



ARGENTINA

Decent Work Check 2019

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WageIndicator Foundation - www.wageindicator.org

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

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INTRODUCTION

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

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

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

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

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

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

Major Legislation on Employment and Labour

1. Employment Act, 1965
2. Constitution of Argentina, 1994
3. National Employment Act, Act No. 24.013, 17 December 1991
4. Employment Contract Act, No. 20.744, 1976
5. Res. CNEPSMVYM N° 4/2013
6. National Regulation on Agricultural Work Act No. 22,248, 1980
7. Law No. 11.544 on Working Time, 1929
8. Holidays Act, No. 21.329, 1976
9. Law on Mandatory National Holidays No. 23.555, 1988
10. Regime of Family Allowances Law No 24.714, 1996
11. Workers' Compensation Law No. 24,557, 1995
12. Health & Safety at Work Law No. 19.587, 1972
13. Work System Law No. 25.877, 2004
14. Integrated Retirement and Pension Law No. 24.241, 1993
15. Pension Benefits Law No. 26.417
16. Social Security Law No. 25.994, 2004
17. Women Protection Act No. 26.485, 2009
18. Protection of Child Labour & Protection of Adolescent Labour Law No. 26,390 of 2008
19. Prevencion Y Sancion De La Trata De Personas Y Asistencia A Sus Victimas No. 26,364, 2008
20. Decree 484/2000 on Work and working hours
21. Trade Union Law No. 23.351, 1989

01/13 WORK & WAGES

ILO Conventions

Minimum wage: Convention 131 (1970)

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

Argentina has ratified the Convention 95 only.

Summary of Provisions under ILO Conventions

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

Regulations on work and wages:

- Employment Act, 1965
- Constitution of Argentina, 1994
- National Employment Act, Act No. 24.013, 17 December 1991
- Employment Contract Act, No. 20.744, 1976
- Res. CNEPSMVYM N° 4/2013
- National Regulation on Agricultural Work Act No. 22,248, 1980
- Law No. 11.544 on Working Time, 1929

Minimum Wage

The Constitution of Argentina provides for adjustable minimum living wage and fair remuneration for all workers. In accordance with the National Employment Act No. 24,013, Minimum wage is the lowest wage paid in cash that all workers over 18 years of age must receive no matter the category or activities carried out so that adequate food, respectable living conditions, education, clothing, sanitary assistance, transport, recreation, vacations and other provisions are assured.

The Employment Act considers it one of the primary objectives of the law to establish appropriate mechanisms for operation of minimum wage system. The National Council for Employment, Productivity and the Adjustable Minimum Living Wage (NCEPAMLW) is established under title VI of the Employment Act which determines the minimum wage periodically. Wage rates, even when set through collective bargaining, cannot be lower than minimum wage. Employment Contract Act sets a single national minimum wage for workers who are at least 18 years old. Factors considered while determining national minimum wage include needs of workers and their families; socio-economic situation of the country; goals pursued by the National Council and how they correspond with the socio-economic situation. Rate of payment for minimum wages can be set at the hourly, daily or monthly basis. However, subject to specific regulations, minimum wages are set differently for workers in the public sector, agriculture sector as well as the domestic workers.

National Council for Employment, Productivity and the Adjustable Minimum Living Wage (NCEPAMLW) is a tripartite body composed of 48 members (16 members each from government, worker and employer groups). The Chairman of the Council is appointed by the Ministry of Labour and Social Security. The mandate of the Council lasts for 4 years. Resolutions of the Council are adopted by a majority of two-third. The Council works under a 2004 Decree (No. 1095). The responsibilities of the Minimum Wage Council include the following: periodically ascertain the minimum vital and adjustable wage; periodically reassess the minimum and maximum amount of unemployment compensation; approve the guidelines, methodology, standards and regulations to determine a market basket that becomes a benchmark so as to set the minimum vital and adjustable wage; set up sectoral tripartite technical committees to conduct studies about the sectoral situation; make recommendations in order to create policies and job programmes, and professional training; and propose measures aimed at increasing production and productivity.

The text in this document was last updated in February 2019. For the most recent and updated text on Employment & Labour Legislation in Argentina in Spanish, please refer to: <https://elsalario.com.ar/>

The Federal Labour Pact provides for sanctions in the case of infraction. In the case of minor infractions, fine is 25% to 150% of the applicable statutory minimum wage for for each worker affected. For serious infractions, the fine is 30% to 200% of the applicable statutory minimum wage for each worker affected. In the event of very serious infractions, the fine may rise to 50% to 2000% of minimum wage. In the event of a repeat offence, the administrative authority may add to the maximum fines an amount equal to a maximum of 10% of all the remuneration due the month prior to the offence being proven.

Compliance with labour legislation including statutory minimum wages is ensured by the Labour Inspectorate. Thus, Labour Inspector may notice themselves or workers may submit complaint regarding payment of wages below statutory level.

Sources: §14B of the Constitution of Argentina, 1994; §2 of National Employment Act, Act No. 24.013, 17 December 1991; §116-120 of the Employment Contracts Act; §28 of the Act No. 22.248 approving the National Regulation on Agricultural Work Act No. 22,248, 1980

For updated minimum wage rates, please refer to the section on minimum wages.

Regular Pay

In accordance with the Employment Contract Act, wage is the compensation that a worker receives in exchange for his/her work. An employer is under the obligation to pay the worker his/her wages through cash or check. However, the workers can always choose that their remuneration be paid in cash.

Wages should be paid on working days in the workplace during working hours directly to the worker or the authorized person. Wage payment is prohibited in a place where goods or alcoholic beverages are sold, except in case when a person is employed at such place. Days and hours of payments are previously identified by the employer. If the payday falls on weekly rest day or holiday, the payment is made on the immediately following working day.

The workers hired on monthly basis are paid at the end of each calendar month while worker hired on daily or hourly basis are paid at the end of a week or fortnight. Law requires payment of wages at regular intervals within four (4) or three (3) days on the completion of wage period for which wages are payable (monthly, fortnightly or weekly basis respectively).

Payments to employees must be properly documented in pay slips indicating the purpose of the payment and it must be signed by the employer and the employee. Pay slips must indicate, among other items, the following information: name and address of the employer; name and position of the employee; tax identification numbers of both the employer and the employee; details of all and any remuneration collected and the gross total; if applicable, the number of hours worked or units completed; deductions

taken from the employee's gross salary for legal withholdings; place and date of payment; and the employee's date of hire.

In kind payments are permitted as a part of the remuneration because wages should be paid in cash according to the legislation. It cannot be counted as part of the minimum wage or constitute more than the 20% of the total remuneration.

Deduction of wages is prohibited in discounts, retention or compensation for delivery of goods, provision of food, housing and accommodation, use or employment of tools, or any other benefit in money or in kind. Deductions can only be made in certain cases specified by the law, provided that the amount of deduction must not exceed 20% of the worker's salary.

Sources: §103, 124-133 of the Employment Contract Act No. 20.744 of 1976

02/13 COMPENSATION

Regulations on compensation:

- Employment Act, 1965
- Constitution of Argentina, 1994
- National Employment Act, Act No. 24.013, 17 December 1991
- Employment Contract Act, No. 20.744, 1976
- Res. CNEPSMVYM N° 4/2013
- National Regulation on Agricultural Work Act No. 22,248, 1980
- Law No. 11.544 on Working Time, 1929

Overtime Compensation

In accordance with the Law No. 11.544 on Working Time, normal working hours are 8 hours a day and 48 hours a week. Working hour is the time during which a worker is at the employer's disposal, and he can't engage in any activity of his own account. It might include periods of inactivity inherent to the job. Working hours can be extended beyond the normal daily and weekly hours however these hours may not exceed 8 hours a day and 48 hours when averaged over a 3-week period. This normal working hours' limit is not applicable to workers holding responsible positions, when the work is performed in teams, or in cases of accident, urgency, or force majeure, when the work cannot be performed during normal working hours. For hazardous or unhealthy work, the maximum working hours are 6 hours per day and 36 hours per week.

A worker cannot be compelled to work overtime except in the cases of emergency, accident, force majeure, actual or imminent danger or exceptional demands of economy or company. Overtime hours cannot exceed 3 hours per day, 30 hours per month and 200 hours per year. Overtime work is not allowed for part-time workers and those engaged in hazardous working conditions.

An employer is required to pay at least 150% of the wage if overtime work is performed on normal working days and 200% of the wage if overtime work is performed on weekly rest days or public holidays.

Working hours are established by the employer without any alteration of the terms and conditions of the contract which may cause a moral or material prejudice to the worker. The working hours are displayed at the visible places in the establishment to inform the workers and allowing the administrative inspection.

Sources: §66, 197 & 201-203 of Employment Contract Act, No. 20,744, 1976; §01 of Decree 484/2000 on Work and working hours; §1-3 & 13 of the Law No. 11,544 on Working Time 1929

Night Work Compensation

In accordance with the Employment Contract Act, night work is the work performed between 21:00 hours and 06:00 hours on the following day. Normal working hours for night work is only 07 hours per night. Working hours for night workers further reduce to 06 hours per night and 36 hours per week in case the work is carried out in unhealthy places and where the health of the worker is at risk.

In case when hours of day work are combined with hours of night work, total working hours are proportionally reduced by eight minutes for every hour of night work or the extra eight minutes is paid for as overtime.

In Argentina, night workers are not paid a premium rate for working at night rather their work hours are reduced from 8 hours to 7 hours.

Sources: §200 of the Employment Contract Act, No. 20,744, 1976; §02 of the Law No. 11.544 on Working Time 1929

Compensatory Holidays / Rest Days

In extraordinary circumstances, workers may perform work on weekly rest days and public holidays. Workers get a compensatory day off in lieu of the rest day during the following week. The worker may claim his entitlement as from the first working day of the following week, after giving formal notice of his intention to do so at least 24 hours in advance. There is no provision for compensatory holiday for workers working on a public holiday.

Sources: §207 of the Employment Contract Act, No. 20.744 of 1976

Weekend / Public Holiday Work Compensation

Workers may be required to work on weekly rest days and public holidays. In such circumstances when employees have to work on official holidays, they are entitled to receive wages at a premium rate of 200% of the normal hourly wage rate. Similarly, workers working on weekly rest days are entitled to premium pay at the rate of 200% of the normal wage rate.

Sources: §166 & 207 of the Employment Contract Act, No. 20.744, 1976

03/13 ANNUAL LEAVE & HOLIDAYS

Regulations on annual leave and holidays:

- Employment Contract Act, No. 20.744, 1976
- Holidays Act, No. 21.329, 1976
- Law on Mandatory National Holidays No. 23.555, 1988

Paid Vacation / Annual Leave

The Argentinean Constitution guarantees the provision of annual leave. In accordance with the Employment Contract Act, workers are entitled to annual leave on completion of at least half of all working days in a year, that is, at least 6 months. If a worker has worked less than 6 months in a calendar year, he/she is entitled to one day of annual leave for every twenty (20) days effectively worked. The length of annual leave for young workers is at least 15 days. For others, the length of annual leave depends on the length of service/seniority of the employee. It is:

- 14 calendar days when the length of service is greater than 6 months but does not exceed five (5) years;
- 21 calendar days when the length of service is greater than five (5) years but less than ten (10) years;
- 28 calendar days when the length of service is greater than ten (10) years but less than twenty (20) years; and
- 35 calendar days when the length of service is more than 20 years.

Employees are entitled to annual leave during the summer months, i.e., between October and April. Workers are informed about the annual leave schedule in writing at least 45 days in advance. Workers are entitled to special pay during annual leave which is calculated by dividing the monthly salary by 25 and then multiplying this amount by the number of days of annual leave. The payment is made at the commencement of leave period.

If both the parties agree, up to one-third of annual leave entitlement can be carried forward to the subsequent year.

Sources: §150-157, 164 & 194 of Employment Contract Act, No. 20.744, 1976

Pay on Public Holidays

Workers are entitled to paid holidays during Festival (public and religious) holidays. These include memorial holidays and religious holidays (Christian origin). The Public Holidays are usually 11 in number.

Public Holidays in Argentina fall in two categories. Feriados inamovibles (holidays that don't move) are covered under the Law 21.329 while the Feriados trasladables (holidays that move depending on the day of the week they occur) are covered under law 23.555. Argentinean public holidays includes New Year's Day (January 1); Good Friday (before Easter Sunday); Labour Day (May 1); Anniversary of the 1810 Revolution (May 25); Malvinas Day (June 10); Flag Day (June 20); Independence Day (July 9); Anniversary of

the Death of General José de San Martín (August 17); Columbus Day (October 12) and Christmas Day (December 25).

The compulsory national holidays which fall on Tuesday or Wednesday will be moved to the previous Monday while if these public holidays fall on Thursday or Friday, they are moved to next Monday.

Public holidays are paid only if the workers have rendered services to the same employer with at least 48 hours or 6 days in the last 10 working days proceeding to the public holiday.

Sources: §168 of Employment Contract Act, No. 20,744, 1976; §01 of the Holidays Act, No. 21,329 of 1976; Law No. 23.555

Weekly Rest Days

Weekly rest period is provided under the Law. Every worker is entitled to enjoy a weekly rest of 35 hours starting on Saturday at 13:00, except in any extraordinary circumstances mentioned in legislation. It includes part of Saturday and whole Sunday.

Law requires a daily rest period of at least 12 hours. As for the rest breaks, given between working hours, although the law says that these are included in the hours of work however their duration is not clearly specified. Employment Contract Law however specified a two-hour rest break for young workers (under 18) and women.

Sources: §174 & 204 of Employment Contract Act, No. 20,744 of 1976

04/13 EMPLOYMENT SECURITY

Regulations on employment security:

- Employment Contract Act, No. 20.744, 1976

Written Employment Particulars

The individual employment contract can be written or oral. The Law does not require written employment contracts for permanent, full-time employment relationships, except in some cases. In the case of casual employment, as well as part-time and fixed-term contracts, a written agreement is required. The parties may freely choose the form they prefer, unless other laws or collective agreements have different provisions. A contract is always considered a permanent contract, unless either specific time duration is mentioned in written form or the task/activity is clearly performed for limited time duration.

Fixed term contracts are in writing and their period must not exceed 5 years. These are renewable, but only when the kind of task/activity justifies it.

Contracts of employment may be made for part-time work (less than 2/3 of normal working hours), seasonal work, and casual work. There is no clear provision in the law requiring employers to provide written contract of employment or written employment particulars to the workers. The law does require that employer must record employee's data in a book that must be stamped and numbered by the Ministry of Labour. This Employee Book contains the basic employee data.

Sources: §48, 52 & 90-100 of Employment Contract Act, No. 20.744, 1976

Fixed Term Contracts

Argentinean labour Law prohibits hiring fixed term contract workers for tasks of permanent nature. Fixed-term contracts or "determinate contracts" are employment contracts for specified periods of time where the contract duration is expressly written into the contract or contracts concluded for a specific task.

The maximum duration of a fixed term contract is 60 months/05 years (EWI). It must be justified by an extraordinary reason to need to apply a fixed term contract. There is no limitation on successive renewals of the contract, provided that the maximum duration of the contract must not exceed 05 years.

Sources: §90 & 93 of the Employment Contract Act, No. 20.744 of 1976

Probation Period

In accordance with the Employment Contract Act, probationary/trial period is the first 03 months of all permanent labour contracts. During this period, either party may terminate the employment contract without just cause by providing a 15-day prior notice and without having to make any severance payment. An employer cannot hire

the same worker more than once by using the trial period.

Sources: §92bis of the Employment Contract Act, No. 20.744 of 1976

Notice Requirement

An employment contract terminates at the end of its term; before the specified date due to cancellation by either of the parties; or by mutual agreement. The employer may terminate the employment contract without just cause but he/she has to provide justified cause of dismissal in following cases: the employee is not fulfilling his/her work duties (e.g., unwarranted or excessive absences, lack of punctuality, abandonment of work, disobedience, participation in illegal strikes, and no reincorporation on time); or the employee's gross misconduct (e.g., loss of trust, illegal competition, and the commission of criminal acts). Employment contract may also terminate due to Force Majeure and economic reasons which includes any event that is outside the employer's control, which could not be avoided with reasonable care. This includes events such as total or partial destruction of a plant or other building of the company by flood or by fire, or acts of war and terrorism.

Either party can terminate a contract by serving a notice or paying in lieu thereof. According to the Employment Contract Act, required notice period is 15 days if an employee wants to terminate the employment contract. If an employer wants to terminate the services of an employee without just cause, the length of notice period depends on seniority. The statutory length of notice period is:

- 15 days during the probation period;
- 1 month for employees with more than 3 months but less than 5 years of service; and
- 2 months for employees with greater than 5 years of service

Parties are required to meet the obligations arising under the contract during the probationary period. The notice period is counted from the day following the prior notice communication. The employer may avoid giving a prior notice by instead paying the compensation in lieu of notice period which is equal to the salary or salaries he/she would have been paid during the prior notice period.

Sources: §231, 232, 241, 242, 247, 250 of the Employment Contract Act, No. 20.744 of 1976

Severance Pay

The Employment Contract Act provides for Severance Pay equal to 01 month's basic pay for each completed year of service (and any fraction greater than 3 months) in the event of dismissal without just cause (unfair dismissal). If an employer dismisses an employee due to a reason not attributable to a worker, i.e., economic reasons like force majeure, lack or reduction of work, the employee is entitled to half-monthly salary for each year of service.

Severance pay is calculated on the basis of the employee's highest monthly salary accrued over the last year, although the payment is capped by law for companies that apply collective bargaining agreements. The Supreme Court recently held the cap to be contrary to the protections provided by the Constitution (*Vizzotti v AMSA*, 2004). As a result, the application of the legal cap cannot reduce the amount of severance pay by more than 33%. The employer must pay the employee's salary in full for the month when the termination occurs.

Severance pay for the fixed term employees is usually calculated as the remaining salary that would have been paid had the employees finished the project or period for which they were hired. Furthermore, fixed-term employees with more than a year of service are entitled to 50% of the severance pay that a permanent employee would receive when terminated if the term of employment for which the fixed-term employees were hired has been completed

Sources: §245-247 of the Employment Contract Act, No. 20.744, 1976

05/13 FAMILY RESPONSIBILITIES

Regulations on family responsibilities:

- Employment Contract Act, No. 20.744, 1976

Paternity Leave

Male workers are entitled to two days of paid paternity leave on the birth of a child. Length of leave can be extended through collective bargaining. Bills are already proposed in parliament for the extension of statutory paternity leave. These provisions are, however, not applicable to public, domestic and agricultural workers.

Sources: §158-159 of the Employment Contract Act, No. 20,744, 1976

Parental Leave

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

Flexible Work Option for Parents / Work-Life Balance

No provisions could be located in the law supporting work-life balance for parents or workers with family responsibilities. However, flexible working hours can be provided through collective bargaining. An employee may however opt for a part-time job with the employer. Part-time jobs are those jobs in which the working hours are at most two-third of the normal working hours. The compensation in such case is determined on the pro-rata basis

Furthermore, the mother of a sick child may resign to care for that child. In this case, she has the right to a payment equal to 25% of the severance payment she would have received if she had been dismissed without cause.

Sources: §183(b) of the Employment Contract Act, No. 20.744, 1976

06/13 MATERNITY & WORK

Regulations on maternity and work:

- Employment Contract Act, No. 20.744, 1976
- Regime of Family Allowances Law No 24.714, 1996

Free Medical Care

Maternity related statutory benefits are not provided under labour laws. Medical care (pre-natal, child birth and post-natal) is available through mandatory medical program of the health care system. Plan Nacer provides disadvantaged women with free medical health care during pregnancy, confinement and post-confinement period. (www.plannacer.msal.gov.ar/index.php/pages/inicio; ILO Travail).

Source: Act 26.061 on integral protection of children and minors rights. Special protection for pregnant minors, right to healthcare, protecting measures on maternity and paternity; Programa Materno-infantil de la Nacion Argentina

No Harmful Work

There is no specific provision in the Employment Contract Act regarding risk assessment for pregnant workers and prohibition of employing them in hazardous working conditions. However, the Employment Contract Act has established general rules to ensure health and safety of working women. Women workers may not be employed in jobs that are arduous, dangerous or unhealthy. Law also prohibits ordering women to execute work at home that was supposed to be performed at the company premises.

Sources: §175-176 of the Employment Contract Act, No. 20.744, 1976

Maternity Leave

Female employees are entitled to 90 days of paid maternity leave on the birth of a child. A worker may choose to take 45 days of leave before confinement and 45 days after the confinement. The compulsory leave to be taken before confinement is at least 30 days, remaining days can be added to the post natal leave period. In case of premature birth, the worker is entitled to full 90 days maternity leave after confinement. In order to avail this leave, the employee must notify the employer of her pregnancy by presenting a medical certificate indicating the expected date of delivery.

Maternity leave can be extended for 03 to 06 months for a worker who has worked for at least a year in the enterprise. This extension in leave is however without pay. Maternity leave of the mother of a child born with Down syndrome is extended further for six months without pay under the same conditions as paid maternity leave.

In case of illness or complications arising out of pregnancy and if a worker is unable to rejoin the enterprise, further leave can be granted. The woman worker is entitled to the sick leave for up to three months if she has worked for less than five months and for up

to six months if she has worked for more than five years with the same employer.

Sources: §177-183 of the Employment Contract Act, No. 20.744, 1976; §113 of approving the National Regulation on Agricultural Work, Act No. 22.248; §1 & 3 of the Act No. 24.716

Income

Maternity leave is fully paid leave. It is paid through family allowance funds that are financed by the employer and state contributions. In order to avail cash benefits, a worker must have been working with the employer for the period of three months or have received unemployment benefits. Maternity benefits are also paid to the temporary and household workers, provided that the temporary workers must have a proven record of employment with one or more employers in the 12 months immediately preceding the start of their current employment.

Maternity allowance is equal to the remuneration that would have been payable to a worker if she was working at that time.

Sources: §6, 11 & 18 of Regime of Family Allowances Law No 24.714, 1996

Protection from Dismissals

Employment of a women worker is secure during the period of her pregnancy. Job protection is guaranteed from the moment an employee informs her employer of the pregnancy through medical certificate.

Dismissal is considered unfair during seven and a half months before or after a baby's birth. In such cases, employer has to pay the employee special severance equal to one year salary in addition to usual severance package without just cause.

Sources: §177-178, 182 & 245 of the Employment Contract Act, No. 20,744, 1976

Right to Return to Same Position

Once the maternity leave ends, right to return to same position is guaranteed under the Employment Contract Act. If female employer gives birth to a baby, she is entitled to the right called "excedencia" that allows her to return to a job of same working conditions after the end of her maternity leave.

Sources: §183 of the Employment Contract Act, No. 20,744, 1976

Breastfeeding/Nursing Breaks

Employment Contract Act requires employers to provide two paid nursing breaks, each of 30-minute duration, for new mothers to breastfeed their child(ren) until a child is one year (12 months) old. If there is some medical necessity, mother may nurse the child for longer period.

The Act requires employers to provide day care facilities and develop their own regulation related to minimum number of workers, age limit for a child and other conditions required including a child care facility in an enterprise.

Sources: §179 of the Employment Contract Act, No. 20,744, 1976



07/13 HEALTH & SAFETY

Regulations on health and safety:

- Employment Contract Act, No. 20,744, 1976
- Workers' Compensation Law No. 24,557, 1995
- Health & Safety at Work Law No. 19.587, 1972
- Work System Law No. 25.877, 2004

Employer Cares

An employer has duty to safety and is obliged to observe the regulations on health and safety at work. Employers and workers are required to take legal measures to reduce workplace accidents; repair any damage that results from occupational accidents and disease; prevent occupational risks effectively; and to make concrete commitments to comply with health and safety at work norms.

Employers shall adopt and implement appropriate measures of health and safety to protect the life and integrity of workers, taking special care of adequate environmental and hygienic conditions, protective covering of machinery, the provision of protective equipment, the safety in work processes.

It is obligatory for an employer to perform pre-occupational and periodic medical health surveillance. Employer must also provide adequate facilities for immediate first aid; sanitary installations, independent for each sex and proportionate to the number of workers; water reserves for human use; and separate rest and eating area.

Employers must also provide occupational risk insurance to their workers or they can secure insurance for themselves if they can provide financial guarantees required by law and necessary medical services and other measures foreseen by the law. Otherwise employers must contract insurance with a private Occupational Risk Insurer (ART). ART is also responsible for the periodic risk assessment.

Employer has to compensate for any damage that result from the breach of obligations provided by the law. Workers should also respect and comply with the OSH legislation.

Sources: §75 of the Employment Contract Act, No. 20.744 of 1976; §3, 4 of the Workers' Compensation Law No. 24.557 of 1995; §8-10, 46-58 of the Health & Safety at Work Law No. 19.587 of 1972

Free Protection

Provision and maintenance of personal protective equipment is employer's duty. It is not stated explicitly whether protective equipment are provided free of cost to the workers, but it can be inferred by the Law No. 19,587 that the employees are required to comply with health and safety standards and the recommendations made to them concerning the obligations and recommendations of use, conservation and care of personal protective equipment.

Sources: §8 & 10 of the Health & Safety at Work Law No. 19,587 of 1972

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Training

Employers are required to promote the training of staff on health and safety at work, particularly with regard to the prevention of specific risks of certain assignments. The Occupational Risk Insurer must include a training programme for workers and employer in their action plan to prevent occupational risks.

Sources: §9(k) of the Health & Safety at Work Law No. 19.587 of 1972; § 4(2)(d) of the Workers' Compensation Law No. 24.557 of 1995

Labour Inspection System

Work System Law No. 25, 877 provides for a labour inspection system. However, as indicated in the comments of the Committee of Experts on Application of Convention and Recommendation (CEACR), the labour inspection system is deficient and does not meet the requirements of ILO Convention 081.

Argentina is composed of twenty-three provinces organized as a federation and each province has a different inspectorate law. The powers of labour inspectors depend on this administrative division (provincial jurisdiction). In order to ensure the compliance with labour laws, the national law creates an Integral System of Labour Inspection and Social Security.

Labour inspector has the power to enter the workplace anytime during day and night without prior notification; ask for information; gather evidence; take or remove samples of substances or materials used at the workplace as prescribed by labour legislation; and they may ask for police assistance if necessary.

Labour inspectors are authorised to order the employer to take measures to comply with OSH legal duties. In case of non-compliance with the OSH legal duties, inspectors may issue a warning to the employer and they can also impose financial penalties when there are obstructions to the performance of inspectors. Penalties for companies breaking the law depend on size of the company and other factors.

The national legislation has also authorized the inspectors to close a workplace and require the cessation of tasks involving a serious and imminent risk for the safety and health of workers.

Source: §28-38 of the Work System Law No. 25.877 of 2004

08/13 SICK LEAVE & EMPLOYMENT INJURY BENEFIT

Regulations on sick leave & Employment Injury Benefits:

- Employment Contract Act, No. 20,744, 1976
- Workers' Compensation Law No. 24,557, 1995

Income

In accordance with the Employment Contract Act, a worker is entitled to a fully paid sick leave for duration of 03 months to one year depending on the seniority and family status of a worker. An employee with less than 5 years of service is entitled to 3 months of paid leave or 6 months if the employee has dependents. The period of paid sick leave is extended to 6 month and 12 months if the worker has seniority of more than 5 years and has dependents respectively.

In case, an employee does not recover during the period of paid sick leave, there is an additional period of up to one year (unpaid leave) during which the employee maintains the right to return to his employment position. At the end of this one year period, referred to as Reserve Period, either party may terminate the employment contract without any obligation for severance pay.

Employers are required to provide 100% of salary for up to three months to employees with less than five years of service; up to six months with at least five years of service. The maximum duration of cash benefits is doubled for workers with dependents.

In case, when the employee returns to work but there is a permanent reduction in his capacity to carry out the previous tasks, the employer must assign the task according to his/her working capacity without reducing his/her salary. If the employer is unable to provide such task, the employment relationship terminates and the employer has to pay half of the seniority compensation to the worker. In case, the employer does not assign such a position voluntarily to the employee, he/she has to pay the whole compensation for seniority. The same severance have to be paid to the employee when, as a result of the illness or accident, he/she loses all of his/her capacity to work.

Sources: §208-212 of the Employment Contract Act, No. 20.744 of 1976

Medical Care

No statutory medical benefits are provided under the law. Medical benefits are available to the insured workers (including dependents), pensioners and those receiving unemployment benefits. For unemployed workers, coverage is extended for 3 months if the insured worker has more than 3 months of continuous service. Medical benefits include medical, hospital & dental care. Medicines are either provided free of cost (as in pregnancy) or the insured worker has to share the cost if medicine.

Healthcare system, managed by Social Security Administration, is financed with contributions from workers and employers. Employer's contribution is 6% of the worker salary while employee contribution is 3% of salary. An additional 1.5% of employee

salary is paid by the worker for each family beneficiary covered under the health coverage plan.

Sources: ISSA Country Profile for Argentina 2015

Job Security

According to the Employment Contract Act, employment of a worker is secure during the term of his/her sick leave. The minimum period of a sick leave (paid + unpaid) is 15 months while the maximum period is 24 months. It is only at the end of this period that employer may terminate the contract of a worker if he/she is still unable to join work.

Sources: §211 of the Employment Contract Act, No. 20,744, 1976

Disability / Work Injury Benefit

Work injuries are divided into four categories: (i) permanent total incapacity (ii) permanent partial incapacity (iii) temporary incapacity and (iv) fatal injury leading to death of a worker.

There is no minimum qualifying period. Work injury includes accidents that occur while commuting to and from work.

In the case of permanent total incapacity/disability (decrease in permanent working capacity of 66% or more), a whole life annuity must be given to the injured worker as a lump sum amount, calculated as 53 times the monthly base earnings multiplied by the quotient of 65 divided by the insured person's age when the disability began. The minimum permanent disability benefit is 841,856 pesos. There is no upper ceiling. A constant attendance allowance of 2,000 pesos per month is also paid.

In the case of permanent partial incapacity (decrease in permanent working capacity of less than 66%), employers must provide a lump sum or monthly payments, depending on the degree of disability. In the event of disability between 50% and 66% a lump sum of ARS 80,000 is provided, plus a whole life annuity which can't be less than the disability percentage x ARS 180,000. The minimum partial disability benefit is 841,856 pesos. There is no upper ceiling.

When disability is less than 50%, only a lump sum is given to the injured worker calculated with this formula: $53 \times \text{basic income} \times \text{disability \%} \times (65/\text{age})$.

In the case of temporary disability, the worker receives monthly payments equal to the monthly base income. In case of worker with variable earning, the monthly benefit is equal to the insured person's average earnings in the six months before the disability began and it must be at least equal to the insured's expected earnings had the injury or accident not occurred. For the first ten days of disability, the employer pays for these benefits. From the 11th day until recovery or certification of permanent disability, the

benefits are paid for by ART (Labour Risk Insurance).

In the case of fatal injury, dependents (widow/widower, cohabitant, children younger than 21 years) receive a survivors' pension equal to the permanent total disability pension a deceased worker would have received, plus an additional payment of ARS 120,000. Law also provides for funeral grant. The survivors' benefit is paid as a lump sum and its minimum amount is 841,856 pesos

Sources: §11-18 of the Workers' Compensation Law No. 24,557, 1995; ISSA Country Profile for Argentina 2015; Swiss Life Country Profile for Argentina

09/13 SOCIAL SECURITY

Regulations on social security:

- Integrated Retirement and Pension Law No. 24.241, 1993
- Pension Benefits Law No. 26.417
- Social Security Law No. 25.994, 2004
- National Employment Act, Act No. 24.013, 17 December 1991

Pension Rights

For full pension, a worker must have attained 65 years of age (60 years for women) with at least 360 months (30 years) of contributions and service, up to 540 months. Women may retire at age 65 with a higher pension. In case, the worker is employed in hazardous or unhealthy working conditions, the requirement for retirement age and contribution reduce up to 10 years.

Old age, survivor and invalidity benefits are managed by the National Social Security Administration. These are financed by the worker and employer contributions. Workers pay 11% of the covered earnings while employer pays 10.17% or 12.71% of the gross payroll, depending on the type of enterprise. Public sector enterprises pay 16% of the gross payroll as contribution to the Social Security Administration.

Monthly pension is a combination of basic old-age pension (2031.04 pesos), compensatory pension (1.5% of the insured's average adjusted monthly earnings in the last 10 years, multiplied by the number of years of contributions paid before July 1994) and additional pension (1.5% of the insured's average adjusted monthly earnings in the last 10 years, multiplied by the number of years of contributions paid after July 1994). Self-employed person receives the basic old-age pension plus guaranteed minimum.

So-called Advanced Age Pensions (PEA) are granted to people over 70 years of age, with at least 10 years of service with contributions paid while employed, including at least five of the last eight years before leaving employment. A self-employed person must have been insured for at least five years. Advanced Age Pension is 70% of the basic old-age pension.

Workers with at least 70 years of age with income and assets below a subsistence level and not receiving any social security benefits or support from family members are entitled to non-contributory old-age pension. Citizens and foreigners must have at least five years and 40 years of residence respectively, immediately before claiming the pension. Non-contributory old-age pension is 70% of the minimum old-age pension.

Early Pension is available to workers having attained the age of 60 years (55 for women) with at least 360 months of contributions. Early pension is 50% of the amount of the full pension a worker would have attained if he/she had reached the required age.

Sources: §19-26 & 34bis of the Integrated Retirement and Pension Law No. 24.241 of 1993; §02 of the Social Security Law No. 25.994 of 2004; Circular GP N° 06/11 Movilidad para Jubilados y Pensionados - Ley 26.417, marzo/2011; ISSA Country Profile for Argentina 2015

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Dependents' / Survivors' Benefit

Survivor's benefit is provided to the dependents if the deceased received or was entitled to receive an old-age or disability pension at the time of death. Dependents includes a widow(er) or partner who lived with the deceased for at least five years (two years if they had children); an unmarried child younger than age 18 who is not receiving benefits; and a child with a disability (no age limit) who was dependent on the deceased.

Spouse or partner without dependents receives 70% and eligible child receives 20% of the reference payment or the old-age or disability pension the deceased received or was entitled to receive, whichever is greater (monthly earnings in the five years before death). 50% is paid to a widow(er) or partner with children. If there is no eligible widow(er) or partner, the survivor pension is split equally among the surviving children. All survivor benefits combined must not exceed 100% of the reference payment or the deceased's pension.

Funeral grant of a lump sum of 6,000 pesos is paid to the person who pays for the insured person's funeral.

Source: §53 & 98 of the Integrated Retirement and Pension Law No. 24,241 of 1993; ISSA Country Profile for Argentina 2015

Unemployment Benefit

Argentinean law provides for unemployment benefit if insured worker has at least 6 months' contribution in the three years before unemployment began and 90 days in the 12 months before unemployment for temporary workers. Unemployment benefits can be given for 2 to 12 months, depending on the months of contribution and its amount decreases with time: 50% of the highest salary of the last 6 months of employment is paid for two months if the insured has 6 to 11 months of contributions; for four months with 12 to 23 months of contributions; for eight months with 24 to 35 months of contributions; and for 12 months with at least 36 months of contributions. Unemployment benefits are managed by the National Social Security Administration. Only employers contribute to the unemployment fund. Employer contribution is 0.89% or 1.11% of the gross payroll, depending on the type of enterprise.

In case, the unemployed person is 45 or more years old and has children who are eligible for family allowances, 70% of the first monthly unemployment benefit is paid for up to 06 months.

Unemployed person who wants to set up a business receives a lump sum amount on presenting a business plan for approval to the Ministry of Labour, Employment, and Social Security. A lump sum amount is paid after the first monthly payment has been made if at least three monthly payments remain before entitlement ceases. The benefit is twice the total amount of the remaining monthly payments.

The unemployed person must get registered for available and suitable employment and he/she must not receive any other social security benefit. However, the unemployed person and his/her dependents receive social assistance medical benefits and family allowances and may continue their health insurance plan during the period of unemployment.

Source: §111-119 of the National Employment Act, Act No. 24.013, 17 December 1991; ISSA Country Profile for Argentina 2015; Resolution 2/2016 of the national Council for Employment, Productivity and Minimum Wage

Invalidity Benefits

(DDD) Permanent invalidity benefits are paid to a person assessed with minimum disability of 66% (total disability) and he/she is younger than the normal retirement age. Furthermore, the person must be regular or irregular contributor and must not be gainfully employed or receiving other benefits.

Regular contributors are those with minimum contribution requirements for the basic old-age pension or 30 months of contributions in the 36 months before the disability began. Irregular contributors must have 18 months of contributions in the 36 months before the disability began or meet 50% of the minimum contribution requirements for the basic old-age pension and have 12 months of contributions in the 60 months before the disability began.

The amount of invalidity pension is 70% of the insured's average salary (regular contributor) or 50% of the insured person's average salary (irregular contributor) in the five years before the claim is made.

Advanced-age disability pension is entitled to the insured person who has attained 65 years of age and assessed with at least a two-third (66%) loss of earning capacity. The amount of advanced-age disability pension is 70% of the old age pension. The person must also be a regular or irregular contributor and not be receiving other benefits.

Noncontributory disability pension is 70% of the minimum old-age pension. It is paid to the insured person assessed with a total and permanent disability of at least 76%, has income and assets below a subsistence level, and is not receiving any social security benefits or support from family members. Naturalized and foreign citizens must have at least five years and 20 years of residence respectively, immediately before claiming the pension. Dependents may also receive additional benefits under Family Allowances.

Source: §27 & 91-99 of the Integrated Retirement and Pension Law No. 24.241, 1993; ISSA Country Profile for Argentina 2015

10/13 FAIR TREATMENT

Regulations on fair treatment:

- Constitution of Argentina, 1994
- Employment Contract Act, No. 20.744, 1976
- Women Protection Act No. 26.485, 2009

Equal Pay

The Constitution supports the principle of equal pay for equal work. The State considers it violence against women if they are paid unequally.

The Employment Contract Act also requires that wage rates determined under the collective agreements must comply with the principle of equal pay for work of equal value without any discrimination.

Source: §14bis of the Constitution of Argentina, 1994; §172 of the Employment Contract Act, No. 20,744, 1976; §6(c) of the Women Protection Act No. 26,485 of 2009

Sexual Harassment

In accordance with Ley De Protection Integral A Las Mujeres (No. 26.485), sexual harassment is considered a form of violence against women. It also requires the government to prevent harassment of women in the field of business and trade unions through some specific programs.

The Civil Code states that those people who arbitrarily interfere in someone else's life by torturing that person mentally or physically or intruding in that person's privacy are required to cease such activities and pay fair compensation to the victim.

Sexual harassment is a valid reason for dismissal in the private sector as regulated under the Employment Contract Act. Sexual harassment also constitutes a crime under Law No. 25.087. The perpetrator of this crime is punished with an imprisonment term ranging from six months to four years. The punishment may increase from four to ten years if the duration of the harassment is quite long and the circumstances under which it was carried out.

Sources: §242 of the Employment Contract Act, No. 20,744, 1976; Women Protection Act No. 26,485 of 2009; §1071bis of the Civil Code; §119-123 of the Penal Code; Integral Protection of Women, Decree No. 936 of 2011

Non-Discrimination

In accordance with the Constitution, all citizens are equal before the law and there are no special privileges on the basis of blood, birth or nobility. Constitution supports equality of opportunity among all citizens without any discrimination. Certain international treaties are raised to the rank of constitutional rights. The relevant among them include the International Covenant on Economic, Social and Cultural Rights; the

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International Covenant on Civil and Political Rights and its Optional Protocol; the International Convention on the Elimination of all Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination Against Women; and the Convention on the Rights of the Child. Furthermore, the Constitution allows citizens to file a complaint and obtain immediate solution when a constitutional right is jeopardized (Amparo procedure).

The Employment Discrimination Act prohibits any type of discrimination based on "sex, race, nationality, religion, politics, union affiliation or age. It also requires that every employee should be treated equally without any discrimination based on sex, religion or race. However, differential treatment is permitted if it is based on good faith principles if that is based on efficiency and attitude of an employee towards work.

A worker can't be discriminated against on the basis of his/her marital status and his/her dismissal, during three months before marriage and six months after marriage, without just cause would be considered an unfair dismissal. Discrimination on the basis of pregnancy is also prohibited and pregnant worker can't be fired during 7.5 months prior to birth and 7.5 month after birth. The Anti-Discrimination Law (23.592) prohibits discrimination on the following grounds: race, religion, nationality, ideology, political or trade union, gender, economic status, social status or physical characteristics.

Employees suffering from disabilities and certain diseases like (Law No. 23,573), AIDS (Law No. 23,798) and Epilepsy (Law No. 25,404) cannot be discriminated against. The Trade Union Law (No. 23,551) also prohibits discrimination on the basis of union membership or being involved in union activities (Art. 47-52)

Sources: §16 & 43 of the Constitution of Argentina, 1994; §47-52 of the Trade Union Law No. 23,551; Law No. 23,573; Anti-Discrimination Law No. 23,798; 23.592

Equal Choice of Profession

Women cannot work in the same industries as men as law restricts employment of women in jobs that are arduous, dangerous or unhealthy. Law no. 11,317 prohibits employment of women and children in certain hazardous occupations like production of liquors, alcohol, white lead. It also prohibits their employment in loading and unloading activities as well as their work in underground mine or quarries.

Sources: §176 of the Employment Contract Act, No. 20,744, 1976; §10-11 of the Law No. 11,317

11/13 MINORS & YOUTH

Regulations on minors and youth:

- Employment Contract Act, No. 20,744, 1976
- Protection of Child Labour & Protection of Adolescent Labour Law No. 26,390 of 2008

Minimum Age for Employment

Minimum age for employment is 16 years. It is strictly prohibited to employ a worker of under 16 years of age. Minors aged 14-16 years can be employed only in companies that are operated by their parents or guardians and working conditions must not be hazardous. Additionally, the working hours may not exceed 03 hours per day and 15 hours per week and it does not affect a child's school attendance.

Minors aged 14 to 18 years can be employed with the consent of their parents or guardian. Minors are entitled to the same remuneration as an adult for similar work and equivalent working day. The employer must obtain a medical certificate prior to hiring a minor. This certificate specifies if the minor is physically fit for that job or not.

Minimum age for compulsory education is 18 years. A 2014 amendment of 2006 law requires compulsory education from the age of 4 years till the completion of secondary education.

Sources: §187-189 of the Employment Contract Act, No. 20,744 of 1976; §2 & 7 of the Protection of Child Labour & Protection of Adolescent Labour Law No. 26,390 of 2008; §16 % 29 of the National Education Law (Ley n° 26.206 de 2006); §2 of the Law on Early Education (Ley n° 27.045 de 2014)

Minimum Age for Hazardous Work

Minimum Age for Hazardous Work is set as 18 years and children under this age cannot be hired in harmful working conditions. Working hours for employees aged 16 to 18 years may not exceed 06 hours per day and 36 hours per week. In case of uneven distribution, the working hours cannot be more than 07 hours per day.

Minors aged under 18 years cannot be employed in night work (20:00 to 06:00). However, exception can be granted in case of shift work to the minors over 16 years of age.

A 2016 Decree (No. 117/2016) prohibits employment of minors (under 18 years) in works which expose minors to physical, psychological and sexual abuse; work performed underground, under water, dangerous heights or confined places; exposure to hazardous chemical or biological substances; and construction work. The Decree also prohibits, among others, pornography and work that puts excessive psychological load on the person inadequate to the age of the worker.

Sources: §190 & 191 of the Employment Contract Act, No. 20,744 of 1976; §9 of the Protection of Child Labour & Protection of Adolescent Labour Law No. 26,390 of 2008; §10-11 of the Law No. 11,317; Decreto 1117/2016 Determinanse los tipos de trabajo que constituyen trabajo peligroso para menores

12/13 FORCED LABOUR

Regulations on forced labour:

- Prevencion Y Sancion De La Trata De Personas Y Asistencia A Sus Victimas No. 26,364, 2008
- Employment Contract Act, No. 20,744, 1976

Prohibition on Forced and Compulsory Labour

Forced Labour is prohibited under the Law No. 26,364 of 2008. The Argentinean Constitution also prohibits slavery. Any contract of purchase and sale of persons is a crime for which those performing it, and the notary or official approving it, are responsible.

Sources: §15 of the Constitution of Argentina, 1994; §1-4 of the Prevencion Y Sancion De La Trata De Personas Y Asistencia A Sus Victimas No. 26,364 of 2008

Freedom to Change Jobs and Right to Quit

According to the Argentinean constitution, every citizen has a right to choose any employment according to their abilities and the needs of the society.

Workers have the right to change jobs after serving due notice or payment in lieu of notice period to their employer. For more information on this, please refer to the section on employment security.

Sources: §14 of the Constitution of Argentina, 1994; §232 of the Employment Contract Act, No. 20,744, 1976

Inhumane Working Conditions

Working time may be extended beyond normal working hours of forty eight hours per week and eight hours a day. Working hours can be extended beyond the normal daily and weekly hours however these hours may not exceed 8 hours a day and 48 hours when averaged over a 3-week period. A worker is not required to provide services in overtime hours except in the cases of emergency, accident, force majeure or exceptional demands of economy or company. Overtime hours can't exceed 3 hours per day, 30 hours per month and 200 hours per year.

Sources: §203 of Employment Contract Act, No. 20,744, 1976; §01 of Decree 484/2000 on Work and working hours; §01 of the Law No. 11.544 on Working Time 1929

13/13 TRADE UNION

Regulations on trade unions:

- Constitution of Argentina, 1994
- Trade Union Law No. 23.351, 1989

Freedom to Join and Form a Union

Constitution and labour law provide for freedom of association and allow workers to join and form unions. This right is regulated by the Trade Union Law No. 23,351. The right to join a trade union is available once a person reaches the age of 14 years.

A trade union can determine its name, purpose, scope of territorial representation and staff performance. They adopt the type of organisation they deem appropriate and approve their statutes. Unions also formulate their programs, and perform all lawful activities in defense of the interests of the workers. In particular, exercise the right to bargain collectively, the right to strike and to take other legitimate measures of trade union action.

The union must get its legal status by registering with the labour administrative authority by filing their name, address, assets and the background of its foundation; list of participants; names and nationality of the members of its governing body; and its association. The administrative labor authority, within ninety (90) days of the request, provide for the registration in the special register and publication, without charge, the resolution authorizing the registration and extract the statutes in the Official Gazette.

Trade union must be free from discriminatory treatment on the basis of ideology, political opinion, social status, creed, nationality, race or gender.

Sources: §14bis of the Constitution of Argentina, 1994; §01-22 of the Trade Union Law No. 23,551 of 1989

Freedom of Collective Bargaining

Right to collective bargaining is recognized by Constitution and is regulated under the Law No. 14.250 and Law No. 23.456.

The collective agreements concluded between a professional association of employers, an employer or group of employers, a professional association of workers with legal personality. A CBA must be concluded in writing and contain the following information: place and date of execution; the name of the participants and accreditation of their personality; the activities and categories of workers referred; the area of application; and the period of validity.

A CBA usually provides better benefits to the worker than those provided in the law. If a CBA has provisions which are less favourable than those provided under the law, it cannot be enforced. They typically involve such issues as vacations,

bonuses, wage scales, overtime pay, health and safety conditions in the workplace, and special paid leave.

A CBA is published by the Ministry of Labour and Social Security within ten days of its approval or confirmation. It becomes valid from the day following its publication. This process ensures that there are no clauses violating public order or general interest. agreement remain in force until a new collective agreement is concluded. A collective agreement may be extended to a non-covered area on the request of either party.

Most collective agreements apply nationally across a particular industry. However, it is possible to have a collective agreement that applies, for example, to a particular company or group of companies, or even to a particular company premises. All collective agreements must be signed by the trade union. In addition, company level agreements must be signed by up to four employee representatives.

Upon expiration of an agreement or within sixty days prior to expiry, the Ministry of Labour and Social Security, at the request of any interested party, order the initiation of negotiations for the conclusion of a new convention.

National Council for Employment, Productivity and the Adjustable Minimum Living Wage (NCEPAMLW) is a tripartite body composed of 48 members (16 members each from government, worker and employer groups). The Chairman of the Council is appointed by the Ministry of Labour and Social Security. The mandate of the Council lasts for 4 years. Resolutions of the Council are adopted by a majority of two-third. The Council works under a 2004 Decree (No. 1095). The responsibilities of the Minimum Wage Council include the following: periodically ascertain the minimum vital and adjustable wage; periodically reassess the minimum and maximum amount of unemployment compensation; approve the guidelines, methodology, standards and regulations to determine a market basket that becomes a benchmark so as to set the minimum vital and adjustable wage; set up sectoral tripartite technical committees to conduct studies about the sectoral situation; make recommendations in order to create policies and job programmes, and professional training; and propose measures aimed at increasing production and productivity.

Other than Wage Council, another tripartite statutory body is proposed however not established at the national level. There are currently two Economic and Social Council which are operating at the city level in the cities of Buenos Aires and Cordoba. The National Economic Council is a tripartite advisory body to the technical secretariat of the Presidency of Argentina.

Sources: §14bis of the Constitution of Argentina, 1994; Law No. 14.250 of 1989; Law No. 23.456

Right to Strike

Right to strike is provided under the constitution and regulated by the Trade Union Law No. 23,551. Decree 272/06 deals with strikes in the essential services. Minimum service has to be kept in the public services during strikes.

However, before going on a strike, parties must comply with compulsory conciliation procedure. Once the period of conciliation is over and it has been unsuccessful, trade unions with legal acknowledgement (in the form of a resolution - Personería Gremial - by Ministry of Labour and Social Security) are entitled to declare a strike.

Sources: §14bis of the Constitution of Argentina, 1994; §05 of the Trade Union Law No. 23,551 of 1989; §7-14 of the Decree 272/06



DECENT WORK QUESTIONNAIRE

DECENTWORKCHECK.ORG

Check

Decent Work Check Argentina is a product of WageIndicator.org and
www.elsalario.com.ar



National Regulation exists



National Regulation does not exist

01/13 Work & Wages

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

02/13 Compensation

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

03/13 Annual Leave & Holidays

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

04/13 Employment Security

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

05/13 Family Responsibilities

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

06/13 Maternity & Work

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

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

07/13 Health & Safety

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

08/13 Sick Leave & Employment Injury Benefits

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

09/13 Social Security

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

10/13 Fair Treatment

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

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

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

11/13 Minors & Youth

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

12/13 Forced Labour

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

13/13 Trade Union Rights

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

Results

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



is your amount of "YES" accumulated.

Argentina scored 41 times "YES" on 49 questions related to International Labour Standards

If your score is between 1 - 18

This score is unbelievable! Does your employer know we live in the 21st century? Ask for your rights. If there is a union active in your company or branch of industry, join it and appeal for help.

If your score is between 19 - 38

As you can see, there is ample room for improvement. But please don't tackle all these issues at once. Start where it hurts most. In the meantime, notify your union or WageIndicator about your situation, so they may help to improve it. When sending an email to us, please be specific about your complaint and if possible name your employer as well. Also, try and find out if your company officially adheres to a code known as Corporate Social Responsibility. If they do, they should live up to at least ILO standards. If they don't adhere to such a code yet, they should. Many companies do by now. You may bring this up.

If your score is between 39 - 49

You're pretty much out of the danger zone. Your employer adheres to most of the existing labour laws and regulations. But there is always room for improvement. So next time you talk to management about your work conditions, prepare well and consult this DecentWorkCheck as a checklist.