
International Labour Organization

**> Fundamental principles and rights
at work: A labour law study**

Dominican Republic

International Labour Office Geneva

Foreword

The International Labour Office was invited by the Government of the Dominican Republic in a letter dated 31 October 2003 to prepare an updated and objective study of current labour laws relating to fundamental principles and rights at work in this country. The terms of reference for this review were agreed with the Government. The review builds on work already done by the ILO and includes an individual country review. The desk review was complemented by a visit to the Dominican Republic where meetings were held with representatives of workers' and employers' organizations as well as government representatives. An initial draft of the full study was then shared with the Government, which had the opportunity to provide written comments on the draft. In accordance with ILO standard practice, it was suggested that the draft document be shared with the social partners and that they be consulted on any comments sent to the ILO.

The scope of the study was determined by the terms of reference agreed with the Dominican Republic. The study focuses on the conformity of labour laws with respect to the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up adopted by the International Labour Conference in 1998. These fundamental principles and rights are contained in the eight ILO Conventions which deal with freedom of association, the right to collective bargaining, the elimination of all forms of discrimination, abolition of forced labour and eradication of child labour. The study does not consider labour laws dealing with other issues, nor does it attempt to evaluate the practice and enforcement of the relevant labour laws. Finally, the study is intended to provide an objective summary account rather than a detailed analysis, although both the footnotes and the material contained in Appendix I reference more detailed sources of background material.

I wish to thank the Government, workers' and employers' organizations of the Dominican Republic for their contributions to this study. I am also grateful to the Director of the ILO Subregional Office, San José, and the technical specialists in both the San José Office and IFP/DIALOGUE at ILO headquarters in Geneva for their prompt cooperation and competent handling of this study. A special word of thanks goes to the Director and staff of RELCONF who ensured the timely translation and printing of this text, and also to my staff in ED/DIALOGUE for their tireless efforts.

Sally P. Paxton,
Executive Director,
Social Dialogue Sector.

Contents

	<i>Page</i>
Foreword	iii
Abbreviations	vii
Introduction	1
Freedom of association and the effective recognition of the right to collective bargaining.....	4
The elimination of discrimination in respect of employment and occupation	8
The effective abolition of child labour	9
The elimination of all forms of forced or compulsory labour	10

Appendices

I. Summary table of legislation	13
II. Comments from the Government on the Office paper	18

Abbreviations

art. article

C Constitution

CEACR Committee of Experts on the Application of Conventions and Recommendations

CNUS National Council for Trade Union Unity

LC Labour Code

PenC Penal Code

s. section

Introduction

This study was requested by the Secretary of Labour of the Dominican Republic, which is about to begin negotiations on a Free Trade Agreement with the United States. The purpose of the study, in accordance with the terms of reference agreed with the Government following its request,¹ is to review current labour legislation with regard to the four categories of rights and principles referred to in the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up of 1998,² namely:

- (a) freedom of association and the effective recognition of the right to collective bargaining (Conventions Nos. 87³ and 98⁴);
- (b) the elimination of all forms of forced or compulsory labour (Conventions Nos. 29⁵ and 105⁶);
- (c) the effective abolition of child labour (Conventions Nos. 138⁷ and 182⁸); and
- (d) the elimination of discrimination in respect of employment and occupation (Conventions Nos. 100⁹ and 111¹⁰).

¹ See the letter of the Minister of Labour of 31 October 2003.

² The terminology used throughout the report is taken from para. 2 of the Declaration.

³ Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), approved by the National Congress by resolution No. 4505 of 1956, *Official Gazette* No. 8010 of 1956. The international labour Conventions can be found at the ILO web site <http://www.ilo.org/ilolex/english/convdispl.htm>.

⁴ Right to Organise and Collective Bargaining Convention, 1949 (No. 98), approved by the National Congress through resolution No. 3592 of 30 June 1953, *Official Gazette* No. 7584 of 22 July 1953.

⁵ Forced Labour Convention, 1930 (No. 29), approved by the National Congress through resolution No. 4505 of 1956, *Official Gazette* No. 8010 of 1 August 1956.

⁶ Abolition of Forced Labour Convention, 1957 (No. 105), approved by the National Congress through resolution No. 4926 of 2 May 1958, *Official Gazette* No. 8257 of 30 June 1958.

⁷ Minimum Age Convention, 1973 (No. 138), approved by the National Congress through resolution No. 2399 of 16 April 1999, *Official Gazette* No. 10012 of 30 April 1999.

⁸ Worst Forms of Child Labour Convention, 1999 (No. 182), approved by the National Congress through resolution No. 4700 of 21 July 2000, *Official Gazette* No. 10053 of 31 July 2000.

⁹ Equal Remuneration Convention, 1951 (No. 100), approved by the National Congress through resolution No. 3592 of 30 June 1953, *Official Gazette* No. 7584 of 22 July 1953.

¹⁰ Discrimination (Employment and Occupation) Convention, 1958 (No. 111), approved by the National Congress through resolution No. 274 of 1 June 1964, *Official Gazette* No. 8864 of 5 June 1964.

Methodology and purpose of the study

The purpose of the study is to show the state of legislation with regard to the fundamental ILO Conventions and to illustrate the ways in which national legislation is developing or implementing the most relevant principles and provisions of each of these Conventions, citing where appropriate the observations of the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR)¹¹ and the Conference Committee on the Application of Standards¹² regarding the effect given to these Conventions through legislation or any clashes or discrepancies between national laws and a given Convention. In particular, reference is made to legislative measures that have been "noted with satisfaction" by the CEACR, but legislation developing or implementing the most relevant principles and provisions of each of the fundamental Conventions is indicated even where there are no particular observations. *In accordance with the agreed terms of reference, the assessment does not examine problems in the implementation of legislation.*¹³ Like any Office survey, it is without prejudice to any comments or observations that may be formulated at a later date by the ILO's supervisory bodies.

The study specifically reviews, first, the provisions of the Labour Code intended to give effect to the fundamental Conventions in national law. It also reviews the constitutional provisions giving expression to the fundamental principles and provisions of the Conventions relating to the ILO Declaration of 1998, including implementing legislation. It should be noted that the number of observations made by the CEACR concerning the application of Conventions Nos. 87 and 98 is much higher than for the other six fundamental Conventions, and so the former are considered at greater length in the study. The appendices contain a tabular summary of the legislative provisions referred to in the study and the observations received from the Government, which are referred to in the footnotes.

¹¹ "The Committee's task consists of indicating the extent to which the law and practice in each State appears to be in conformity with ratified Conventions and the obligations undertaken by that State by virtue of the ILO Constitution." (ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), ILC, 91st Session, Geneva, 2003, para. 6, available at <http://www.ilo.org/ilolex/cgi-lex/single.pl?query=042003@ref>).

¹² The tripartite Conference Committee on the Application of Standards considers and reports on information and reports received on the application of Conventions and Recommendations. See <http://www.ilo.org/public/english/standards/relm/ilc/ilc91/pdf/pr-24pl.pdf>.

¹³ For this reason, no reference is made to the reports of the Committee on Freedom of Association of the ILO Governing Body, which are available at <http://www.ilo.org/ilolex/english/casframeE.htm>.

The adoption of the Labour Code (Act No. 16-92 of 29 May 1992), which had been drafted with the technical assistance of the ILO, and of the Civil Service and Administrative Careers Act of 20 May 1991, removed many of the obstacles that had been highlighted by the CEACR over a number of years regarding the application of ILO Conventions Nos. 87,¹⁴ 98,¹⁵ 100¹⁶ and 111.¹⁷

Lastly, provisions in the Conventions in question and national legislation are compared only where observations have been made by the ILO's supervisory bodies, and in particular the CEACR. Where this is not the case, that is, where a provision is entirely in conformity with the provisions of the Convention, no observation is made as it is considered unnecessary.

¹⁴ CEACR: Individual observation concerning Convention No. 87: 1993. The Committee noted with satisfaction the provisions of the two pieces of legislation which amended and repealed a number of former provisions on which the Committee had been commenting for several years. Specifically, it noted that the new Labour Code "covers all workers in agricultural enterprises, agro-industries, farming and forestry (section 281), and employees of the State and autonomous official institutions of a commercial or industrial character or in the transport sector, and grants them the right to organize (Principle III); it confines limitations on the right to strike to essential services in the strict sense of the term, and provides for expeditious and impartial arbitration procedures (sections 403 and 404); abolishes the prohibition on political and sympathy strikes (section 406); repeals Act No. 5915 of 1962 and amends Act No. 2059 of 1949. It also repeals Act No. 56 of 1965 which prohibited all trade union propaganda or proselytizing in public institutions. The Civil Service and Administrative Careers Act establishes the right to organize of all public servants and employees in the central administration and in autonomous institutions which are not of a commercial or industrial nature (section 30)".

¹⁵ CEACR: Individual observation concerning Convention No. 98: 1994. The Committee noted with satisfaction that the new Labour Code "sets out trade union rights (section 390), increases the level of fines and sanctions as punishment to the authors of anti-union acts and discriminatory practices (sections 720 and 721), and that the provisions of the Labour Code respecting protection against anti-union discrimination and the promotion of collective bargaining for the determination of terms and conditions of employment through collective agreements (sections 103 and 281) are applicable to workers in agro-processing, stock-raising and forestry enterprises, as well as in export processing zones".

¹⁶ CEACR: Individual observation concerning Convention No. 100: 1994. The Committee noted with satisfaction the information contained in the Government's report to the effect that, by virtue of the new Labour Code, and specifically section 281 thereof, "the provisions of the Code apply to all agricultural enterprises, thus answering the concerns previously expressed by the Committee as to the application of the principle of the Convention to employees in certain small agricultural undertakings".

¹⁷ CEACR: Individual observation concerning Convention No. 111: 1993. The Committee noted with satisfaction that Fundamental Principle VII of the new Labour Code expressly prohibits "any discrimination, exclusion or preference based on grounds of sex, age, race, colour, national origin, social origin, political views, trade union activity or religious belief" and thus covers the grounds of discrimination listed in Article 1, para. 1(a), of the Convention; and that the provisions and amendments of the 1951 Labour Code requiring women (but not men) wishing to take up employment to provide a medical certificate attesting physical fitness for work had been repealed.

Freedom of association and the effective recognition of the right to collective bargaining

A. The right to organize

The Constitution of the Republic states that joining a trade union is a matter of free choice (article 8.11.a). Similarly, the Labour Code (section 319) allows workers to choose the scope and level of their organization.

In order to establish a confederation, the participation of at least two federations is required and two-thirds of the total membership must vote for such a move at a general meeting (sections 383 and 384 of the Labour Code). The CEACR has urged the Government “to ensure that it removes from the applicable legislation in the near future the restrictions relating to the requirement for two-thirds of the members of federations to vote for the establishment of a confederation, so that it is left to the rules of federations to lay down the criteria in this respect”.¹⁸

1. ***The right to establish organizations without distinction whatsoever and without previous authorization***

(a) Non-discrimination. The Labour Code recognizes the right of association of workers (section 317 of the Labour Code), with the sole exception of directors, managers or administrators of an undertaking, and those who carry out work relating to management, inspection, safety, surveillance or monitoring, where such work is of a general nature or related to the work performed directly for the employer; such staff “may not be members of a workers’ trade union” (section 328 of the Labour Code). In addition, the Labour Code also contains provisions protecting freedom of association in the converse sense of the right not to join and the right to leave a union, and prohibits any conduct likely to violate this right (sections 47.4, 332, 333.1 and 334 of the Labour Code).

In general, a minimum number of 20 members is required to form a trade union (section 324 of the Labour Code). However, in order to establish trade unions representing public servants, the minimum number required is 60 per cent of the total number of employees in the organization in question (section 142, paragraph 1, of the Implementing Regulations of the Civil Service and Administrative Careers Act). The CEACR had indicated in 2001 that it was hoping “to be able to note in the near future that this percentage has been reduced to a reasonable level”. In 2003, the CEACR noted that Decree No. 559-01 of 18 May 2001 had amended section 142 of Implementing Regulations No. 81-94 of the Civil Service and Administrative Careers Act, reducing to 40 per cent the minimum number of employees in each institution required for the establishment of associations of public servants. The Committee nevertheless recalled that “by requiring organizations to have a minimum number (or percentage) of members as a condition of registration, restrictions are placed on the right of workers to establish organizations of their own choosing, tantamount to prior authorization, which is contrary to Article 2 of the

¹⁸ CEACR: Individual observation on Convention No. 87: 2003. In its comments on the preliminary version of this study, the Government states that the Labour Code was the result of consultations between employers and workers and, following the adoption of the Code, the Government submitted the amendments suggested by the CEACR to the Consultative Labour Council, but the response from the social partners was not favourable (see Appendix II).

Convention”. The Committee continued to consider “that 40 per cent is too high and therefore requests the Government to adapt its legislation accordingly”.¹⁹

(b) Registration requirements. The Secretary of State for Labour may, within a period of ten days after submission of the documents required for registration of a trade union, return them to the applicants “indicating to the parties concerned any defects for due correction” (section 375 of the Labour Code). If the documents are not returned, or if they are returned and appropriate corrections are made, the Secretary of State for Labour is required to take a decision within a period of 30 days. Failing this, “the parties shall give [the Secretary of State] a deadline within which a ruling must be given and, if that is not done within three days, the trade union shall be deemed to be registered with all the effects of law” (section 376 of the Labour Code). Valid reasons for refusal to register a trade union include: failure to include in the by-laws basic provisions relating to the routine activities of the organization; failure of any of the by-laws to comply with the laws in force; and failure to comply with any of the requirements of the Labour Code or the by-laws (ibid.).

2. Organizational autonomy

(a) Administrative and financial matters. The trade union organization is required to submit accounts to the Labour Administration, and to its members by displaying them prominently at the headquarters of the undertaking (sections 346 and 347 of the Labour Code).

(b) Election of representatives. The Labour Code does not prohibit foreign citizens from standing for election to union office (sections 351 and 359).

3. Guarantees of protection

(a) The general principle of non-discrimination on grounds of trade union activity and the prohibition of unfair labour practices. There is a prohibition on “labour practices that are unfair or contrary to the labour ethic” that might obstruct, impede or restrict in any way the free exercise of freedom of association. For example, the Labour Code prohibits: any requirement that “workers or persons seeking employment join or refrain from joining a trade union” (section 333.1 of the Labour Code); dismissal or suspension of a worker for membership of a trade union (section 333.3); and in general any attempt to influence workers in order to restrict their right to join or not to join a union, or to resign from a union or remain in it (section 47.4); reprisals against workers because of their trade union activities (section 333.2 of the Labour Code); refusal without good reason to engage in talks on collective agreements (section 333.4 of the Labour Code); interference of any kind in the establishment or administration of a workers’ trade union, or provision of financial or any other support to a union (section 333.5 of the Labour Code), and specifically any attempt to put pressure on workers to vote for a particular candidate in trade union elections (section 47.5 of the Labour Code); refusal to negotiate with legitimate representatives of workers (section 333.6 of the Labour Code); and any use of force, violence, intimidation or threats, or any other form of coercion against workers or their unions, with the aim of impeding or obstructing the exercise of the rights enshrined in the relevant laws (section 333.7 of the Labour Code). Unfair practices contrary to the principles of freedom of association are regarded as very serious and punishable by a fine of between seven and 12 times the minimum wage (sections 720 and 721 of the Labour Code).

¹⁹ CEACR: Individual observations on Convention No. 87: 2001 and 2003.

Similarly, the Labour Code considers as unlawful and effectively non-existent any clause in a collective agreement which requires the employer: “to hire only members of a trade union” (section 106.1); to “give preference to members of a trade union for the purpose of hiring” (section 106.2); “to dismiss a worker who ceases to be a trade union member” (section 106.3); or “to implement against workers sanctions that have been imposed by their trade union” (section 106.4).

(b) Protection from dismissal: Trade union immunity. The following groups enjoy trade union immunity: members of a trade union in the process of being established (section 390.1 of the Labour Code); members of a trade union’s executive body (section 390.2 of the Labour Code); and workers’ representatives involved in talks on a collective agreement (section 390.3 of the Labour Code). This protection is subject to certain restrictions, both quantitative (in terms of the number of workers covered) and in terms of the duration of protection, although these limits can be adjusted through collective talks. The quantitative limits mean that protection is granted to a maximum of 20 workers during the period in which the union is being established (section 390.1 of the Labour Code); to a maximum of five, eight or ten members of the executive body where the undertaking employs, respectively, up to 200, 400, or more than 400 workers (section 390.2 of the Labour Code); and up to three representatives appointed for the purpose of collective bargaining (section 390.3 of the Labour Code). In the latter two cases, if an undertaking has more than one trade union, or if the unions are occupational or branch unions, the number of workers who enjoy trade union immunity is divided between the unions concerned on the basis of their respective memberships (section 390 of the Labour Code). There are also time limits, in that protection begins with written notification of intent to establish a new union to the employer and to the Department of Labour or local authority that acts in its place, and continues for up to three months after registration (section 393.1 of the Labour Code), provided that the union’s executive body and members apply for registration “within 30 days of the notification”; failure to do so results in loss of trade union immunity (section 87 of Labour Code Implementing Regulations No. 258-93). Alternatively, protection can begin from the date of notification regarding union appointments or elections and continue for up to eight months after executive body members or the union representatives responsible for negotiating a collective agreement cease to hold union office (section 393.2 of the Labour Code). If one worker is replaced by another in the exercise of trade union duties, he or she loses trade union immunity (section 393.3 of the Labour Code), while the worker taking his or her place continues to enjoy such protection (section 390.4 of the Labour Code).

Before a worker is dismissed, prior approval must be obtained from the judicial authority (labour court), which must determine within a period of not more than five days whether the worker has been dismissed for a genuine offence, or because of the worker’s trade union office or activity. If this procedure is not followed, the dismissal is null and void and does not terminate the contract of employment (section 391 of the Labour Code). Application for the reinstatement of a worker dismissed without such prior approval is examined through the ordinary labour procedure.

B. Voluntary collective bargaining

National legislation recognizes the right to collective bargaining, which is granted to trade union organizations (section 103 of the Labour Code).

1. The obligation to negotiate

If talks are requested by the trade union which is the “authorized representative of the workers” whose interests are concerned by the relevant collective agreement, that is, by the union whose members make up an “absolute majority” of the workers employed at a given

undertaking or in a given branch (sections 109 and 110 of the Labour Code), the employer is required to initiate talks, which “does not imply the employer’s acceptance of the union’s demands” (section 333.4 of the Labour Code). In the view of the CEACR, the requirement of a majority imposed by legislation “is excessive and, in many cases, may constitute an obstacle to collective bargaining or even make it impossible”, in contravention of Article 4 of Convention No. 98. The Committee therefore requested the Government to “take the measures necessary to amend the provisions of the Labour Code, in order to encourage and promote free collective bargaining, by reducing the majority required for negotiations, or at least by allowing a sufficiently representative minority union to conclude collective agreements on behalf of its members”.²⁰

If the employer refuses to initiate negotiations or no agreement is reached, the workers can have recourse to the established procedure for resolving economic disputes (sections 397 and 674 of the Labour Code), which includes provisions for exercising the right to strike (section 407.2 of the Labour Code).

2. Penalties for non-compliance

In the case of failure by the employer to implement an agreement, trade union organizations may also, in addition to applying to the courts for an implementation order, seek compensation for damages (section 125 of the Labour Code).

C. The right to strike

The right to strike is recognized under national law (article 8.11.d of the Constitution).

1. Requirements to be met for a strike to be legal

The general requirements for a strike to be legal (section 407 of the Labour Code) include the requirement that at least 51 per cent of workers at a given undertaking vote for strike action. The CEACR has reiterated in this regard “that the Government should ensure that account is taken only of the votes cast and that the quorum is fixed at a reasonable level” and has accordingly requested the Government “to amend its legislation in this respect”.²¹

2. Strikes in public services

In general, the legislators who framed the Constitution declared illegal any strike, stoppage, interruption, obstruction or deliberate reduction in output such as to affect the administration, public services or utilities (article 8.11.d. of the Constitution). As regards public services, strikes are prohibited in essential services, meaning communications, water supply, gas and electricity for lighting and domestic use, pharmaceuticals, hospitals and other services, interruption of which could endanger the life, health or safety of all or

²⁰ CEACR: Individual observations on Convention No. 98: 1998 and 2002. In its comments, the Government states that it submitted an amendment aimed at reducing the percentage to the social partners, but no response has so far been forthcoming (see Appendix II).

²¹ CEACR: Individual observation on Convention No. 87: 2003.

part of the population (sections 403 and 404 of the Labour Code). Strikes that would affect national security and public order are also prohibited (section 406 of the Labour Code).

The elimination of discrimination in respect of employment and occupation

The principle of equality and the prohibition of discrimination are embodied in the Constitution itself, which rejects “any privilege and any situation tending to undermine the equality of all Dominicans, among whom no distinctions should prevail other than those that result from the talents or virtues of individuals” (article 100).

1. Equality of remuneration

The Labour Code affirms the principle that “equal remuneration should always be paid for equal work done under identical conditions of capacity, efficiency or seniority, whoever performs it” (section 194). Nevertheless, the CEACR considers that it would be advisable, in accordance with Convention No. 100, for the Government to “introduce formally the concept of work of equal value since the term ‘equal work’ may lead to ambiguity in its application since it can be interpreted to mean ‘the same’ or ‘equal in quality, nature or status’, or ‘identical value’”²²

2. Equality of opportunity in employment and occupation

In general, as a fundamental principle of the Labour Code, legislation prohibits “any discrimination, exclusion or preference based on a person’s sex, age, race, colour, national origin, social origin, political opinion, trade union activity or religious belief” in the context of employment and occupation, except for cases provided for in law for the purpose of protecting the worker, or such distinctions, exclusions or preferences as may be based on the qualifications and skills required by a given job (Principle VII). Moreover, anyone who refuses to hire, sanction or dismiss a worker, or offers employment on the basis not only of a worker’s origins, age, sex, political opinion, trade union activity, ethnicity, national affiliation, race or religion, but also on the basis of the worker’s family situation, health, disability, customs or present occupation, is guilty of discrimination and liable to punishment by two years’ imprisonment and a fine of 50,000 pesos (section 336 of the Penal Code, amended by section 9 of the Family Violence Prevention Act No. 24-97 of 27 January 1997).

(a) Discrimination based on gender. Another fundamental principle of the Labour Code is that women workers “have the same rights and obligations as male workers” (Principle X). In addition, sexual harassment is an offence punishable by one year’s imprisonment and a fine of between 5,000 and 10,000 pesos (section 333.2 of the Penal Code amended by section 8 of the Family Violence Prevention Act No. 24-97 of 27 January 1997).

(b) Discrimination based on nationality. The Labour Code also states that labour laws are territorial and thus apply to Dominicans and other nationalities without distinction (Principle IV).

²² CEACR: Individual observations on Convention No. 100: 1998 and 2001.

(c) **Discrimination based on HIV/AIDS status.** Under the terms of Act No. 55.93 of 31 December 1993 concerning AIDS, diagnostic tests for HIV must not be applied for employment purposes as a requirement for entry into employment or for remaining in a job (section 3.a); workers who are HIV-positive are not required to inform their employers of their condition (section 22); and any information in cases where an individual is diagnosed as HIV-positive is strictly confidential (section 6).

(d) **Discrimination based on disability.** People with disabilities have a right “to obtain permanent employment on an equal footing with other workers”. The sole criterion applied “shall be the capacity for work of the individual concerned, whatever the origin of his or her disability” (section 315 of the Labour Code). The State is legally required to ensure the provision of basic, specialized and continual training in various specialist areas to facilitate the integration of people with disabilities in society on equal terms, as well as providing funding, including public loans in certain cases, to help people with disabilities become effectively integrated in the national productive economy (sections 9 and 10, Act No. 42-2000 concerning disability in the Dominican Republic).

3. Equality of opportunity for pregnant women

Summary dismissal of a woman during pregnancy and for a period of three months after childbirth is null and void (section 232 of the Labour Code). Dismissal of a woman who is pregnant or within six months of childbirth must first be examined by the Department of Labour or the local authority acting for it, with a view to deciding “whether the dismissal is motivated by the pregnancy or childbirth”. If that is the case, it is null and void (section 233 of the Labour Code). An employer who fails to comply with this procedure is required to pay the worker compensation equivalent to five months’ normal wages, in addition to any other benefits awarded to her (ibid.).

The effective abolition of child labour

According to the Constitution, the State is required to adopt health-related and “other” measures to ensure the “healthy development” of children (article 8.15.a).

1. Ensuring access to basic education

Primary education is free and compulsory (article 8.16 of the Constitution; section 45-I of Act No.136-03, Code for the Protection of the Rights of Children and Adolescents). An employer who employs minors is required to provide facilities that are “appropriate and consistent with the needs of the worker” to allow him or her to keep up with school work and attend vocational training schools (section 254 of the Labour Code).

In cases where work attendance interferes with a young person’s compulsory schooling, the employer is responsible for providing schooling at his or her own expense, under the supervision of the authorities (section 17).

2. Measures to safeguard normal physical and mental development

Children “have a right, from the moment of birth, to the highest possible level of physical and mental health” (section 28 of Act No. 136-03, referred to above). Consequently, they may not be employed in services that are unsuitable in the light of their

age, status or condition (Principle XI of the Labour Code). Young people below the age of 16 years wishing to work in any type of undertaking must undergo annual medical examinations, which are free of charge, for the purpose of certifying their physical fitness for the work; these are provided free of charge by a state medical practitioner (section 248 of the Labour Code, sections 52 to 56 of Labour Code Implementing Regulations No. 258-93). Young people below the age of 16 years cannot be employed to do hazardous or unhealthy work (section 251 of the Labour Code, section 34 of Act No. 136-03, and section 1 of resolution No. 03/93 concerning hazardous and unhealthy work for minors).

3. Minimum age for admission to employment

The minimum age for admission to employment is 14 years (section 245 of the Labour Code and section 40 of Act No. 136-03), except for work as actors or extras in public entertainments, radio or television and in films, provided that the activity is deemed beneficial to the arts, sciences or education (section 245 of the Labour Code, resolution No. 30/93 on work for young people below the age of 14 years of benefit to the arts, sciences or education), and for light harvesting work (section 282 of the Labour Code and section 4 of resolution No. 29/93, which defines what is meant by “light harvesting work”). In both these cases, children below the age of 14 years require the permission of their parents or of a legal guardian. A higher minimum age for admission to employment, such as 16 years, applies in certain activities deemed to be unhealthy or hazardous (section 251 of the Labour Code and section 1 of resolution No. 03/93).

4. Hours of work

Hours of work for young people below the age of 16 years may not exceed six hours per day (section 247 of the Labour Code) and, in the case of light harvesting work, a minimum of 30 minutes’ rest must be allowed after every three consecutive hours of work (section 3 of resolution No. 29/93). Overtime work is therefore prohibited (*ibid.*) as is night work (section 246 of the Labour Code and section 1 of resolution No. 09/93 on night work for minors).

5. Monitoring and enforcement mechanisms

The Labour Inspection Service is responsible for ensuring that provisions relating to the employment of minors are observed (sections 423.6 and 433 of the Labour Code and section 42 of Act No. 136-03).

The elimination of all forms of forced or compulsory labour

According to the Constitution, the principal purpose of the State is “the effective protection of the rights of the human individual and the maintenance of conditions that will allow the individual to develop progressively within a framework of individual freedom”, and freedom of work is enshrined as a means of achieving that purpose (article 8.11). That freedom is developed in the Labour Code as a fundamental principle, namely, that “any individual is free to devote himself or herself to any occupation, craft, industry or trade allowed by law”, and that consequently “no one may prevent others from working or force them to work against their will” (Principle II).

It follows that workers have the right at any time to terminate a contract of employment (sections 69 and 75 of the Labour Code), and resignation by the worker is considered justified if the employer fails in his or her obligation to refrain from any act that might detract from the dignity of the workers (sections 46.8, 47.9, 97.4, 97.5 and 97.13 of the Labour Code).

Appendix I

Summary table of legislation

I. Freedom of association and the effective recognition of the right to collective bargaining

Principle	National legislation
Part 1. Right to organize	
1. The right to establish organizations without distinction whatsoever and without previous authorization	
(a) Non-discrimination	
1. The right of workers to associate freely and to establish trade union organizations.	art. 8.11.a, C and s. 317, LC.
2. The right of workers to decide freely to join or to withdraw from trade unions.	ss. 47.4, 332, 333.1 and 334, LC.
(b) Registration requirements	
1. Registration requirements for trade unions and the appeals that can be filed against administrative decisions.	ss. 375 and 376, LC.
(c) Freedom to establish trade union organizations	
1. Workers have the right freely to establish trade union organizations in the area that they wish.	s. 319, LC.
2. Organizational autonomy	
(a) Administrative and financial matters	
1. The organization's members are exclusively responsible for the supervision and control of administrative, and especially financial, matters.	ss. 346 and 347, LC: must submit accounts to the labour administration.
(b) Election of representatives	
1. Nationality is not a requirement to act as a trade union representative.	ss. 351 and 359, LC.
3. Guarantees of protection	
(a) The general principle of non-discrimination on grounds of trade union activities and the prohibition of unfair labour practices	
1. Unfair labour practices or those contrary to the labour ethic that hamper, prevent or restrict in any way the right to the free exercise of freedom of association.	ss. 47.4 , 47.5, 106 and 333, LC.
(b) Protection against dismissal: Trade union immunity	
1. Guarantees that ensure the free exercise of trade union activity by members without fear of reprisals.	s. 390.1, LC: during establishment of a trade union; s. 390.2, LC: executive body members; s. 390.3, LC: workers' representatives involved in collective bargaining.

-
- | | | |
|----|---|--|
| 2. | Quantitative and time-related restrictions on protection. | Specific restrictions:
s. 390.1, LC, and s. 87 of Regulations No. 258-93: maximum of 20 workers during establishment period, for up to three months after registration; s. 390.2, LC: maximum of five, eight or ten executive body members, depending on the number of workers employed, for up to eight months after the end of their terms of office; s. 390.3, LC: up to three representatives for the purpose of collective bargaining, for up to eight months after the end of their mandates. |
| 3. | Prior judicial authorization required for dismissal, through summary legal proceedings. | s. 391, LC: non-compliance renders the dismissal null and void. |

Part 2. Collective bargaining

1. Ownership of the right to collective bargaining

- | | | |
|----|---|-------------|
| 1. | Representative trade unions of workers have the right to engage in collective bargaining. | s. 103, LC. |
|----|---|-------------|

2. The obligation to negotiate

- | | | |
|----|---|--|
| 1. | The employer must negotiate. | ss. 109, 110 and 333.4, LC: provided that the union has an absolute majority of the workers concerned. |
| 2. | If there is no agreement, the parties can have recourse to administrative proceedings to resolve collective disputes, which includes provisions for exercising the right to strike. | ss. 397 and 674, LC. s. 407.2, LC: the right to declare strike action. |

3. Penalties for non-compliance

- | | | |
|----|--|-------------|
| 1. | If the employer does not comply with the agreement, the trade union can claim compensation for damages, as well as demanding implementation. | s. 125, LC. |
|----|--|-------------|

Part 3. The right to strike

1. Ownership of the right to strike

- | | | |
|----|----------------------|---------------|
| 1. | The right to strike. | s. 8.11.d, C. |
|----|----------------------|---------------|

2. Requirements to be met for a strike to be legal

- | | | |
|----|--|--|
| 1. | A lawful objective; exhaustion of conciliation and arbitration procedures; support of a minimum number of workers. | s. 407, LC: more than 51 per cent of members must support strike action. |
|----|--|--|

3. Strikes in public services

- | | | |
|----|---|--|
| 1. | Strike action in public services is restricted. | ss. 403 and 404, LC: strikes prohibited in essential services (communications, water supply, gas or electricity for lighting and domestic consumption, pharmaceuticals, hospitals and other similar services, the interruption of which could endanger the life, health or safety of all or part of the population.
s. 406, LC: services pertaining to national security or public order. |
|----|---|--|

II. The elimination of discrimination in respect of employment and occupation

Principle	National legislation
1. The principle of non-discrimination: General	
1. The principle of non-discrimination is recognized.	s. 100, C.
2. The principle of non-discrimination: Specific	
(a) Equality of remuneration	
1. The right to equal remuneration in equal working conditions is recognized.	s. 194, LC.
(b) Equality of opportunity in employment and occupation	
1. Discriminatory practices that restrict or exclude placement of workers are prohibited.	Principle VII, LC: prohibition of discrimination based on sex, age, race, colour, national origin, political opinion, trade union activity or religious belief, except in cases provided for in law with the aim of protecting workers, and except for distinctions, exclusions or preferences that are based on the skills required for a given job. s. 336, PenC: discrimination is an offence.
1(b) Discrimination based on sex	
1. Any form of discrimination in employment and occupation based on sex is prohibited.	Principle X, LC. s. 333.2, PenC: sexual harassment is an offence.
2(b) Discrimination based on nationality	
1. Any form of discrimination in employment and occupation based on nationality is prohibited.	Principle IV, LC.
3(b) Discrimination based on disability	
1. Any form of discrimination in employment and occupation based on disability is prohibited.	s. 315, LC: Equality in obtaining employment and in skills recognition. ss. 9 and 10 of Act No. 42-2000 concerning disability: guaranteed continual training to ensure the integration of disabled persons; provision of funding to help integrate disabled persons in the national productive economy.
4(b) Discrimination based on HIV/AIDS status	
1. Any form of discrimination in employment and occupation based on HIV/AIDS status is prohibited.	Act No. 55-93 on AIDS: diagnostic tests for AIDS must not be applied as a condition for obtaining or retaining employment (s. 3.a); workers who are HIV-positive are not required to inform their employers of the fact (s. 22); information regarding HIV status is strictly confidential (s. 6).
(c) Equality of opportunity for pregnant women	
1. Pregnant women and women on maternity leave are protected against discriminatory dismissal.	s. 232, LC: Protection until three months after childbirth. s. 233, LC: Protection until six months after childbirth.
2. There are administrative procedures to ensure that dismissal occurs only for a valid reason.	s. 233, LC.

III. The effective abolition of child labour

Principle	National legislation
1. Abolition of child labour as a general rule	
1. There are special provisions to protect working children.	art. 8.15.a, C.
(a) Ensuring access to basic education	
1. Employment of children is prohibited if it hinders their access to basic education.	art. 8.16 , C and s. 45.I, Act No. 136-03: primary education is free and compulsory. s. 17, LC: If work attendance hinders compulsory schooling, the latter must be provided at the employer's expense under the supervision of the authorities.
2. Facilities are provided for children to allow them to attend educational establishments, through arrangements and timetables that are compatible with their interests and employment conditions.	s. 254, LC: facilities that are "appropriate and compatible with the worker's needs" to allow him or her to follow school programmes.
3. Children are entitled to participate in apprenticeship schemes.	s. 254, LC: vocational training schools.
(b) Measures to safeguard normal physical and mental development	
1. Minors cannot be employed if this interferes with their normal physical and mental development.	Principle XI and s. 248, LC; s. 28 of Act No. 136-03, and ss. 52-56 of Regulations No. 258-93.
2. Children are not allowed to work in activities considered to be unhealthy or hazardous – work classified as the worst forms of child labour.	s. 251, LC; s. 34, Act No. 136-03; and s. 1, resolution No. 03/93.
2. Special labour conditions	
(a) Minimum age for admission to employment	
1. The minimum age for admission to employment is 14 years.	s. 245, LC and s. 40 of Act No. 136-03. work in public entertainments, radio, television and films as actors or extras is exempted, provided that the purpose of the activity is to benefit the arts, sciences or education (s. 245, LC, and resolution No. 30/93), as is light harvesting work (s. 282, LC, and s.4, resolution No. 29/93).
2. The minimum age for admission to employment in activities that are considered to be unhealthy or hazardous is 16 years.	s. 251, LC, and s. 1, resolution No. 03/93.
(b) Hours of work	
1. Minors are entitled to reduced hours of work.	s. 247, LC, and s. 3, resolution No. 29/93: six hours a day.
2. Night work is prohibited.	s. 246, LC, and section 1, resolution No. 09/93.
3. Overtime work is prohibited.	s. 247, LC, and s. 3, resolution No. 29/93.
(c) Monitoring and enforcement mechanisms	
1. Monitoring and enforcement mechanisms are available.	ss. 423.6 and 433, LC, s. 42, Act No. 136-03.

IV. The elimination of all forms of forced or compulsory labour

Principle	National legislation
1. Freely chosen employment	
1. All persons have the right freely to choose their employment or to obtain decent work.	s. 8.11, C, and Principle II, LC.
2. All employers must refrain from abusive language or actions that might affect the dignity and propriety of workers.	ss. 46.8, 47.9, 97.4, 97.5 and 97.13, LC.
3. The worker may give notice at any time.	ss. 69 and 75, LC.

Appendix II

Comments from the Government on the Office paper ¹

“National Social Security Year”

Santo Domingo, Dominican Republic
9 January 2004

To: Ms. Sally P. Paxton
Executive Director, Social Dialogue Sector
International Labour Organization
Geneva, Switzerland

Dear Ms. Paxton,

In the light of your communication of 19 December 2003, we wish to draw your attention to certain observations on the preliminary version of the ILO document “Fundamental principles and rights: A labour law study”, as follows:

- (1) On page 5 under “The right to organize”, reference is made to the recommendation by the CEACR to remove the restrictions contained in sections 383 and 388 of the Labour Code with regard to the establishment of federations and confederations. We must point out that the Labour Code now in force was the result of in-depth consultations conducted with employers and workers, with the technical assistance of the ILO and the Roman Catholic Church in the Dominican Republic. Subsequently, the then Secretary of State for Labour, Dr. Rafael Albuquerque, submitted the changes suggested by the CEACR to the Consultative Labour Council but they were not adopted by the social partners.
- (2) Similarly, also on page 5, under “The right to establish organizations without distinction whatsoever and without previous authorization”, in paragraph (a), we are asked to accept the recommendation of the CEACR to reduce the percentage (40 per cent) of employees required for the establishment of associations of public servants. We would point out that the percentage required previously under the terms of Decree No. 81-94 was 60 per cent, which was then reduced. Nevertheless, we take note of the recommendation of the CEACR and will submit the proposed further reduction to the Consultative Labour Council, with a view to amending the current provisions at a later date.
- (3) On page 6, under the heading “Guarantees of protection”, we would point out that the unfair practices referred to in section 333 of the Labour Code are regarded as serious offences under section 720 of the Code and give rise to criminal sanctions (section 721).
- (4) With regard to paragraph (b) under “Protection from dismissal: Trade union immunity” (page 7), we must explain that not only is the employer’s right to dismiss a worker for a serious offence limited, as explained in detail in the ILO study; sections 75 and 392 of the Labour Code prohibit dismissal and render it null and void if it concerns a trade union official protected by trade union immunity. This is consistent with the wording of the paragraph heading and with current Dominican legislation.

¹ Page numbers refer to the preliminary Spanish version of the text. Comments were also received directly by the ILO from the employers’ organization. These were forwarded to the Minister of Labour, in accordance with the agreed upon procedures, for his consideration.

-
- (5) With regard to voluntary collective bargaining (page 7), specifically, the requirement under the terms of sections 109 and 110 of the Labour Code that an organization have an “absolute majority” of workers in a given undertaking or branch in order to be able to negotiate, we would point out that – as with the matter referred to above – the previous administration submitted a proposal to amend legislation to the Consultative Labour Council with a view to reducing the percentage, but no response has been forthcoming from the social partners. The same applies with regard to the legal requirements under the terms of section 407 of the Labour Code on votes for strike action (page 8).
 - (6) As regards section 194 of the Labour Code, specifically, the principle of “equal remuneration ... for equal work done under identical conditions of capacity, efficiency or seniority”, we would point out that this provision has never given rise to difficulties in its application.
 - (7) Lastly, we do not find any discrimination in section 44 of the Labour Code, the sole purpose of which is to ensure that workers affected by contagious illnesses are kept away from workplaces and prevented from infecting other workers.

We would not wish to conclude these observations on the ILO study without highlighting the general climate of industrial peace that prevails in our country, thanks to the fact that the social partners have grasped that differences are best resolved through dialogue; this has led to numerous agreements and preliminary drafts of legislation in the labour sphere.

We trust that these points will be included in the study, and take this opportunity to reaffirm the assurances of our highest consideration and esteem.

Yours, sincerely,

Dr. Milton Ray Guevara,
Secretary of State for Labour.