

## DECENTWORKCHECK.ORG

Check

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



National Regulation exists



National Regulation does not exist

## 01/13 Work &amp; Wages

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

## 02/13 Compensation

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

## 03/13 Annual Leave &amp; Holidays

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

## 04/13 Employment Security

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





## 05/13 Family Responsibilities

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

## 06/13 Maternity &amp; Work





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

\* On question 7, only 3 or 4 working weeks is equivalent to 1 "YES".

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





## 07/13 Health & Safety

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

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

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

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

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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

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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

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

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## Results

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



is your amount of "YES" accumulated.

Guatemala scored 39 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.

## DECENTWORKCHECK.ORG

## 01/13 Work &amp; Wages

**Regulations on work and wages:**

Constitution of Guatemala, 1985

Labour Code, Decree No.1441 (amended in 2001)

**Minimum Wage**

Minimum wage is the minimum remuneration that can be established by the parties to the employment relation, capable to cover the normal material, moral and cultural needs of the worker and enable that person to fulfill his duties as head of the household. The periodic establishment (and revision) of minimum wage, in accordance with the law, is the minimum social right among others that form the basis of labour legislation.

In accordance with the Labour Code, every worker has the right to earn a minimum wage that covers his/her material, moral and cultural needs. Other factors that are considered while determining minimum wage include cost of living, economic development, levels of productivity, and the capacity of employers to pay different sectors.

The minimum wage is set by the National Wage Commission. There is no national minimum wage, as it varies by sector. The Executive sets the minimum wage rate for private sector workers in an accord with the Ministry of Labour and Social Welfare, based on the report of the National Wage Commission. Report of the National Wage Commission is based on the recommendation of the Joint Minimum Wage Board (created for each region and economic zone) for their respective region or economic zone. The recommendations of National Wage Commission are shared with the Monetary Board of the Central Bank of Guatemala and Guatemalan Social Security Institute. The Boards are composed of equal number of representatives from worker and employer groups (two members each). Labour inspector (government representative) acts as a Chairman of the Board. A government agreement annually determines the minimum wage for agriculture, non-agriculture and export sectors. The Joint Minimum Wage Boards must take into account surveys on cost of living (done by Department of Statistics) and all other data relevant to its jurisdiction on price of housing, clothing, food consumed by workers and also about the facilities that employers provide workers with regard to accommodation, land for cultivation, firewood and other benefits that reduces their cost of living.

Different minimum wage rates are applicable to specific categories of workers (including trainees, domestic workers and piece-rate workers) and sectors (including agricultural sector, non-agricultural sector, export and textile sector). The minimum wage is determined on daily or hourly basis. In addition to the minimum wage, there is also provision for incentive bonus.

Minimum wage may also be set through collective bargaining however it cannot be less than the minimum wage fixed by authority.

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Compliance with labour laws including minimum wages is ensured by the General Inspectorate of Labour. In case of violation of labour or social security provisions such as wages, there is a provision of fine between three to twelve times the monthly minimum wage for non-agricultural activities. This fine is payable by the employer without prejudice to the right of workers to recover sums due to them for non-payment or less payment of wages. Employer and workers are suggested to resolve their disputes between themselves. A worker may file a case before the Court of Labour & Social Welfare.

Source: §102(f) of the Constitution of Guatemala, 1985; §103-115, 272(2), 283, and 374 of the Labour Code 2001; Acuerdo Gubernativo Numero 288-2016

### Regular Pay

Salary or wage is the compensation that an employer must pay to an employee by virtue of complying with the employment agreement or relationship in effect between them. Save for the legal exceptions, any service rendered by a worker to his or her respective employer must be remunerated by the employer.

The payment of the salary is made on the basis of time unit (monthly, fortnightly, weekly, daily, or hourly), or work unit (by piece, task, lump price, or by work piece); or by participation in the profits, sales or collections the employer may make, regardless of the risk of the profit or loss the employer might have.

In accordance with the Labour Code, wages must be fully paid regularly in legal tender, at workplace (unless agreed otherwise), during working hours or immediately after working hours to the worker or any authorized person. Payment of wages in recreation outlets or pubs is prohibited except in case of employees who work in that kind of establishment.

Employers and employees may set a deadline/wage payment interval however this period may not be longer than a fortnight (15 days) for manual workers and one (01) month for intellectual (knowledge workers) and domestic service workers. Employers must also keep a wage book for a record of payments made to the workers.

In kind payment is allowed but it may not exceed 30% of the total wage that a worker receives. The agricultural workers or their families may receive up to 30% of their wages in food or other similar allowances intended for their direct personal consumption. However, totally or partially paying an employee's salary in merchandise or coupons is prohibited.

Source: §88 & 90-102 of the Labour Code 2001, § 102 (d) of the Constitution of Guatemala

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## 02/13 Compensation

### Regulations on compensation:

Labour Code, Decree No.1441 (amended in 2001)

### Overtime Compensation

In accordance with the Labour Code, the normal working hours are 8 hours a day and 48 hours per week. Working hours are the hours when a worker is at the disposal of the employer. The total working hours (normal + overtime) may not exceed 12 hours a day. All the work performed out of the limits provided by the legislation or by agreement between the parties is considered as overtime work and it is remunerated as such. If a worker works beyond the stipulated working hours, i.e., 8 hours a day and 48 hours a week, he is entitled to an overtime pay at 150% of normal hourly rate for the overtime hours.

Workers should not be allowed to perform overtime work in hazardous and unhealthy working conditions. In work that is unhealthy or dangerous, the 8 hour limit can be extended by agreement between worker and employer by up to 2 hours, provided that weekly working time does not exceed the 48 hour weekly limit (in actual the limit is 44 hours). Except for those workers not subject to the limitations of working time (these include employees not subject to direct supervision; supervisors; employees whose presence alone is required; employees who perform their work outside of the work place (e.g. commission agents); and other workers who, due to the nature of their work, cannot be subject to the limit) the hours of effective work during daytime cannot exceed 44 per week, equivalent to 48 hours exclusively for payment purposes. For night workers and mixed time workers, the daily and weekly working hours are 6 hours/7hours and 36 hours/42 hours respectively.

The ordinary hours of work may be scheduled to be performed in consecutive hours or split into one or more periods with rest breaks in accordance with the nature of the work and the needs of the worker.

Source: §116, 121 & 122 of the Labour Code 2001, Acuerdo Gubernativo Numero 388-2010

### Night Work Compensation

Work done during 18:00 (06 p.m.) and 06:00 a.m. of following day is considered night work. There is no provision in the Labour Code, which requires an employer to pay night workers at a higher premium rate. Weekly working hours for night workers may not exceed 36 hours per week (6 hours per day). For workers working both during the day and night, working hours may not exceed 42 hours per week (7 hours per day).

Source: §116-117 of the Labour Code 2001

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## Compensatory Holidays / Rest Days

There is no provision in the law, which requires an employer to provide compensatory rest day to a worker who performs work on a weekly rest day or public holiday.

## Weekend / Public Holiday Work Compensation

Workers may be required to work on weekly rest days and public holidays. Hours of work on weekly rest day and public holiday are considered overtime work and they are paid at a premium rate of 150% of normal hourly wage rate, which is the total amount of the ordinary and extraordinary payments of the last week or the last 15 or 30 days depending on whether wages are paid by fortnight or per month.

Source: §128 & 129 of the Labour Code 2001



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**03/13 Annual Leave & Holidays****Regulations on annual leave and holidays:**

Constitution of Guatemala 1985, last revised in 1993

Labour Code, Decree No.1441 (amended in 2001)

**Paid Vacation / Annual Leave**

An employee is entitled to 15 consecutive working days paid annual leave, after completion of 12 months of continuous service with the same employer. The worker must have worked at least 150 days in the last year to be entitled for leave. There is no provision in law, which shows that annual leave increases with seniority.

The amount of an annual leave pay that the worker is entitled to receive is an average of his ordinary and extraordinary remuneration over the last three months (for agricultural workers) or last one year (for other categories of workers). The amount of payment for annual leave has to be paid to the worker in advance of the enjoyment of such leave. Employer is required to indicate the proposed timing of annual leave of a worker within 60 days of the qualification of annual leave. While making the annual leave schedule, an employer should give priority to the smooth running of the enterprise and effectiveness of the rest periods and not to overload the workers who are currently working in the enterprise.

The Labour Code does not allow splitting or accumulation of annual leave in general cases. However, if the work is of special nature where long absence cannot be permitted, annual leave may be divided at most in two parts. It is prohibited to perform work during annual leave. A worker may not receive compensation in lieu of annual leave except in the case of contract termination before enjoyment of leave. A worker is eligible for compensation for proportional vacation if his employment is terminated before completion of one year of service.

Source: §102 (I) of the Constitution of Guatemala 1985; §130-137 of the Labour Code 2001

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## Pay on Public Holidays

Workers are entitled to paid holidays during Festival (public and religious) holidays. These are usually 12 in number (10 full days and two half days). If a public holiday falls on weekly rest day, an employer is obliged to provide both paid public holiday and weekly rest day.

Public holidays include New Year's Day (January 01), Holy Thursday (April 17), Good Friday (April 18), Labour Day (May 01), Army Day (June 30), Feast of the Assumption (August 15), C.A. Independence Day (September 15), Revolution Day (October 20), All Saints Day (November 01), Christmas Eve (half day on December 24), Christmas Day (December 25), New Year's Eve (half day on December 31).

Source: §127 of the Labour Code 2001

## Weekly Rest Days

Workers are entitled to 24 consecutive hours of rest per week after 5 or 6 days of work, depending on the custom of a workplace. There is no provision regarding the specified day in which the weekly rest may fall.

Source: § 126 of the Labour Code 2001

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## 04/13 Employment Security

### Regulations on employment security:

Labour Code, Decree No.1441 (amended in 2001)

### Written Employment Particulars

Employment contract may be concluded for an indefinite duration, for a fixed term or for performance of certain work. Individual employment contract may be verbal for work on a farm/ranch; domestic service; accidental or temporary work not exceeding 60 days; and the contract for certain work whose value does not exceed GTQ 100. In all other cases, contract of employment must be in writing and it must contain following terms: the names, age, sex, civil status, nationality, and residence of the contracting parties; the start date of the employment relationship; an indication of the services the worker commits to render, or the nature of the work to be performed; the workplace; the duration of the agreement or the expression that it is for an indefinite period of time or for the performance of a certain work; the time of the work shift and the hours during which it must be rendered; the salary, benefit, or commission that the worker must receive; calculation method of salary/remuneration and the payment manner, period, and place of payment; the place and date of the execution of the agreement; and the signatures of the contracting parties and the fingerprint of those who do not know or cannot sign, and the number of their identification documents.

In the case of oral contracts as mentioned above, the employer is obliged to provide the worker, at the time the contract is concluded, a card or record, which should contain the date of commencement of the employment relationship and the expected salary. At the end of each pay period, employer must also provide a card indicating the number of days worked and the work performed.

Source: §25-29 of the Labour Code 2001

### Fixed Term Contracts

Guatemalan Labour Law prohibits hiring fixed term contract workers for tasks of permanent nature. Fixed term contracts are allowed for temporary or accidental work or service that needs to be executed or performed. The Labour Code however does not prescribe any limit to the duration of fixed term contract. The limit of a fixed term contract actually depends on the duration of temporary task, on expiration date of occurrence of any event or circumstance.

Source: §25-26 of the Labour Code 2001

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## Probation Period

In accordance with the Labour Code, probation/trial period is the first 2 months for contracts of indefinite duration. The probation period can be shorter, if mutually agreed between the parties. During this period, either party may terminate the employment contract with or without cause, without any liability on its part.

Source: §79-81 of the Labour Code 2001

## Notice Requirement

An individual employment contract may terminate by will of either party, by mutual consent, or for cause attributable to the other, or when the termination occurs by provision of the law, in which case the rights and duties that arise from the agreements are extinguished. Just causes of termination are provided in the labour code. However, employment can also be terminated without just cause, or unjustified dismissal, resignation, retirement, death or disability, or transfer to another country.

Labour Code does not refer to reasonable notice that an employer has to give to an employee before terminating contract. However, if an employee has to terminate employment contract due to just-cause or misconduct, he/she has to provide a written dismissal notice to an employee before terminating his/her employment contract and on receipt of this notice, an employee has to stop working. Length of notice period, depending on the duration of service, is as follows:

- 1 week notice for less than 6 months of service;
- 10 days notice for more than 6 but less than 12 months of service;
- 2-week notice for more than 1 year but less than 5 years of service; and
- 1-month notice for 5 years of service and beyond.

Source: §78 & 83 of the Labour Code 2001

## Severance Pay

In accordance with 82 of Labour Code, severance pay is payable if an employee is unjustifiably terminated or an employee himself terminates the employment contract for reasons specified in article 79 of the Labor Code. An employee is eligible for one-month salary for each completed year of service. If service is less than a year, a proportionate amount is paid as severance pay. Severance pay is not payable if a worker is dismissed for gross misconduct.

Source: § 77-82 of the Labour Code 2001

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## 05/13 Family Responsibilities

### Regulations on family responsibilities:

Labour Code, Decree No.1441 (amended in 2001)

### Paternity Leave

Labour Code provides 2 days of paid paternity leave on the birth of a child.

Source: §61 of the Labour Code 2001

### Parental Leave

Once maternity leave has exhausted, women workers may avail unpaid leave for up to 9 months to look after the newborn.

### 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.

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## 06/13 Maternity & Work

### Regulations on maternity and work:

Labour Code, Decree No.1441 (amended in 2001)

Social Security Law, Decree No. 295

Decree for a Healthy Maternity, 32-2010

### Free Medical Care

A pregnant women worker is provided complete medical assistance, which includes medical, surgical, therapeutic and hospital care during pregnancy, childbirth and the postnatal period. Health care services are provided during pregnancy, confinement and the post-natal period without any discrimination.

Source: §30 of the Organic Law on the Guatemalan Social Security Institution; §6-9 of Decree for a healthy maternity No. 32-2010

### No Harmful Work

There is only a general provision in the Labour Code, which prohibits employers from ordering or allowing their employees to work in jobs that are extraordinary by nature, dangerous and unhealthy. According to the rules of General Labour Inspectorate, employment of women in dangerous and unhealthy workplaces is prohibited.

Source: §122, 148 & 197 of the Labour Code 2001

### Maternity Leave

In accordance with the labour code, female employees are entitled to a maximum of twelve weeks (84 days) of maternity leave including 30 days pre-natal and 54 days post-natal leave. Maternity leave can be extended in case of medically certified illness which is caused by pregnancy or confinement, provided that this period does not exceed three months, counting from the point when leave was taken (In essence, it is actually leave extension of 36 days after availing 54 days post-natal leave). Extension in maternity leave is not provided in case of multiple births.

In case of adoption, female workers are entitled to post-partum leave on providing all the documents to the employer, certifying that adoption has had taken place.

Source: §152 of the Labour Code 2001

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## Income

Maternity leave is fully paid for an insured female worker who has paid contributions for three months in the six months preceding prenatal leave provided that she is not engaged in any other paid work during the period of leave. Two third of the basic salary is covered by the Social Security and one-third by the employer. If a worker is not registered with the Social Security, full salary is paid by the employer.

Source: §152 of the Labour Code 2001; §28 & 38 of the Decree No. 295

## Protection from Dismissals

A women worker cannot be dismissed during the period of her pregnancy or breastfeeding. It is illegal for an employer to dismiss a female worker during pregnancy or breastfeeding period except in case of just cause stemming from a serious violation of the obligations laid down in their contract. In this case, the employer has to obtain authorization of a Labour judge. If the employer does not comply with the above arrangement, the employee may resort to the courts to exercise their right to reinstatement on the job she occupied and is entitled to the wages owed during the time she was off duty.

Source: §151(c) of the Labour Code 2001

## Right to Return to Same Position

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

Source: §151(c) of the Labour Code 2001

## Breastfeeding/Nursing Breaks

During 10 months on the return of a women worker from maternity leave, nursing breaks of one-hour duration (two 30-minute breaks) on daily basis are allowed to female workers to breastfeed their child(ren).

During the breastfeeding period, worker is entitled to start work one hour late or leave one hour earlier. This breastfeeding time is paid and the failure to pay can lead to appropriate sanction for the employer.

Breastfeeding time is calculated from the day the mother return to their jobs and up to ten (10) months, unless a medical prescription provides for its extension.

Law of Integral Protection of Children and Adolescents requires employers and government institution to provide appropriate conditions for breastfeeding.

Source: §153 & 154 of the Labour Code 2001; §1-3 of the Regulation on Breastfeeding; §26 of the Law of Integral Protection of Children and Adolescents 2003

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## 07/13 Health &amp; Safety

**Regulations on health and safety:**

Labour Code, Decree No.1441 (amended in 2001)

**Employer Cares**

An employer is required to take all precautionary measures to protect the life, safety and health of employees and to provide healthy work environment.

Appropriate measures should be taken to protect the health and safety and the body integrity of its workers especially with regard to operations and work processes; supply, use and maintenance of personal protective equipment; buildings, facilities and environmental conditions; and placement and maintenance of safety shields on machines and all kinds of facilities. It is also obligatory for the employer to maintain machinery, equipment and supplies in good condition. Regular medical examination of a worker is also the employer's responsibility.

Every employer must adopt the effective precautions to protect life, safety and health of workers; adopt the necessary measures in order to prevent accidents, ensuring that the machinery, equipment and operations have the highest degree of safety and remain in good condition, operation and use; provide a healthy work environment; place and maintain safeguards and protections to machines and facilities, to prevent that a risk caused by them may arise for workers; warn the worker of the dangers to their health and integrity arising from the work.

Workers are also under legal obligation to comply with health and safety guidelines and instructions. They must also strictly observe the preventive measures agreed by the competent authorities and employers. Technical recommendations given in regard to the use and maintenance of personal protective equipment and machinery guards must also be adopted by the workers.

Under the Government decision No. 229 of 2014, an enterprise is required to create a safety plan and safety committee with equal representation of workers and employers.

Source: §197 of the Labour Code 2001; §4, 5(d) & 8 of the Reglamento General sobre Higiene y Seguridad en el Trabajo; Government Decision no. 229-2014, of 23 July 2014 amending Regulation Occupational Health and Safety



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## Free Protection

The employer is under an obligation to prevent accidents and occupational hazards by providing appropriate clothes and personal protective equipment, when and where necessary. The leading OSH law provides a list of personal protective items to be provided to workers according to the type of work they perform.

Source: §197(e) of the Labour Code 2001; § 7 & 94 of the Reglamento General sobre Higiene y Seguridad en el Trabajo

## Training

An employer is obliged to promote capacities of the workforce on OSH issues, advice workers about the hazards related to their work and conduct on-going training for workers on health and safety at work. The employer must provide constant training on health and safety at work for workers.

Source: §197 of the Labour Code 2001; §5(b) of the Reglamento General sobre Higiene y Seguridad en el Trabajo

## Labour Inspection System

Labour Inspection System is provided under the Labour Code. However, it is not as efficient as is required under ILO Convention on labour inspection. The General Inspectorate within the Ministry of Labour is responsible for the enforcement and investigation of the provisions related to occupational safety and health provided in labour code.

Inspectors are authorized to visit workplaces at any time during the day or night, if the work is carried out during night, for the sole purpose of inspection; examine wages books, payroll or proof of payment; take samples of substances and materials used in the establishment, etc.

Technical recommendations to improve working conditions and to eliminate risks of accidents and diseases and promote measures to protect the life, health and physical integrity of workers are issued by the Ministry of Labour and Social Welfare (the General Labour Inspectorate being part of it) and the Social Security Institute of Guatemala.

The legislation has provided the inspectors power to issue measures for immediate implementation in case of imminent danger to the health or safety of workers.

In case of violations, the labor inspector communicates the infringement to the employer or legal representative of the company. A deadline is then established to rectify the situation according to the law. Employers must allow and facilitate the inspection of workplaces. Employers are also obliged to allow and facilitate the performance of studies on health and safety conditions in their establishments.

Source: §281 of the Labour Code 2001; §13 of the Reglamento General sobre Higiene y Seguridad en el Trabajo

## DECENTWORKCHECK.ORG

**08/13 Sick Leave & Employment Injury Benefits****Regulations on sick leave & employment Injury benefits:**

Labour Code, Decree No.1441 (amended in 2001)

Social Security Law, Decree No. 295

Agreement No. 410 of the Institute of Social Security of Guatemala, establishing a Regulation on sickness and maternity, 1964

**Income**

In accordance with the Labour Code, workers are entitled to paid sick leave for up to 6 months, provided that the insured worker has at least three months of contributions in the six months before the sickness begins. Two-third of a worker's average earnings is paid as sickness benefit up to a maximum of 180 days; may be extended to 39 weeks. The maximum combined benefit for multiple periods of incapacity is 52 weeks in a 24-month period. The maximum monthly benefit is GTQ 2,400.

Source: §28 & 31 of the Decree No. 295, ISSA Country Profile

**Medical Care**

Medical benefits, including medical and surgical care, hospitalization, medicines, appliances, transportation, rehabilitation services, X-rays, laboratory tests and retraining are available for insured workers.

Source: §31 of the Decree No. 295

**Job Security**

Employment of a worker is secure during the period of sick leave, i.e., six months. An employer may dismiss the worker who is on sick leave for more than 6 months.

Source: §66-68 of the Labour Code 2001; §8 of the Agreement No. 410 of the Institute of Social Security of Guatemala, establishing a Regulation on sickness and maternity 1964

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## Disability / Work Injury Benefit

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

In the case of permanent total incapacity/disability, a lump-sum of GTQ 495 to GTQ 4,950 is paid according to the assessed degree of disability.

There is no provision for permanent partial disability pension.

In the case of temporary disability, 66.7% of worker's earning is paid after a one-day waiting period. Minimum daily benefit is GTQ 8 and maximum monthly benefit is GTQ 2,400.

In the case of fatal injury, dependents are entitled to a lump-sum of GTQ 412.50 as funeral expense.

All the above mentioned benefits are adjusted periodically according to a financial assessment of the program.

Source: ISSA Country Profile

## DECENTWORKCHECK.ORG

## 09/13 Social Security

**Regulations on social security:**

Agreement No. 1124 of the Board of Directors on Regulations on Disability, Old-age, and Survivors of 13 March, 2003, with 2010 amendment

**Pension Rights**

Law provides for old-age pension. For full pension, a worker must have attained 60 years of age (same for women). For those workers insured before 2011, pensionable age is 60 years with at least 20 years of contributions (rising yearly by one year). While for workers first insured from 2011 and onwards, pensionable age is 62 years with at least 240 months of contributions.

Old-age pension is 50% of a worker's average earnings in the last 5 years (60 months) plus 0.5% for each 6-month period exceeding the required number of months for old-age pension. Maximum pension is 80% of an insured worker's earnings. Thirteen payments and December bonus is paid to a retired worker as old-age pension. 10% of the old age pension is paid as a dependent supplement to a wife or partner or a husband with a disability, to each child younger than age 18 (no age limit if disabled), and to a dependent mother and a dependent, disabled father who are not pensioners under this program.

Source: Agreement No. 1124 of the Board of Directors on Regulations on Disability, Old age, and Survivors of 13 March, 2003, with 2010 amendment

**Dependents' / Survivors' Benefit**

Law provides for survivor benefit to the dependents including widow, widower, children and parents. Dependents are entitled to Survivor's benefit if the deceased worker has at least 36 months of contributions in the last six years. At the time of death, a worker must be entitled to receive old age or disability pension or was already receiving this pension.

Survivors' benefit is 50% of the deceased's total disability or old-age pension and is paid to a widow/widower. 25% of the deceased worker's pension is paid to each orphan younger than 18 years. If there are full orphans, 50% of the pension is paid to each full orphan. Total survivors' benefits can't exceed 100% of a deceased worker's pension.

Source: §24-25 of the Agreement No. 1124 of the Board of Directors on Regulations on Disability, Old-age, and Survivors of 13 March, 2003, with 2010 amendment

# DECENTWORKCHECK.ORG

## Unemployment Benefit

There is no provision for unemployment benefit under Guatemalan labour laws

## Invalidity Benefits

Law provides for invalidity benefit in the case of non-occupational accident/injury/disease resulting into permanent invalidity.

If a worker is assessed with total disability, 50% of a worker's average earnings in the last 3 years multiplied plus 0.5% for each 6-month period of contributions exceeding the required number of months for disability pension.

Source: §9 of the Agreement No. 1124 of the Board of Directors on Regulations on Disability, Old-age, and Survivors of 13 March, 2003, with 2010 amendment

## DECENTWORKCHECK.ORG

**10/13 Fair Treatment****Regulations on fair treatment:**

Constitution of the Republic of Guatemala, 1985 (amended in 1993)

Labour Code, Decree No.1441 (amended in 2001)

**Equal Pay**

The constitution of Guatemala guarantees equality of salary for the same rendered work in equality of conditions, productivity, and seniority.

In accordance with the article 89 of the Labour Code, the principle of equal remuneration for work of equal value between workers applies without any discrimination.

Source: §102 (c) of the Constitution of Guatemala 1985; §89 of the Labour Code 2001

**Sexual Harassment**

There is no provision in the law, which prohibits sexual harassment of women at workplace.

**Non-Discrimination**

The Guatemalan Constitution clearly states that all human beings are free and have equal rights. Men and women, regardless of their civil status, have equal opportunities and responsibilities.

In accordance with labour code, there cannot be any discrimination on the ground of race, gender/sex, ethnicity, marital status, social status, language, disability and union activity.

Source: §04 of the Constitution of Guatemala 1985; §14 (a) of the Labour Code 2001

**Equal Choice of Profession**

Men and women can work in the same industries, as no restrictive provision could be located in the law. Constitution grants the right to work in any profession to all the citizens. It guarantees "the right to the free choice [elección] of work and the satisfactory economic conditions that guarantee a dignified existence for the worker and his [or her] family."

Source: §102 (a) of the Constitution of Guatemala 1985; §06 of the Labour Code 2001

# DECENTWORKCHECK.ORG

## 11/13 Minors & Youth

### Regulations on minors and youth:

Constitution of the Republic of Guatemala, 1985 (amended in 1993)

Labour Code, Decree No.1441 (amended in 2001)

### Minimum Age for Employment

Minimum age for employment is 14 years. The Labour Code however allows the Ministry of Labour and Social Security to authorise children less than 14 years of age to work under exceptional circumstances.

The employer has to obtain written authorization from the Labour Inspection office by proving that the minor may work as an apprentice or that he or she is needed to work due to extreme poverty of his or her parents or of the people who are in charge of taking care of him or her; the work is light due to its duration and intensity, compatible with the physical, mental and moral development of the minor; and the minor is still able to comply with his or her mandatory education requirement.

The ordinary work shift established by law can be totally or partially reduced as follows: one hour per day and six hours per week for employees older than 14 years but yet not of legal age of 18 years; and two hours per day and 12 hours per week for minors of 14 years or younger, provided that their work is authorized.

Constitution provides for free public education. Compulsory education age is 15 years.

Source: §74 of the Constitution of Guatemala 1985; §32 & 148 of the Labour Code 2001

### Minimum Age for Hazardous Work

Minimum Age for Hazardous Work is set as 18 years. Under the Ministerial Accord 154-2008, a comprehensive list of hazardous occupations is provided in which children under 18 cannot be employed. These activities include working with toxic substances, domestic service, carrying heavy loads, working under water, mining, etc. Minors cannot also be employed in bars where alcoholic beverages are sold and they cannot be engaged in overtime and night work. Children have the right to be protected from economic exploitation and from performance of any work which is hazardous to their physical and mental health or work which can prevent their access to education. Minimum age for work is set under the Child law as 14 years except in cases specified under the Labour Code. Employment of adolescent workers (under 18) is prohibited in night and overtime work, work in dangerous, unhealthy and hazardous working conditions and work which affects a child's schooling.

Source: §148 of the Labour Code 2001; Ministerial Accord 154-2008; §51 & 63-74 of the Law of Integral Protection of Children and Adolescents 2003

## DECENTWORKCHECK.ORG

**12/13 Forced Labour****Regulations on forced labour:**

Constitution of the Republic of Guatemala, 1985 (amended in 1993)

Labour Code, Decree No.1441 (amended in 2001)

**Prohibition on Forced and Compulsory Labor**

Forced Labour is prohibited under the Constitution and the Labour Code. In accordance with the Constitution, no one can be subjected to servitude or other condition that diminishes his/her dignity. Penal Code provide for punishment of imprisonment for a term ranging between two to ten years.

Source: §04 of the Constitution of Guatemala 1985; §04 of the Labour Code 2001,

**Freedom to Change Jobs and Right to Quit**

Workers have the right to change jobs after serving due notice on their employer.

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

Source: §83 of the Labour Code 2001

**Inhumane Working Conditions**

Working time may be extended beyond normal working hours of forty-eight hours per week and eight hours a day. However, total hours of work inclusive of overtime must not exceed twelve hours a day. In work that is unhealthy or dangerous, the 8-hour limit can be extended by agreement between worker and employer by up to 2 hours, provided that weekly working time does not exceed the 48 hour weekly limit (in actual the limit is 44 hours).

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

Source: §116, 121 & 122 of the Labour Code 2001; Acuerdo Gubernativo Numero 388-2010



**Regulations on trade unions:**

Constitution of the Republic of Guatemala, 1985 (amended in 1993)

Labour Code, Decree No.1441 (amended in 2001)

**Freedom to Join and Form a Union**

Constitution and labour law provide for freedom of association and allow workers and employers to join and form unions. This right is regulated by the labour code. The Constitution protects the right of workers to form and join unions. This is an exclusive right of the employees without any discrimination, as they do not need any prior authorization to act upon this right, as long as they have complied with all legal requirements. The workers may not be dismissed for participating in the establishment of a [labor] union, [and] must be able to enjoy such a right from the time that they notify the General Inspectorate of Labor [Inspección General de Trabajo].

Union is any permanent association of workers or employers or persons in a profession or independent job (self-employed) constituted exclusively for the study, improvement and protection of their common economic and social interests.

Union members are free to elect their representatives and formulate their work programs. They may draw up their own statutes and administrative regulations, as long as these are not contrary to laws in effect and public order.

The unions must be registered directly with the Directorate General of Labour or through the local authorities by filing written request along with a copy of their statutes and list of names of those responsible for management and administration. A trade union is considered registered if the documentation is complete and they conform to the legal provisions. Filing of registration form has to be done again in case of any change in statutes and administration. After registration, statutes are published in Journal of Union Statutes.

Discriminatory behavior is prohibited on the basis of union affiliation or participation in union activities.

Source: §102 (r) of the Constitution of Guatemala 1985; §206 & 218 of the Labour Code 2001

# DECENTWORKCHECK.ORG

## Freedom of Collective Bargaining

Right to collective bargaining is recognized by the Constitution and regulated by Labour Code.

Collective Bargaining Agreement (CBA) is an agreement between workers/union and employer(s) regulating the terms and conditions of employment.

A CBA must be in written form and must be concluded in triplicate, one for each party and third copy is submitted to the Directorate General of Labour by the employer. 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.

A CBA is applicable from the day of its approval. The duration of a CBA may not be less than a year and more than three years. It can be cancelled by giving a prior notice of one year.

Labour Code provides for a National Wage Commission which is a tripartite body, supported by Joint Minimum Wage Boards (also tripartite in nature), working at the regional or sectoral level. The Boards submit their proposals to the Commission for determining minimum wage.

There is also provisions for Economic and Social Council of Guatemala which is an advisory body of the state. The Council acts a place of permanent social dialogue between productive sectors of economy and encourages the concerted opinions of the productive sectors for creating public policies of social and economic nature. The Council's decisions are not binding. The Council is composed of 24 members with eight members each from worker, employer and cooperative groups.

Source: §106 of the Constitution of Guatemala 1985; §38-56 of the Labour Code 2001; Decreto Numero 2-2012

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## Right to Strike

Right to strike is enshrined in the Constitution and regulated by the Labour Code. The Constitution has recognised the right to strike and to work stoppage exercised in accordance with the law, after all conciliation procedures have been exhausted. These rights can be exercised solely for reasons of economic-social order. The laws establish the cases and situations where the strike and work stoppage will not be allowed. The excessively long list of essential services, which includes education, postal, transport and energy production sectors, eventually frustrates the right to strike.

The right to strike of the workers of the State and its decentralized and autonomous entities is also recognized by the Constitution. This right can only be exercised in the form provided by the law and in no case may it affect the provision of the essential public services.

In accordance with the labour law, legal strike is the temporary suspension and abandonment of the work at a company agreed, implemented and maintained by a group of three or more workers, after fulfilling the requirements provided in the law, for the sole purpose of improving or defending their economic.

A strike is legal only after all the methods of dispute resolution fail and it strictly adheres to the provisions of law. The employment contract of strikers suspends during the period of strike and employer is not obliged to pay wages to the strikers during this period. However, workers who have to work during strike due to nature of their job are entitled to double pay during a legal strike. Double pay is not provided in case a strike is declared illegal. If a strike is declared fair and legal by the courts, employer has to pay wages to the striking workers.

Source: §104 & 116 of the Constitution of Guatemala 1985; §239-244 of the Labour Code 2001

## DECENTWORKCHECK.ORG

## 01/13 Work &amp; Wages

**ILO Conventions on Work and Wages**

Minimum wage: Convention 131 (1970)

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

***Guatemala has ratified the Conventions 95, 117 & 131.***

**Minimum wage**

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.

**Regular Pay**

Wages must be paid regularly on a daily, weekly, fortnightly or monthly basis.

## 02/13 Compensation

**ILO Conventions on Compensation**

Compensation overtime: Convention 01 (1919); Night work: Convention 171 (1990)

***Guatemala has ratified Convention 01 only.***

**Overtime Compensation**

Working overtime is to be avoided. Whenever it is unavoidable, extra compensation is at stake - minimally the basic hourly wage plus all additional benefits you are entitled to. In accordance with ILO Convention 1, overtime pay rate should not be less than one and a quarter times (125%) the regular rate.

**Night Work Compensation**

Night work means all work which is performed during a period of not less than seven (07) consecutive hours, including the interval from midnight to 5 a.m. A night worker is a worker whose work requires performance of a substantial number of hours of night work which exceeds a specified limit (at least 3 hours). Convention 171 requires that night workers be compensated with reduced working time or higher pay or similar benefits. Similar provisions are found in the Night Work Recommendation No. 178 of 1990.

**Compensatory Holidays/Rest Days**

If you have to work on a national/religious holiday or a weekly rest day, you should be entitled to compensation. Not necessarily in the same week, provided that the right to a paid compensation is not.

**Weekend/Public Holiday work Compensation**

If you have to work during the weekend, you should thereby acquire the right to a rest period of 24 uninterrupted hours instead. Not necessarily in the weekend, but at least in the course of the following week. Similarly, if you have to work on a public holiday, you must be given a compensatory holiday. A higher rate of pay for working on a public holiday or a weekly rest day does not take your right to a holiday/ rest.

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## 03/13 Annual Leave &amp; Holidays

**ILO Conventions on weekly rest days and paid annual leave**

Convention 132 (1970) on Holidays with Pay Convention Conventions 14 (1921), 47 (1935) and 106 (1957) for weekly rest days. In addition, for several industries, different Conventions apply.

***Guatemala has ratified the Conventions 14 & 106 only.***

**Paid Vacation/Annual Leave**

An employee is entitled to at least 21 consecutive paid annual leave. National and religious holidays are not included. Collective agreements must provide at least one day of annual leave on full remuneration for every 17 days on which the employee worked or was entitled to be paid.

**Pay on Public Holidays**

You should be entitled to paid leave during national and officially recognized public holidays.

**Weekly Rest Day**

Workers should enjoy a rest period of at least twenty-four consecutive hours in every 7 day period, i.e., a week

## 04/13 Employment Security

**ILO Conventions on employment termination**

Convention 158 (1982) on employment termination

***Guatemala has not ratified the Convention 158.***

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

**Written Employment Particulars**

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

**Fixed Term Contracts**

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

**Probation Period**

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

**Notice Requirement**

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

**Severance Pay**

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

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## 05/13 Family Responsibilities

**ILO Conventions on family responsibilities**

Convention 156: Workers with Family Responsibilities Convention (1981)

Recommendation 165: Workers with Family Responsibilities (1981)

***Guatemala has ratified the Convention 156 only.***

**Paternity Leave**

This is for the new fathers around the time of child birth and is usually of shorter duration.

**Parental Leave**

The accompanying recommendation (No. 165) to ILO Convention on Family Responsibilities provides for parental leave as an option available to either parent to take long leave of absence (paid or unpaid) without resigning from work. Parental leave is usually taken once the maternity and paternity leave have been exhausted. For working parents, laws may define the portion of parental leave that has to be compulsorily taken by fathers or mothers.

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

Recommendation 165 asks for looking into measures for improving general working conditions through flexible work arrangements.

## 06/13 Maternity and Work

**ILO Conventions on maternity and work**

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

***Guatemala has ratified Convention 103 only.***

**Free medical care**

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

**No harmful work**

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

**Maternity leave**

Your maternity leave should last at least 14 weeks.

**Income**

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

**Protection from Dismissals**

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

**Right to return to same position**

Workers have the right to return to same or equivalent position after availing maternity leave.

**Breastfeeding/Nursing Breaks**

After child birth and your rejoining your organization, you must be allowed paid nursing breaks for breastfeeding your child.

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## 07/13 Health &amp; Safety

**ILO Conventions on Health and Safety**

Most ILO OSH Conventions deal with very specific Occupational Safety hazards, such as asbestos and chemicals.

Convention 155 (1981) is the relevant general convention here. Labour Inspection Convention: 81 (1947)

***Guatemala has ratified Convention 81 only.***

**Employer cares**

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

**Free protection**

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

**Training**

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

**Labour Inspection System**

You and your colleagues should receive training in all work related safety and health aspects and you should have been shown the emergency exits.

## 08/13 Sick Leave &amp; Employment Injury Benefits

**ILO Conventions on Sickness and Employment Injury**

Convention 102 (1952), Conventions 121 (1964) and 130 (1969) concerning Social Security, Employment Injury Benefits and Medical Care and Sickness Benefits

***Guatemala has not ratified the Conventions 102, 121 & 130.***

**Income/Paid Sick Leave**

Your rights to work and income should be protected when illness strikes. The national labour law may provide that sickness benefit may not be paid during the first 3 days of your absence. Minimally you should be entitled to an income during first 6 months of illness. This income should be at least 45 per cent of the minimum wage. (Countries are free to opt for a system which guarantees 60 per cent of the last wages during the first 6 months of illness or even during the first year). You should be entitled to paid sick leave.

**Medical Care**

During illness, you should be entitled to medical care without any additional cost. Employees and their family members should have access to the necessary minimal medical care at an affordable cost.

**Job security**

During the first 6 months of your illness, you should not be fired.

**Disability/Work Injury Benefit**

Whenever you are disabled due to an occupational disease or accident, you ought to receive a higher benefit. In the case of temporary or total incapacity/disability, a worker may at least be provided 50% of his average wage while in the case of fatal injury, the survivors may be provided with 40% of the deceased worker's average wage in periodical payments.

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## 09/13 Social Security

**ILO Conventions on Social Security**

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

Employment Injury Benefits: Conventions 121 (1964),

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

Medical Care and Sickness Benefits: Convention 130 (1969)

Unemployment Benefits: Convention 168 (1988).

***Guatemala has not ratified any of the Conventions mentioned above.***

**Pension Rights**

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

**Dependent's/Survivors' Benefit**

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

**Unemployment Benefit**

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

**Invalidity Benefits**

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

## 10/13 Fair Treatment

**ILO Conventions on Fair Treatment**

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

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

***Guatemala has ratified both Conventions 100 & 111.***

**Equal Pay**

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

**Sexual Harassment**

Not clearly provided in ILO Conventions. However, sexual intimidation/harassment is gender discrimination.

**Non-Discrimination**

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

**Equal Choice of Profession**

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



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## 11/13 Minors & Youth

### ILO Conventions on Minors & Youth

Minimum Age: Convention 138 (1973)

Worst Forms of Child labour: Convention 182 (1999)

***Guatemala has ratified both Conventions 138 & 182.***

### Minimum Age for Employment

At workplaces, children may not be forced to perform work that could harm their health and hampers their physical and mental development.

All children should be able to attend school. Once this is safeguarded, there is no objection against children performing light jobs between the ages of 12 and 14. The general minimum age is 15 years however developing countries may set this at 14 years. The minimum age for hazardous work, work that is likely to jeopardize the health, safety or morals of young persons, is 18 years. It can also be set at a lower level of 16 years under certain circumstances

### Minimum Age for Hazardous Work

Children should not be employed in a work that is likely to harm the health, safety or morals of children. It is considered one of the worst forms of child labour. The minimum age for such hazardous work is 18 years.

## 12/13 Forced Labour

### ILO Conventions on Forced/Bonded labour

Forced labour: Conventions 29 (1930)

Abolition of Forced labour: Conventions 105 (1957)

Forced labour is the work one has to perform under threat of punishment: forfeit of wages, dismissal, harassment or violence, even corporal punishment. Forced labour means violation of human rights.

***Guatemala has ratified both Conventions 29 & 105.***

### Prohibition on Forced and Compulsory labour

Except for certain exceptions, forced or compulsory labour (exacted under the threat of punishment and for which you may not have offered voluntarily) is prohibited.

### Freedom to change jobs and Right to quit

Employers have to allow you to look for work elsewhere. If you do, you should not be shortened on wages or threatened with dismissal. (In the reverse cases, international law considers this as forced labour).

### Inhumane Working Conditions

If the total working hours, inclusive of overtime exceed 56 hours per week, the worker is considered to be working under inhumane working conditions.

## 13/13 Trade Union

### ILO Conventions on Trade Union Rights

Freedom of association and protection of the right to organize: Convention 87 (1948)

Right to Organize and Collective Bargaining: Convention 98 (1949)

***Guatemala has ratified both Conventions 87 & 98.***

### Freedom to join and form a union

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

### Freedom of Collective Bargaining

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

### Right to Strike

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

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## About Decent Work and Decent Work Check

Compare your own situation with the international labour standards and how they are applied in Guatemala. At the end of the checklist you will see how things stand for you. You may be better off than what the international standards prescribe, but you should not be worse off. Behind every answer, you can find a short explanation of what your rights are; nationally and internationally. So you see right away if you can improve your situation.

The Decent Work Check makes the pretty abstract Conventions and legal texts tangible. Because, in the end, you want to know what your rights on the job mean in practice, what you may claim and what protection you are entitled to in case something unexpectedly does go wrong. The Decent Work Check employs double comparison system. It first compares national laws with international labour standards and gives a score to the national situation (happy or sad face). It allows workers to compare their real situation with national regulations in the country. Workers then compare their own score both at national and international levels. The Decent Work Check is based on de jure labour provisions, as found in the labour legislation. The real practice is informed by the employees themselves. This Check is different from other indices like World Bank's Doing Business Indicators or even ISSA's Social Security Programs throughout the World as it is not only descriptive in nature (bereft of any subjective opinions) but also that it covers a lot of different variables. The Revised Decent Work Check is also designed while taking into account upcoming Decent Work Indicators. While Decent Work Indicators focus more on statistics, our priority is informing workers about their rights through this Decent Work Check. 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 labour inspectors don't even know 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). As soon as you complete the DecentWorkCheck, you see which issues need improvement in your work life.

This is exactly the strategy chosen in the debates in many WageIndicator countries. In the debates with roughly 20-30 people around the table from all sides, the decent Work Check has soon the effect of a mini social dialogue. The people who run the dialogue are equally well informed.

The international labour standards are laid down in ILO-Conventions. ILO is the specialised body of the United Nations working on labour issues and was founded in 1919. In the ILO, negotiations are always going on between governments of the member states, national trade unions and employers associations regarding work related issues like rights at work and social protection. These negotiations may take years, but eventually lead to so called Conventions or Recommendations. In Conventions, minimum standards are laid down. Conventions are not the law, but the intention is that member states subscribe to the standard in question. The proper way to do that is to have these Conventions ratified by parliament and then make national laws (Some countries may follow the system of self-executing treaties). National law can be enforced. ILO-Conventions are usually accompanied by Recommendations on how to implement the standards.

Since 1999, the ILO works according to the so called Decent Work Agenda. In the meantime, the Decent Work Agenda has been widely accepted as an important strategy to fight poverty and foster development. The Agenda has been incorporated in the Millennium Development Goals of the United Nations. In short, the idea behind Decent Work is first of all an income which allows the working individual a good life. Moreover, at work, everybody has an equal chance to develop themselves; working conditions are safe; there is no instance of child and forced/bonded labour; and discrimination does not occur. Trade unions are allowed a real say in work related matters and the state has created a social safety net for all especially for the sick, weak, elderly and expecting women.

**WageIndicator.org and Iftikhar Ahmad**

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