reference to objective criteria such as market value, cost price or prices fixed by public authorities, as appropriate;
- (c) limiting payments in kind to those clearly appropriate for the personal use and benefit of the domestic worker, such as food and accommodation;
- (d) ensuring that, when a domestic worker is required to live in accommodation provided by the household, no deduction may be made from the remuneration with respect to that accommodation, unless otherwise agreed to by the worker; and
- (e) ensuring that items directly related to the performance of domestic work, such as uniforms, tools or protective equipment, and their cleaning and maintenance, are not considered as payment in kind and their cost is not deducted from the remuneration of the domestic worker.

15. (1) Domestic workers should be given at the time of each payment an easily understandable written account of the total remuneration due to them and the specific amount and purpose of any deductions which may have been made.

(2) Upon termination of employment, any outstanding payments should be made promptly.

16. Members should take measures to ensure that domestic workers enjoy conditions not less favourable than those of workers generally in respect of the protection of workers' claims in the event of the employer's insolvency or death.

17. When provided, accommodation and food should include, taking into account national conditions, the following:

- (a) a separate, private room that is suitably furnished, adequately ventilated and equipped with a lock, the key to which should be provided to the domestic worker;
- (b) access to suitable sanitary facilities, shared or private;
- (c) adequate lighting and, as appropriate, heating and air conditioning in keeping with prevailing conditions within the household; and
- (d) meals of good quality and sufficient quantity, adapted to the extent reasonable to the cultural and religious requirements, if any, of the domestic worker concerned.

18. In the event of termination of employment at the initiative of the employer, for reasons other than serious misconduct, live-in domestic workers should be given a reasonable period of notice and time off during that period to enable them to seek new employment and accommodation.

19. Members, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers, should take measures, such as to:

- (a) protect domestic workers by eliminating or minimizing, so far as is reasonably practicable, work-related hazards and risks, in order to prevent injuries, diseases and deaths and promote occupational safety and health in the household workplace;

- (b) provide an adequate and appropriate system of inspection, consistent with Article 17 of the Convention, and adequate penalties for violation of occupational safety and health laws and regulations;
- (c) establish procedures for collecting and publishing statistics on accidents and diseases related to domestic work, and other statistics considered to contribute to the prevention of occupational safety and health related risks and injuries;
- (d) advise on occupational safety and health, including on ergonomic aspects and protective equipment; and
- (e) develop training programmes and disseminate guidelines on occupational safety and health requirements specific to domestic work.

20. (1) Members should consider, in accordance with national laws and regulations, means to facilitate the payment of social security contributions, including in respect of domestic workers working for multiple employers, for instance through a system of simplified payment.

(2) Members should consider concluding bilateral, regional or multilateral agreements to provide, for migrant domestic workers covered by such agreements, equality of treatment in respect of social security, as well as access to and preservation or portability of social security entitlements.

(3) The monetary value of payments in kind should be duly considered for social security purposes, including in respect of the contribution by the employers and the entitlements of the domestic workers.

21. (1) Members should consider additional measures to ensure the effective protection of domestic workers and, in particular, migrant domestic workers, such as:

- (a) establishing a national hotline with interpretation services for domestic workers who need assistance;
- (b) consistent with Article 17 of the Convention, providing for a system of pre-placement visits to households in which migrant domestic workers are to be employed;
- (c) developing a network of emergency housing;
- (d) raising employers' awareness of their obligations by providing information on good practices in the employment of domestic workers, employment and immigration law obligations regarding migrant domestic workers, enforcement arrangements and sanctions in cases of violation, and assistance services available to domestic workers and their employers;
- (e) securing access of domestic workers to complaint mechanisms and their ability to pursue legal civil and criminal remedies, both during and after employment, irrespective of departure from the country concerned; and
- (f) providing for a public outreach service to inform domestic workers, in languages understood by them, of their rights, relevant laws and regulations, available complaint mechanisms and legal remedies, concerning both employment and immigration law, and legal protection against crimes such as violence, trafficking in persons and deprivation of liberty, and to provide any other pertinent information they may require.

(2) Members that are countries of origin of migrant domestic workers should assist in the effective protection of the rights of these workers, by informing them of their rights before departure, establishing legal assistance funds, social services and specialized consular services and through any other appropriate measures.

22. Members should, after consulting with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers, consider specifying by means of laws, regulations or other measures, the conditions under which migrant domestic workers are entitled to repatriation at no cost to themselves on the expiry or termination of the employment contract for which they were recruited.

23. Members should promote good practices by private employment agencies in relation to domestic workers, including migrant domestic workers, taking into account the principles and approaches in the Private Employment Agencies Convention, 1997 (No. 181), and the Private Employment Agencies Recommendation, 1997 (No. 188).

24. In so far as compatible with national law and practice concerning respect for privacy, Members may consider conditions under which labour inspectors or other officials entrusted with enforcing provisions applicable to domestic work should be allowed to enter the premises in which the work is carried out.

25. (1) Members should, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers, establish policies and programmes, so as to:

- (a) encourage the continuing development of the competencies and qualifications of domestic workers, including literacy training as appropriate, in order to enhance their professional development and employment opportunities;
- (b) address the work–life balance needs of domestic workers; and
- (c) ensure that the concerns and rights of domestic workers are taken into account in the context of more general efforts to reconcile work and family responsibilities.

(2) Members should, after consulting with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers, develop appropriate indicators and measurement systems in order to strengthen the capacity of national statistical offices to effectively collect data necessary to support effective policy-making regarding domestic work.

26. (1) Members should consider cooperating with each other to ensure the effective application of the Domestic Workers Convention, 2011, and this Recommendation, to migrant domestic workers.

(2) Members should cooperate at bilateral, regional and global levels for the purpose of enhancing the protection of domestic workers, especially in matters concerning the prevention of forced labour and trafficking in persons, the access to social security, the monitoring of the activities of private employment agencies recruiting persons to work as domestic workers in another country, the dissemination of good practices and the collection of statistics on domestic work.

(3) Members should take appropriate steps to assist one another in giving effect to the provisions of the Convention through enhanced international cooperation or assistance, or both, including support for social and economic development, poverty eradication programmes and universal education.

(4) In the context of diplomatic immunity, Members should consider:

- (a) adopting policies and codes of conduct for diplomatic personnel aimed at preventing violations of domestic workers' rights; and
- (b) cooperating with each other at bilateral, regional and multilateral levels to address and prevent abusive practices towards domestic workers.

For more information:

International Labour Office
4 route des Morillons
CH-1211 Geneva 22
Switzerland

Conditions of Work and
Employment Branch (TRAVAIL)
Phone: +41 22 799 67 54
Fax: +41 22 799 84 51
E-mail: travail@ilo.org
www.ilo.org/travail

Industrial and Employment
Relations Department (DIALOGUE)
Phone: +41 22 799 70 35
Fax: +41 22 799 87 49
E-mail: dialogue@ilo.org
www.ilo.org/public/ifpdial



GRAND DUCHY OF LUXEMBOURG
Ministry of Foreign Affairs

Directorate for Development Cooperation

ISBN 978-92-2-125275-7



9 789221 252757