

Conditions of Work and Employment Programme

***Domestic work, conditions of work and employment:  
A legal perspective***

José Maria Ramirez-Machado

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## Preface

When working conditions of domestic workers are addressed in the media, it is mainly to highlight extreme situations of near-slavery rather than the general situation of the majority of domestic workers. While it is good that such cases be condemned, they do not provide a comprehensive picture of the working conditions and status of domestic workers and, therefore, do not necessarily help to improve the situation of this very vulnerable category of worker. The purpose of this working paper is precisely to shed some light on the working conditions of domestic workers as they are specified by national legislation.

The domestic worker is a very heterogeneous category, difficult to define and therefore to protect. Mr. Ramirez-Machado shows that its weakness is even more reinforced by a very specific characteristic of this category of worker: its invisibility. Their invisibility derives primarily from the characteristics of the workplace itself — the private household. Labour inspection and enforcement of legislation are difficult in private households and, even more so, the organization of a collective action. In the case of clandestine situations, which can occur more easily in this type of workplace, workers are even more vulnerable. Their invisibility is reinforced by the inaccuracy and/or unavailability of data on domestic workers, often linked to reliance on domestic workers being registered for information gathering. Knowing that domestic work is mainly performed by women, that the use of child domestic labour is widespread and that, in some countries, a large part of the domestic labour force is made up of migrant workers, we cannot measure its real extent.

This working paper starts by pointing out the main characteristics of domestic work and provides an in-depth national and international comparative legal analysis of the conditions of work and employment of domestic workers. The study thus helps to identify the gaps and the limits of the legal protection provided by national legislation. Improving the working conditions for this category of worker — among the most vulnerable — is certainly a matter of social justice. It is also a way of attracting new workers and creating more decent employment opportunities. In addition, if we consider that domestic work is part of the equation of a good work-and-life balance, it is in everyone's interest to participate in improving the current situation.

François Eyraud,  
Director,  
Conditions of Work and Employment Programme,  
Social Protection Sector.



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## **Vulnerability of domestic workers: The need for legal protection**

They are housekeepers, gardeners, watchpersons or drivers. All over the world, an important army of workers performs domestic tasks in private households in exchange for remuneration and/or lodging and board. Although the number of workers who have joined the ranks of this army is considerable, they remain hidden and invisible to society.

To give a rough estimate of the number of domestic workers worldwide is made highly problematic by the lack of available and accurate data and the prevalence of unregulated or clandestine work relationships. Unregistered workers do not appear in official statistics and child domestic workers are ignored by household surveys: they are not supposed to work and are counted as children of the household. Even though few countries have labour force statistics for domestic workers, what we do know is that:

- most domestic workers are housekeepers and women;
- more and more immigrants, national and international, are looking for employment in the sector; and
- domestic service draws an important number of child workers.

What we do know also, through case studies and surveys published on the subject, is that domestic workers suffer from poor working conditions and that their isolation makes difficult some kind of organization which would allow them to improve their condition. This is why labour law protection is so important for this category of workers. The aim of this working paper is to present legislation in 60 countries which applies to domestic workers in order to draw some conclusions on how their conditions could be improved. Beforehand, some indications on their conditions of employment will be given in this introduction.

### **Some insights in the conditions of work of domestic workers**

Given its social and economic invisibility and the accompanying low social status, domestic work is often exploitative. Amongst other major problems encountered at the workplace, domestic workers face: long hours of work, heavy workloads, lack of privacy, low salaries, inadequate accommodation and food (live-in workers), job insecurity, absence of benefits normally granted to other categories of workers, and exposure to violence and abuse. In addition, given the particular vulnerability attached to their situation, two groups of domestic workers tend to be exposed to even harder conditions of work: migrant and child domestic workers.

*Long hours of work and heavy workloads*, limiting rest and leisure time, are a common trend in domestic work. In some instances, working hours are so extended as to deprive domestic workers of any free time. It is not rare to find live-in domestic workers exposed to on-call work day and night. In addition, as employers normally consider that the level of specialization required to complete the workers' tasks is low, there is a tendency to systematically increase the number of chores to be performed.

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*Inadequate accommodation* (small rooms, poor lighting, lack of furniture)<sup>1</sup> and *inadequate food* (quantity and quality)<sup>2</sup> are frequent complaints of live-in domestic workers. A survey conducted in Hong Kong (1994) showed that 70.4 per cent of the domestic workers did not have their own room and were forced to share a room with the employers' children or to sleep in the corridor, the living room, dining room, store room, kitchen, laundry, ironing area or any other available space.<sup>3</sup>

In many cases, live-in domestics may suffer from *lack of privacy* and *interference in personal matters* as a result of long hours at work, the close supervision by household members, and the normal conditions of accommodation. This problem may be reinforced by practices such as the possibility of the employer inspecting at any time the worker's living quarters and goods, setting restrictions concerning visitors, monitoring the domestic's spare time,<sup>4</sup> and by the general inadequacy of the living space to provide for privacy and separation between the employer's family and the domestic worker.

Domestic workers are *vulnerable workers* and are *exposed to many abuses*. Arbitrary changes of work contracts, pay cuts or even non-payment of salaries are facilitated by the irregular nature of the employment relationship. The lack of a binding labour contract makes it difficult for dismissed workers to obtain an assessment of severance pay and other obligatory fringe benefits. This is also underlined by the fact that, frequently, the working contract is of an oral nature, presenting the worker with the extra difficulty of proving the existence of a contractual working relationship in case of controversy.

In general terms, domestic work is a *low paying* activity. Domestic workers' salaries are often far below the minimum wage, when it exists. For instance, "[i]n a survey of ten cities in Colombia, men and women working in domestic service jobs were found to have the lowest average incomes, with the exception of self-employed (non-professional) women. And in metropolitan Lima, domestic service workers were earning less than two-thirds the average income of the next lowest-earning group: wage workers in small-scale establishments. In San José City, Costa Rica, domestic servants in 1982 were receiving less than two-fifths the average income of that second-lowest group".<sup>5</sup>

The *lack of working benefits* is a common trend in domestic work. A large number of countries explicitly exclude domestic workers from the scope of laws granting maternity protection to women workers.<sup>6</sup> Employers avoid contributions to medical benefits or pension schemes by avoiding regularizing employment relationships. Situations such as sickness injury or pregnancy are common grounds for immediate dismissal, particularly for migrant women workers.

<sup>1</sup> Ennew (1993), p. 12; and Heyzen et al. (1994), p. 75.

<sup>2</sup> Constable (1997), p. 99.

<sup>3</sup> Heyzen et al. (1994), p. 75.

<sup>4</sup> Chaney and Garcia Castro (1989), p. 9.

<sup>5</sup> ILO (1987), p. 120.

<sup>6</sup> ILO (1999a), p. 27.



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Domestic workers may suffer from *violence at the workplace*.<sup>7</sup> Although both male and female domestic workers may face physical and psychological abuses, women and children are by far the most seriously and most commonly affected by this problem.<sup>8</sup>

Abuses normally come from the employer or his/her family; however, in households with more than one employee, co-worker violence may also erupt as a result of rivalry and interaction between workers. Among the main causes of violence in this context, one may note the servile and isolated nature of the work; the perception, common to both the employers and employees, of domestic work as an inferior occupation; the traditional attitude that women and children are subordinate and inferior;<sup>9</sup> the consideration of domestic workers as the cause of domestic quarrels or just the victims of family violence; and the lack of awareness by domestic workers of their legal rights.

## Factors of vulnerability of domestic workers

The vulnerability of this category of worker comes first of all from the relationship of submission and their isolation. The tasks performed, as the adjective “*domestic*” denotes, are carried out within the sphere of the home, in the employer’s residence or on his/her premises. This feature is the cornerstone of domestic work. This factor and its implications are a key to understanding this working relationship.

As from the beginning, domestic work acquired a clearly personalized and paternalistic nature, as a result of the inherent relationship of submission of the servant to the authority and responsibility of the head of the household where she or he worked. In many cases, this was also strengthened by 18<sup>th</sup> and 19<sup>th</sup>-century legal codes that reasserted the authority of the male head over other members of the household.<sup>10</sup> Domestic work was considered by law as falling within the family sphere, and therefore as a matter governed exclusively by family law. The development of domestic work within the home is the crucial factor that determined then its exclusion from the ambit of labour law.<sup>11</sup>

In this evolutionary process, domestic work has progressively been considered an occupation of low social status: mainly left to those coming from groups with a low social or ethnic profile, frequently a migrant from a rural area or a foreign country; and generally perceived as attracting workers unsuccessful in obtaining other employment, or those with limited or poor education;<sup>12</sup> and as an occupation requiring no particular skills or

<sup>7</sup> For a complete list of violence indicators, see UN Division for the Advancement of Women (1996), p. 15, paragraph 63.

<sup>8</sup> For an overall view on violence against domestic workers, see UN (1997), pp. 21-23.

<sup>9</sup> Abrera-Manghas (1996), p. 9.

<sup>10</sup> *ibid.*, p. 22.

<sup>11</sup> Vega Ruiz (1994), p. 35.

<sup>12</sup> The general trend is that domestic workers have a poor level of education. Nonetheless, the international migration process of domestic workers has shown that this is not always true. It is not rare to find domestic workers with medium and high levels of education among migrants from certain countries (i.e. the Philippines) or regions (i.e. Eastern Europe), and also with working experience in various areas and sectors of white-collar professions. See Asian Migrant Workers Centre (1991), p. 15. In one survey, 31.7 per cent of Filipino migrants were reported to have

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training.<sup>13</sup> This has reinforced the status of submission that is particularly obvious in the case of migrant workers.

In receiving countries, migrant domestic workers often benefit from limited legal protection given their foreign status. In some cases, immigration laws tend to differentiate between local and foreign workers in terms of protection and access to support services.<sup>14</sup> Foreign domestic workers may be subject to special conditions, such as periodic pregnancy and venereal disease checks or prohibition on mixed marriages.<sup>15</sup> Work permits are delivered for a given period of time subject to renewals of the temporary visas tied to them. This generates a precarious immigration status, a high dependency on employers, and gives rise to a situation of insecurity and fear of job loss and deportation if the employer is asked for better conditions. In many countries, in addition, “foreign workers are regulated through work permits issued by the [labour authorities] through specific employers, who have the unilateral right to revoke these work permits. Without a work permit, a foreign worker cannot work legally. A change of job requires the consent of the employer through whom the work permit has been issued. This severely constrains job mobility and depresses wages artificially, making the imported labour market an employer-s market. The work permit thus functions as an immigration control and wage mechanism”.<sup>16</sup>

In any case, the employment relationship often implies a high level of control by the employer. Linked to this characteristic, the vulnerability of domestic workers is reinforced by the nature of the work and the workplace: domestic workers tend to work in isolation and be invisible. Domestic work frequently entails *isolation* in the working place, especially for those workers who live-in. In particular, difficulties typically arise because of the nature of the place of work, the atomized nature of the working conditions (there is on average one employee per household), and because of the long hours of work. Other factors, such as language problems and lack of social integration in the case of foreign migrant workers, the lack of familiarity with urban life in the case of workers from rural areas, and work in rural or remote places (outside urban areas and with few or no public transport facilities), may also reinforce this problem.

In addition, domestic workers are also isolated in the world of work. The lack of a common employer hinders domestic workers to organize and fight collectively for their rights. Furthermore, the right to organize of all workers without distinction whatsoever continues to raise difficulties in some countries which still limit this right for domestic workers (among others). And although, in most countries, domestic workers have the same rights of freedom of association and collective bargaining as other workers, these rights are seldom exercised in practice.<sup>17</sup>

For these reasons, the protection of domestic workers depends mainly on legislation. Indeed, the real conditions of work and employment of domestic workers not only depends on the extent that labour laws offer them protection, but also on the level and the way that these laws are, in fact, enforced by the competent authorities. Furthermore, given the close

reached tertiary level education, and 28.7 per cent to have completed this level of education. See also Colectivo IOE (1991), p. 12.

<sup>13</sup> US Bureau of Labor Statistics (1998).

<sup>14</sup> Shah and Menon (1997), p. 24.

<sup>15</sup> Heyzen et al. (1994), p. 64.

<sup>16</sup> Heyzen and Wee (1994), p. 58.

<sup>17</sup> ILO (1998a), paragraphs 49 and 44.

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relationship between the domestic worker and the employer, and the private and hidden nature of the work itself, the legislative situation may not mirror the daily working reality faced by these workers. Domestic work entails a working relationship where the personal interaction between the employee and the employer is very important when determining the real working and employment conditions.



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## Conditions of work and employment of domestic workers: A cross-national comparative analysis of labour legislation

In its evolution from slavery and servitude to the 18<sup>th</sup> and 19<sup>th</sup> century legal codes which reasserted the authority of the male head over other members of the household,<sup>18</sup> domestic work was considered by law as falling within the familial sphere and was governed exclusively by family law.

The development of domestic work within the home is the crucial factor that determined its exclusion from the ambit of labour law.<sup>19</sup> During the 20<sup>th</sup> century, domestic work was progressively regulated and included within the purview of labour law, either in labour codes or as specific laws as a special employment relationship. However, the legacy of its past legal configuration remains. Quite frequently, labour laws refer to domestic workers either to exclude them completely from their scope or to grant them lower levels of protection by being deprived on many of the rights accorded to other categories of workers. As has been pointed out, “the ideologies of domesticity and privacy have historically combined to provide a justification for exempting these workers from some of the basic legal entitlements available to other workers”.<sup>20</sup> As the following analysis shows, the special nature of the employment relationship and the private household sphere in which it is conducted still characterize an employment situation that does not fit into the general framework of existing employment laws in the 21<sup>st</sup> century.

The present legal perspective is an attempt to identify the main thrust of the statutory rules covering this employment relationship.<sup>21</sup> It compares the national legislation of over 60 countries in a purposely broad spectrum of standards which vary widely in their scope and efficacy. This comparative survey looks at standards affording a reasonable protection to domestic workers; those excluding them from basic labour standards; those encompassing Labour Code or equivalent legislation (i.e. general law on working conditions, work environment, Labour Protection Act, etc.); those which make no reference, specifically or not, to domestic workers; and those which refer to domestic workers at the highest level, the national constitution.<sup>22</sup>

The emphasis is more on trying to present, for every aspect analysed, the variety of solutions offered by the different national laws studied, rather than trying to give a detailed updated picture of any of these laws.

<sup>18</sup> Kuznesof (1989), p. 22.

<sup>19</sup> Vega Ruiz (1994), p. 35.

<sup>20</sup> Fudge (1997), p. 119.

<sup>21</sup> The countries for which legislation has been analysed are Argentina, Austria, Belgium, Bolivia, Brazil, Burkina Faso, Burundi, Cambodia, Canada (Ontario), Cape Verde, Central African Republic, Chile, China, Colombia, Costa Rica, Côte d’Ivoire, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Ethiopia, Finland, France, Gabon, Guatemala, Guinea-Bissau, Haiti, Honduras, Hungary, Iran, Italy, Japan, Jordan, Lao Peoples Democratic Republic, Lebanon, Madagascar, Malaysia, Malta, Mexico, Mongolia, Namibia, Nicaragua, Panama, Paraguay, Peru, Philippines, Portugal, Singapore, South Africa, Spain, St. Vincent and the Grenadines, Swaziland, Sweden, United Republic of Tanzania, Thailand, Tunisia, Turkey, United Arab Emirates, Venezuela, Viet Nam, Yemen, Zambia and Zimbabwe.

<sup>22</sup> Brazil, Constitution, 1988, Article 7; and Mexico, Constitution (as amended), Article 123.

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## National laws and domestic work: Specificity

The specificity of the employment relationship in domestic work is reflected in the various ways it is regulated in national labour legislation.

Of the more than 60 countries studied, 19 have enacted specific laws or regulations dealing with domestic work.<sup>23</sup> Another 19 countries have devoted specific chapters, titles or sections in labour codes, employment acts or acts respecting contracts of employment;<sup>24</sup> in some cases, this can mean that the legislation may not apply in its entirety to domestic workers.<sup>25</sup> Seventeen countries have set no specific regulations on domestic work in their basic labour legislation.<sup>26</sup> Regardless of whether they explicitly mention<sup>27</sup> domestic workers or not,<sup>28</sup> such legislation seems intended to consider them only as a category of workers. Thus, in some of these countries, general labour legislation may refer to domestic workers to include or exclude them in relation to particular matters, as in Colombia, Ethiopia, Namibia or Tunisia;<sup>29</sup> to address their situation to be regulated by special laws, as in Cape Verde and Iran;<sup>30</sup> or merely to indicate the possibility of enacting specific legislation if considered necessary, as in Singapore.<sup>31</sup> The law may also consider that,

<sup>23</sup> Argentina, Austria, Brazil, Burkina Faso, Central African Republic, Denmark, Finland, Hungary, Italy, Malta, Peru, Portugal, Spain, St. Vincent and the Grenadines, South Africa, Swaziland, Sweden, United Republic of Tanzania, Zimbabwe.

<sup>24</sup> Belgium, Bolivia, Canada (Ontario), Chile, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Malaysia, Mexico, Nicaragua, Panama, Paraguay, Philippines, Venezuela. In France, in addition to the Labour Code, a national collective agreement regarding gardeners and gardener-caretakers of private households was enacted in January 1986; and a national collective agreement regarding domestic workers was enacted in November 1999 and amended in March 2000.

<sup>25</sup> Haiti, Code du travail, Section 257; Venezuela, Ley orgánica del trabajo, 1990 (as amended up to 1997), Section 275.

<sup>26</sup> Burundi, Cape Verde, China, Colombia, Côte d'Ivoire, Equatorial Guinea, Ethiopia, Gabon, Iran, Lao People's Democratic Republic, Madagascar, Mongolia, Namibia, Thailand, Tunisia, Viet Nam, Zambia.

<sup>27</sup> Viet Nam, Labour Code, 1994, Section 2.

<sup>28</sup> Burundi, Code du travail, 1993, Section 14; China, Labour Act, 1994, Section 2; Côte d'Ivoire, Code du travail, 1995, Section 2; Equatorial Guinea, Ordenamiento General del Trabajo, 1990, Sections 3-4; Gabon, Code du travail, 1994, Section 1; Lao People's Democratic Republic, Act 2/NA concerning labour, 1994, Section 5; Madagascar, Code du travail, 1995, Section 1; Mongolia, Labour Law (as amended up to 1999), Section 4; Thailand, Labour Protection Act 1998 [This law neither refers explicitly to domestic workers to consider them as included within its scope, nor excludes them from it. However, following Ministerial Regulations issued in 1998, numerous parts of the LPA 1998 shall not apply to domestic workers.]; Zambia, Industrial and Labour Relations Act, 1993, Section 3.

<sup>29</sup> Colombia, Código Sustantivo Laboral (as amended up to 1990), Sections 175 and 252; Ethiopia, Labour Proclamation No. 42/1993, Section 3(1) and 3(2)(a); Namibia, Labour Act 1992, Sections 2(1) and 33(2)(c); Tunisia, Code du travail, 1966 (as amended up to 1994), Sections 1 and 278.

<sup>30</sup> Cape Verde, Law Decree No. 62/87, 1987, Section 4; Iran, Labour Code, 1990, Sections 1 and 190.

<sup>31</sup> Singapore, Employment Act 1968 (as amended up to date). In Section 2, the Act provides a definition of "domestic servant", but subsequently in the same Section, domestic servants are

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unless explicit reference is made to domestic workers, they are excluded from the basic labour law, as in the case of Cambodia.<sup>32</sup> Finally, nine other countries exclude domestic work from the scope of the labour code or equivalent text,<sup>33</sup> although in at least one case, Guinea-Bissau, there is a specific reference to the need to regulate conditions of work for this category of worker through special legislation.<sup>34</sup> In other cases, the labour code or equivalent law is completely silent as to how domestic workers' protection should be ensured.<sup>35</sup>

The catch-22 is that, although domestic workers are often considered as a special category, this does not mean that specially tailored standards are enacted to take into account their particular conditions of work and employment relationship. On the contrary, this normally means that they are afforded a lower protection than other categories of worker. This legal stigmatization occurs in two different ways: passively, when they are explicitly excluded from the scope of basic labour standards applicable to other categories of worker and thus are deprived of the basic protection afforded to those other categories; and actively, when special laws or rules in the basic labour legislation are specifically enacted given that those laws, on the grounds of the particular nature of domestic work, in general terms, grant to domestic workers a lower protection than other categories are offered by general labour laws.

### **Domestic work: Legal definition**

The majority of the national laws analysed containing specific norms on domestic workers provide a definition either of “domestic work”, “domestic worker” or “contract of domestic service” with two exceptions, Denmark and Hungary, where a specific law on

neither explicitly included in the definition of “employee” nor of “workman”. In Section 67, the law provides that “[t]he Minister may, from time to time by notification in the *Gazette*, apply all or any of the provisions of this Act with such modification as may be set out in the notification to all domestic workers or to any group, class or number of domestic workers and may make regulations to provide generally for the engagement and working conditions of domestic workers”. Therefore, unless a notification is issued, the Employment Act does not apply to domestic workers, and would be applicable only to the extent that may be considered on this occasion. See also CCH-SNEF (1996), p. 5,054.

<sup>32</sup> Cambodia, Labour Code, 1997, Section 1. Notwithstanding, certain sections do apply to domestic servants, i.e. forced labour (Section 15), protection of workers' claims (Section 122), wage attachment (Sections 131-133), occupational accidents (Section 249) and workers' representatives-exclusion (Section 283).

<sup>33</sup> Egypt, Guinea-Bissau, Japan, Jordan, Lebanon, Turkey, United Arab Emirates, Yemen.

<sup>34</sup> Guinea-Bissau, Lei Geral do Trabalho, 1986, Section 1(2).

<sup>35</sup> Egypt, Labour Code, 1981, Article 3(b); Japan, Labour Standard Law, 1947 (as amended up to 1995), Sections 8-9; Jordan, Labour Code, 1996, Section 3(3); Lebanon, Labour Code, 1946 (as amended up to 1993), Section 7(1); Turkey, Labour Act (as amended up to 1983), Section 5(d); United Arab Emirates, Federal Law No. 8, 1980, Section 3; Yemen, Labour Code, 1995, Section 3(2).

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domestic work does not include a definition.<sup>36</sup> In the case of Singapore, the Employment Act defines “domestic servant”, even though it is not explicitly included in its scope.<sup>37</sup>

The following points are encompassed by the different definitions of domestic work provided by national laws:

- The workplace is a private home. Thus, for example, workers are employed in a “private household or part thereof”;<sup>38</sup> at “the employer’s home”;<sup>39</sup> on “private premises”;<sup>40</sup> “in the employer’s household”;<sup>41</sup> or within the “family home sphere”.<sup>42</sup> However, the law may explicitly consider the concept of a “private household” as larger than commonly understood, as in Malta, where the concept of “private household” includes charitable institutions, monasteries and convents.<sup>43</sup>
- The work performed has to do with “the service of a household”;<sup>44</sup> is “in connection with the work of a private dwelling-house”;<sup>45</sup> responds “to the needs of the employer’s household or that of his/her family”;<sup>46</sup> is “intended to the satisfaction of the proper or specific needs of a family or family-like situation, and its respective members”;<sup>47</sup> is “usually necessary or desirable for the maintenance and enjoyment [of the employer’s home] ... and includes ministering to the personal comfort and convenience of the members of the employer’s household”.<sup>48</sup>

<sup>36</sup> Denmark, Notification of the Act respecting agricultural and domestic assistants, 1980; and Hungary, Ordinance No. 6 to regulate the employment relationship and the conditions of employment of domestic employees, 1959 (as amended up to 1978).

<sup>37</sup> Singapore, *lex cit.*, Sections 2 and 67.

<sup>38</sup> France, *lex cit.*, 1999, Section 1(a); Swaziland, Legal Notice 21, 1985, Section 2.

<sup>39</sup> Finland, Act No. 951, 1977 (as amend up to 2001), Section 1; South Africa, Basic Conditions of Employment Act 1997, Section 1.

<sup>40</sup> Singapore, *lex cit.*, Section 2.

<sup>41</sup> Sweden, Act No. 943 respecting the hours of work and other conditions of work of domestic employees, 1970 (as amended up to 1995), Section 1.

<sup>42</sup> Brazil, Lei No. 5859, 1972; Section 1; and Spain, Real Decreto No. 1424/1985, 1985, Section 1(2).

<sup>43</sup> Malta, Domestic Wages Council Wage Regulation Order 1976 (as amended up to 1989).

<sup>44</sup> Burkina Faso, Decree No. 77-311/PRES/FTP, 1977, Section 1; Central African Republic, Arrêté No. 49-MFPT-DT, 1971, Section 1.

<sup>45</sup> Malaysia, Employment Act, No. 265, 1955 (as amended up to 1981), Section 2.

<sup>46</sup> Belgium, Act respecting contracts of employment, 1978 (as amended up to 1995), Section 5; France, *lex cit.*, 1999, Section 1(a).

<sup>47</sup> Portugal, Decreto-Lei No. 235/92, 1992, Section 2(1).

<sup>48</sup> Philippines, Labour Code, 1998, Section 141.



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- The work is carried out on behalf of the direct employer,<sup>49</sup> the householder, and under his/her “authority, direction and supervision”.<sup>50</sup> However, in South Africa, the concept of *domestic worker* also includes a “domestic worker employed or supplied by employment services”.<sup>51</sup> In this connection, *employment services* means any person who recruits, procures or provides domestic workers for clients in return for payment, regardless of which party pays the domestic worker.<sup>52</sup> The South African law also states that (for the purposes of the law) “a domestic worker whose services have been provided by an employment service is employed by that employment service ... if the employment service pays the domestic worker”.<sup>53</sup> Nevertheless, in such cases, the “employment service Y and the client are jointly and severally liable if the employment service, in respect of a domestic worker who provides services to that client, does not comply with the determination or any provision of the Basic Conditions of Employment Act.”<sup>54</sup>
  
  - The work performed must be done on a regular basis and in a continuous manner.<sup>55</sup> Thus, the law may not consider work of an accidental or discontinuous nature as domestic service as, for example in Portugal.<sup>56</sup> Other national laws establish a minimum amount of working time (months, days or hours) to be considered as falling within the definition of work of a domestic character or to determine to which extent domestic work regulations are

<sup>49</sup> Spain, *lex cit.*, 1985, Section 1(2).

<sup>50</sup> Belgium, *lex cit.*, 1978, Section 5; France, *lex cit.*, 1999, Section 1(a).

<sup>51</sup> South Africa, Basic Conditions of Employment Act 1997, Sectoral Determination 7: Domestic Worker Sector, 2002, Clause 31.

<sup>52</sup> South Africa, *ibid.*

<sup>53</sup> South Africa, *ibid.*, Clause 29.

<sup>54</sup> South Africa, *ibid.*

<sup>55</sup> Brazil, *lex cit.*, 1972, Section 1; Central African Republic, *lex cit.*, 1970, Section 1; Colombia, Decreto núm. 824/88, 1988, Section 1; Costa Rica, Código de trabajo, Section 101. Also Bolivia, Ley General del Trabajo, 1939, Section 36; Chile, Código de trabajo, 1994, Section 146; Dominican Republic, Código de trabajo, 1992 (as amended up to 1999), Section 258; Ecuador, Código de trabajo, 1997, Section 268; El Salvador, Código de Trabajo, 1972 (as amended up to 1995), Section 77; Haiti, *lex cit.*, Section 254; Nicaragua, Código del Trabajo, 1996, Section 145; Panama, Código de Trabajo, 1995, Section 230; Paraguay, Código del Trabajo, 1993 (as amended up to 1995), Section 148; and Peru, Decreto Supremo No. 23, 1957, Section 1.

<sup>56</sup> Portugal, *lex cit.*, 1992, Section 2(3).

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applicable.<sup>57</sup> However, other national laws explicitly mention, without further detail, that the work can be done either on a full or part-time basis.<sup>58</sup>

- The employer [the householder] shall not derive any pecuniary gain from the activity done by the domestic worker.<sup>59</sup> Thus, “[the work should not be] in connection with any trade, business, or profession carried out by the employer in [the] dwelling-house”.<sup>60</sup> However, some national laws introduce a certain degree of flexibility in this respect. In El Salvador, the sporadic performance of services of a different nature to that of domestic work is insufficient to exclude the employee from being considered a domestic worker.<sup>61</sup> In Spain, in addition to tasks of a domestic nature and regardless of periodicity, if the domestic worker performs services not proper to the domestic sphere in activities or business of the employer of whatever nature, the law establishes a presumption against the work being considered of a domestic nature. However, this presumption may be rebutted upon proof that the non-domestic-related work is of a marginal or sporadic character.<sup>62</sup> In Venezuela, if the domestic employee works both in the employer’s household and in a company, establishment or business controlled by his/her employer, the domestic worker is considered as been employed by the company.<sup>63</sup>

<sup>57</sup> Argentina, Decreto Ley núm 326/56, 1956a, Section 1; Austria, Domestic Servants and Salaried Household Staff Act, 1962 (as amended up to 1994), Section 21; Canada (Ontario), Employment Standards Act: Domestic, nannies and sitters Regulation, 1990, Section 2; Central African Republic, lex cit., 1970, Section 1; Finland, lex cit., 1977, Section 2; Italy, Act No. 339 to provide for the employment relationships of domestic workers, 1958, Section 1; Peru, Reglamento de los servicios domesticos, 1957, Section 1; South Africa, lex cit., 1997a, Clause 1(3).

<sup>58</sup> Chile, lex cit., Section 146; France, lex cit., 1999, Section 1(a); Portugal, lex cit., 1992, Section 7(3).

<sup>59</sup> France, lex cit., 1986, Section 1. See also France, lex cit., 1999, Section 1(a). It is worth mentioning that in France in the previous national collective agreement on domestic work (1980), the solution retained was of a more open character, as workers spending more than 50 per cent of their working time on activities falling within their employer’s profession were excluded from the scope of the CCN 1980. Conversely, under that CCN, workers who spent less than 50 per cent of their working time performing activities other than domestic work for their employer were considered domestic workers (*cf.* CCN 1980, Section 1).

<sup>60</sup> Malaysia, lex cit., Section 2. Also Argentina, lex cit., 1956a, Section 1; Austria, lex cit., Section 1(5)(a); Brazil, lex cit., 1972, Section 1; Burkina Faso, lex cit., Section 1; Costa Rica, lex cit., Section 101; Dominican Republic, lex cit., Section 258; Ecuador, lex cit., Section 268; Guatemala, Código de Trabajo (as amended up to 1995), Section 161; Haiti, lex cit., Section 254; Honduras, Código de Trabajo, Section 149; Nicaragua, lex cit., Section 145; Paraguay, lex cit., Section 150(b); Peru, lex cit., 1957, Section 1; Tanzania, Regulation of wages and terms of employment ordinance, 1996, Section 2.

<sup>61</sup> El Salvador, lex cit., Section 77.

<sup>62</sup> Spain, lex cit., 1985, Section 2(1)(d).

<sup>63</sup> Venezuela, lex cit., Section 274.

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- The work is performed in return for remuneration, either in cash and/or in kind.<sup>64</sup>
  - Domestic work is a generic and heterogeneous activity. National legislation acknowledging this fact often enumerates occupations which qualify or disqualify work as being of a domestic nature. The list is broad and includes, for example, occupations such as babysitter, butler, charwoman, child-minder, cook, minder of older or disabled persons, driver, footman, gardener, groom, handyman, housekeeper, house-servant, laundress, maid, valet, washerperson and watchperson. Some national laws, as in France and Swaziland, give definitions of all occupations included within the concept of domestic work.<sup>65</sup> The law may also articulate mechanisms to determine whether an employee should be considered as a domestic worker, as in Chile, where the labour inspectorate is competent to rule on the matter.<sup>66</sup> The law may also explicitly exclude some occupations from being considered as domestic work. This is the case, for instance, of people hired exclusively as private chauffeurs in Argentina and Colombia,<sup>67</sup> and of employees hired as personal-care workers in Argentina and Finland.<sup>68</sup>
  - The employee's place of residence does not affect the definition of the work. However, the law may attach some legal consequences to the fact that the worker resides within the employer's premises, as in Venezuela, where live-in domestic workers are excluded from some chapters (labour relations, working contract, remuneration and labour conditions) of the labour code, and enjoy a specific number of rest hours, while hours of work for live-out domestic workers are the same prescribed by the labour code for other categories of worker.<sup>69</sup> In this connection, some national laws, as in Portugal, provide for a specific definition: "live-in domestic worker means ... a domestic worker which benefits in kind, including lodging or lodging and board".<sup>70</sup>
  - National laws may also contain provisions on different situations to be taken into account in considering an employee as a domestic worker, and therefore as being covered by the laws on domestic service. Some countries, such as

<sup>64</sup> Belgium, *lex cit.*, 1978, Section 5; Ecuador, *lex cit.*, Sections 268 and 274; Honduras, *lex cit.*, 1982, Section 149; Italy, *lex cit.*, 1958, Section 1; and Spain, *lex cit.*, 1985, Section 1(2).

<sup>65</sup> France, *lex cit.*, 1999, Sections 2-4; Swaziland, *lex cit.*, 1985, Section 2.

<sup>66</sup> Chile, *lex cit.*, Section 146.

<sup>67</sup> Argentina, *lex cit.*, 1956a, Section 2; and Colombia, *lex cit.*, 1988, Section 5. Although, for instance, in Paraguay, *lex cit.*, Section 148(a), private chauffeurs are explicitly considered as domestic workers.

<sup>68</sup> Argentina, *lex cit.*, 1956a, Section 2; Finland, *lex cit.*, 1977, Section 2(4)-(5).

<sup>69</sup> Venezuela, *lex cit.*, Section 275.

<sup>70</sup> Portugal, *lex cit.*, 1992, Section 7(2). Also, in South Africa, in the previous version of the Basic Conditions of Employment Act of 1983, as amended to 1994, Section 1.

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Chile, Haiti, Malta and Portugal,<sup>71</sup> consider workers in charitable institutions as performing tasks equal or similar to those rendered for the well-being of household employers and define both occupations within the concept of domestic work. Other countries, such as Peru, do not.<sup>72</sup> Some legal systems do not consider the following situations as domestic work: work of a domestic nature performed in hospitals, hotels, bars, restaurants, and the like (Austria, Colombia, Ecuador, Mexico or Paraguay);<sup>73</sup> work of a domestic nature done in industrial settings (El Salvador or Honduras);<sup>74</sup> work of a domestic nature done on behalf of legal entities (Spain);<sup>75</sup> or done for any undertaking operated by the Government (Saint Vincent and the Grenadines).<sup>76</sup> Alternatively, other legal systems may not consider, explicitly, this possibility of exclusion, for instance in Austria, where it is immaterial whether the household is run by an individual or whether it is run by a body corporate;<sup>77</sup> work of a domestic nature done on an *au pair* basis, as in Portugal and Spain, although France takes the opposite view;<sup>78</sup> social work, voluntary work, or work performed for friendship, sympathy or good neighbourliness, as in Portugal and Spain;<sup>79</sup> domestic work done by members of the employer's family, as in Colombia, Finland, Spain and Sweden;<sup>80</sup> work done by the children or relatives of domestic workers, as in the Philippines and Argentina;<sup>81</sup> domestic work performed in rural settings, as in South Africa, where workers employed to perform domestic work in a home on a farm are considered "farm workers",<sup>82</sup> although other national legislation does not take into consideration the urban or rural nature of the

<sup>71</sup> Chile, *lex cit.*, Section 146; Haiti, *lex cit.*, Section 254; Malta, *lex cit.*, Explanatory note; Portugal, *lex cit.*, 1992, Section 2(2).

<sup>72</sup> Peru, *lex cit.*, 1957, Section 1 (*in fine*).

<sup>73</sup> Austria, *lex cit.*, Section 1(5)(c); Colombia, *lex cit.*, 1988, Section 5(a); Ecuador, *lex cit.*, Section 269; Mexico, *Ley Federal del Trabajo* (as amended up to 1995), Article 332.I; Paraguay, *lex cit.*, 1957, Section 150(a).

<sup>74</sup> El Salvador, *lex cit.*, Section 77 (*in fine*); Honduras, *lex cit.*, 1982, Section 152.

<sup>75</sup> Spain, *lex cit.*, 1985, Section 2(1).

<sup>76</sup> Saint Vincent and the Grenadines, *Wages Regulation (Domestic Workers) Order*, 1989, Section 4.

<sup>77</sup> Austria, *lex cit.*, Section 1(4).

<sup>78</sup> Portugal, *lex cit.*, 1992, Section 2(3); Spain, *lex cit.*, 1985, Section 2(2) (*in fine*), is a presumption that admits proof to the contrary. However, in France, *au pair* workers are subject to the general laws; thus, as far as the work takes place within the sphere of a private household, the CCN on domestic workers is also applicable to them. Therefore it falls within the concept of domestic work. See Zaquin and Martin (1994), pp. 54-55.

<sup>79</sup> Portugal, *lex cit.*, 1992, Section 2(3); Spain, *lex cit.*, 1985, Section 2(1).

<sup>80</sup> Colombia, *lex cit.*, 1988, Section 5(c)-(d); Finland, *lex cit.*, 1977, Section 2(1); Spain, *lex cit.*, 1985, Section 2(1)(b); Sweden, *lex cit.*, 1970, Section 1.

<sup>81</sup> Philippines, *Omnibus Rules*. Also Argentina, *lex cit.*, 1956a, Section 3 (*in fine*).

<sup>82</sup> South Africa, *lex cit.*, 1997a, Section 1.

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place of employment, for instance Paraguay and Zimbabwe;<sup>83</sup> domestic work done by independent workers, as in Paraguay;<sup>84</sup> and finally domestic work done by trainees, as in Finland.<sup>85</sup>

## Contract of employment

The contract of employment governs the employer-employee relationship. It establishes the rights and obligations of the parties involved and the legal basis they must refer to regarding job description, type of employment (full-time/part-time, live-in/live-out), probationary period, working days, hours of work, breaks, overtime, holidays, wages, leaves, termination of employment, settlement of disputes, etc. For both parties, the importance of a written contract of employment is paramount. However, this is a legal requirement in only very few of the countries studied here (Austria, Burkina Faso, Chile, China, Finland, France, Hungary, Lao People's Democratic Republic and Zimbabwe).<sup>86</sup> In other cases, this requirement may be stated in muted terms. In Swaziland, for instance, the law establishes that "as a condition of employment, an employee may enter into a written agreement with his employer".<sup>87</sup> The law on domestic service may also address the matter by referring to the general labour legislation in relation to other categories of workers, as in the Central African Republic.<sup>88</sup>

Subject to certain conditions, some legislation requires a written contract of employment. Thus, in Sweden the "contract for employment on domestic work shall be made in writing if either of the parties so requests".<sup>89</sup> In other cases, contracts shall be made in writing when they are concluded for a specific period of time, as in Belgium;<sup>90</sup> when that period of time exceeds a given number of months, as in Bolivia, Denmark and Malaysia;<sup>91</sup> or when it does not exceed a given number of months, as in Portugal.<sup>92</sup> However, the law may establish other criteria to determine the written nature of the contract, as in Viet Nam, where "persons who are employed to assist in households may be

<sup>83</sup> Paraguay, *lex cit.*, Section 159(b) [*a contrario*]; Zimbabwe, Labour Relations (Domestic Workers) Employment Regulation, 1992 (as amended up to 1996), Section 3.

<sup>84</sup> Paraguay, *lex cit.*, Section 150.

<sup>85</sup> Finland, *lex cit.*, 1977, Section 2. Also see Japan, *lex cit.*, Section 69(2).

<sup>86</sup> Austria, *lex cit.*, Section 2(1); Burkina Faso, *lex cit.*, Section 2; Chile, *lex cit.*, Section 9; China, *lex cit.*, Section 19; Finland, *lex cit.*, 1977, Section 1; France, *lex cit.*, 1986, Section 8, and *lex cit.*, 1999, Section 7; Hungary, *lex cit.*, Section 1(3); Lao People's Democratic Republic, *lex cit.*, Section 12; Zimbabwe, *lex cit.*, 1992, Section 16.

<sup>87</sup> Swaziland, *lex cit.*, 1985, Section 5.

<sup>88</sup> Central African Republic, *lex cit.*, 1970, Section 2.

<sup>89</sup> Sweden, *lex cit.*, 1970, Section 11.

<sup>90</sup> Belgium, *lex cit.*, 1978, Section 9.

<sup>91</sup> Bolivia, *lex cit.*, 1939, Section 36; Denmark, *lex cit.*, 1980, Section 3; Malaysia, *lex cit.*, Section 10.

<sup>92</sup> Portugal, *lex cit.*, 1992, Sections 3 and 5.

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hired under oral or written employment contracts”, but “persons hired to watch over property must in all cases have a written employment contract”.<sup>93</sup>

However, in other countries, the law may either allow contracts of employment in domestic service to be of a verbal nature or else exclude those contracts from a written requirement (Costa Rica, Guatemala, Iran, Nicaragua, Panama, Paraguay or Spain).<sup>94</sup>

The case of South Africa is especially interesting. Although the Basic Conditions of Employment Act states that “a basic condition of employment constitutes a term of any contract of employment”, there is no explicit indication about the form (verbal or in writing) of contracts of employment.<sup>95</sup> In fact, in this country, although “it is preferable to receive the contract of employment in writing”, contracts of employment can be both, verbal or in writing.<sup>96</sup> Furthermore, at least as regards domestic workers, “it is not compulsory to have a contract of employment”.<sup>97</sup> However, the law requires the employer to supply the domestic worker, when she or he starts work, with written particulars of employment that both parties must agree and signed.<sup>98</sup>

In very few instances does the law refer to matters to be dealt with in the employment contract. It may enumerate the matters to be covered, as in Swaziland, where the contract shall include the grade of the domestic, rate of pay and time of payment, the free use of water for normal domestic use, the period of notice required to terminate the employment contract, hours of work, details of any bonus and accommodation, transport and lights allowances, benefits during sickness and vacation leave.<sup>99</sup> If the employment contract is for a specified period of time, it shall also specify the date of commencement and the date of termination. (These issues will be discussed below under **Conditions of work**). In other cases, the law may merely include a standard contract form to be used as a model.<sup>100</sup>

### ***Duration of employment***

National laws also pay special attention to the duration of the employment. Some countries consider the contract as valid for an unspecified duration unless otherwise agreed<sup>101</sup> or valid for a specified duration,<sup>102</sup> whereas other countries consider the contract

<sup>93</sup> Viet Nam, lex cit., Sections 28 and 139.

<sup>94</sup> Costa Rica, lex cit., Section 22; Guatemala, lex cit., Section 27; Iran, lex cit., Section 7; Nicaragua, lex cit., Section 24; Panama, lex cit., 1971, Section 67; Paraguay, lex cit., Section 44; Spain, lex cit., 1985, Section 4.

<sup>95</sup> South Africa, lex cit., 1997a, Section 4.

<sup>96</sup> South Africa Department of Labour (1998a).

<sup>97</sup> South Africa Department of Labour (1998b).

<sup>98</sup> South Africa, lex cit., 1997b, Clause 9. See also Canada (Ontario), lex cit., 1990, Section 8.

<sup>99</sup> Swaziland, lex cit., 1985, Section 16(1) and 16(8).

<sup>100</sup> Austria, lex cit., Section 2(1); France, lex cit., 1999, Annexe I; Hungary, lex cit., Section 1(3).

<sup>101</sup> Sweden, lex cit., 1970, Section 12.

<sup>102</sup> Spain, lex cit., 1985, Section 4(1).

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invalid if it is concluded for longer than a given period of time, normally one or two years.<sup>103</sup>

### **Trial period**

Contracts of employment normally provide for a trial period. This period may range from a few days, as in Austria (one week) or in Italy (eight days) up to 90 days in Haiti and Portugal or even more;<sup>104</sup> however, the average duration is either 15 or 30 days.<sup>105</sup> The law may also establish different periods for different categories of workers. In the Central African Republic, for example, the maximum trial period for beginners is two months, but 15 days for other categories of domestic worker, although parties may determine a different period of time which can then be fixed by contract.<sup>106</sup> In Italy, the trial period for workers engaged in non-manual domestic work and other workers with similar functions (tutors, teachers, governesses, qualified nursemaids, butlers, companions) should be no longer than one month; whereas workers engaged in manual domestic work, whether skilled or general (cooks, gardeners, nurses, handmaids, ordinary nursemaids, chambermaids, maids, doorkeepers, private porters, odd-job men, stable boys, washerwomen) and other workers with similar functions serve a trial period of no longer than eight consecutive working days.<sup>107</sup> Work carried out during the trial period shall be remunerated, but either party may terminate the contract without previous notice (Austria, Burkina Faso, Central African Republic, Costa Rica, France, Haiti, Italy, Nicaragua, Peru and Portugal);<sup>108</sup> or by either party giving a period of notice (24 hours in Honduras, Panama, and Paraguay; 48 hours in Belgium; or 72 hours in Ecuador).<sup>109</sup> There is no right to indemnity in case of termination during the trial period. If the domestic worker is not discharged after completing the trial period, he/she shall be deemed to have been automatically confirmed in the employment.<sup>110</sup> In such cases “the work done during the trial period shall count for all purposes as part of the worker’s length of service”.<sup>111</sup>

<sup>103</sup> Denmark, *lex cit.*, 1980, Section 4(1); Ecuador, *lex cit.*, Section 270; Philippines, *lex cit.*, 1974, Section 142.

<sup>104</sup> France, *lex cit.*, 1986, Section 9. The trial period of gardeners and gardener-caretakers, depending on the category, may be up to six months.

<sup>105</sup> France, *lex cit.*, 1999, Section 8.

<sup>106</sup> Central African Republic, *lex cit.*, 1970, Section 13.

<sup>107</sup> Italy, *lex cit.*, 1958, Section 5.

<sup>108</sup> Austria, *lex cit.*, Section 13(4); Burkina Faso, *lex cit.*, Section 2; Peru, *lex cit.*, 1957, Section 5; Central African Republic, *lex cit.*, 1970, Section 13; Costa Rica, *lex cit.*, Section 102; France, *lex cit.*, 1999, Section 8; Haiti, *lex cit.*, Section 264; Italy, *lex cit.*, 1958, Section 5; Nicaragua, *lex cit.*, Section 148; Peru, *lex cit.*, 1957b, Section 5; Portugal, *lex cit.*, 1992, Section 8.

<sup>109</sup> Honduras, *lex cit.*, 1959, Section 158; Panama, *lex cit.*, 1971, Section 231(3); Paraguay, *lex cit.*, Section 155; Belgium, *lex cit.*, 1978, Section 109; Ecuador, *lex cit.*, Section 270.

<sup>110</sup> Italy, *lex cit.*, 1958, Section 5.

<sup>111</sup> *ibid.*; Portugal, *lex cit.*, 1992, Section 8(4).

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## **Medical examination**

Some national laws provide employers with the possibility of asking their future employees to take a medical examination before commencement of duties. The costs of examinations are defrayed, depending upon the country, either by the employer or by the State through a public health service.<sup>112</sup> In other cases, such as in France, a medical examination is mandatory for full-time domestic workers prior to the commencement of an employment relationship. Furthermore, an additional examination is required by French law at least once a year, and after sick leave (sickness or accident) or maternity leave.<sup>113</sup>

The HIV/AIDS pandemic is resulting in numerous abuses. In relation to medical examinations, in some places it is not unusual that employers request domestic workers to take HIV/AIDS tests, either as a precondition for employment or, once employed, driving the worker away should they test positive.<sup>114</sup>

## **Young domestic workers**

National laws may also contemplate additional requirements in contracts of employment for young domestic workers. The employer may be asked to transmit a copy of the contract to the person exercising parental authority over the worker, as in Austria, Denmark and Italy.<sup>115</sup>

## **Subrogation of contract**

Some national laws on domestic work deal with the subrogation of the contract in the event of change of employer, normally in the context of an employer's death. In Honduras and in Denmark, "the contract shall subsist with any of the employer's relations who were living in his household and continue to live there after his death".<sup>116</sup> In Spain, the subrogation is the result of mutual consent of the parties; however, the law considers that employees are presumed to have agreed to the subrogation if they continue to work at least seven days after the change of employer.<sup>117</sup> However, in other countries, as in France, the employer's death means, *ipso facto*, the end of the contract; thus, there is no automatic continuation of the contract with the employer's heirs. In such event, the law considers the domestic worker as dismissed with all consequential rights.<sup>118</sup>

<sup>112</sup> Brazil, lex cit., 1972, Section 2(III); Burkina Faso, lex cit., Section 2; Costa Rica, lex cit., Section 103; Finland, lex cit., 1977, Section 30; Guatemala, lex cit., Section 163; Haiti, lex cit., Section 256; Honduras, lex cit., 1959, Section 157; Panama, lex cit., 1971, Section 231(5).

<sup>113</sup> France, lex cit., 1999, Section 22.

<sup>114</sup> See, for instance, the media statement by the Department of Labour of South Africa of 7 November 2002 [at [http://www.labour.gov.za/docs/pr/2002/nov/07\\_mdldlana.htm](http://www.labour.gov.za/docs/pr/2002/nov/07_mdldlana.htm)]. In this context, see also South Africa Department of Labour (2000), Section 7.1.1 and Section 11.1.

<sup>115</sup> Austria, lex cit., Section 2(1); Denmark, lex cit., 1980, Section 3. Italy, lex cit., 1958, Section 4.

<sup>116</sup> Denmark, lex cit., 1980, Section 29; Honduras, lex cit., 1959, Section 165.

<sup>117</sup> Spain, lex cit., 1985, Section 8(1).

<sup>118</sup> France, lex cit., 1999, Section 13.



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## **Dissemination of information to domestic workers**

It is interesting to note that some countries encourage the dissemination of the law on domestic work at the time the employment relationship is established. In Austria, for example, the employer provides the domestic worker with a copy of the respective law in force at the time, and also with a copy of any collective agreements or minimum wage scales that may be applicable.<sup>119</sup> In Argentina, it is mandatory to give the employee a *work book* delivered by the labour authority, containing the employee's personal description, the text of the law on domestic work and the wages agreed upon by the parties.<sup>120</sup> In Finland, the employer must display the law and the provisions and regulations on domestic work in a suitable place for examination by workers, and shall also draw up a work schedule and keep a separate register on any emergency work and overtime, which must be kept available for inspection by the workers and, on request, made available for inspection by the occupational safety and health authority.<sup>121</sup> In South Africa, the employer — apart from supplying the domestic worker with written particulars of employment (*cf. supra*) — must also keep a copy of the sectoral determination or an official summary available in the workplace in a place to which the domestic worker has access.<sup>122</sup>

## **Conditions of work**

### **Working time**

#### *Hours of work*

As stated earlier under **Specificity**, domestic workers in many countries are considered as a special category and this is particularly reflected in their hours of work and rest, when compared with those of other workers.

National legislation deals with the hours of work of domestic workers in very different ways. In some countries, domestic workers are clearly excluded from the general norms on hours of work, and this is irrespective of dealing with them in specific regulations, as in the Philippines and Canada (Ontario),<sup>123</sup> or in the general labour legislation, as in Colombia.<sup>124</sup>

In some other countries, domestic workers are not subject to fixed hours of work; instead, the law refers only to hours of rest. Therefore, this matter is regulated by law only indirectly, trusting the employer's good faith in fixing hours of work. References to rest hours are heterogeneous and sometimes vague. Thus, while some laws refer to rest periods between days (night rest), others also include rest breaks during the day. The range of

<sup>119</sup> Austria, *lex cit.*, Section 2(2).

<sup>120</sup> Argentina, *lex cit.*, 1956a, Section 11.

<sup>121</sup> Finland, *lex cit.*, 1977, Sections 31-32.

<sup>122</sup> South Africa, *lex cit.*, 1997b, Clause 30.

<sup>123</sup> Philippines, *lex cit.*, 1975, Rule I, Section 2 and Rule XIII, Section 20. In addition, the Labour Code excludes domestic workers from the general norms on hours of work. Canada (Ontario), 1990a, Section 9, and 1990b, Section 8. However, as regards residential care workers (see Section 4), it seems that their normal daily hours of work can amount to 12.

<sup>124</sup> Colombia, see "Regimen Laboral Colombiano", in *Legis*, No. 162, November 1989, ' 0109.

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possibilities on rest hours can vary widely, from “a period (undetermined) sufficient for the domestic worker to eat and rest during the night hours” in Mexico;<sup>125</sup> to a period of rest of eight,<sup>126</sup> nine,<sup>127</sup> ten<sup>128</sup> or even 12 hours per day.<sup>129</sup> However, it merits attention that when the law stipulates hours of rest instead of hours of work, the protection of domestic workers may be more imaginary than real, given that employers tend to consider non-rest hours as working hours. In Peru, for instance, the provision that household workers must have eight hours of rest within each 24-hour period had an unintended outcome. It was widely interpreted as a licence for employers to exact 16-hour workdays from household workers.<sup>130</sup> It must also be said that in most of the cases referred to above, national laws address the question of working hours for live-in domestic workers, with no explicit reference to non-resident domestic workers. In such cases, the extent of protection afforded to non-resident domestic workers in relation to hours of work is not clear. In Venezuela, the law states that the hours of work for live-in domestic workers are determined by the nature of the work; however, they shall at least have a given number of continuous hours of rest (ten). The law also determines hours of work for live-out domestic workers: the same applicable to other categories of worker.<sup>131</sup>

A third group of countries has enacted specific rules on hours of work for domestic workers, but references to such hours vary considerably. Thus, some countries refer to a maximum number of hours per day without mention of a maximum amount of hours per week or otherwise (Costa Rica).<sup>132</sup> Other countries (Malta, Swaziland, Tanzania, Viet Nam and Zimbabwe), refer to total number of hours, both per day and per week.<sup>133</sup> In this context, legislation may even take into account the number of days worked during the week with a view to fixing the maximum hours of daily work, as in South Africa, where the law stipulates 12 rest hours between ending and recommencing work along with working hours (although by written agreement, these may be reduced to ten hours for a household employee who lives on the premises and whose meal interval lasts for at least

<sup>125</sup> Mexico, *lex cit.* 1969, Section 333. However, in Section 61, the Labour Code establishes that the working day shall be eight hours for day workers, seven for night workers, and seven-and-a-half for mixed workers. See also Mexican Constitution, Section 123(1): “The working day shall not exceed eight hours”.

<sup>126</sup> Bolivia, *lex cit.*, 1943, Section 38; Italy, *lex cit.*, 1958, Section 8; Peru, Decreto Supremo No 002-TR, 1970, Section 1.

<sup>127</sup> Dominican Republic, *lex cit.*, Section 261 and Section 259; Panama, *lex cit.*, 1971, Section 231(2).

<sup>128</sup> Haiti, *lex cit.*, Section 257(a); Honduras, *lex cit.*, 1959, Section 154; Guatemala, *lex cit.*, Section 164.

<sup>129</sup> Argentina, *lex cit.*, 1956a, Section 4 (as regards live-in domestic workers); El Salvador, *lex cit.*, Section 80; Nicaragua, *lex cit.*, Section 147; Paraguay, *lex cit.*, Section 154.

<sup>130</sup> Chaney and Garcia Castro, *op. cit.*, p. 5.

<sup>131</sup> Venezuela, *lex cit.*, Section 275.

<sup>132</sup> Costa Rica, *lex cit.*, Section 104(c).

<sup>133</sup> Malta, *lex cit.*, 1976, Section 3; Viet Nam, *lex cit.*, Sections 68 and 139(2); Swaziland, *lex cit.*, 1985, Section 6; Tanzania, *lex cit.*, Section 6(1)-(2); Zimbabwe, *lex cit.*, 1992, Section 5(1).

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three hours).<sup>134</sup> However, the law may also make reference to daily hours of work and to hours worked during a period of time longer than one week (Finland).<sup>135</sup> The law may not even mention daily hours of work, but refer only to the total number of hours worked per week, as in France (40), Portugal (44) and Spain (40).<sup>136</sup> In some cases, these hours may vary to provide flexibility. The total amount of required weekly hours of work may be the result of an average over different weeks, as in Portugal and Sweden, and is subject to the domestic worker's agreement.<sup>137</sup>

To determine the hours of work of domestic workers, national laws may also take into account other criteria, such as the live-in or non-resident status of the worker (Saint Vincent and the Grenadines and Chile);<sup>138</sup> the worker's age (Colombia, Dominican Republic, Ecuador, Finland, Mexico, Panama and Venezuela);<sup>139</sup> or a combination of different criteria (Austria).<sup>140</sup>

To complicate matters further, some national laws also refer, along with normal hours of work or of rest, to other situations such as "hours in readiness for service",<sup>141</sup> "*heures de présence responsable*"<sup>142</sup> or "*tiempos de presencia*".<sup>143</sup> These concepts cover on-call situations, during which the worker's presence and readiness for work is required, although this does not mean that he/she will necessarily hold responsibilities during the whole period of on-call time. Some laws also refer to "actual hours of work"<sup>144</sup> or to "time included in working hours"<sup>145</sup> that, although related to on-call situations, refer to on-call work of a particular character. For instance, in Finland,

*"Besides actual time spent at work, working hours include the time spent taking related meals. However, breaks of a minimum of one hour during which the worker is*

<sup>134</sup> South Africa, lex cit., 1997a, Sections 9, 15(1)(a) and (15)(2)(a)-(b). See also lex cit., 1997b, Clauses 10 and 16.

<sup>135</sup> Finland, lex cit., 1977, Section 4. However, see Section 5: The effects of collective agreements on regular working hours.

<sup>136</sup> France, lex cit., 1999, Section 15(a); Portugal, lex cit., 1992, Section 13(1); Spain, lex cit., 1985, Section 7.

<sup>137</sup> Portugal, *ibid.*, 1992, Section 13(3); Sweden, lex cit., 1970, Section 2.

<sup>138</sup> Saint Vincent and the Grenadines, lex cit., Section 2; Chile, lex cit., Section 149.

<sup>139</sup> Colombia, lex cit., 1950, Section 161(b); Dominican Republic, lex cit., Section 247; Ecuador, lex cit., Section 136; Finland, Young Workers' Act, 1993 (as amend up to 1998), Sections 4(3) and 6; Mexico, lex cit., 1969, Section 177; Panama, lex cit., 1971, Section 122; Venezuela, lex cit., Section 254.

<sup>140</sup> Austria, lex cit., Section 5(1).

<sup>141</sup> *ibid.*; Burkina Faso, lex cit., Section 3; Central African Republic, lex cit., Section 7; Finland, lex cit., 1977, Section 6.

<sup>142</sup> France, lex cit., 1999, Section 3.

<sup>143</sup> Spain, lex cit., 1985, Section 7.

<sup>144</sup> Portugal, lex cit., 1992, Section 13(2); Spain, lex cit., 1985, Section 7.

<sup>145</sup> Finland, lex cit., 1977, Section 6.

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*released from his or her duties and allowed to leave the workplace freely are excluded. In cases where workers are obliged by contract to remain at home in order to be available if they are called to work comprising child minding or care of a sick family member or another member of the household, no less than half such stand-by time shall count as working hours or such stand-by shall be remunerated”*<sup>146</sup>

Finally, some countries also refer to the concept of “spread-over”, a term referring to the period in any day reckoned from the time an employee first commences work until she or he ceases work for that day. National laws normally establish a maximum time frame within which the work should be carried out.<sup>147</sup>

It is worth noting that the countries that have considered these situations in law, in relation to domestic work, do not deal with them in the same way. Thus, in France for example, on-call work is limited to a maximum number of hours in addition to regular hours of work,<sup>148</sup> while in Spain, the number of such hours is left to agreement by the parties.<sup>149</sup> Furthermore, there are countries that stipulate the time frame within which work must take place, but let the parties themselves decide on-call hours (Austria and Burkina Faso).<sup>150</sup> Finally, while in some countries, such as in Finland or France, it is clear that hours of presence are taken into legislative account as regards remuneration,<sup>151</sup> in other cases they are not (Burkina Faso), or this point is not made clear (Portugal and Spain).<sup>152</sup>

In sum, national laws deal with the hours of work of domestic workers in different ways. The law, trying to cover all possible situations, can take into account a considerable number of parameters. This can introduce a certain level of complexity and a lack of clarity that may permit unintended abuses. It is important to avoid any thinkable loophole by setting up the norms in the clearest possible way and contributing to a realistic and effective control of hours of work. Concepts such as “hours in readiness for service”, “hours to be regarded as hours of work” and “spread-over” should be taken into account by any law, in accordance with national practices, to cope with certain abuses, such as permanent “on-call” during long hours, a situation often faced by live-in domestic workers.

### *Night work*

Few countries deal in explicit terms with night work in relation to domestic workers.

In the Philippines, for example, the law refers to this matter only to exclude domestic workers from the provisions dealing with night work.<sup>153</sup> In Costa Rica, women domestic

<sup>146</sup> *ibid.*

<sup>147</sup> Austria, *lex cit.*, Section 5(1); Costa Rica, *lex cit.*, Section 104(c); Finland, *lex cit.*, 1977, Section 9.

<sup>148</sup> France, *lex cit.*, 1999, Section 15(a) (*in fine*).

<sup>149</sup> Spain, *lex cit.*, 1985, Section 7.

<sup>150</sup> Austria, *lex cit.*, Section 5(1); Burkina Faso, *lex cit.*, Section 3.

<sup>151</sup> Finland, *lex cit.*, 1977, Section 6; France, *lex cit.*, 1999, Section 15.

<sup>152</sup> Burkina Faso, *lex cit.*, Section 3 ; Portugal, *lex cit.*, 1992, Section 13; Spain, *lex cit.*, 1985, Section 7.

<sup>153</sup> Philippines, *lex cit.*, 1975, Book Three, Rule II, Section 1(c).

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workers are excluded from the general prohibition on women performing night work; in this case, women domestic workers may perform night work as long as it is not detrimental to their physical and mental health or to their morality.<sup>154</sup> In Italy, the reference is vague, but points to the need of an adequate subsequent rest: “where services have to be performed at night, an adequate compensatory rest shall be granted during the day”.<sup>155</sup>

In Denmark, night work is considered as exceptional and domestic workers are not to be employed on night work without a valid reason and, when employed on such work, the domestic worker shall be entitled to a corresponding rest period the following day.<sup>156</sup> The exceptional character of night domestic work is also legislated in Finland, where work may only be performed between 06:00 and 23:00, except in the following cases: emergency work, standing by in readiness for work (subject to the worker’s consent), and occasional work which is necessary for special and important reasons (subject to the workers’s consent).<sup>157</sup>

In South Africa, “night work” means work performed after 18:00 and before 06:00 the next day; and it is subject to the following conditions: the domestic worker’s agreement in writing; the payment by the employer of an allowance (the amount must be agreed upon by both parties); and the domestic worker shall reside at the workplace or transport shall be available between the domestic worker’s place of residence and the workplace at the beginning and end of the domestic worker’s shift.<sup>158</sup> Finally, certain safety and health concerns apply: if the employer requests the domestic worker to perform night work (more than one hour after 22:00 and before 06:00 the next day) on a regular basis (at least five times per month or 50 times per year).<sup>159</sup> The South African law also contemplates a slightly different situation: “standby” refers to “any period between 20:00 and 06:00 the next day when a domestic worker is required to be at the workplace and is permitted to rest or sleep but must be available to work if necessary”.<sup>160</sup> Standby work is subject to the following conditions: it is required to be mentioned in the domestic worker’s agreement in writing; the payment of an allowance per shift; the payment at the overtime rate or equivalent time-off in relation to any time worked in excess of three hours; during standby time the employer may only require or permit a domestic worker to perform work which is required to be done without delay; and the employer may not require or permit standby situations more than five times per month or 50 times per year.

### *Rest periods*

The national laws analysed can be separated in three different groups.

Some countries acknowledge the necessity of rest periods but refer to them without precision nevertheless. For instance, in Swaziland, where “the normal working week shall

<sup>154</sup> Costa Rica, lex cit., Section 88.

<sup>155</sup> Italy, lex cit., 1958, Section 8 (*in fine*).

<sup>156</sup> Denmark, lex cit., 1980, Section 19(5).

<sup>157</sup> Finland, lex cit., 1977, Section 9.

<sup>158</sup> South Africa, lex cit., 1997b, Clause 13.

<sup>159</sup> South Africa, lex cit., 1997a, Section 17(3)(4).

<sup>160</sup> South Africa, lex cit., 1997b, Clause 14.

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consist of forty-eight hours, exclusive of meal breaks”<sup>161</sup> — i.e. meals breaks are neither included in the hours of work nor determined by the law; or Italy, where workers are entitled to an adequate rest during the day,<sup>162</sup> or in Portugal, where hours of work are determined by agreement, or by the employer following the periods established by usage, if the parties do not reach an agreement.<sup>163</sup>

A second group of countries prescribe the minimum daily rest hours more precisely by referring to a number of hours for meals, for instance two (El Salvador, Guatemala, Haiti, Paraguay or Spain),<sup>164</sup> or three (Argentina).<sup>165</sup> However, in some other countries, day rest hours are established in an indirect way, by referring to the total number of daily rest hours and to the amount of those hours that must be of night rest. The remaining hours are thus considered as day rest hours, as in Chile or in Nicaragua.<sup>166</sup> Nevertheless, reference can also be made to the maximum continuous period of time a worker shall be allowed to work, and to the subsequent rest period, as for instance in South Africa, where “an employer must give an employee who works continuously for more than five hours a meal interval of at least one continuous hour”, although “an agreement in writing may (a) reduce the meal interval to not less than 30 minutes; (b) dispense with a meal interval for an employee who works fewer than six hours on day”.<sup>167</sup>

A third group of countries has enacted different provisions following the domestic worker’s status: live-in or non-resident. For instance, in Malta, in jobs where workers sleep in their employer’s house, they shall be entitled to a minimum daily rest of three hours in the aggregate of every day, the times of rest being fixed by the employer after consulting the employee. However, when they do not sleep in the employer’s house, they shall be allowed during any day, in the aggregate, 45 minutes for meals and rest.<sup>168</sup> In Venezuela, the law establishes a rest period of ten continuous hours for live-in domestic workers, supposedly night rest, without making any explicit reference to day rest or mealtimes.<sup>169</sup> However, for live-out domestic workers, a 30-minute rest break for every five hours of continuous work is stipulated.<sup>170</sup> In Saint Vincent and the Grenadines, the law prescribes an equal period of rest for live-in and live-out domestic workers. But there is a difference: the rest hours of live-in workers are both for rest and for meals, while the rest hours of live-out workers are only for rest.<sup>171</sup> In Austria, live-in domestic workers should interrupt

<sup>161</sup> Swaziland, *lex cit.*, 1985, Section 6. See also Sweden, *lex cit.*, 1970, Section 2.

<sup>162</sup> Italy, *lex cit.*, 1958, Section 8.

<sup>163</sup> Portugal, *lex cit.*, 1992, Section 14.

<sup>164</sup> El Salvador, *lex cit.*, Section 80; Guatemala, *lex cit.*, Section 164(a); Haiti, *lex cit.*, Section 257(a); Paraguay, *lex cit.*, Section 154(a); Spain, *lex cit.*, 1985, Section 7.1.

<sup>165</sup> Argentina, *lex cit.*, 1956a, Section 4(a).

<sup>166</sup> Chile, *lex cit.*, Section 149; Nicaragua, *lex cit.*, Section 147.

<sup>167</sup> South Africa, *lex cit.*, 1997a, Sections 14(1) and 14(5); and *lex cit.*, 1997b, Clause 15. See also Zimbabwe, *lex cit.*, 1992, Section 5(3); and Viet Nam, *lex cit.*, Sections 71(1) and 139(3).

<sup>168</sup> Malta, *lex cit.*, 1976, Section 7.

<sup>169</sup> Venezuela, *lex cit.*, Section 275.

<sup>170</sup> *ibid.*, Section 205.

<sup>171</sup> St. Vincent and the Grenadines, *lex cit.*, Section 2.

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their daily hours of work with breaks representing a total of at least three hours, including at least two uninterrupted breaks of 30 minutes each, which are granted to enable live-in employees to take their main meals.<sup>172</sup> With regard to live-out workers, when daily hours of work exceed four-and-a-half, they shall be interrupted by one or more breaks, to be fixed in advance, in accordance with the following rate “after more than four-and-a-half hours’ work but not more than six: 20 minutes. After more than six hours’ work but not more than eight: 30 minutes. After more than eight hours’ work but not more than nine: 45 minutes. After more than nine hours’ work: 60 minutes”.<sup>173</sup>

Mealtimes are not generally considered as work time. However, in Finland, the law considers that “working hours include the time spent taking related meals. However, breaks of a minimum of one hour during which the worker is released from his or her duties and allowed to leave the workplace freely are excluded”.<sup>174</sup> When the worker is resting, sleeping or eating (i.e. during rest time), she or he is deemed not to perform any work.<sup>175</sup> However, as clear as it is, domestic workers may be subject to certain tasks, such as watching and assisting the employer’s family during rest and meal periods (Portugal);<sup>176</sup> or to perform only duties that cannot be left unattended and cannot be performed by another domestic worker, where if such is the case, this time must be remunerated (South Africa).<sup>177</sup>

## Overtime

Overtime in relation to a given period of time means the portion of time employees work for their employers in excess of the ordinary working hours established by law. A significant number of countries have no regulations on overtime, mainly because they either do not deal with hours of work of domestic workers in their laws or simply because they exclude them for the general norms on that matter.<sup>178</sup> Countries that do deal with overtime quantify it in very different ways, as this analysis will show. The variety of legislative treatments range from the non-existence of a precise limit on overtime hours [Austria, Burkina Faso, Canada (Ontario): only with regard to domestics, nannies and sitters, Swaziland, Tanzania and Zimbabwe],<sup>179</sup> to the existence of limits on the basis of different criteria. For instance, in Canada (Ontario), as regards care workers, the law authorizes “no more than three additional hours worked in excess of twelve hours of work

<sup>172</sup> Austria, lex cit., Section 5(3) (*in fine*).

<sup>173</sup> *ibid.*, Section 5(4) (*in fine*).

<sup>174</sup> Finland, lex cit., 1977, Section 6. Also Viet Nam, lex cit., Section 71(1).

<sup>175</sup> Canada, (Ontario), lex cit., 1990a, Section 6, and 1990b, Section 7; Burkina Faso, lex cit., Section 7 (*in fine*).

<sup>176</sup> Portugal, lex cit., 1992, Section 14(1).

<sup>177</sup> South Africa, lex cit., 1997a, Section 14(2)-(3). See also 1997b, Clause 15(3).

<sup>178</sup> *Cf.* Bolivia, Ecuador, El Salvador, Grenadines, Guatemala, Honduras, Nicaragua, Panama, Paraguay, Swaziland, Venezuela (live-in domestic workers).

<sup>179</sup> Austria, lex cit., Section 5(5); Burkina Faso, lex cit., Section 4; Canada (Ontario), lex cit., 1990a, Section 7 (as regards domestics, nannies and sitters); Swaziland, lex cit., 1985, Section 13; Tanzania, lex cit., Section 6; Zimbabwe, lex cit., 1992, Section 5(3).

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in a day”.<sup>180</sup> In Costa Rica and in Iran, overtime is measured on a daily basis too, the limit fixed at a maximum of four hours.<sup>181</sup> In South Africa, as a general rule, the employer may not require or permit an employee to work more than 12 hours, including overtime, on any day and to work more than 15 hours’ overtime in any week.<sup>182</sup> In Viet Nam, the total additional hours of work shall not exceed four in a day or 200 in a year. In France, overtime cannot exceed, on average, eight hours per week in any consecutive 12-week period. In addition, overtime cannot exceed ten hours in any one week.<sup>183</sup> In Sweden, overtime cannot exceed 48 hours in a four-week period and is also subject to a maximum of 300 hours in any one calendar year.<sup>184</sup> In Finland, overtime must not exceed six hours in any day, 24 hours in any two weeks and 320 hours in any calendar year.<sup>185</sup> In Spain, overtime must not exceed 80 hours in any year.<sup>186</sup>

The majority of laws dealing with overtime stipulate the domestic worker’s consent to overtime work, i.e. a previous agreement between the employer and the employee on the matter.<sup>187</sup>

However, in one case (Austria), the law does not refer to consent, although it does state that only “in exceptional cases” may the normal hours of work be exceeded.<sup>188</sup> In Sweden, overtime is accepted for special reasons. However, the worker’s obligation to work overtime is governed by what may be deemed to have been agreed between the parties. Workers are bound to work overtime, however, subject to a valid event or hindrance, where an accident, acute sickness or other such unforeseeable circumstance necessitates the overtime.<sup>189</sup> Some national laws on domestic service make no reference at all to the need of the domestic’s consent to work overtime, as in Burkina Faso, Costa Rica and Tanzania.

National laws compensate overtime in three different ways: time off, cash payment, or a combination of both. In all cases, the remuneration should not be inferior to the regular rate of payment. Rates range from an increase of 10 per cent<sup>190</sup> to 100 per cent,<sup>191</sup>

<sup>180</sup> Canada (Ontario), *lex cit.*, 1990b, Section 4.

<sup>181</sup> Costa Rica, *lex cit.*, Section 104(c) (*in fine*); Iran, *lex cit.*, Section 59.

<sup>182</sup> South Africa, *lex cit.*, 1997b, Clause 11.

<sup>183</sup> France, *lex cit.*, 1999, Section 15(b)(3).

<sup>184</sup> Sweden, *lex cit.*, 1970, Section 3.

<sup>185</sup> Finland, *lex cit.*, 1977, Section 7. Furthermore, “Working hours in excess of 90 hours over a period of two weeks shall be considered overtime, even if the working hours on any one day did not exceed nine hours”.

<sup>186</sup> Spain, *Estatuto de los Trabajadores*, 1980 (as amended up to 1999), Section 35(2).

<sup>187</sup> Canada (Ontario), *lex cit.*, 1990a, Section 7(1)(b); Finland, *lex cit.*, 1977, Section 7; Iran, *lex cit.*, Sections 59-60; South Africa, *lex cit.*, 1997b, Clause 11(a); Spain, *lex cit.*, 1980, Section 35(4) [however, overtime may have been established previously by collective agreement or in the contract of employment]; Viet Nam, *lex cit.*, Sections 69 and 139(3); Zimbabwe, *lex cit.*, 1992, Section 5(2).

<sup>188</sup> Austria, *lex cit.*, Section 5(5).

<sup>189</sup> Sweden, *lex cit.*, 1970, Sections 3-5.

<sup>190</sup> Burkina Faso, *lex cit.*, Section 4.



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although the normal rate is a supplement of 50 per cent.<sup>192</sup> Nevertheless, the rate can progressively increase as overtime hours worked increase.<sup>193</sup>

### *Special arrangements on hours of work*

Under certain circumstances of an exceptional nature, some national laws provide for the conclusion of a special arrangement between the employer and the domestic worker with a view to extending hours of work. In Austria, for example, the parties may agree C outside normal hours of work, daily rest and breaks, and weekly rest C to other hours of work “in cases where the employer’s household includes infants (i.e. children under 3 years of age) or where the employer himself or any member of his household is so disabled that he needs constant attendance for which no other arrangements have been made”. Such hours shall not exceed normal hours by more than 18 in any two consecutive weeks. To be valid, the agreement must have been set down in writing in the contract of employment.<sup>194</sup>

In Sweden, “where the work includes the care of a child or other member of the household unable to attend to their own needs”, the law allows hours of work to be increased if the household members “who are responsible for attending to such a person are unable to do so because they are engaged in remunerative work outside the home or because of diminished working capacity”.<sup>195</sup> However, there is a limit of 12 hours per week, averaged over a four-week period.

In Finland, domestic workers can be required, outside the regular working hours, to carry out *emergency work* necessary when an accident, sudden case of illness or other similar, unforeseeable event in the employer’s household has put or seriously threatens to put life, health or property at risk. However, emergency work can only be done for a maximum of a fortnight at a time, and for no more than 20 hours in that period. In such a case, the employer must notify, in writing, the competent occupational safety and health authority, which can authorize, limit or obviate the emergency work. Emergency work is not considered as overtime, but it is paid in the same way.<sup>196</sup>

This was also the case in South Africa, under the former Basic Conditions of Employment Act 1983 as amended to 1994 (now repealed by Act No. 75 of 1997), that employer and employee could conclude a written agreement under the terms of which ordinary working hours could be extended by no more than four hours per day for a period not exceeding 26 days within any 12 months; overtime was forbidden on any day in which working hours were extended; and within the same 12-month period, working hours had to be reduced by the same number of hours and over the same number of days as they had been extended.<sup>197</sup>

<sup>191</sup> Finland, *lex cit.*, 1977, Section, 13.

<sup>192</sup> *Cf.* South Africa, *lex cit.*, 1997b, Clause 12. Also in Tanzania, Viet Nam and Zimbabwe.

<sup>193</sup> *Cf.* Burkina Faso, Central African Republic, Finland, France.

<sup>194</sup> Austria, *lex cit.*, Section 5(7).

<sup>195</sup> Sweden, *lex cit.*, 1970, Section 2.

<sup>196</sup> Finland, *lex cit.*, 1977, Sections 8 and 13.

<sup>197</sup> South Africa, Basic Conditions of Employment Act 1983 (as amended up to 1994), Section 6(A).

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## Weekly rest

National laws on domestic work include a wide range of provisions on weekly rest, with some important differences among them.

*Period of time provided for rest.* Legal provisions range from where domestic workers are excluded from legal provisions respecting work on Sundays or holidays (Namibia, where the only explicit reference to domestic workers in the labour code is precisely to exclude them from the application of a provision excluding work on those days);<sup>198</sup> to legal provisions where this period falls below 24 hours: Ecuador, where domestic servants are entitled to one day of rest for every two weeks worked; Bolivia, where the law establishes a six-hour weekly rest period, without specifying the day on which it has to be taken; Costa Rica, where weekly rest amounts to a half-day, to be decided by the employer, although twice a month weekly rest must be on Sundays; Guatemala and Haiti, where in addition to their normal hours of rest, domestic workers have a six-hour rest on Sundays; or Austria, where domestic workers are entitled to time off each week, to be agreed between the parties and granted from not later than 14:00 on a working day until the commencement of work the following day. Employees are also entitled to a Sunday off every other week. In addition, hours of work on Sundays, other than Sundays off, shall not exceed six hours.<sup>199</sup>

However, the great majority of the national laws analysed provide for a minimum of 24 hours of weekly rest.<sup>200</sup> In some cases (Argentina, Burkina Faso, Chile and Italy), these hours can be split into two half-days.<sup>201</sup> Furthermore, in one case (Central African Republic), the law allows for a 24 hours of weekly rest (in principle on Sunday), although it can be split into two half-days each week, at least one of which must be decided beforehand. Alternatively it may be split into one half-day every week and one full day off every fortnight.<sup>202</sup>

Weekly rest exceeds 24 hours in Finland (no less than 30 uninterrupted hours either on Sunday or, if it is not possible, on some other day);<sup>203</sup> in Spain, where weekly rest is 36 hours, of which 24 must be consecutive and preferably on Sunday, and the 12 remaining as agreed by the parties;<sup>204</sup> and in the Dominican Republic, where weekly rest must also be 36 hours, to be taken half on Saturday and on Sunday, unless otherwise agreed.<sup>205</sup> In Canada (Ontario), care workers have not less than 36 hours of rest in each week, either

<sup>198</sup> Namibia, *lex cit.*, Section 33(2)(c).

<sup>199</sup> Ecuador, *lex cit.*, Section 275; Bolivia, *lex cit.*, 1939, Section 39; Costa Rica, *lex cit.*, Section 104(d); Guatemala, *lex cit.*, Section 164(b); Haiti, *lex cit.*, Section 257(b); Austria, *lex cit.*, Section 6(1)-(2).

<sup>200</sup> *Cf.* Argentina, Burkina Faso, Chile, Colombia, El Salvador, Honduras, Iran, Italy, Malta, Nicaragua, Panama, Paraguay, Peru, Philippines, Portugal, Swaziland, Venezuela, Viet Nam.

<sup>201</sup> Argentina, *lex cit.*, 1956a, Section 4(b); Burkina Faso, *lex cit.*, Section 6; Chile, *lex cit.*, Section 150 (regarding live-in domestic workers); Italy, *lex cit.*, 1958, Section 7.

<sup>202</sup> Central African Republic, *lex cit.*, 1970, Section 9.

<sup>203</sup> Finland, *lex cit.*, 1977, Section 10.

<sup>204</sup> Spain, *lex cit.*, 1985, Section 7(3). Also Zimbabwe, *lex cit.*, 1992, Section 5(4).

<sup>205</sup> Dominican Republic, *lex cit.*, Sections 163 and 262. Also Sweden, *lex cit.*, 1970, Section 9.

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consecutive or as may be arranged with the worker's consent, although domestics, nannies and sitters with a live-in status shall have one free period of 36 consecutive hours and one free period of 12 consecutive hours.<sup>206</sup> In France, the minimum weekly rest for domestic workers, including those under 18 years of age, must be 24 hours, preferably on Sunday and an additional half day.<sup>207</sup> In South Africa, the employee must be allowed a weekly rest period of at least 36 consecutive hours.<sup>208</sup> However, despite this, domestic workers may agree, in writing, to a rest period of at least 60 consecutive hours every two weeks or be reduced to eight hours in any week if the rest period in the following week is extended equivalently.<sup>209</sup>

Regarding when weekly rest is to be taken, the analysis of national laws shows that several countries make no particular reference to the day on which weekly rest should be taken.<sup>210</sup> Some countries leave it to employers to fix weekly rest days;<sup>211</sup> and some countries leave it to the agreement of both parties.<sup>212</sup> Finally, some legislation fixes weekly rest on Sunday or the equivalent day in religious terms (Friday or Saturday).<sup>213</sup>

*Work during weekly rest.* Some national laws include the possibility of reducing weekly rest, so that domestic workers may work during a rest period, subject to certain conditions. Thus, in France and in Sweden, work during weekly rest is allowed only in connection with special or exceptional situations (i.e. emergency work).<sup>214</sup> In other countries [Burkina Faso, Canada (Ontario), Malta or the United Republic of Tanzania], the only requirement is the worker's consent;<sup>215</sup> or, as in Finland, where in addition to the

<sup>206</sup> Canada(Ontario), lex cit., 1990b, Section 6(1), and 1990a, Section 5(2).

<sup>207</sup> France, lex cit., 1999, Sections 15(c) and 24(f).

<sup>208</sup> South Africa, lex cit., 1997a, Section 15(1)(b).

<sup>209</sup> South Africa, lex cit., 1997b, Clause 16(1)(b) and (3).

<sup>210</sup> Cf. Bolivia, Canada (Ontario), Ecuador, El Salvador, Honduras, Nicaragua, United Republic of Tanzania, Venezuela.

<sup>211</sup> Canada (Ontario), lex cit., 1990a, Section 5(2), and 1990b, Section 6(1); Costa Rica, lex cit., Section 104(d) [however, twice a month the rest must be on Sunday]; Malta, lex cit., 1976, Section 8 [nevertheless, it is the employer who decides if he/she must consult with the employee]; Panama, lex cit., 1971, Section 231(2); Paraguay, lex cit., Section 154; Peru, lex cit., 1970, Section 1; Viet Nam, lex cit., Section 72(2).

<sup>212</sup> Argentina, lex cit., 1956a, Section 4(b); Austria, lex cit., Section 6(1) [however, every two weeks the worker shall have a Sunday off]; Burkina Faso, lex cit., Section 6; Central African Republic, lex cit., 1970, Section 9; Colombia, lex cit., 1950, Section 175; Chile, lex cit., Section 150; Dominican Republic, lex cit., Sections 163 and 262; South Africa, lex cit., 1997b, Clause 16(1)(b); Spain, lex cit., 1985, Section 7(3) [states that with preference on Sunday; however, the parties may agree otherwise].

<sup>213</sup> Portugal, lex cit., 1992, Section 15(3). Also Guatemala, lex cit., Section 164(b), Haiti, lex cit., Section 257(b); Iran, lex cit., Section 62; Italy, lex cit., 1958, Section 7.

<sup>214</sup> France, lex cit., 1999, Section 16(c); Sweden, lex cit., 1970, Section 9 (*in fine*). Also Finland, lex cit., 1977, Section 10.

<sup>215</sup> Burkina Faso, lex cit., Sections 4 and 6; Canada (Ontario), lex cit., 1990a, Section 5(4), and 1990b, Section 6(2); Malta, lex cit., 1976, Section 8 (*in fine*); United Republic of Tanzania, lex cit., Section 7(1).

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worker's consent, special or urgent reasons necessitate the work.<sup>216</sup> However, in other cases, the only requirement is the employer's request, as in El Salvador and Panama.<sup>217</sup>

*Remuneration for work carried out during weekly rest (normally on Sunday).* National laws entitle domestic workers to adequate remuneration for work on Sunday. Depending on the country, payment can range from an additional 25 per cent to an additional 200 per cent of the normal hourly rate, or its equivalent in time-off.<sup>218</sup>

### Miscellaneous

In some countries (Argentina, Austria, Peru, the Philippines and Zimbabwe), the law on domestic workers contains provisions on the attendance of religious services with a view to facilitating, either in regard to hours of work or weekly rest, the worker's attendance at services or practices based on religious grounds.<sup>219</sup>

Some other countries (Dominican Republic, Ecuador, France, Haiti, Honduras, Nicaragua and Peru), have enacted provisions to give domestic workers the opportunity of either attending school for at least an elementary education, or for professional training.<sup>220</sup> In the Dominican Republic, the law explicitly states that the domestic worker has to obtain permission from the employer to visit a doctor or a health centre when she or he is sick, provided that this is compatible with working hours or carried out during the day, in agreement with the employer.<sup>221</sup> In Viet Nam, the law provides for arrangements concerning older workers during the year prior to retirement, with a view to either reducing their daily hours of work or working on a part-time basis in accordance with the regulations issued by the Government.<sup>222</sup>

In France, the current national collective agreement also states that domestic workers mandated by a labour union shall be entitled, subject to certain conditions, to a given number of hours free from work in order to fulfil that mandate.<sup>223</sup>

<sup>216</sup> Finland, lex cit., 1977, Section 10.

<sup>217</sup> El Salvador, lex cit., Section 81; Panama, lex cit., 1971, Section 231(2).

<sup>218</sup> South Africa, lex cit., 1997b, Clause 17. See also Finland, lex cit., 1977, Sections 11 and 14.

<sup>219</sup> Argentina, lex cit., 1956a, Section 4; Austria, lex cit., Section 6(4); Peru, lex cit., 1957, Section 3; Philippines, lex cit., 1975, Book Three, Rule III, Section 4; Zimbabwe, lex cit., 1992, Section 5(4) (*in fine*).

<sup>220</sup> Dominican Republic, lex cit., Section 264; Ecuador, lex cit., Section 274; France, lex cit., 1999, Section 25; Haiti, lex cit., Section 257(c); Honduras, lex cit., 1959, Section 155; Nicaragua, lex cit., Section 147; Peru, lex cit., 1957, Section 3.

<sup>221</sup> Dominican Republic, lex cit., Section 264.

<sup>222</sup> Viet Nam, lex cit., Section 123.

<sup>223</sup> France, lex cit., 1999, Section 1(i).

**Table 1. Working time of domestic workers: Regulations in selected countries**

Country	Hours of work	Rest periods Overtime Night work	Weekly rest	Comments
<b>Argentina</b>	<i>Live-in domestic workers</i> : nightly rest of at least 9 h., which may be interrupted only for serious or urgent reasons, and daily rest period of 3 h. between morning and afternoon duties.		24 h.	
<b>Austria</b>	<i>Live-in domestic workers</i> (hours of work + hours in readiness for service): <ul style="list-style-type: none"> <li>▪ if the worker is 18 years of age or over: shall not exceed 120 in any 2 calendar weeks.</li> <li>▪ if the worker is under 18 years of age: shall not exceed 110 in any 2 calendar weeks.</li> </ul> <i>Live-out domestic workers</i> (hours of work + hours in readiness for service): <ul style="list-style-type: none"> <li>▪ if the worker is 18 years of age or over: shall not exceed 96 in any 2 calendar weeks.</li> <li>▪ if the worker is under 18 years of age: shall not exceed 88 in any 2 calendar weeks.</li> </ul> <i>Domestic workers below 18 years</i> : no more than 8 h. per day	<b>Rest periods:</b> Live-in domestics shall have at least 3 h. of rest during the day, including two 30-minute breaks for meals. Live-out domestics are entitled to a rest period proportional to their working hours. <b>Overtime:</b> no precise limit exists	From 14:00 on a working day until commencement of work the following day and a Sunday off every 2 weeks.  Hours of work on working Sundays shall be 6.	The law provides for special arrangements: a maximum of 18 h. of work in any 2 consecutive weeks.
<b>Bolivia</b>	Domestic workers are not subject to a given number of working hours.	<b>Night rest:</b> 8 h.	6 h. per week	Domestic workers are not subject to hours of work.
<b>Burkina Faso</b>	Time on duty shall be 60 h. per week corresponding to 40 h. of actual work (time on duty does not include time allowed for the worker's meals).	<b>Overtime:</b> no precise limit exists.	24 h.	The employer may, subject to a maximum of 6 working days, spread the hours of work unevenly over the week provided that the worker has at least a rest period of 9 consecutive hours between any two consecutive days of work.
<b>Cambodia</b>	Exclusion of domestic workers from the Labour Code standards on hours of work.			
<b>Canada (Ontario)</b>	Care workers may work up to 12 h.	<b>Overtime:</b> no precise limit exists, with the exception of care workers, who the law authorizes to work no more than 3 additional hours worked in excess of 12 h. of work in a day.	<i>Care workers</i> : 36 h. either consecutive or as may be arranged. <i>Domestics, nannies and sitters with a live-in status</i> : 36 consecutive hours + 12 consecutive hours.	Exclusion of domestic workers from general norms on hours of work.

Country	Hours of work	Rest periods Overtime Night work	Weekly rest	Comments
<b>Chile</b>	<i>Live-in domestic workers:</i> not subject to working hours but shall enjoy at least 12 h. of rest per day (9 h. night rest, 3 h. for breaks and meals). <i>Live-out domestic workers:</i> 12 h. per day of which at least 1 should be for rest. <i>Domestic workers below 18 years:</i> no more than 8 h. per day.		24 h.	
<b>Colombia</b>	Exclusion of domestic workers from general norms on hours of work. Children 12-14 years 4h. per day; 14-16 years, 6h. per day; 16-18 years, no more than 8 h. per day.		24 h.	
<b>Costa Rica</b>	12 h. with a 1 h. break (meal). However, the law allows a spread over of 15 h. to perform the work. The maximum working hours for child domestic workers (12-18 years) are 12 per day.	<b>Overtime:</b> Maximum of 4 h. per day. Prohibition of night work below 18 years of age.	Half-day, the day being decided by the employer, although twice a month shall be on a Sunday.	
<b>Denmark</b>		<b>Night work:</b> shall be considered as exceptional (need a valid reason) and shall be followed by a rest period the day after.		
<b>Dominican Republic</b>	Domestic workers are not subject to a given number of working hours. <i>Domestic workers below 16 years of age</i> no more than 6 h. per day.	<b>Rest period:</b> 9 h. Prohibition of night work below 16 years of age.	36 h., taken, unless otherwise agreed, half on Saturday and on Sunday.	Exclusion of domestic workers from general norms on hours of work.
<b>Egypt</b>	Exclusion of domestic workers from the labour code, therefore, from general norms on hours of work.			
<b>Finland</b>	9 h. per day. 90 h. every 2 weeks. It shall be permissible to request work to be performed between 06:00 and 23:00. Meal time included in working hours. <i>Children under 15 years:</i> 7h. per day and 35 h. per week, work ends at 20:00. <i>15-18 years</i> 9h. per day, 48h. per week, work shall end no later than 22:00.	<b>Overtime:</b> 6 h. per day; 24 h. in any fortnight and 320 h. per year <b>Night work:</b> shall be exceptional, i.e. emergency work, standing by in readiness for work and occasional work for special and important reasons (subject to the worker's consent in both cases). 14 consecutive h. of rest in every 24h. 12 consecutive h. of rest in every 24h. +15 years possible overtime only 80 h. per year and no more than 9h. per day, 48h. per week.	30 h., including if possible Sunday. Work is possible under exceptional situations (emergency work) <i>Under 18 years of age:</i> 38 consecutive h.	The law provides for special arrangements (emergency work = 20 h. of additional work per fortnight at a time).

Country	Hours of work	Rest periods Overtime Night work	Weekly rest	Comments
France	40 h. per week. Same hours of work for young and adult domestic workers.	<b>Overtime:</b> on average not more than 8 h. per week in any 12-week period; and 10 h. in any one week. Prohibition of overtime and of night work below 18 years of age.	24 h. preferably on Sunday + an additional half-day. (Same for domestic workers below 18 years of age.) Work is possible only in connection with special or exceptional situations. <i>Under 18 years of age:</i> 24 consecutive h. on Sunday + additional half-day	On call-work limited to 4 additional hours per week.
Guatemala	Domestic workers are not subject to a given number of working hours.	<b>Rest period:</b> 10 h. (8 for night rest and 2 for meals).	6 h. on Sundays.	Exclusion of domestic workers from general norms on hours of work.
Guinea Bissau	Exclusion of domestic workers from the General Law on Work, therefore, from general norms on hours of work.			
Haiti	Domestic workers are not subject to a given number of working hours.	<b>Rest period:</b> 10 h. (8 for night rest and 2 for meals).	6 h. on Sundays.	
Honduras	Domestic workers are not subject to a given number of working hours.	<b>Rest period:</b> 10 h. (8 for night rest and 2 for the taking of meals). Prohibition of overtime for young domestic workers. Prohibition of night work below 16 years of age.	24 h.	Exclusion of domestic workers from general norms on hours of work.
Italy		<b>Period of rest</b> (night rest) of 8 h. <b>Night work:</b> if service has to be performed at night, adequate compensatory rest shall be granted during the day.	24 h.	
Japan	Exclusion of domestic workers from the Labour Standards Law, therefore, from general norms on hours of work.			
Jordan	Exclusion of domestic workers from the labour code, therefore, from general norms on hours of work.			
Lebanon	Exclusion of domestic workers from the labour code, therefore, from general norms on hours of work.			

Country	Hours of work	Rest periods Overtime Night work	Weekly rest	Comments
Malta	8 h. per day. 40 h. per week.	<b>Daily rest:</b> Live-in domestics shall be entitled to a minimum of 3 h. per day in the aggregate.	24 h.	
Mexico	Determined indirectly. <i>Domestic workers below 16 years:</i> no more than 6 h. per day.	"Domestic workers shall have a period sufficient to eat and rest during night hours." Prohibition of overtime for young domestic workers. Prohibition of night work below 16 years of age.	Young workers shall not work on Sundays and holidays.	General provision on working time: 8 h. per day. Domestic workers are not excluded.
Panama	Domestic workers are not subject to a given number of working hours.	<b>Rest period:</b> from 21:00 to 06:00. Prohibition of night work below 18 years of age.	24 h. Young workers shall not work on Sundays and holidays.	Exclusion of domestic workers from general norms on hours of work.
Paraguay		<i>Live-in domestic workers:</i> nightly rest of at least 10 h., and a daily rest period of 2 h. for meals. <i>Non-resident domestic workers:</i> 12 h. rest per day. Night work is possible after 15 years of age.	24 h. Young workers shall not work on Sundays and holidays.	
Peru		<b>Period of rest</b> (night rest) of 8 h.	24 h.	
Philippines	Exclusion of domestic workers from general norms on hours of work, night work.	Exclusion of domestic workers from general norms on night work.	24 h.	
Portugal	44 h. per week.	Rest periods: determined by agreement between the parties. But the employee may be subject to certain tasks during such periods.	24 h.	If there is an agreement between the parties, working time may be considered as a result of an average.
Saint Vincent and the Grenadines		<i>Live-in domestic workers:</i> 11 h. per day, of which 2 should be for rest and for meals. <i>Live-out domestic workers:</i> 10 h. per day, of which 2 should be for rest.		
Spain	40 h. per week of actual work. <i>Domestic workers below 18 years:</i> no more than 8 h. per day.	<b>Rest periods:</b> 2h. per day. <b>Overtime:</b> 80 h. per year. Prohibition of overtime and night work below 18 years of age.	36 h., of which 24 shall be consecutive and preferably on Sunday.	Hours of on-call work left to the agreement of the parties.



Country	Hours of work	Rest periods Overtime Night work	Weekly rest	Comments
South Africa	No more than 45 hours a week. No more than 9 hours a day (5 day week). No more than 8 hours a day (6 day week).	<b>Rest periods:</b> daily rest period of 12 consecutive hours, by agreement may, under certain conditions, be reduced to 10 hours. <b>Meal intervals:</b> 1-hour break after not more than 5 hours work. By agreement, such interval may be reduced to 30 minutes. <b>Overtime:</b> 15 hours per week but may not work more than 12 hours on any day including overtime. No reference to children's overtime. <b>Night work:</b> after 18:00 and before 06:00, only if agreed to in writing and subject to certain conditions.	36 consecutive hours, which must include Sunday, unless otherwise agreed, and may by agreement be extended to 60 consecutive hours every two weeks or be reduced to eight hours in any week if the rest period in the following week is extended equivalently.	<b>Standby:</b> any period between 20:00 and 06:00 the next day when a domestic worker is required to be at the workplace and is permitted to rest or sleep but must be available to work if necessary, only if it is agreed in writing and subject to certain conditions.
Swaziland	8 h. per day. 48 h. per week.	<b>Rest time:</b> hours of work shall not include breaks during which the worker can freely dispose of his time and need not remain at the workplace. <b>Overtime:</b> no precise limit exists.	24h.	
Sweden	40 h. per week averaged over not more than 4 weeks.	<b>Overtime:</b> not more than 48 h. in any 4-week period and a maximum of 300 h. per year.		Special arrangements: 12 h. of additional work per week averaged over 4 weeks.
Turkey	Exclusion of domestic workers from the Labour Act, therefore, from general norms on hours of work.			
United Arab Emirates	Exclusion of domestic workers from the Federal Law regulating the employment relationship, therefore, from general norms on hours of work.			
Venezuela	<i>Live-in domestic workers:</i> not subject to a given number of working hours. <i>Live-out:</i> subject to general norms on hours of work (8 h. per day, 44 per week). <i>Domestic workers below 16 years:</i> no more than 6 h. per day.	<i>Live-in domestic workers:</i> shall enjoy a rest period of 10 h (continuous). <i>Live-out:</i> no more than 5 h. of work without a rest of 2 h.	24 h.	
Viet Nam	8 h. per day. 48 h. per week. <i>Domestic workers below 18 years:</i> no more than 8 h. per day.	<b>Overtime:</b> 4 h. per day and 200 h. per year.		

Country	Hours of work	Rest periods Overtime Night work	Weekly rest	Comments
Yemen	Exclusion of domestic workers from the Labour Code, therefore, from general norms on hours of work.			
Zimbabwe	8 h. per day 48 h. per week.	<b>Overtime:</b> no precise limit exists.		

## Leave periods

### Annual leave

Most of the national laws studied deal with annual leave. In some countries (Colombia, Chile, Costa Rica, Honduras, Paraguay or Viet Nam), domestic workers are covered by the general provisions concerning holidays with pay.<sup>224</sup> Thus, in theory, they are afforded the same protection as other categories of workers. In some countries with specific laws on domestic work (Denmark, France, Portugal, South Africa or Spain), domestic workers' standards on annual leave tend to be equivalent to those of other categories of workers.<sup>225</sup> Yet in countries such as Bolivia, Brazil and Venezuela, there are significant differences in provisions on annual leave between domestic workers and other categories of workers: generally the conditions granted to the former being less favourable than those applicable to the latter.<sup>226</sup> There are also some countries (Haiti and the Philippines) where the Labour Code, although dealing with domestic work, excludes such workers from rules on service-incentive leave.<sup>227</sup>

Even though standards on annual leave in relation to domestic work are extremely diverse, the comparative analysis indicates some common trends: almost all establish a qualifying period, i.e. a period of time during which work must be performed in order to have the right to annual leave. The normal period is 12 months; however, in two cases (Costa Rica and Panama), the qualifying period is shorter: 50 weeks and 11 months, respectively.<sup>228</sup> While in some countries domestic workers must work for the full qualifying period before being entitled to annual leave (Bolivia, Central African Republic, Dominican Republic or United Republic of Tanzania),<sup>229</sup> in other countries (Costa Rica,

<sup>224</sup> Colombia, lex cit., 1950, Sections 186 and 192; Chile, lex cit., Section 67; Costa Rica, lex cit., Sections 104(f) and 153; Honduras, lex cit., 1971, Section 156; Paraguay, lex cit., Section 154(b); Viet Nam, lex cit., Section 74(1).

<sup>225</sup> Denmark, lex cit., 1980, Section 11(1); France, lex cit., 1999, Section 16; Portugal, lex cit., 1992, Section 16(1); South Africa, lex cit., 1997a, Sections 19-20, and 1997b, Clause 19; Spain, lex cit., 1985, Section 7(6).

<sup>226</sup> Bolivia, lex cit., 1943, Sections 38 and 44; Brazil, lex cit., 1972, Section 3; and Consolidação das Leis do Trabalho, 1943, Section 130; Venezuela, lex cit., Sections 219 and 277.

<sup>227</sup> Haiti, lex cit., Section 257; Philippines, lex cit., 1975, Rule V, Section 1(b).

<sup>228</sup> Costa Rica, lex cit., Section 104(f); Panama, lex cit., 1971, Section 54(1).

<sup>229</sup> Bolivia, lex cit., 1939, Section 38; Central African Republic, lex cit., 1970, Section 11; Dominican Republic, lex cit., Section 263; United Republic of Tanzania, lex cit., Section 7(1).

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Denmark, Malta, Portugal or Viet Nam),<sup>230</sup> domestic workers employed for a period shorter than the qualifying one are granted annual leave proportional to the length of service effectively completed.

In several countries, such as France or Zimbabwe, annual leave is accorded differently: the qualifying period may be as low as one month.<sup>231</sup> In fact, in these countries, annual leave rights are accrued on the basis of a given number of leave days per month worked. Therefore, after a month of work, domestic workers are already entitled to a leave period that increases month after month. However, in the particular case of Zimbabwe, during the first year of employment, domestic workers accumulate annual leave, but may not take it without the consent of the employer.<sup>232</sup> In South Africa, the law allows three different ways to calculate annual leave: (a) three weeks of annual leave on full pay in respect of each 12 months of employment (“the annual leave cycle”); (b) by agreement, at least one day of annual leave on full pay for every 17 days the domestic worker worked or was entitled to be paid; or (c) by agreement, one hour of annual leave on full pay for every 17 hours the domestic worker worked or was entitled to be paid.<sup>233</sup>

The length of the leave period varies greatly from country to country. It ranges from 10 days (Bolivia, Argentina and Honduras),<sup>234</sup> to 30 days (Denmark, France, Panama and Spain),<sup>235</sup> or to four working weeks and four days (Malta).<sup>236</sup> However, in some countries (Argentina, Austria, Chile, Honduras, Italy, Paraguay or Venezuela), the number of leave days increases with the domestic worker’s years of continuous service.<sup>237</sup> To fix the worker’s leave days, national laws may also take into account other factors, such as the worker’s age or her or his professional category. Thus, for instance, young domestic workers below 18 years in Austria and Ecuador, or below 21 years in France, enjoy better conditions in terms of leave days than older workers, until the end of the year of service in which they reach the age of 18 or 21.<sup>238</sup> In Austria and Italy, the law prescribes more leave days for domestic workers performing services of a higher nature than for those

<sup>230</sup> Costa Rica, *lex cit.*, Section 104(f); Denmark, *lex cit.*, 1980, Section 11(4); Malta, *lex cit.*, 1976, Section 9(1) (*in fine*); Portugal, *lex cit.*, 1992, Section 16(4); Viet Nam, *lex cit.*, Section 74(1).

<sup>231</sup> France, *lex cit.*, 1999, Section 16(a); Zimbabwe, *lex cit.*, 1992, Section 13(1)-(2).

<sup>232</sup> Zimbabwe, *ibid.*, Section 13(3).

<sup>233</sup> South Africa, *lex cit.*, 1997b, Clause 19(1).

<sup>234</sup> Bolivia, *lex cit.*, 1942, Section 38; Argentina, *lex cit.*, 1956a, Section 4(c)(1) [but only as regards domestic workers with more than one year and less than five years of continuous service]; Honduras, *lex cit.*, 1959, Section 346(a) [but only as regards domestic workers with more than one year and less than two years of continuous service].

<sup>235</sup> Denmark, *lex cit.*, 1980, Section 11(1), France, *lex cit.*, 1999, Section 16(b); Panama, *lex cit.*, 1971, Section 54; Spain, *lex cit.*, 1985, Section 7(6).

<sup>236</sup> Malta, *lex cit.*, 1976, Section 9(1)(d).

<sup>237</sup> Argentina, *lex cit.*, 1956a, Section 4(c); Austria, *lex cit.*, Section 9(1); Chile, *lex cit.*, Sections 67-68; Honduras, *lex cit.*, 1959, Section 346; Italy, *lex cit.*, 1958, Section 10; Paraguay, *lex cit.*, Section 218.

<sup>238</sup> Austria, *lex cit.*, Section 9(3); Ecuador, *lex cit.*, Section 69; France, *lex cit.*, 1973, Section 223(3), and 1999, Section 24(i).

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performing other tasks.<sup>239</sup> It is also worth noting that, while some national laws quantify leave periods in a given number of *working days*,<sup>240</sup> other countries refer only to a total number of days without further specification:<sup>241</sup> It is therefore unclear whether in the latter case, Sundays (i.e. weekly rest days) during the annual leave period, are considered when determining the length of leave due. It should also be noted that in some countries, when a public holiday occurs during the period of annual leave granted, the employee is either paid a day's wages for that public holiday in addition to the wages payable in respect of annual leave, as in the United Republic of Tanzania,<sup>242</sup> or, as in South Africa, the employee's leave period shall be extended by one working day with full pay.<sup>243</sup>

National laws also offer a great diversity of possibilities for granting annual leave. Some national laws remain silent on this issue, as in Austria, Bolivia, Chile, Italy or Zimbabwe. However, in Chile, the law states that while service needs shall be taken into account, leave shall in preference be given in spring or summer.<sup>244</sup> Other countries leave the matter to the agreement of the parties, as for instance in Swaziland and Venezuela.<sup>245</sup> In Ecuador, France, Portugal and South Africa, the parties may fix the annual leave period by agreement, but if they do not fix it (Ecuador), or if the parties fail to agree (France, Portugal and South Africa), the matter is decided by the employer.<sup>246</sup> However, in South Africa, the employer must grant annual leave not later than six months after the end of the annual leave cycle of the year in which the leave was earned or, if requested by the domestic worker, the leave earned in one year over a continuous period.<sup>247</sup> Some other countries (Argentina, Costa Rica, Guatemala, Honduras, Nicaragua, Panama and Paraguay) allow the employer, subject to certain conditions, to decide when annual leave will be taken by the domestic worker.<sup>248</sup> The law may also forbid annual leave during certain periods (South Africa): the employer may not require or permit annual leave during any other period of leave the domestic worker is entitled to or during any period of notice of termination of employment.<sup>249</sup>

Denmark is particularly worthy of mention. The law establishes a detailed time frame within which the parties negotiate to fix the leave period, with the worker's preferred

<sup>239</sup> Austria, *lex cit.*, Section 9(1)-(2); Italy, *lex cit.*, 1958, Section 10(a)-(b).

<sup>240</sup> *Cf.* Austria, Argentina, Brazil, Chile, Colombia, Denmark, France, Guatemala, Honduras, Malta, Portugal, South Africa, United Republic of Tanzania, Viet Nam, Zimbabwe.

<sup>241</sup> *Cf.* Costa Rica, Dominican Republic, Ecuador, Italy, Spain, Swaziland.

<sup>242</sup> United Republic of Tanzania, *lex cit.*, Section 7(2).

<sup>243</sup> South Africa, *lex cit.*, 1997b, Clause 19(2).

<sup>244</sup> Chile, *lex cit.*, Section 67.

<sup>245</sup> Swaziland, *lex cit.*, 1985, Section 10(a)(i); Venezuela, *lex cit.*, Section 277.

<sup>246</sup> Ecuador, *lex cit.*, Section 72; France, *lex cit.*, 1999, Section 16(b) (*in fine*); Portugal, *lex cit.*, 1992, Section 20(2); South Africa, *lex cit.*, 1997b, Clause 19(5).

<sup>247</sup> South Africa, *ibid.*, Clause 19(4).

<sup>248</sup> Argentina, *lex cit.*, 1956a, Section 4(c)(4) (*in fine*); Costa Rica, *lex cit.*, Section 155; Guatemala, *lex cit.*, Section 132; Honduras, *lex cit.*, 1959, Section 348; Nicaragua, *lex cit.*, Section 76 (*in fine*); Panama, *lex cit.*, 1971, Section 57; Paraguay, *lex cit.*, Section 222.

<sup>249</sup> South Africa, *lex cit.*, 1997b, Clause 19(6).

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option being taken into account: “A worker who is entitled to 30 days’ leave may request that nine of them should be granted consecutively between 2 May and 30 September, and nine of them consecutively between 2 May and 30 April. The remainder of the leave shall be granted, at the worker’s option, in one or more instalments, six days being taken between 1 May and 31 October and six between 1 November and 30 April”.<sup>250</sup>

*Payment of annual leave.* Almost all the laws analysed deal with this issue. In some countries, the law only refers, without any additional indication, to the full payment of salary during leave periods; in other countries, the law makes explicit reference to the inclusion of payments in kind (i.e. lodging and board).<sup>251</sup> In several countries, the law considers that in the event of the worker’s termination of employment, for any reason, she or he is entitled to the cash equivalent of the proportional accumulated leave. The same may apply when hired for a period of time shorter than that normally required to qualify for annual leave.<sup>252</sup> Some national laws also refer to the moment at which annual leave payments shall be made. In Viet Nam and Zimbabwe, domestic workers taking annual leave are paid their current wages for the period of such leave prior to departure on such leave.<sup>253</sup> In South Africa, payments must be at least equivalent to the full pay the domestic worker would receive for working for a period equal to the leave, calculated on the basis of the domestic worker’s current rate of pay, and paid immediately before the beginning of the period of leave. Furthermore, the employer may offer payment in lieu of paid leave except on termination of employment, subject to certain conditions.<sup>254</sup>

### *Public holidays*

As a general rule, domestic workers are entitled to a holiday with full pay on public and statutory holidays.<sup>255</sup> However, only few of the laws analysed have enacted explicit provisions. Domestic workers have been excluded from general rules on public holidays (with pay) in Guatemala, Honduras, Namibia and the Philippines.<sup>256</sup> It also appears that in some other countries, domestic workers’ standards on public holidays fall clearly below the general standards applicable to other categories of workers. For instance, in Costa Rica, while domestic workers are entitled to a half-day off on public holidays or to additional half pay if they are asked to work, the general rule is that work is forbidden during public holidays. However, if domestics asked to work, they are entitled to twice the ordinary

<sup>250</sup> Denmark, lex cit., 1980, Section 11(3); see also Section 11(2).

<sup>251</sup> Argentina, Decreto 7979/56, 1956b, Section 5; and 1956a, Section 4(c)(4); Colombia, lex cit., 1950, Section 192; Denmark, lex cit., 1980, Section 11(5) in connection to Section 7; France, lex cit., 1973, Section R-771(4) and R-771(5) [see also 1999, Section 16(e) (*in fine*)]; Honduras, lex cit., 1959, Section 352; Italy, lex cit., 1958, Section 10; Portugal, lex cit., 1992, Section 17(2).

<sup>252</sup> Chile, lex cit., Section 73; Italy, lex cit., 1958, Section 10 (*in fine*); Nicaragua, lex cit., Section 77; Paraguay, lex cit., Section 221; Portugal, lex cit., 1992, Section 16(4); Swaziland, lex cit., 1985, Section 10(a)(iii); United Republic of Tanzania, lex cit., Section 7(3); Viet Nam, lex cit., Section 77(1); Zimbabwe, lex cit., 1992, Section 13(6).

<sup>253</sup> Viet Nam, lex cit., Section 77(1); Zimbabwe, *ibid.*, Section 13(4).

<sup>254</sup> South Africa, lex cit., 1997b, Clause 19(8)-(11).

<sup>255</sup> Zimbabwe, lex cit., 1992, Section 14(1); Malta, lex cit., 1976, Section 9(1); Portugal, lex cit., 1992, Section 24(1); Spain, lex cit., 1985, Section 7(4); and 1980, Section 37(2); Viet Nam, lex cit., Section 73.

<sup>256</sup> Guatemala, lex cit., Section 164; Honduras, lex cit., 1959, Section 154; Namibia, lex cit., Section 33(2)(c); Philippines, lex cit., 1975, Rule IV, Section 1(c).

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pay.<sup>257</sup> In addition, given the particular nature of domestic work, it must be noted that in several countries (Portugal, Austria, El Salvador, South Africa, Spain, Swaziland, United Republic of Tanzania or Zimbabwe), domestic workers are allowed to or may be asked to work on statutory holidays.<sup>258</sup> In this respect, the law normally requires the worker's consent, but there are exceptions (El Salvador or United Republic of Tanzania), where the worker must work during public holidays if the employer so requires.<sup>259</sup> National laws allowing domestic work on public holidays normally include a compensatory mechanism to provide domestic workers with either equivalent remuneration or time off.<sup>260</sup> In France, only 1 May is a paid holiday: if the domestic worker is requested to work that day, compensation equal to 100 per cent of the daily salary must be paid. As regards the rest of public holidays, domestic workers may be requested to work without any right to an additional compensation.<sup>261</sup>

It must be said that, in general terms and when they exist, standards on public and statutory holidays applicable to domestic workers, are more permissive than those applicable to other categories of workers. From the domestic worker's perspective, public or statutory holidays may be tantamount to having to work at the employer's behest, notwithstanding that an additional or equivalent compensation — either in cash or in time off — may be given in some cases.

### *Sick leave*

In domestic work, given the private household sphere of the workplace and the special nature of the employment relationship, health problems due to sickness or accident have significant implications for both parties. For live-in domestic workers, such implications are even greater as far as sensitive issues are concerned, such as infectious diseases and payments in kind (lodging and board).

A characteristic feature of domestic worker protection is the obligation, frequently imposed on the employer, of providing medical care and, therefore, provisions on sick leave are widespread in national legislation. Although there are wide differences in the level of protection, some common trends can be seen.

In an important number of countries (Argentina, Austria, Belgium, Denmark, France, Malta, Mexico, United Republic of Tanzania, South Africa, Swaziland or Zimbabwe), domestic work regulations expressly provide for a paid leave in the event of incapacity to work due to illness or accident. However, this leave may be subject to certain conditions. In Austria (only for sickness), France, Malta, Peru or the United Republic of Tanzania, the law establishes a qualifying period for sick leave, which may range from several days to

<sup>257</sup> Costa Rica, *lex cit.*, Sections 104(e), 149 and 152(2). See also Italy, *lex cit.*, 1958, Section 9.

<sup>258</sup> Portugal, *lex cit.*, 1992, Section 24(2). Also Austria, *lex cit.*, Section 6(5); El Salvador, *lex cit.*, Section 81; South Africa, *lex cit.*, 1997b, Clause 18(1). Spain, *lex cit.*, 1985, Section 7(3)-(4); Swaziland, *lex cit.*, 1985, Section 7(1); Tanzania, *lex cit.*, Section 10; Zimbabwe, *lex cit.*, 1992, Section 14(1).

<sup>259</sup> El Salvador, *lex cit.*, Section 81; United Republic of Tanzania, *lex cit.*, Section 10.

<sup>260</sup> Zimbabwe, *lex cit.*, 1992, Section 14(1); Malta, *lex cit.*, 1976, Section 9(1); Portugal, *lex cit.*, 1992, Section 24(1); South Africa, *lex cit.*, 1997b, Clause 18(2)-(3); Spain, *lex cit.*, 1985, Section 7(4); and 1980, Section 37(2); Viet Nam, *lex cit.*, Section 73.

<sup>261</sup> France, *lex cit.*, 1999, Section 18.

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several months or years.<sup>262</sup> However, in other countries, the law either remains silent in this regard (Belgium, Mexico, Swaziland or Zimbabwe), or considers that domestic workers accrue sick leave rights from the moment they commence employment (Argentina and Denmark),<sup>263</sup> or stipulates that domestic workers are entitled to sick leave from the first day of work, but only in the case of accident (Austria)<sup>264</sup> or subject to certain conditions (South Africa).<sup>265</sup>

In several countries (Austria, Denmark, Portugal and Zimbabwe), the law also expressly stipulates that the incapacity to work shall not be the result of a wilful act or gross negligence of the domestic worker.<sup>266</sup>

Some national laws also require domestic workers to provide the employers with a medical certificate on the nature and duration of incapacity to work.<sup>267</sup> In this regard, several States provide for some flexibility. Thus, in Zimbabwe, if a medical practitioner is not available, a certificate issued by a State nurse or other suitably qualified person shall be accepted.<sup>268</sup> In the United Republic of Tanzania, employers may accept other evidence of incapacity as they deem appropriate in lieu of a medical certificate.<sup>269</sup> In South Africa, it is becoming normal practice to accept a certificate from a *sangoma* (traditional healer) in lieu of a medical certificate.<sup>270</sup>

When the above-mentioned conditions are fulfilled, the domestic worker becomes entitled to sick leave. The duration and level of protection may range from a few days to several months per year, and from payment of a certain percentage to full payment of salary, depending on the country.<sup>271</sup>

However, several countries have taken a different approach (Chile, Costa Rica, Honduras and Panama). In the event of sickness or injury that incapacitates for work, the law provides for the suspension of the employment relationship after a given period,

<sup>262</sup> Austria, lex cit., Section 10(1); France, lex cit., 1999, Section 19; Malta, lex cit., 1976, Section 10; Peru, lex cit., 1970, Section 9; United Republic of Tanzania, lex cit., Section 8(1).

<sup>263</sup> Argentina, lex cit., 1956a, Section 4; Denmark, lex cit., 1980, Section 14(1).

<sup>264</sup> Austria, lex cit., Section 10(1).

<sup>265</sup> South Africa, lex cit., 1997b, Clause 20.

<sup>266</sup> Austria, lex cit., Section 10(1); Denmark, lex cit., 1980, Section 14(2); Portugal, lex cit., 1992, Section 25(1); Zimbabwe, lex cit., 1992, Section 15(6).

<sup>267</sup> South Africa, lex cit., 1997b, Clause 20(6). Also Denmark, lex cit., 1980, Section 14(2); France, lex cit., 1999, Section 19; Malta, lex cit., 1976, Section 10 (*in fine*); United Republic of Tanzania, lex cit., Section 8(1); Zimbabwe, lex cit., 1992, Section 15(2).

<sup>268</sup> Zimbabwe, *ibid.*, Section 15(7).

<sup>269</sup> United Republic of Tanzania, lex cit., Section 8(3).

<sup>270</sup> Huber and Sack (1993), p. 42. See also South Africa, lex cit., 1997b, Clause 20(7)(a).

<sup>271</sup> Argentina, lex cit., 1956a, Section 4(d); Austria, lex cit., Section 10(1); Belgium, lex cit., 1978, Section 112; Denmark, lex cit., 1980, Section 14(1); France, lex cit., 1999, Section 19; Malta, lex cit., 1976, Section 10; Mexico, lex cit., 1969, Section 338; Peru, lex cit., 1970, Section 10; South Africa, lex cit., 1997b, Clause 20; United Republic of Tanzania, lex cit., Section 8(1); Zimbabwe, lex cit., 1992, Section 15(2).

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following which dismissal is possible in some cases. Again, conditions vary from country to country. Thus, in Chile, if a domestic worker is sick or injured, the employment relationship is suspended with no salary due for eight days if the domestic worker has been in service for less than six months, up to 15 days if he/she has been working for more than six months but less than one year, and up to 30 days if he/she has worked for more than one year.<sup>272</sup> In Guatemala, Haiti, Honduras and Panama, whenever a domestic servant is sick, in cases other than minor illness, and is not fit to work for longer than one week (Guatemala and Honduras), two weeks (Haiti) or four weeks (Panama), the employer is entitled to terminate the contract on the expiry of the time limit. The only obligation upon the employer is payment to the domestic worker of one month's wages for every year of continuous service or any fraction of a year exceeding a given number of months. The law may also prescribe a maximum number of months of compensation.<sup>273</sup> In Portugal, the domestic worker's contract of employment may also be suspended in the event of the worker's temporary incapacity due to illness or accident; the respective laws do not mention any right to payment during such suspension.<sup>274</sup> In Costa Rica, the employer can suspend the employment relationship for no more than three months if the worker is not fit to work (illness or accident). During that period, the domestic worker is paid half-salary for one to three months, depending on length of service, a rule which applies to other categories of workers.<sup>275</sup> In Spain, the only indication made by the law in relation to domestic workers' incapacity to work refers to the right of live-in household workers to stay in the employer's house for 30 days, unless hospitalization is ordered by a doctor.<sup>276</sup>

Given the private household sphere and consequent personal interactions between the domestic worker, the employer and the employer's family, some national laws make special provisions in the event of contagious diseases. In countries such as Chile or Honduras, any communicable disease contracted by any of the parties C the domestic worker or the employer, or any of the persons living in the household C entitles the other party to terminate the employment contract without notice or liability.<sup>277</sup> However, when it is the domestic worker who has been infected (through direct contact with the employer or persons living in the household), she or he is entitled to benefit from medical care and payment of full wages until completely recovered.<sup>278</sup> Furthermore, in Argentina and Haiti, if the employee's health situation so requires, he/she must be taken to a hospital at the employer's charge.<sup>279</sup> In addition to sick leave, suspension of contracts and special measures in the event of contagious diseases, national laws also provide other measures and rights to protect sick or injured domestic workers. In several countries (Belgium, Denmark, Honduras and Sweden), it is statutory that live-in domestic workers temporarily

<sup>272</sup> Chile, *lex cit.*, Section 152.

<sup>273</sup> Guatemala, *lex cit.*, Section 165(c); Haiti, *lex cit.*, Section 260; Honduras, *lex cit.*, 1959, Section 163; Panama, *lex cit.*, 1971, Section 231(7).

<sup>274</sup> Portugal, *lex cit.*, 1992, Section 25(1).

<sup>275</sup> Costa Rica, *lex cit.*, Sections 104(h) and 79.

<sup>276</sup> Spain, *lex cit.*, 1985, Section 8(3).

<sup>277</sup> Chile, *lex cit.*, Section 152 (*in fine*); Costa Rica, *lex cit.*, Section 162.

<sup>278</sup> Costa Rica, *ibid.*, Section 104(f) (*in fine*); Dominican Republic, *lex cit.*, Section 265; Guatemala, *lex cit.*, Section 165(d); Haiti, *lex cit.*, Section 261; Honduras, *lex cit.*, 1959, Section 162; Nicaragua, *lex cit.*, Section 151.

<sup>279</sup> Argentina, *lex cit.*, 1956a, Section 4(d) (*in fine*); Haiti, *lex cit.*, Section 261 (*in fine*).



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unfit for work are provided with normal accommodation and suitable care (usually, as long as may be necessary).<sup>280</sup> In other countries (Philippines or Zimbabwe), the law merely asks the employer to grant domestic workers such facilities as may be necessary to enable them to be examined by a medical practitioner.<sup>281</sup> In some countries (Bolivia, Denmark, Guatemala and Honduras), the law also addresses the possibility of transferring sick or injured domestic workers to a hospital, either because they need to be admitted or placed in isolation, or because the employer does not wish to keep these workers in the household.<sup>282</sup> In Denmark, this sort of transfer can also be made at the worker's request if not given proper care in the employer's household.<sup>283</sup> In Argentina, Bolivia, Guatemala, Honduras, Mexico, Viet Nam or Cambodia (only for occupational accidents), the employer is liable for the potential cost of medical, surgical, pharmaceutical and hospital expenses.<sup>284</sup> In Peru, employers who are not up-to-date with workers' social security payments must pay for the emergency health care of their domestic workers.<sup>285</sup> In Belgium, however, the employer is not liable for such expenses.<sup>286</sup> In South Africa, where an employer, at the request of the domestic worker, pays for a domestic worker's hospital or medical treatment, the fees paid may be set off against the worker's pay.<sup>287</sup>

Few national laws refer to the situation of casual workers in the event of sickness or accident. Given the particular nature of their work, it is difficult for casual domestic workers to qualify for any entitlement to sick leave. In fact, the only explicit references found were in France, where any domestic worker with six months of seniority, irrespective of the number of hours of work, is entitled to sick leave; and in Swaziland, to expressly exclude casual domestic workers from sick leave rights.<sup>288</sup>

A particular case of sick leave deserves mention here. In Ecuador, if the domestic servant becomes unable to work on account of long service with her or his employer, the employer is entitled to dismiss this long-term employee, but is required to provide the necessary means of subsistence, or grant the employee a pension in accordance with the law. This obligation also binds the employer's heirs.<sup>289</sup>

Finally, in several countries (Guatemala, Haiti, Honduras, Mexico, Nicaragua and the Philippines), the law states that should the domestic worker die in the employer's house as

<sup>280</sup> Belgium, *lex cit.*, 1978, Section 114; Denmark, *lex cit.*, 1980, Section 13(1); Sweden, *lex cit.*, 1970, Section 13.

<sup>281</sup> Philippines, *lex cit.*, 1974, Section 148; Zimbabwe, *lex cit.*, 1992, Section 15(1).

<sup>282</sup> Bolivia, *lex cit.*, Section 40; Denmark, *lex cit.*, 1980, Section 13(2); Guatemala, *lex cit.*, Section 165(e); Honduras, *lex cit.*, 1959, Section 164.

<sup>283</sup> Denmark, *ibid.*, 1980, Section 13(3).

<sup>284</sup> Argentina, *lex cit.*, 1956a, Section 4(d) (*in fine*); Bolivia, *lex cit.*, 1939, Section 40; Guatemala, *lex cit.*, Section 165(b) and (e); Honduras, *lex cit.*, 1959, Section 164; Mexico, *lex cit.*, 1969, Section 338(II)-(III); Viet Nam, *lex cit.*, Section 139(2); Cambodia, *lex cit.*, Section 249.

<sup>285</sup> Peru, *lex cit.*, 1970, Section 11.

<sup>286</sup> Belgium, *lex cit.*, 1978, Section 114.

<sup>287</sup> South Africa, *lex cit.*, 1997b, Clause 20(5).

<sup>288</sup> France, *lex cit.*, Section 19 ; Swaziland, *lex cit.*, 1985, Section 10.

<sup>289</sup> Ecuador, *lex cit.*, Section 276.

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a result of illness, the employer is required to pay any reasonable funeral expenses (commensurate with the deceased's standard of living).<sup>290</sup> Furthermore, in the Philippines, the Labour Code states that unless otherwise desired by the household domestic worker or his/her guardian (with court approval), in the event of the worker's death, it is prohibited to transfer or use the body for purposes other than burial.<sup>291</sup>

### Maternity leave

Given that the majority of domestic workers are women, maternity protection is an issue of critical importance and it is essential to analyse to what extent national laws afford protection to female domestic workers.

Different approaches have been taken in dealing with this issue. First, there are national laws (Argentina, Egypt, El Salvador, Guinea-Bissau, Haiti, Japan, Jordan, Thailand, Turkey and the United Arab Emirates) that do not afford maternity leave and related benefits to domestic workers.<sup>292</sup> In several other countries (Central African Republic, Colombia, Denmark, El Salvador, Finland, Guatemala, Lao People's Democratic Republic, Malta, Mexico, Nicaragua, Sweden, Venezuela and Zambia), although the law does not exclude domestic workers from maternity leave protection, it make no specific reference to them. In this respect and from a formal viewpoint, it could be concluded that domestic workers in these countries enjoy the same protection regarding maternity leave as other categories of workers.<sup>293</sup> However, the frequent social reality is that pregnancy usually entails a direct job loss for female domestic workers, normally with limited, or no, rights. And while it is true that maternity leave cash benefits are paid through social security schemes, the prevalence of clandestine employment relationships quite often means that domestic workers have no such protection. Furthermore, the law may only consider social security protection in respect of domestic workers as voluntary in nature, which is the case in Honduras and Mexico.<sup>294</sup> In another group of countries, the law refers explicitly to maternity leave in relation to domestic workers. In some countries (France, Italy, Panama, Paraguay, Peru, Portugal, Spain, Viet Nam and Zimbabwe), the aim of the

<sup>290</sup> Guatemala, *lex cit.*, Section 165(f); Haiti, *lex cit.*, Section 263; Honduras, *lex cit.*, 1959, Section 164 (*in fine*); Mexico, *lex cit.*, 1969, Section 339; Nicaragua, *lex cit.*, Section 152; Philippines, *lex cit.*, 1975, Rule XIII, Section 16.

<sup>291</sup> Philippines, *ibid.*, Rule XIII, Section 17.

<sup>292</sup> Argentina, Ley núm. 24714, 1996, Section 2; El Salvador, Labour Code, 1972, Section 2 [formally covers female employees in the private and public sectors; however, the social security system only affords protection to domestic workers in connection with disability, retirement and death, but excludes female domestic workers from maternity leave protection]; Egypt, *lex cit.*, Sections 3(b) and 159; Guinea-Bissau, *lex cit.*, Section 1(2); Haiti, *lex cit.*, Section 257; Japan, *lex cit.*, Sections 8-9; Jordan, *lex cit.*, Section 3(3); Thailand, Social Security Act, 1990, Section 5; Turkey, *lex cit.*, Section 5(d); United Arab Emirates, *lex cit.*, Section 3(d).

<sup>293</sup> Central African Republic, Labour Code, 1961, Sections 1(1) and 123; Colombia, *lex cit.*, 1950, Section 236, and Decreto núm. 956, 1996, Section 1; Denmark, Equal Opportunities Act, 1989 (as amended up to 1994), Chapter 1, Section 2; Finland, Employment Contracts Act, 2001, Chapter 1, Section 1 and Chapter 4, Section 1; Guatemala, *lex cit.*, Sections 1, 3, and 152; Lao People's Democratic Republic, *lex cit.*, Section 5; Malta, Conditions of Employment (Regulation) Act, 1952 (as amended up to 1986), Section 18(5); Nicaragua, *lex cit.*, Sections 2 and 6; Sweden, Parental Leave Act, 1995, Section 1; Venezuela, *lex cit.*, Sections 1 and 385-386; Zambia, Employment Act, 1965 (as amended up to 1982), Sections 1, 2 and 15A(1).

<sup>294</sup> Honduras, Agreement No. 193, 1971 (as amended up to 1980), Section 4; Mexico, Ley del Seguro Social, 1995, Section 13.

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statutory references is to grant female domestic workers the general protection afforded to other categories of workers,<sup>295</sup> although such protection may be granted in a different way, for instance, through a special social security scheme (Spain).<sup>296</sup> However, in some other countries, it is the employer who must grant the worker leave. For instance, in Swaziland, the law grants 30 working days' leave on full pay if a medical practitioner recommends that a pregnant domestic worker should refrain from work;<sup>297</sup> however, the post-natal protection afforded by the law, if any, is unclear. Furthermore, under the Swaziland Employment Act, an employer is not required to pay for any time spent on maternity leave, and cash benefits under social security legislation are also not provided.<sup>298</sup>

It is worth mentioning the detailed provisions and protection afforded, in this regard, by the South African legislation on domestic work.<sup>299</sup> Domestic workers are explicitly entitled to at least four consecutive months of maternity leave. Although the employer is not obliged to pay the domestic worker for the period for which she is off work due to pregnancy, the parties may agree that the domestic worker will receive part of or her entire salary/wage for the time she is off in this connection. With effect from 1 April 2003, domestic workers will be covered by the Unemployment Insurance Act, 2001 and will be entitled to claim maternity benefits in terms of that Act. Domestic workers may commence maternity leave at any time from four weeks before the expected date of birth, unless otherwise agreed or on a date from which a medical practitioner or a midwife certifies that it is necessary for the health either of the domestic worker or of the unborn child. After giving birth, a domestic worker may not work for six weeks, unless a medical practitioner or midwife certifies that she is fit to do so. If a domestic worker has a miscarriage during the third trimester of pregnancy or bears a stillborn child, she is entitled to maternity leave for six weeks after the miscarriage or stillbirth, whether or not she had commenced maternity leave at the time of the miscarriage or stillbirth. The employer must be notified in writing, unless the domestic worker is unable to do so, at least four weeks before the commencement of the intended maternity leave and subsequent return to work. In addition, no employer shall require or permit a pregnant domestic worker or a domestic worker who is nursing her child to perform work that is hazardous to her health or the health of her child. Finally, the dismissal of an employee on account of her pregnancy, intended pregnancy, or any reason related to her pregnancy, is automatically unfair.<sup>300</sup>

### *Other leaves and bonuses*

In addition to leaves already referred to, some national laws grant other kinds of paid leave to domestic workers. In some countries (Austria, Denmark, the Dominican Republic,

<sup>295</sup> France, *lex cit.*, 1999, Section 23; Italy, Act No. 1204, 1971, Section 1; Paraguay, *lex cit.*, Section 153(g); Panama, Decreto núm. 14/1954, 1954 (as amended up to 1991), Sections 2 and 44; Peru, *lex cit.*, 1970, Sections 9-10; Portugal, Lei No. 4/84, 1984 (as amended up to 2000), Section 9; Spain, Decreto núm. 2346, 1969, Sections 29(1) and 30; Viet Nam, *lex cit.*, Sections 1 and 114; Zimbabwe, Labour Relations Act, 1985 (as amended up to 1992), Section 18, and 1997a, Section 21(1).

<sup>296</sup> Spain, Real Decreto Legislativo núm. 1/1994, 1994, Section 10(2)(e), and *ibid.*, Sections 29(1) and 30.

<sup>297</sup> Swaziland, *lex cit.*, 1985, Section 9(1).

<sup>298</sup> Swaziland, Employment Act 1980, Section 107.

<sup>299</sup> South Africa, *lex cit.*, 1997b, Clause 22.

<sup>300</sup> South Africa, Labour Relations Act, 1995, Section 187(1)(e).

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Ecuador, Portugal, Spain, Swaziland and Venezuela), domestic workers are entitled to an additional leave allowance or bonus, either made effective with the annual leave paid, or at a different time.<sup>301</sup> In South Africa, for example, there is no legal obligation to give an allowance or bonus to the domestic worker, although it is a common practice to pay a bonus either before Christmas or when the domestic worker goes on annual leave; the amount paid can vary from a small additional payment to a full “13<sup>th</sup> cheque”.<sup>302</sup>

In some countries (Central African Republic, France and Spain), domestic workers qualify for a long-service bonus/seniority bonus after a given number of years of service with the same employer, that normally represents a given percentage of the basic wage.<sup>303</sup>

Under certain circumstances and subject to the subsequent presentation of a lawful justification or reasonable proof of the event before paying the employee, national laws on domestic work may allow paid leave of absence on certain occasions (sometimes subject to certain additional conditions), the most common being: the birth or adoption of a child,<sup>304</sup> marriage,<sup>305</sup> sickness<sup>306</sup> or death of a relative,<sup>307</sup> or civic duties.<sup>308</sup> Some countries also provide for compassionate leave. In Swaziland, the law stipulates that such leave is at the employer's full discretion.<sup>309</sup>

Finally, some countries (France and Viet Nam) have enacted specific provisions allowing the parties to agree upon unpaid leave (at the domestic worker's request) or paid leave (imposed by the employer).<sup>310</sup> In France, these days are not taken into account to calculate annual paid leave or are considered as such. In South Africa, the law grants five days' leave during each 12-months period; however, the unused entitlement to leave in this respect lapses at the end of the annual leave cycle in which it accrues; furthermore, before

<sup>301</sup> Austria, *lex cit.*, Section 9(4); Denmark, *lex cit.*, 1980, Section 11(5); Dominican Republic, *lex cit.*, Section 263; Ecuador, *lex cit.*, Section 115; Portugal, *lex cit.*, 1992, Section 18; Spain, *lex cit.*, 1985, Section 6(4); Swaziland, *lex cit.*, 1985, Section 10(d); Venezuela, *lex cit.*, Section 278.

<sup>302</sup> Huber and Sack, *op. cit.*, p. 40.

<sup>303</sup> Central African Republic, *lex cit.*, 1970, Section 16; France, *lex cit.*, 1999, Section 20(a)(4); Spain, *lex cit.*, 1985, Section 6(3).

<sup>304</sup> Belgium, *Arrêté Royal*, 1963, Section 2(4); Burkina Faso, *lex cit.*, Section 11; Central African Republic, *lex cit.*, 1970, Section 20(3); France, *lex cit.*, 1999, Section 17(a); Malta, *lex cit.*, 1976, Section 12, South Africa, *lex cit.*, 1997b, Clause 21(2)(a); Spain, *lex cit.*, 1980, Section 37(3)(b).

<sup>305</sup> Belgium, *ibid.*, 1963, Section 2(1)-(2); Burkina Faso, *lex cit.*, Section 11; Central African Republic, *lex cit.*, 1970, Section 20(1); France, *lex cit.*, 1999, Section 17(a); Italy, *lex cit.*, 1958, Section 15; Spain, *lex cit.*, 1980, Section 37(3)(a); Viet Nam, *lex cit.*, Section 78.

<sup>306</sup> France, *lex cit.*, Section 17(f); South Africa, *lex cit.*, 1997b, Clause 21(2)(b).

<sup>307</sup> Belgium, *lex cit.*, 1963, Section 2(5)-(7); Burkina Faso, *lex cit.*; Central African Republic, *lex cit.*, Section 20(2); France, *ibid.*, Section 17(a); Malta, *lex cit.*, 1976, Section 11; South Africa, *ibid.*, Clause 21(2)(c); Spain, *lex cit.*, Section 37(3)(b); Viet Nam, *lex cit.*, Section 78(2).

<sup>308</sup> Belgium, *ibid.*, Section 2(10)-(12); France, *ibid.*; Spain, *ibid.*, Section 37(3)(d).

<sup>309</sup> Swaziland, *lex cit.*, 1985, Section 10(c).

<sup>310</sup> France, *lex cit.*, 1999, Section 17(b)-(c); Viet Nam, *lex cit.*, Section 79.

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paying this leave, the employer may require reasonable proof of the event for which the leave was required.<sup>311</sup>

### **Measures providing special protection for young domestic workers**

The majority of laws dealing with domestic work contain provisions on young workers. Furthermore, a large number of general laws which include regulations on domestic service include provisions on the working conditions of young persons. However, one may also find cases, as in the Philippines, where household helpers are excluded from the rule on Employment of Women and Minors.<sup>312</sup>

#### *Minimum age*

Minimum age for work is one of the issues commonly referred to, but again, national laws offer a wide range of standards. There are countries that exclude child domestic workers from the general minimum age for admission to work set up in labour laws.<sup>313</sup> There are other countries where the minimum age for admission to employment does cover, implicitly or explicitly, domestic service.<sup>314</sup> There are countries (Colombia, Ecuador, and Venezuela) where the minimum age for work, although initially set at the age of 14, may start at the age of 12, subject to certain restrictions, such as a reduced number of hours of work; completion of minimum school education; light domestic work only; the necessity for the child to work for a living or to maintain parents or younger siblings; and also may be subject to obtaining a special permit from the competent authority.<sup>315</sup> In Panama, minors between 12 and 14 years of age could be authorized to carry out domestic tasks; however, this authorization was declared unconstitutional.<sup>316</sup> In Argentina, Bolivia, the Central African Republic, the Dominican Republic, Mexico and Nicaragua, the minimum age for domestic workers is set at 14 years,<sup>317</sup> or work is allowed from age 14 under certain conditions, e.g. light domestic work, the completion of elementary schooling,

<sup>311</sup> South Africa, *lex cit.*, 1997b, Clause 21(5)-(6).

<sup>312</sup> Philippines, *lex cit.*, 1975, Rule XII, Section 1.

<sup>313</sup> For instance, Australia (Queensland), Egypt, India, Lebanon, Moldova, New Zealand, Pakistan, Santa Lucia, Sao Tome and Principe, Saudi Arabia, Thailand. For further details, see ILO (2002b) under effective abolition of child labour.

<sup>314</sup> For instance Australia (Western Australia), Azerbaijan, Bahamas, Bahrain, Bangladesh, Belgium, Cambodia, China, Cuba, Czech Republic, Estonia, Georgia, Guatemala, Guinea-Bissau, Honduras, Kazakhstan, Kiribati, Latvia, Lithuania, Oman, Peru, Poland, Qatar, Russian Federation, Saint Vincent and the Grenadines, Syrian Arab Republic, Trinidad and Tobago. For further details, see ILO (2002b) under effective abolition of child labour.

<sup>315</sup> Colombia, *lex cit.*, 1950, Section 30; Ecuador, *lex cit.*, Section 134; Venezuela, *lex cit.*, Section 247(1).

<sup>316</sup> ILO (2000), p. 346: Decision of 13 November 1995.

<sup>317</sup> Argentina, *lex cit.*, 1956a, Section 2; Bolivia, *lex cit.*, 1939, Section 8; Central African Republic, *lex cit.*, 1970, Section 6 (implicitly); Dominican Republic, *lex cit.*, Section 245; Mexico, *lex cit.*, 1969, Section 173; Nicaragua, *lex cit.*, Section 131.

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or only if the work is carried out during school holidays (Chile, Finland or France).<sup>318</sup> In Iran, South Africa and Viet Nam, the minimum age is set at 15 years,<sup>319</sup> and in France (with exclusion of school holidays), Portugal and Spain, the minimum legal age for domestic work is 16 years.<sup>320</sup>

### *Legal authorization*

The law may require a legal authorization for work. In some cases, merely to make an exception to the requirements on minimum age set up by law (*cf. supra*), but in other cases just because, from a legal point of view, workers below 18 years are minors. Therefore, some national laws (Finland, France, Italy, Panama, Paraguay, Spain and Venezuela) require parental authorization or that of the minor's legal representative as a condition prior to the establishment of an employment relationship.<sup>321</sup>

### *Medical examination*

A medical examination is required by the national laws of Austria, the Dominican Republic, Finland, France, Iran, Mexico, Paraguay, Venezuela and Viet Nam,<sup>322</sup> as a precondition to commencing employment, to check the minor's state of health, and his/her physical and mental capabilities in relation to the work to be performed. Depending on the country, this examination is carried out only once or periodically (every six or 12 months). Some national laws provide that such examinations are free of charge when they are carried out by the public health system, but other laws stipulate that the employer bears the costs.

### *Records and obligation to report to the authorities*

In order to facilitate the protection of young workers, some national laws prescribe that the employer shall keep a special register specifying the worker's date of birth, the work assigned, the number of hours worked, the wages paid, the results of health check(s), etc.<sup>323</sup> Sometimes, the law also requires the employer to keep a worker's certificate of

<sup>318</sup> Chile, *lex cit.*, Section 13; Finland, *lex cit.*, 1993, Section 2(2); France, *lex cit.*, 1999, Section 24(a).

<sup>319</sup> Iran, *lex cit.*, Section 79; South Africa, *lex cit.*, 1997a, Section 43(1). See also South African, *lex cit.*, 1997b, Clause 23; and the South African Schools Act, 1996, Section 31(1); Viet Nam, *lex cit.*, Section 120 (unless determined by the Ministry of Labour).

<sup>320</sup> France, *lex cit.*, 1999, Section 24(a)-(b); Portugal, *lex cit.*, 1992, Section 4; Spain, *lex cit.*, 1980, Section 6(1).

<sup>321</sup> Finland, *lex cit.*, 1993, Section 3.; France, *lex cit.*, 1999, Section 24(b); Italy, *lex cit.*, 1958, Section 4; Panama, *lex cit.*, 1971, Section 121; Paraguay, *lex cit.*, Section 120(d); Spain, *lex cit.*, 1980, Section 7(b); Venezuela, *lex cit.*, Section 248.

<sup>322</sup> Austria, *lex cit.*, Section 7(2); Dominican Republic, *lex cit.*, Section 248; Finland, *lex cit.*, 1993, Section 11; France, *lex cit.*, Section 22; Iran, *lex cit.*, Sections 80-81; Mexico, *lex cit.*, 1969, Section 174; Paraguay, *lex cit.*, Sections 120(b) and 121 (*in fine*); Venezuela, *lex cit.*, Section 252; Viet Nam, *lex cit.*, Section, 119(1).

<sup>323</sup> Colombia, *lex cit.*, 1950, Section 171; Costa Rica, *lex cit.*, Section 93; Ecuador, *lex cit.*, Section 147; Honduras, *lex cit.*, 1959, Section 133; Mexico, *lex cit.*, 1969, Section 180(II); Panama, *lex cit.*, 1971, Section 124; South Africa, *lex cit.*, 1997b, Clause 23(3); Venezuela, *lex cit.*, Section 265; Viet Nam, *lex cit.*, Section 119(1).

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completion of compulsory school attendance.<sup>324</sup> Furthermore, the employer engaging a young worker may be asked by the law to report to the competent worker's protection authority on details such as: the worker's name, date and place of birth, address, her or his legal guardian's name and address, information showing completion of compulsory schooling, the date on which the employment relationship is to begin, and the employer's name and address of the household workplace.<sup>325</sup>

### *Working time*

Hours of work of young domestic workers are, in general terms, by law lower than their adult counterparts. However, national laws differ in their provisions. Some countries limit daily hours of work for domestics under a certain age.

In the Dominican Republic, Mexico and Venezuela, domestic workers below the age of 16 years shall not work more than six hours per day.<sup>326</sup> In Austria, Chile, Iran, Spain and Viet Nam, the reference age is set at 18 years.<sup>327</sup> In other countries (Colombia, Ecuador and Panama), the law provides for various daily hours of work, following distinct age categories, for example 12-14, 14-16, and 16-18 years.<sup>328</sup>

In Finland, "the working hours of a person under the age of 15 shall not exceed seven hours a day and 35 hours a week", and he or she should benefit from at least 14 consecutive hours of rest in every 24.<sup>329</sup> The "regular working hours of a person who has reached the age of 15 years shall not exceed those of workers who have reached the age of 18 years and are engaged in the type of activity in which the young worker is employed" and "shall not exceed nine hours a day or 48 hours a week", with at least 12 consecutive hours of rest in every 24.<sup>330</sup> Furthermore, if the daily working hours are in excess of 4.5 hours, young workers under 18 shall be granted a rest period of at least 30 minutes in the course of their work, during which they shall be free to leave the workplace.<sup>331</sup> As regards the distribution of working hours, the law states that working hours (i) for a person under the age of 15 "shall fall between 8 a.m. and 8 p.m.", and (ii) for a person who has reached the age of 15 "shall fall between 6 a.m. and 10 p.m."<sup>332</sup> However, with the worker's

<sup>324</sup> Ecuador, lex cit., Section 147; Finland, lex cit., 1993, Section 12.

<sup>325</sup> Finland, lex cit., 2001, Section 13; Portugal, lex cit., 1992, Section 4(2); Venezuela, lex cit., Section 262.

<sup>326</sup> Dominican Republic, lex cit., Section 247; Mexico, lex cit., 1969, Section 177; Venezuela, lex cit., Section 254.

<sup>327</sup> Austria, lex cit., Section 5(1); Chile, lex cit., Section 13 (*in fine*); Iran, lex cit., Section 82; Spain, lex cit., 1980, Section 34(3) (*in fine*); Viet Nam, lex cit., Section 122(1).

<sup>328</sup> Colombia, lex cit., 1950, Section 161(b); Ecuador, lex cit., Section 136; Panama, lex cit., 1971, Section 122.

<sup>329</sup> Finland, lex cit., 2001, Sections 4(2)-(3) and 8(2).

<sup>330</sup> *ibid.*, Sections 4(1), 6 and 8(1).

<sup>331</sup> *ibid.*, Section 8(3).

<sup>332</sup> *ibid.*, Section 7(1) and (3).

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consent, working hours of young workers under 18 performing domestic work at the employer's home may be extended until 11 p.m. if it is necessary for a special reason.<sup>333</sup>

In France, the law clearly defines equal hours of work for young and adult domestic workers.<sup>334</sup> In South Africa, the law on domestic work does not deal with this issue.<sup>335</sup>

*Overtime* in relation to young domestic workers is expressly prohibited in some countries (France, Honduras, Iran, Mexico and Spain).<sup>336</sup> In other countries, young domestic workers may be required to work in excess of normal hours of work: in Denmark, under special circumstances such as accidents, mechanical breakdowns, natural phenomena, or other similar unforeseen circumstances that could disrupt or threaten to disrupt the normal course of work.<sup>337</sup> In Finland, only young workers who have reached the age of 15 may, with their own consent, do overtime work. Nevertheless, the law fixes two limits: overtime cannot exceed 80 hours in any calendar year, and hours of work cannot exceed nine a day or 48 a week.<sup>338</sup> The same conditions apply to emergency work, subject to the additional condition that no employee over the age of 18 is available to do the emergency work in question.<sup>339</sup> Surprisingly, in some countries such as South Africa, the law on domestic workers does not refer to overtime in relation to young domestic workers.<sup>340</sup>

*Night work.* As with overtime, some national laws do not allow young workers to work during night hours. Thus, in countries such as Costa Rica, France, Panama, and Spain, the law excludes night work for every domestic worker under 18 years of age.<sup>341</sup> Until recently in Ecuador, domestic workers were excluded from the general rule forbidding night work for workers under the age of 18 years; the Labour Code was since amended in 1997.<sup>342</sup> In Venezuela, although domestic workers under 18 years of age should not work during night hours, the competent authority can make exceptions to that

<sup>333</sup> *ibid.*, Section 7(4).

<sup>334</sup> France, *lex cit.*, 1999, Section 24.

<sup>335</sup> South Africa, *lex cit.*, 1997a, Sections 9 and 43(2) and Chapter VI. See also South Africa, *lex cit.*, 1997b, Clause 23.

<sup>336</sup> France, *lex cit.*, 1999, Section 24(c) (*in fine*); Honduras, *lex cit.*, 1959, Section 129, Iran, *lex cit.*, Section 83; Mexico, *lex cit.*, 1969, Section 178; Spain, *lex cit.*, 1980, Section 6(3).

<sup>337</sup> Denmark, *lex cit.*, 1980, Section 19(4).

<sup>338</sup> Finland, *lex cit.*, 1993, Sections 5(1) and 6.

<sup>339</sup> Finland, *lex cit.*, 1977, Sections 5(2) and 8.

<sup>340</sup> South Africa, *lex cit.*, 1997a, Sections 10 and 43(2) and Chapter VI.

<sup>341</sup> Costa Rica, *lex cit.*, Section 88(a) and 88 (*in fine*); France, *lex cit.*, 1999, Section 24(e); Panama, *lex cit.*, 1971, Section 120(1); Spain, *lex cit.*, 1980, Section 6(2).

<sup>342</sup> Ecuador, *lex cit.*, Section 138.



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rule if special reasons so require.<sup>343</sup> In other countries (Dominican Republic, Honduras and Mexico), night work is prohibited only for young domestic workers under the age of 16.<sup>344</sup>

In Finland, the law has no explicit provision on night work; however, the law allows young workers under the age of 15 to work until 20:00, and under the age of 18 to work until 22:00 or, with their consent, until 23:00 if it is necessary for a special reason.<sup>345</sup>

In Paraguay, the law prohibits young workers between 15 and 18 years from working at night during 12 consecutive hours, including from 22:00 to 06:00. However, domestic workers are expressly excluded from this provision. The law also forbids young workers between 13 and 15 years from working at night during 14 consecutive hours, including from 20:00 to 08:00. In this latter case, there is no exclusion of young domestic workers. Therefore, it can be concluded that night work is allowed for domestic workers of 15 years or over.<sup>346</sup>

*Weekly rest.* Few countries refer to weekly rest in relation to young workers. In some countries (Mexico, Panama and Paraguay), the law makes only an indirect reference by prohibiting young domestic workers from working on Sundays and holidays.<sup>347</sup> In contrast, in other countries, the reference to young workers' weekly rest is explicit. In Finland, a young domestic worker under 18 is entitled to a weekly rest of at least 38 consecutive hours.<sup>348</sup> In France, young domestic workers under 18 years have a weekly rest of 24 consecutive hours on Sunday and an additional half-day.<sup>349</sup>

### *Physical, mental and moral protection*

In some countries (Austria, Denmark, Finland, France, Italy, South Africa and Viet Nam), the law provides for the physical, mental and moral protection of young domestic workers.<sup>350</sup> The main concern of these laws is that the workload of young domestic workers is adapted to their age and that they are not employed in work beyond their physical or mental capacities. Other legal concerns are the protection of the young domestic worker's morality and the use and manipulation of hazardous products and dangerous devices, which, in general terms, must be avoided. Furthermore, the employers of young domestic workers must warn them of any dangers in connection with their work,

<sup>343</sup> Venezuela, lex cit., Section 257.

<sup>344</sup> Dominican Republic, lex cit., Section 246; Honduras, lex cit., 1959, Section 129; Mexico, lex cit., 1969, Section 175(g).

<sup>345</sup> Finland, lex cit., 2001, Section 7(1) and (3)-(4).

<sup>346</sup> Paraguay, lex cit., Section 122.

<sup>347</sup> Mexico, lex cit., 1969, Section 178; Panama, lex cit., 1971, Section 120(2); Paraguay, lex cit., Section 119(2).

<sup>348</sup> Finland, lex cit., 1993, Section, 8(4).

<sup>349</sup> France, lex cit., 1999, Section 24(f).

<sup>350</sup> Austria, lex cit., Section 7(1); Denmark, lex cit., 1980, Section 19(1); Finland, lex cit., 1993, Section 9; France, *ibid.*, Section 24(g) and 26; Italy, lex cit., 1958, Section 4; South Africa, lex cit., 1997b, Clause 23(2); Viet Nam, lex cit., Section 121.

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and also provide them with training and guidance to increase their skills and work experience.<sup>351</sup>

## **Wages**

Few national laws refer to young domestic workers' salaries. However, where reference is made, it is normally to establish a reduced wage rate for this category of worker. In the Central African Republic, young domestic workers are paid according to the position they hold, but the salary of those aged between 14 and 16 years can be reduced by 40 per cent, while the salary of those aged between 16 and 18 years can be reduced by 20 per cent.<sup>352</sup> French legislation adopts a similar approach: an abatement of 20 per cent for workers younger than 17 years, and a 10 per cent abatement for workers between 17 and 18 years. However, this abatement disappears when the worker has six months of work experience.<sup>353</sup> Finally, in Venezuela, the law considers that if young workers accomplish work in conditions equal to that of normal workers, they shall be paid an equal salary.<sup>354</sup>

## **Opportunities for education and/or training**

An important number of countries (Bolivia, Costa Rica, Denmark, Ecuador, Finland, Panama, Peru, the Philippines and Venezuela), have enacted provisions either to prevent domestic work from affecting young domestic workers' school attendance adversely, or alternatively to provide them with elementary education.<sup>355</sup> In other countries (France and Venezuela), the law also considers professional training in this connection.<sup>356</sup>

## **Wages**

A significant number of national laws on domestic work refer to wages. The analysis of these provisions shows some recurrent issues, but also different trends in payment of salaries.

## **Minimum wage**

In some countries [Canada (Ontario), the Central African Republic, France, Malta, the Philippines, South Africa, Swaziland, the United Republic of Tanzania and Zimbabwe], the law on domestic workers fixes the minimum wage.<sup>357</sup> In some other countries

<sup>351</sup> Finland, *ibid.*, Section 10.

<sup>352</sup> Central African Republic, *lex cit.*, 1970, Section 6.

<sup>353</sup> France, *lex cit.*, 1999, Section 24(h).

<sup>354</sup> Venezuela, *lex cit.*, Section 258.

<sup>355</sup> Bolivia, Reglamento de la Ley general del trabajo, 1943 (as amended up to 1992), Section 27; Denmark, *lex cit.*, 1980, Section 19(1); Ecuador, *lex cit.*, Section 274 (*in fine*); Finland, *lex cit.*, 1993, Sections 2 and 4; Panama, *lex cit.*, 1971, Section 123 (*in fine*); Peru, *lex cit.*, 1957, Section 3 (*in fine*); Philippines, *lex cit.*, 1974, Section 146; Venezuela, *lex cit.*, Section 254.

<sup>356</sup> France, *lex cit.*, 1999, Sections 24(j) and 25; Venezuela, *lex cit.*, (*in fine*).

<sup>357</sup> Canada (Ontario), *lex cit.*, 1990, Section 3; Central African Republic, *lex cit.*, 1970, Section 4; France, *ibid.*, Section 21; Malta, *lex cit.*, 1976, Section 4; Philippines, *lex cit.*, 1974, Section 143; South Africa, *lex cit.*, 1997b, Part B: Wages; Swaziland, *lex cit.*, 1985, Section 4 and First

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(Argentina, Bolivia, Costa Rica and Mexico), no minimum wage is fixed, but the competent determining authority is indicated.<sup>358</sup> Furthermore, in Colombia and Spain, the national minimum wage applies to domestic workers.<sup>359</sup> In Finland, the minimum wage may be fixed by a generally binding collective agreement, and if this is not the case, the Council of State may lay down provisions governing minimum wages in order to ensure an equitable and reasonable subsistence for domestic workers.<sup>360</sup> Other countries simply do not fix a minimum wage for domestic workers: in Chile, the law leaves the determination of wages in domestic service to the agreement of the parties concerned in each individual employment contract;<sup>361</sup> in Turkey, the general labour legislation excludes domestic workers from a fixed minimum wage.<sup>362</sup>

When setting a minimum wage for domestic work the law may take into consideration the economic importance and living conditions in different zones or areas, the type of contract of employment or the number of ordinary hours of work per week.<sup>363</sup>

### *Benefits in kind and cash payments*

Given the fact that domestic workers may live on their employers' household premises, benefits in kind are widespread in this sector. Some national laws consider that domestic workers are entitled to certain benefits in kind, which the employer shall provide in addition to wages. For example, in the Philippines, the law defines "minimum cash wage" as the minimum wage rate prescribed under the rule on Employment of Househelpers, to which shall be added lodging, food and medical attendance.<sup>364</sup> In Zimbabwe, the law establishes that, in addition to the wage, "every domestic shall be entitled to either free lodging, free transportation to and from work, free lights, free fuel for cooking, free water for normal domestic use or to the minimum allowances [specified by the law] in respect of each of such item".<sup>365</sup> In the Dominican Republic (unless otherwise agreed) and in Nicaragua (live-in domestic employees), remuneration shall comprise board and lodging in addition to cash payment.<sup>366</sup> In Malta, meals are free for all categories of domestic workers, including casual workers, provided they work a total of not less than five hours.<sup>367</sup> The same applies in Swaziland with a slight difference, since accommodation is provided free of charge by the employer if the employee is required to

Schedule; United Republic of Tanzania, *lex cit.*, Sections 4-5 and Schedules A and B; Zimbabwe, *lex cit.*, 1992, Section 4(1) and First Schedule.

<sup>358</sup> Argentina, *lex cit.*, 1956a, Section 13 ; Bolivia, *lex cit.*, 1939, Section 52; Costa Rica, *lex cit.*, Sections 104(b) and 177; Mexico, *lex cit.*, 1969, Section 335.

<sup>359</sup> Colombia, "Regimen Laboral Colombiano", *op. cit.* [ ' 0163 (*in fine*) states that legal dispositions on national minimum wages are applicable to domestic workers]; Spain, *lex cit.*, 1985, Section 6(1).

<sup>360</sup> Finland, *lex cit.*, 1977, Section 12.

<sup>361</sup> Chile, *lex cit.*, Section 151.

<sup>362</sup> Turkey, *lex cit.*, Section 5(d).

<sup>363</sup> Argentina, *lex cit.*, 1956a, Section 13; South Africa, *lex cit.*, 1997b, Clause 2.

<sup>364</sup> Philippines, *lex cit.*, 1974, Sections 144, and 148.

<sup>365</sup> Zimbabwe, *lex cit.*, 1992, Section 6.

<sup>366</sup> Dominican Republic, *lex cit.*, Section 260; Nicaragua, *lex cit.*, Section 146.

<sup>367</sup> Malta, *lex cit.*, 1976, Section 6.

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occupy accommodation provided as part of the conditions of employment.<sup>368</sup> In South Africa, the employer may not receive or withhold any payment in respect of any food supplied to the domestic worker while she or he is working or at the workplace.<sup>369</sup> Some other countries (Ecuador, Haiti, Honduras, Mexico, Panama and Paraguay) have approached this question differently. In these countries, a domestic worker's salary is deemed to comprise board and lodging in addition to money, unless there is an explicit agreement to the contrary or a proof to the contrary.<sup>370</sup> Taking a more liberal view, certain national laws in Austria, Finland and the Central African Republic leave the question to the agreement of the parties. Thus, for instance, in the Central African Republic the law states that "board and lodging shall be benefits in kind which shall in no way be obligatory for the employer to provide nor for the domestic worker to accept".<sup>371</sup> In Colombia, the question is also left to the parties' agreement; however, as the minimum wage applies to domestic workers in this country, the amount corresponding to lodging and cash salary together must not be below this minimum.<sup>372</sup> France takes a totally different approach: in kind benefits (board and lodging) are deductible from the salary (take-home pay).<sup>373</sup>

This analysis also demonstrates that some countries have established the maximum percentage that benefits in kind may represent within the total salary. In France, the minimum amount of board and lodging is set by collective agreement.<sup>374</sup> In South Africa, the employer may not deduct more than 10 per cent for a room or other accommodation supplied to the domestic worker, subject to certain conditions.<sup>375</sup> In Panama, benefits in kind cannot represent more than 20 per cent of the total salary, while in Chile the limit is 25 per cent.<sup>376</sup> In Spain, the parties may agree on a percentage, although it cannot represent more than 45 per cent of the total salary.<sup>377</sup> Mexico has taken a different approach, as board and lodging are considered 50 per cent of the total salary.<sup>378</sup> In Burkina Faso, the law does not fix a maximum percentage, but stipulates that when workers are provided with board and lodging, the maximum monthly amounts to be deducted from their salary for the purposes of reimbursement shall be fixed or amended by decree.<sup>379</sup>

<sup>368</sup> Swaziland, *lex cit.*, 1985, Section 14.

<sup>369</sup> South Africa, *lex cit.*, 1997b, Part B, Clause 7.

<sup>370</sup> Ecuador, *lex cit.*, Section 274; Haiti, *lex cit.*, Section 255; Honduras, *lex cit.*, 1959, Section 153; Mexico, *lex cit.*, 1969, Section 334; Panama, *lex cit.*, 1971, Section 231(9); Paraguay, *lex cit.*, Section 152.

<sup>371</sup> Central African Republic, *lex cit.*, 1970, Section 5.

<sup>372</sup> Colombia, "Regimen Laboral Colombiano", *op. cit.*, ' 163.

<sup>373</sup> France, *lex cit.*, 1999, Section 20(a)(5).

<sup>374</sup> *ibid.*

<sup>375</sup> South Africa, *lex cit.*, 1997b, Part B, Clause 8.

<sup>376</sup> Panama, *lex cit.*, 1971, Section 144 (*in fine*); Chile, *lex cit.*, Section 151.

<sup>377</sup> Spain, *lex cit.*, 1985, Section 6(2).

<sup>378</sup> Mexico, *lex cit.*, 1969, Section 334 (*in fine*).

<sup>379</sup> Burkina Faso, *lex cit.*, Section 9.

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In relation to live-in domestic workers, some countries (Austria, Finland and Portugal) consider that free board or an equivalent compensation in cash shall be provided on weekly rest days and days off to workers whose salary includes these benefits.<sup>380</sup> Furthermore, in relation to annual leave, the laws in some countries (Argentina, Colombia, Denmark, France, Honduras, Italy, Portugal and Spain) set down that, if the domestic worker is normally entitled to board and lodging, then the employer continues to be under the obligation of providing those benefits to the worker, or the cash equivalent during annual leave.<sup>381</sup>

Finally, it must also be pointed out that in some countries (Chile, Colombia, Honduras and Peru), benefits in kind shall not be taken into account when calculating other compensation and fringe benefits to which domestic workers may be entitled, or in determining social security contributions.<sup>382</sup>

### *Payment of wages*

Some national laws also refer to the frequency of payments. However, no general rule is evident. Depending on the country, payments are usually made either monthly or weekly, although in some cases they are made fortnightly.<sup>383</sup> Some national laws also require or recommend that domestic workers should be given a payslip showing, among other things, the wage-rate, the total number of hours worked, any bonuses or allowances, the period for which the payment is made, corresponding value of benefits in kind to be deducted, the net wage to be paid or any other evidence in writing of the payment made.<sup>384</sup>

Regarding the issue of payment by work output, in the Philippines, the law states that where the method of payment of wages agreed upon by the employer and the domestic worker is by piece or output, rates shall be such that will assure the minimum monthly or equivalent daily rate as provided by law.<sup>385</sup>

In relation to payment of wages, it is important to mention that the law may also refer to certain deductions which are or not permitted by the law. In South Africa, for instance, the specific regulation on domestic work prohibits the employer to receive or withhold any payment from the domestic worker in respect of: the employment or training of the domestic worker; the supply of any work equipment, working tools or work clothing, or of any food while the domestic employee is working or at the workplace. The law also

<sup>380</sup> Austria, *lex cit.*, Sections 6(3) and 3(2); Finland, *lex cit.*, 1977, Section 16; Portugal, *lex cit.*, 1992, Section 9(3).

<sup>381</sup> Argentina, *lex cit.*, 1956b, Section 5, and 1956a, Section 4(c)(4); Colombia, *lex cit.*, 1950, Section 192; Denmark, *lex cit.*, 1980, Section 11(5) in connection with Section 7; France, *lex cit.*, 1973, Sections R-771(4) and R-771(5) [see also 1999, Section 16(e) (*in fine*)]; Honduras, *lex cit.*, 1959, Section 352; Italy, *lex cit.*, 1958, Section 10; Portugal, *lex cit.*, 1992, Section 17(2); Spain: the law on domestic work remains silent on this point. However, Quesada Segura (1991, p. 184), considers that Section 35(2) of the Working Contracts Law is applicable here.

<sup>382</sup> Chile, *lex cit.*, Section 151 (*in fine*); Colombia, "Regimen Laboral Colombiano", *op. cit.*, ' 163; Honduras, *lex cit.*, 1959, Section 161; Peru, *lex cit.*, 1957, Section 7.

<sup>383</sup> Finland, *lex cit.*, 1993, Section 16.

<sup>384</sup> South Africa, *lex cit.*, 1997b, Part B, Clause 6; Central African Republic, *lex cit.*, 1970, Section 19; France, *lex cit.*, 1999, Section 20(c); Zimbabwe, *lex cit.*, 1992, Section 10(2).

<sup>385</sup> Philippines, *lex cit.*, 1975, Rule XIII, Section 7.

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prohibits the domestic worker purchasing any goods from the employer or from any person or place nominated by the employer; levying a fine against a domestic worker as a result of breakage or damage caused by the domestic worker respecting crockery, electrical appliances, ironing, etc.; and requiring the domestic worker to acknowledge receipt of an amount greater than the pay actually received.<sup>386</sup> Apart from what has been said before on benefits in kind (board and lodging), the following are the deductions normally permitted by the law: absence from work (other than an absence on paid leave or at the insistence of the employer); medical insurance, savings, pension fund, trade union subscription, rentals, loan or advance.<sup>387</sup>

The law on domestic work may also set specific time limits in relation to claims for remuneration (Finland).<sup>388</sup>

## **Lodging, board, working clothes and transportation fees**

### **Lodging**

In relation to domestic workers, only a few countries refer to the standards of their lodgings, and such references are generally vague. Thus, some national laws (Argentina, the Dominican Republic, Mexico, Panama, Paraguay, the Philippines or Portugal) merely refer to the need of providing domestic workers with an appropriate room or with a comfortable place to sleep.<sup>389</sup> However, some other countries (Austria, Denmark, Finland, France and South Africa) have enacted more precise and detailed norms concerning, *inter alia*, (i) the extent to which the room shall be habitable (size, lighting, heating, sanitation, ventilation, situation in the house, access); (ii) safety measures (fire protection, weatherproof accommodation); (iii) the worker's privacy (number of workers per room, possibility of locking the room from inside and outside); (iv) the minimum furniture (bed, chair, wardrobe, table); (v) bed linens and towels (frequency of change and quantity); (vi) access to a proper toilet or to the employer's toilet; and (vii) access to washing facilities.<sup>390</sup>

Denmark and the United Republic of Tanzania explicitly refer to the competence of the labour inspectors in relation to accommodation standards.<sup>391</sup>

### **Board**

Only a few national laws (Argentina, Austria, Dominican Republic, France, Haiti, Mexico, Panama, Paraguay and the Philippines) deal with this issue.<sup>392</sup> In general,

<sup>386</sup> South Africa, lex cit., 1997b, Part B, Clause 7.

<sup>387</sup> South Africa, lex cit., 1997b, Part B, Clause 8.

<sup>388</sup> Finland, lex cit., Section 17.

<sup>389</sup> Argentina, lex cit., 1956a, Section 4(e), and 1956b, Section 7; Dominican Republic, lex cit., Section 260; Mexico, lex cit., 1969, Section 337; Panama, lex cit., 1954, Section 231(9); Paraguay, lex cit., Section 153(b); Philippines, lex cit., 1974, Section 148; Portugal, lex cit., 1992, Section 26(1)(e).

<sup>390</sup> Denmark, lex cit., 1980, Section 8 ; Austria, lex cit., Section 4; Finland, lex cit., 1977, Section 16 (*in fine*); France, lex cit., 1999, Section 21; South Africa, lex cit., 1997b, Clause 8.

<sup>391</sup> Denmark, lex cit., 1980, Section 9(1); United Republic of Tanzania, lex cit., Section 10(e)(ii).

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references are scarce and vague and focus on: the amount of food to be provided per meal, its quality, and the number of meals per day. In this connection, national laws state that the food provided to domestic workers in terms of quantity and quality shall normally correspond to that provided to healthy adult members of the employer's family.<sup>393</sup> In South Africa, the only reference made to food supplied to the domestic worker is to prohibit the employer from receiving any direct or indirect payment or withholding any payment in this respect.<sup>394</sup>

### *Work clothing*

There are very few references in national laws to domestic workers' clothing. Two countries, Belgium and Swaziland, have taken a general approach: the employer provides the domestic workers with the clothes necessary for the performance of their work.<sup>395</sup> In Colombia, the employer provides domestic workers in service for more than three months with a pair of shoes and the clothes necessary for the performance of work, three times a year and in kind, not in cash.<sup>396</sup> Portugal emphasizes the avoidance of work hazards; thus, the employer shall supply uniforms and other suitable protective clothing to prevent any risk of an accident or any prejudicial effect on the worker's health.<sup>397</sup> In Zimbabwe, a similar approach is taken: the employer supplies, free of charge, uniforms and other suitable protective clothing to prevent domestic workers from being habitually exposed to inclement weather in the course of their duties. Furthermore, the protective clothing supplied becomes the domestic worker's property three months after its issue, if she or he is responsible for mending, washing or otherwise maintaining such clothing.<sup>398</sup> In South Africa, the only reference made to work clothing is to prohibit the employer from receiving any direct or indirect payment or withhold in this respect.<sup>399</sup>

### *Transportation fees*

Some countries have enacted provisions on transportation fees and travelling expenses. In Zimbabwe, the law provides domestic workers with free transportation to and from work, as long as the accommodation is not within two kilometres of the workplace.<sup>400</sup> In the United Republic of Tanzania, the employer provides domestic workers either with transport facilities or with a monthly transport allowance, the amount

<sup>392</sup> Argentina, lex cit., 1956b, Section 8; Austria, lex cit., Section 4(3); Dominican Republic, lex cit., Section 260; France, lex cit., 1999, Section 21 (*in fine*); Haiti, lex cit., Section 255 (*in fine*); Mexico, lex cit., 1969, Section 337; Panama, lex cit., 1971, Section 231(9); Paraguay, lex cit., Section 153(b); Philippines, lex cit., 1974, Section 148.

<sup>393</sup> Austria, lex cit., Section 4(3).

<sup>394</sup> South Africa, lex cit., 1997b, Clause 7(1)(d).

<sup>395</sup> Belgium, lex cit., 1978, Section 110; Swaziland, lex cit., 1985, Section 11.

<sup>396</sup> Colombia, lex cit., 1950, Section 230.

<sup>397</sup> Portugal, lex cit., 1992, Section 26(1)(d).

<sup>398</sup> Zimbabwe, lex cit., 1992, Section 19(1)-(2).

<sup>399</sup> South Africa, lex cit., 1997b, Clause 7(1)(c).

<sup>400</sup> Zimbabwe, lex cit., 1992, Section 6.

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depending on the employer's place of residence.<sup>401</sup> In France, the national collective agreement on domestic workers does not refer to transport fees, but some regions and districts (i.e. Paris) have enacted provisions granting domestic workers, under certain conditions, a percentage of their daily transportation fees.<sup>402</sup>

In some other countries (Central African Republic and Peru), domestic workers recruited from outside the place where the work is to be done or transferred by the employer during the period of execution of the contract from where they are employed to some other place are entitled to paid travelling expenses.<sup>403</sup> In France, some regions and districts also provide domestic workers with such expenses.<sup>404</sup> In Viet Nam, employers pay travel fares and expenses for domestic workers to return home at the end of their service, except in cases where the domestic worker voluntarily leaves before the expiry of the employment contract.<sup>405</sup> It is worth mentioning that in South Africa an employer may only require or permit a domestic worker to perform night work — when the domestic worker does not reside at the workplace — if transport is available between the domestic worker's place of residence and the workplace at the beginning and end of the domestic worker's shift.<sup>406</sup>

## Termination of employment

The lack of formalized structures and procedures in domestic work leads to the primacy of the personal in the employment relationship, placing a singular emphasis on the personal interaction between employer and employee. This high degree of personalization in the employment relationship suggests a very particular situation regarding termination of employment. This reality is explicitly acknowledged by the law in France, where the normal procedure on termination of employment is not applicable to this working relationship.<sup>407</sup>

National laws on domestic work generally grant to both parties, subject to the other giving notice, the right to put an end at any time to the employment relationship. In addition, and similarly for other categories of workers, if there is a valid reason to terminate the employment relationship, normally explicitly stated by law, the employment relationship may end without it being necessary to observe a date or notice period.

In the event of dismissal, there are two basic rights at stake: (i) the employer's right to privacy and therefore the right to employ in his own house a person she or he entirely relies on, and (ii) the worker's right not to be dismissed without a valid reason and therefore of being protected from abuses. However, given the special character of the household employment relationship, legislation does not normally consider reinstatement,

<sup>401</sup> United Republic of Tanzania, lex cit., Section 10(f).

<sup>402</sup> Zaquin and Martin, op. cit., p. 28, ' 54.

<sup>403</sup> Central African Republic, lex cit., 1970, Section 17; Peru, lex cit., 1957, Section 5; United Republic of Tanzania, lex cit., Section 10(g)(i).

<sup>404</sup> Zaquin and Martin, op. cit., p 22, ' 41.

<sup>405</sup> Viet Nam, lex cit., Section 139(3) (*in fine*).

<sup>406</sup> South Africa, lex cit., 1997b, Clause 13(2)(b).

<sup>407</sup> France, lex cit., 1999, Section 12(a)(1).



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even in the absence of “just cause” for dismissal, as a remedy when the employer loses confidence in the domestic worker and decides to terminate the employment relationship.<sup>408</sup> Thus, the only legal way to protect domestic workers’ rights is through economic compensation, the method of calculation of which is also fixed by law.

### **Notice period**

As noted, except in the case of serious fault, the party wishing to terminate the employment relationship must give notice in advance, normally in writing.<sup>409</sup> This cross-comparative analysis of national laws shows a great heterogeneity of provisions on this issue. The length of the notice period can range from five days to up to three months or more. In several countries, (Argentina, Belgium, Finland, France, Honduras, Italy, Portugal and Spain), the notice period depends on the worker’s length of service with the same employer, and normally increases with the length of service.<sup>410</sup> In some countries, the notice period also varies depending on the domestic worker’s position. Thus in Austria and Italy, non-manual domestic workers have longer periods of notice than those in manual domestic service.<sup>411</sup> It is worth mentioning that in South Africa after six months of work domestic workers are subject to a notice period of four weeks, while other categories of workers are subject to this notice period after a year of employment or more.<sup>412</sup> Although the notice period generally tends to be the same for both parties C employer and employee C it is expressly stated in the legislation of some countries (Austria, South Africa or Zimbabwe).<sup>413</sup> In the case of South Africa, the law also states that the employer and the domestic worker may agree to a longer notice period than the one stated by the law, but the agreement may not require or permit a domestic worker to give a period of notice longer than that required of the employer.<sup>414</sup> In Belgium, France and Spain, the law prescribes different notice periods for employers and employees, normally with the period of the former being longer than that prescribed for the latter.<sup>415</sup> The length of the notice period may also depend on other factors. In Finland, if the worker is sick when notice is given or if his or her remuneration includes board and lodging, the notice period is twice as long as that of domestic workers in other situations.<sup>416</sup> In South Africa and Zimbabwe, notice

<sup>408</sup> Mexico, lex cit., 1969, Section 49; Panama, lex cit., 1971, Sections 211 and 212(2); Venezuela, lex cit., Section 112 (*in fine*).

<sup>409</sup> South Africa, lex cit., 1997b, Clause 24(3).

<sup>410</sup> Argentina, lex cit., 1956a, Section 8; Belgium, lex cit., 1978, Section 59 (*in fine*); Finland, lex cit., 1977, Section 27; France, lex cit., 1999, Sections 11(a) and 12(a)(2); Honduras, lex cit., 1959, Section 158; Italy, lex cit., 1958, Section 16(b) (as regards manual workers); Portugal, lex cit., 1992, Section 33(1); South Africa, lex cit., 1997a, Section 37(1), and 1997b, Clause 24(1); Spain, lex cit., 1985, Section 10(2) (as regards employers); Sweden, lex cit., 1970, Section 12.

<sup>411</sup> Austria, lex cit., Section 13(2); Italy, lex cit., 1958, Section 16(a)-(b).

<sup>412</sup> South Africa, lex cit., 1997a, Section 37(1)(c).

<sup>413</sup> Austria, lex cit., Section 13(3); South Africa, lex cit., 1997a, Section 37(1); Zimbabwe, lex cit., 1992, Section 16(2).

<sup>414</sup> South Africa, lex cit., 1997b, Clause 24(2).

<sup>415</sup> Belgium, lex cit., 1978, Section 59; France, lex cit., 1999, Sections 11(a) and 12(a)(2); Spain, lex cit., 1985, Sections 9(4) and 10(2).

<sup>416</sup> Finland, lex cit., 1977, Section 27.

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cannot be given by the employer while the domestic worker is on any leave periods she or he is entitled to in terms of the law, except sick leave (South Africa).<sup>417</sup>

Pay in lieu of notice is a common practice in domestic work. However, only in some countries (Argentina, Bolivia, Burkina Faso, Chile, France, Haiti, Italy, South Africa, Venezuela and Zimbabwe) does the law explicitly consider this possibility.<sup>418</sup>

In the event of termination of employment, the law in several countries (Argentina, Austria, Belgium, Ecuador, France, Italy, Spain or Sweden) provides domestic workers with time off to seek other employment during the notice period.<sup>419</sup> Furthermore, as regards live-in domestic workers, the law may also deal with accommodation during the termination of employment. In South Africa, “if the employer of a domestic worker who resides at the workplace or in other accommodation supplied by the employer terminates the contract of employment of that domestic worker before the date on which the employer was entitled to do so Y the employer is required to provide the domestic worker with accommodation for a period of one month or if it is a longer period, until the contract of employment could lawfully have been terminated”<sup>420</sup>.

### **Grounds for termination**

Either party may terminate the employment relationship by giving notice. In such event, the law does not require that the other party be provided with an explanation. However, employment may also be terminated without a notice period, if there is a valid reason for termination.

As regards grounds for termination of employment without notice (summary termination of employment), the law in several countries (Austria, Burkina Faso and France) refers to the existence of a valid reason.<sup>421</sup> It would seem that these valid reasons are the same foreseen by the law for other categories of workers. In other countries (Chile, Colombia, Finland, Nicaragua, Panama, Paraguay, Spain and Zimbabwe), the law expressly states that the grounds applicable to domestic workers in the event of summary termination of employment are to be the same as those applicable to other categories of workers.<sup>422</sup> However, the legislation in Argentina, Bolivia, the Central African Republic,

<sup>417</sup> South Africa, lex cit., 1997a, Section 37(5), and 1997b, Clause 24(4); Zimbabwe, lex cit., 1992, Section 16(3)-(4).

<sup>418</sup> Argentina, lex cit., 1956a, Section 8 (*in fine*); Bolivia, lex cit., 1939, Section 37; Burkina Faso, lex cit., Section 12; Chile, lex cit., Section 161; France, lex cit., 1999, Section 12(a)(2) (*in fine*); Haiti, lex cit., Section 264; Italy, lex cit., 1958, Section 16; South Africa, lex cit., 1997a, Section 38, and 1997b, Clause 24(6)-(7); Venezuela, lex cit., Section 279; Zimbabwe, lex cit., 1992, Section 16(7).

<sup>419</sup> Argentina, lex cit., 1956a, Section 8; Austria, lex cit., Section 16, Belgium, lex cit., 1978, Sections 41 and 64(1); Ecuador, lex cit., Section 271; France, lex cit., 1999, Section 12(a)(4); Italy, lex cit., 1958, Section 16 (*in fine*); Spain, lex cit., 1985, Section 10(2); Sweden, lex cit., 1970, Section 12(a) (*in fine*).

<sup>420</sup> South Africa, lex cit., 1997b, Clause 26(1).

<sup>421</sup> Austria, lex cit., Section 14; Burkina Faso, lex cit., Section 12 (*in fine*); France, lex cit., 1999, Section 12(a).

<sup>422</sup> Chile, lex cit., Sections 159-161; Colombia, lex cit., 1950, Section 62; Finland, lex cit., 1977, Section 28; Nicaragua, lex cit., Section 48; Panama, lex cit., 1971, Sections 213 and 231(4) (*a*

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Costa Rica, Denmark, El Salvador, Guatemala, Honduras, Mexico, Peru, Portugal, and Venezuela stipulates provisions specifically applicable either to domestic workers, to employers, or to both, detailing the grounds on the basis of which the employment relationship may be summarily terminated (immediate dismissal).<sup>423</sup>

On the basis of the following specific provisions, the employer may invoke, *inter alia*, the termination of the employment: the domestic worker's breach of her or his obligation of loyalty and respect due to the employer and the employer's family; the breach of the obligation of discretion regarding matters of a confidential nature within the family; the domestic worker's guilt in regard to any offence against the safety, honour or interests of the employer or the employer's family; the domestic worker's lack of probity, honesty or morality; the lack of personal cleanliness; the domestic worker's guilt of a serious breach of her or his obligations; the domestic worker's serious breach of the employer's household discipline; the abandonment of employment; the domestic worker's infectious disease.<sup>424</sup> In relation to infectious disease, the HIV/AIDS pandemic is resulting in numerous abuses; in some places it is not unusual that employers request domestic workers to take HIV/AIDS tests, driving them away should they test positive.

Among the more common grounds that domestic workers can invoke to terminate the employment relationship are bad treatment by the employer or employer's family; the use by the employer or employer's family of abusive language towards the domestic worker; the employer's failure to abide by the contract; the employer's incitement to the domestic worker to commit criminal or immoral acts; the employment of the domestic worker for work contrary to law or to any special agreement; the contagious disease of the employer or the employer's family; the employer's removal to another place.

### **Payment on termination and indemnities**

On termination of employment, in addition to the payment of all monies the domestic worker is entitled to,<sup>425</sup> the law in several countries (Argentina, Austria, the Central African Republic, Chile, Costa Rica, Denmark, France, Honduras, Italy, Mexico, Panama, Paraguay, the Philippines, Portugal, South Africa, Spain, Venezuela and Zimbabwe) provides for severance pay in the event of termination of employment. However, this allowance may be subject to certain conditions. In some countries (Argentina, Austria, Central African Republic, Costa Rica, France, Honduras, Italy, Panama or Paraguay), the worker who intends to qualify for such pay shall not terminate the relationship due to her or his own fault.<sup>426</sup> In South Africa, severance pay is subject to dismissal for reasons based

*contrario*); Paraguay, lex cit., Sections 81 and 156; Spain, lex cit., 1985, Section 10(1); Zimbabwe, lex cit., 1992, Section 16(6).

<sup>423</sup> Argentina, lex cit., 1956a, Sections 5-7; Bolivia, lex cit., 1939, Section 37; Central African Republic, lex cit., 1970, Section 14 (*in fine*); Costa Rica, lex cit., Section 107; Denmark, lex cit., 1980, Sections 22(1) and 26(1); El Salvador, lex cit., Section 83; Guatemala, lex cit., Section 166; Honduras, lex cit., 1959 Sections 159-160; Mexico, lex cit., 1969, Sections 337, 340 and 341; Peru, lex cit., 1957, Section 8; Portugal, lex cit., 1992, Sections 30 and 32; Venezuela, lex cit., Sections 279 (*in fine*) and 280.

<sup>424</sup> See, for example, Venezuela, lex cit., Section 280.

<sup>425</sup> Cf. South Africa, lex cit., 1997b, Clause 25(1).

<sup>426</sup> Argentina, lex cit., 1956a, Section 6; Austria, lex cit., Section 17(2); Central African Republic, lex cit., 1970, Section 15; Costa Rica, lex cit., Section 106; France, lex cit., 1999, Section 12(a)(3); Honduras, lex cit., 1959, Section 159; Italy, lex cit., 1958, Section 17; Panama, lex cit., 1971, Section 231(4) (*a contrario*); Paraguay, lex cit., Section 156.

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on the employer's operational requirements, i.e. based on the employer's economic, technological, structural or similar needs.<sup>427</sup> In some other countries (Chile, Venezuela and Zimbabwe), the worker qualifies automatically for severance pay, irrespective of the circumstances of termination.<sup>428</sup> Furthermore, on termination of the employment relationship, some countries provide domestic workers with a special remuneration/leaving grant, subject to a qualifying period, for services rendered.<sup>429</sup>

The calculation of severance pay may vary considerably from country to country. Thus, severance pay may range from an amount corresponding to the salary of a specific number of days, as in Honduras or in the Philippines, to a given number of days per year of service, as in Austria, the Central African Republic, France, Paraguay or South Africa.<sup>430</sup> The method of calculation in some countries (Bolivia, Chile, Ecuador or Peru) only takes cash payments into consideration when calculating the severance allowance.<sup>431</sup> In Portugal and Spain, severance pay may be increased to penalize those employers who allege false grounds for dismissal.<sup>432</sup>

In the event of the domestic worker's death, which constitutes automatic termination of employment, some countries (Austria, Italy and Zimbabwe) have set specific provisions granting an indemnity to the lawful heirs of the worker.<sup>433</sup> In Italy and Zimbabwe, the law provides for the payment in total of the severance allowance the domestic worker would have received upon her or his employment termination on the date of death. In Austria, the employer is bound by legislation to pay half of the severance pay.

### **Certificate of service**

In several countries (Austria, France, Peru, the Philippines, Portugal, South Africa, Sweden and Zimbabwe), the law explicitly provides that, on termination of the employment relationship and regardless of the reason, the domestic worker may request and must be granted a written certificate.<sup>434</sup> In general terms, the record of service must only specify the period served and the nature of the duties performed. In South Africa, the law also states that the certificate of employment shall indicate the employee's salary at the

<sup>427</sup> South Africa, lex cit., 1997b, Clause 27.

<sup>428</sup> Chile, lex cit., Section 163(a); Venezuela, lex cit., Section 281; Zimbabwe, lex cit., 1992, Section 20(1).

<sup>429</sup> Austria, lex cit., Section 17(1); Central African Republic, lex cit., 1970, Section 15; France, lex cit., 1999, Section 12(a)(3); Zimbabwe, lex cit., 1992, Section 20(1).

<sup>430</sup> Honduras, lex cit., 1959, Section 160; Philippines, lex cit., 1974, Section 149; Austria, lex cit., Section 17(1); Central African Republic, lex cit., 1970, Section 15; France, lex cit., 1999, Section 12(a)(3); Paraguay, lex cit., Section 91; South Africa, lex cit., 1997b, Clause 27(2).

<sup>431</sup> Bolivia, lex cit., 1939, Section 28; Chile, lex cit., Section 164(a); Ecuador, lex cit., Section 271 (*in fine*); Peru, lex cit., 1957, Section 7.

<sup>432</sup> Portugal, lex cit., 1992, Section 31; Spain, lex cit., 1985, Section 10(1).

<sup>433</sup> Austria, lex cit., Section 17(4); Italy, lex cit., 1958, Section 18; Zimbabwe, lex cit., 1992, Section 20(2).

<sup>434</sup> Austria, lex cit., Section 18; France, lex cit., 1999, Section 14; Portugal, lex cit., 1992, Section 35(2)-(3); Peru, lex cit., 1957, Section 11; Philippines, lex cit., 1974, Section 151; South Africa, lex cit., 1997b, Clause 28; Sweden, lex cit., 1970, Section 14; Zimbabwe, lex cit., 1992, Section 18.

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date of termination and, if the employee so requests, the reasons for termination of employment; in the Philippines, the employer's opinion of the efficiency and conduct of the domestic worker. In Sweden, at the employee's request, the certificate contains indications of proficiency, willingness to work and the orderly performance of domestic work as well as the party by whom notice was given and, if notice was given by the employer, the reason for termination.

## Law enforcement

The main rationale of labour inspection is the defence of labour rights through the control of the effective application of legal labour standards. However, despite the particular difficulties faced by domestic workers in this connection, very few countries have enacted specific provisions concerning law enforcement: this by reason, among others, of the privatized and hidden nature of domestic work.

Normally, labour inspection regulations of general application are, unless otherwise stated by the law, also applicable to domestic workers. However, this does not imply that the implementation of the law is carried out in the same way as for other categories of workers. Two basic facts explain this: (i) the supervisory action is normally carried out at the workplace; and (ii) in domestic work, the workplace and the employer's private home are one and the same. Thus, *two fundamental rights may collide here: namely, the right and the duty of the State to protect the basic labour rights of domestic workers through the supervisory function of labour inspection, and the employers' basic right to the protection of their privacy and that of their families.*

In order to reach a balance between these basic rights, the law on domestic work may expressly establish specific limitations to the labour authorities' supervisory function. Thus, in some countries, labour inspection in private homes shall take place only (i) with the express agreement of the employer (Argentina or Venezuela), or as a result of a court order (France).<sup>435</sup> In Spain, the limitations on labour inspection within the domestic sphere imposed by the law are more general. Thus, labour inspection may be carried out only if it safeguards the inviolability of the home and the right to personal and family privacy.<sup>436</sup> Second, labour inspection becomes involved on matters regarding domestic workers only if any of the parties so requests, in the presence of "other special reasons", or "if the inspectorate becomes aware in any other manner" (Sweden or Denmark).<sup>437</sup> As a result, and given the private household sphere of the workplace, it is very difficult for labour inspectors to act on their own initiative.<sup>438</sup> This is even more difficult when, as in Tunisia, the household employers of domestic workers are specifically excluded from the mandatory declaration that other Tunisian employers must make to the labour authorities on signing all new contracts of employment.<sup>439</sup> However, in Viet Nam, where the law specifically applies to domestic workers, the Labour Code states that "inspectors shall be empowered to inspect and investigate any place liable to inspection within their

<sup>435</sup> Argentina, lex cit., 1956b, Section 18; Venezuela, lex cit., Section 590 (*in fine*); France, cf. Zaquin and Martin, op. cit., p. 36, ' 71.

<sup>436</sup> Spain, lex cit., 1985, Section 11.

<sup>437</sup> Sweden, lex cit., 1970, Section 15 (*in fine*); Denmark, lex cit., 1980, Section 9.

<sup>438</sup> South Africa, cf. Huber and Sack, op. cit., p. 108 (*in fine*).

<sup>439</sup> Tunisia, lex cit., Section 278.

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competence, at any time without advance notice".<sup>440</sup> From a formal point of view, it would seem that in this case the freedom of action of inspectors is very wide, although without a complaint by one of the parties, or eventually a third party (i.e. a neighbour), it is unrealistic to imagine labour inspectors supervising in a systematic way hundreds or thousands of private homes.

## Main trends

Of the national laws analysed, quite a considerable number of countries (nine) exclude domestic workers from general labour laws applicable to other categories of workers. In several countries (19), the law does not make express reference to them. Some others (20) have set up specific regulations on domestic workers in their Labour Code, or equivalent legislation (i.e. general law on working conditions, law on the working environment, Labour Protection Act, etc.). However, in some cases, this may simply mean that the general labour legislation does not apply in its entirety to domestic workers. Finally, in another group of countries (19), the specificity of domestic work has been recognized by the enactment of special laws dealing with this category of worker. Regardless of the manner in which domestic work is regulated by national laws, it may be said that, in general terms, standards on domestic work fall below labour standards set for other categories of workers.

Only a small number of the national laws analysed require the conclusion of a written contract of employment for domestic work, and only rarely do national laws on domestic work refer to standards and specifications to be dealt with in those contracts. In addition, some countries either exclude domestic work from the requirement of establishing a written contract, or allow such contracts to be of an oral nature. As a result, this legal situation tends to generate uncertainty and create problems in determining and enforcing the conditions of work agreed upon by the parties. To avoid such problems and curtail any possible abuses and uncertainty, some national laws provide a standard form contract to be used as a model.

As for conditions of work, domestic workers tend by law to work longer hours than workers in other categories. In some countries, they are excluded from general norms on the matter. In some others, the law merely fixes standards on minimum rest. Several national laws on domestic work contain specific provisions stipulating the number of working hours per day and additional regulating mechanisms to avoid, as far as possible, situations of being on-call 24 hours per day. However, given the nature of the work and the lack of control by the authorities, employers have a tendency to disregard such standards when they exist. Only very few countries have enacted provisions dealing with night work in relation to domestic work. Domestic workers may also be specifically excluded from standards dealing with such an issue. National laws also deal with domestic workers' rest periods, although references are often generic and vague. A significant number of countries have no regulations on overtime, either because the law does not establish hours of work for domestic workers, or simply because they are excluded for general standards on this matter. However, several countries do consider overtime in relation to domestic work. In such countries, the law normally limits overtime hours, refers to the need of the worker's consent to work overtime, and sets provisions for compensation either in time off, cash payment or a combination of both. A reduced number of countries also allows, under special circumstances and with certain limitations, the conclusion of special arrangements with a view to extending hours of work.

<sup>440</sup> Viet Nam, *lex cit.*, Section 187(i). See also Central African Republic, *lex cit.*, 1970, Sections 23 and 25.

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Although standards on weekly rest are widespread, important differences are found among national laws on this issue. In a significant number of countries, such standards clearly fall below those set for other categories of workers: some national laws stipulate weekly rest for domestic workers at six hours. In addition, quite often, the law leaves the employer to determine when the domestic worker can enjoy such rest. Some national laws also contain provisions that facilitate the worker's attendance at religious services or at school for elementary education or training. In a considerable number of countries, the granting of such opportunities to young domestic workers is particularly emphasized.

Most national laws grant annual leave to domestic workers. While in some countries, domestic workers are covered by the general provisions concerning other categories of workers, in others, domestic workers benefit from special provisions, which generally tend to fix standards equivalent to those afforded to other workers. However, in a significant number of countries, domestic workers' standards on annual leave are either less favourable than those applicable to other workers, or simply exclude domestic workers from receiving such leave. And this is similarly the case for public and statutory holidays. This analysis shows that, in general terms, standards on public holidays applicable to domestic workers, when they exist, are more permissive than those applicable to other workers, i.e. domestic workers may be asked by their employers to work on statutory holidays. Nonetheless, the law may include a compensatory mechanism to provide either equivalent remuneration or time off.

Standards on sick leave are widespread in national laws dealing with domestic work. As for other leaves and rights, there are wide differences in the level of protection afforded by national laws. In several countries, subject to certain conditions such as a qualifying period and the production of a medical certificate, the law provides for paid leave in the event of incapacity to work due to illness or accident. However, in some others, in the event of injury or sickness that incapacitates a person to work, the law allows temporary suspension of the employment relationship, either with or without pay. Some national laws also consider the possibility of terminating employment by providing economic compensation, which may increase with the number of years of service. In addition, given the private nature of the employment relationship between employers and domestic workers, several countries have enacted special provisions dealing with contagious diseases contracted by either party, entitling the other to terminate the employment contract without notice and also without any further liability. In certain countries, domestic workers are either excluded from social security schemes, or their participation in such schemes may be voluntary. Thus, in some of these countries, employers are liable for the cost of any medical attention their domestic workers may need in the case of illness or accident at the workplace. In certain countries, the employer must also pay reasonable funeral expenses should the domestic worker die as a result of illness contracted while working for the employer.

Standards on maternity leave are very heterogeneous. National laws range from those excluding domestic workers from leave and related benefits, to those granting them the same protection afforded to other categories of workers. However, the stark reality is that, very often, female domestic workers lose their employment as a result of pregnancy. Furthermore, in some countries, it is difficult to assess the real extent, if any, of the protection afforded to female domestic workers by social security schemes regarding maternity leave and maternity cash benefit payments.

Several national laws grant domestic workers other kinds of leaves and bonuses, including leave allowances, long-service bonuses, and paid absences in the case of birth, marriage, death or performance of civic duties.

Young domestic workers enjoy special protection in a significant number of countries. The measures adopted normally include setting a minimum age for domestic

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work. Depending on the given country, such legal age may start, under certain conditions, as early as the age of 12 years, although it normally ranges between 12 and 16 years. Additional legal protective measures refer to the previous completion of elementary schooling, the employer's commitment that the child will only do light work C although the law does not normally specify the way this requirement shall be verified, the procurement of a special permit from the competent authority and/or the child's parental authorization, and the obtaining of a medical certificate of physical aptitude for work. Other protective measures applicable to young domestic workers may include setting a reduced number of hours of work and the exclusion of overtime and night work. Unfortunately, such protective measures are not present in all national laws analysed. Furthermore, and similarly for adult domestic workers, standards on domestic work for young workers often fall below the same standards applicable to other categories of young workers.

A great many countries studied have either fixed a minimum wage for domestic workers, enacted mechanisms to fix a minimum wage, or simply apply the national minimum wage to domestic workers. However, in some countries, the fixing of salaries is left to the agreement of the parties concerned. Some national laws also contain provisions on benefits in kind C namely board and lodging C and its relationship to cash payments (and the percentage of each in the total salary). However, there is no clear position on this point. Thus, while in some countries, remuneration of live-in domestic workers comprises board and lodging in addition to cash payments, in several others the question of fixing the salary may be left to the agreement of the parties. Some national laws try to avoid abuses by fixing the maximum proportion of benefits in kind as a percentage of the total salary so that these are not taken into account to calculate other fringe benefits to which domestic workers may also be entitled, and/or to determine social security contributions. Given that in some countries such benefits may represent up to 50 per cent of the total salary, this is detrimental to the interests of domestic workers subject to such conditions, and may lead to abuses and to inadequate social protection.

Few countries have enacted specific provisions on accommodation and board. When such standards exist, they tend to be very general and vague. Very few countries have set precise and detailed norms on those matters. Several national laws also refer to domestic workers' rights in regard to transportation fees, travelling expenses and work clothing.

Given the private nature of the employment relationship, termination of employment is more personalized in domestic work. Thus, when the employer loses confidence in the domestic employee, the only legal way to protect the rights of the worker is through pecuniary compensation. In fact, the law does not normally consider reinstatement as a remedy for dismissal, in cases where it has lacked a "just cause". Therefore, except in the case of serious fault, the party wishing to terminate the employment relationship is merely required to give notice in advance, without giving a reason for termination. Depending on the country concerned, the length of the notice period can range from several days up to two or three months. However it may also depend on other factors, such as the worker's length of service, the worker's occupation or the nature of the working contract.

In the event of termination of employment with notice, some national laws provide domestic employees with time off to seek other employment during this period. Employers may avoid the notice period by paying the domestic workers an equivalent compensation. This, in fact, is a very common practice. As regards termination of employment without notice (summary termination of employment), national laws generally refer to the grounds normally foreseen for other categories of workers (although in some countries the law has established specific grounds for domestic workers). In the event of termination of employment, several countries provide for severance pay, which may be subject to the requirement that the termination of the relationship is not due to the worker's own fault. In the event of termination of employment, subject to a given period of continuous service



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with the same employer, some countries provide domestic workers with a leaving grant in respect of services rendered. Some national laws also state that, on termination of employment and regardless of the reason, the domestic worker may request and be granted a written certificate of service.

Regarding law enforcement from a formal point of view, the freedom of action of labour authorities is very broad. Only a few of the countries that consider the inviolability of the private household as a principle superior to the domestic worker's protection have expressly established specific limits to the supervisory function of labour inspectors. However, the reality is that labour authorities encounter enormous difficulties in balancing the effective application of legal labour standards versus the principle of inviolability of household privacy. Thus, the only realistic means of action left to the labour inspectorate is to act pursuant to a request made by one of the parties, which in fact reduces severely the practical possibilities of enforcing the law.



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## Conclusion: Extending protection to domestic workers

Despite national differences, domestic workers throughout the world share and suffer from the same basic problems: invisibility, marginalization, and lack of social and legal recognition. A striking example of this is that, in contrast to other categories of workers, few countries include private household domestic workers in labour force statistics. In few words, domestic workers suffer from not being considered as “full-workers”.

There is no question that many domestic workers in private households are exposed to adverse conditions of work and employment. Child domestic workers are singularly vulnerable to exploitation. Foreign migrant domestic workers (in particular, those with an unregulated immigration status) are also highly exposed to exploitation and unlikely to be willing or able to claim their rights.

The analysis shows that conditions of work vary from country to country and different factors and national particularities exist which often exclude domestic workers from the scope of national labour laws. When domestic workers are covered by legislation, they often have worse conditions of work and lower legal protection than other categories of workers. The prevalence of clandestine or informal employment means that many domestic workers are not reached by labour authorities so, in turn, the legislation in force is of very little, or no use at all, to them.

At the national level and as a first step, efforts to consider domestics on the same footing as other categories of workers would include granting domestic workers C including adolescent and foreign migrant domestic workers C the basic labour rights afforded by general labour standards to other workers.

As a minimum, domestic workers should have legal protection covering:

- clearly defined daily hours of work and rest periods;
- clear-cut standards on night work and on overtime, including adequate compensation and subsequent and appropriate rest time;
- clearly defined weekly rest and leave periods (annual leave, public holidays, sick leave and maternity leave);
- minimum wage and payment of wages;
- standards on termination of employment (notice period, grounds for termination, severance pay);
- social security protection; and
- action against child domestic work.

All young domestic workers should be afforded special protection comprising a clear minimum legal starting age; reduced number of hours of work in accordance with the worker’s age; rest periods; clear-cut limits on overtime and night work; and special protective measures including legal authorization to work (parental and from the labour authorities), obligatory medical examination and access to at least elementary education or vocational training.

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With regard to foreign migrant domestic workers, all sending and receiving countries should cooperate and adopt the necessary regulations and policies to facilitate migratory processes and thus curb illegal migration that frequently entails exploitative conditions of work and employment. However, this should not be used as an excuse to restrict migration. In addition, receiving countries should take the appropriate measures to avoid discrimination by making national labour standards fully applicable to foreign migrant domestic workers.

However, considering the specificity of the work, domestic workers need additional standards and policies tailored to their specific needs.: avoidance of long or excessive hours of work and of permanent on-call work; control and payment of actual hours of work; clear standards on rest periods; precise standards granting decent accommodation and adequate board; detailed norms on payment in kind with a fair fixing of their value and maximum percentage of total salary. Governments should disseminate the message that domestic workers are protected by labour standards and employers and employment agents are accountable for minimum standards on working and employment conditions.

Legal provisions and actions should tend towards the generalization and standardization of the terms and conditions of work. This may be best achieved through the promotion of model contracts of employment.

Law enforcement is signally difficult in domestic work. National laws should contain effective supervisory mechanisms to facilitate viable control of standards on domestic work by the competent authorities. To be effective, legislation on domestic work should include clear and appropriate deterrents for breaches of law. In this context, strict enforcement should follow hard on the heels of any detected violations. However, States should avoid using labour laws on foreign migrant domestic work to achieve other goals, such as migration control. If care is taken to adopt policies and measures to increase State cooperation, this will also achieve a more effective enforcement of standards addressing migration for employment processes, international recruitment abuses and trafficking of domestic workers. Indeed, domestic workers should be provided with real and effective access to labour justice including, as regards foreign migrant domestic workers, effective access to immigration procedures and decisions. From this point of view, self-organization of domestic workers would be of great help. But self-organization is also crucial in the fight to win recognition of domestic work as “real work” with the same rights as any other occupation. Although domestic workers in some countries have reached significant levels of organization, this is not the case in most countries. It is crucial to support such organizations when created, and help with the establishment of channels of information exchange and of networks of solidarity at the national, regional and international levels. However, it must be stressed that while a nominal recognition of the right to unionize and collectively bargain is important, it is not enough. Action should concentrate on the real access of domestic workers to the exercise of such rights.

However, the law is not enough. It should be complemented with other actions aiming at increasing awareness on domestic work and providing legal literacy and assistance. This could be achieved through capacity building and awareness-raising measures to the attention of labour administration and authorities; of organizations of employers and employees; the mass media; and the social and civil society. Awareness policies and actions should target both employers and employees, to inform them on their respective rights and duties. In addition, the domestic sector should be made more visible to the general public through actions tending to ensure an appropriate recognition of domestic work as a socio-economic activity and of domestic workers as “full workers”.

The present legal perspective has been taken for two reasons: to highlight the current situation at a global level and to activate a concerted call for a future specificity for domestic workers. The issue of specificity must come to terms with an employment

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situation which does not fit into the general framework of existing employment laws. Minimum wages, leave (including maternity leave), hours of work and employment-provided accommodation must refocus on this sector and its vulnerability to unfair dealing and exploitation. Child and migrant women domestic workers are particularly affected.

In progressive steps, the visibility of domestic workers in private households can be enhanced until they are no longer “the hidden sector” but a tangibly organized part of the world of work, with national and international regulatory instruments which target specificity and constitute a basis for the social action of member States.



## ILO international labour standards relevant to domestic work <sup>441</sup>

### Basic human rights

#### *Freedom of association*

Title	Aim of the standard	Comment
(§) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) <sup>442</sup>	The right, freely exercised, of workers and employers, without distinction, to organise for furthering and defending their interests.	<b>Applicable to domestic workers.</b> Art. 2. Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned to join organisations of their own choosing without previous authorisation.
(§) Right to Organise and Collective Bargaining Convention, 1949 (No.98)	Protection of workers who are exercising the right to organise; non-interference between workers' and employers' organisations; promotion of voluntary collective bargaining.	<b>Applicable to domestic workers</b> Art. 1.1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.
Rural Workers' Organisations Convention, 1975 (No. 141), and Recommendation (No. 149)	Freedom of association for rural workers; encouragement of their organisations; their participation in economic and social development.	<b>Applicable domestic workers in rural areas.</b> Art. 1. This Convention applies to all types of organisations of rural workers, including organisations not restricted to but representative of rural workers.

#### *Forced labour*

Title	Aim of the standard	Comment
(§) Forced Labour Convention, 1930 (No. 29)	Suppression of forced labour.	<b>Applicable to domestic workers.</b>
(§) Abolition of Forced Labour Convention, 1957 (No. 105)	Prohibition of the recourse to forced or compulsory labour in any form for certain purposes.	<b>Applicable to domestic workers.</b>

<sup>441</sup> Fundamental Conventions are identified with §. This annex takes into account the work of the Working Party on Policy regarding the Revision of Standards up to March 2002: ILO: *Information note on the progress of work and decisions taken regarding the revision of standards*, GB.283/LILS/WP/PRS/1/2. When reference is made to more than one instrument relating to the same subject matter the up-to-date instrument is indicated.

<sup>442</sup> ILO (1994), paragraphs 59 and 90.

## Equality of treatment and opportunity

Title	Aim of the standard	Comment
(§) Equal Remuneration Convention, 1951 (No. 100), and Recommendation (No. 90)	Equal remuneration for men and women for work of equal value.	<b>Applicable to domestic workers.</b>
(§) Discrimination (Employment and Occupation) Convention, 1958 (No. 111), <sup>443</sup> and Recommendation (No. 111)	To promote equality of opportunity and treatment in respect of employment and occupation.	<b>Applicable to domestic workers.</b>
Workers with Family Responsibilities Convention, 1981 (No. 156), <sup>444</sup> and Recommendation (No. 165)	To create effective equality of opportunity and treatment for men and women with family responsibilities.	<b>Applicable to domestic workers.</b> Art. 2. This Convention applies to all branches of economic activity and all categories of workers.

## Child labour

Title	Aim of the standard	Comment
(§) Minimum Age Convention, 1973 (No. 138), and Recommendation (No. 146)	The abolition of child labour. The minimum age for admission to employment or work shall be not less than the age of completion of compulsory schooling (normally not less than 15 years).	<b>Applicable to child domestic workers, but allows implicit exclusion of child domestic workers.</b> Art. 4.1. In so far as necessary, the competent authority ... may exclude from the application of this Convention limited categories of employment or work in respect of which special and substantial problems of application arise.
(§) Worst Forms of Child Labour Convention, 1999 (No. 182)	Prohibition and immediate actions for the elimination of the worst forms of child labour.	<b>Applicable to child domestic workers.</b> Art. 3. For the purposes of this Convention, the term "the worst forms of child labour" comprises: ... d) work which, by its nature or the circumstances in which is carried out, is likely to harm the health, safety or morals of children. Art. 4. The types of work referred to under Article 3(d) shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned, taking into consideration relevant international standards, in particular Paragraphs 3 and 4 of the Worst Forms of Child Labour Recommendation, 1999.

<sup>443</sup> ILO (1996a), paragraph 19.

<sup>444</sup> ILO (1993), paragraphs 46 and 48.



Title	Aim of the standard	Comment
Worst Forms of Child Labour Recommendation, 1999 (No. 190)		<p>3. In determining the types of work referred to under Article 3(d) of the Convention, and in identifying where they exist, consideration should be given, inter alia, to:</p> <p>(a) work which exposes children to physical, psychological or sexual abuse; ...</p> <p>(e) work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.</p>

## Employment

### *Employment services and fee-charging employment agencies*

Title	Aim of the standard	Comment
Private Employment Agencies Convention, 1997 (No. 181), and Recommendation (No. 188)	To allow the operation of private employment agencies as well as the protection of the workers using their services, within the framework of its provisions.	<p>Up-to-date instrument on this subject.</p> <p><b>Applicable to domestic workers, but allows implicit exclusion of them.</b></p> <p>Art. 2.2. This Convention applies to all categories of workers and all branches of economic activity...</p> <p>4. After consulting the most representative organizations of employers and workers concerned, a Member may: ...</p> <p>(b) exclude, under specific circumstances, workers in certain branches of economic activity, or parts thereof, from the scope of the Convention or from certain of its provisions, provided that adequate protection is otherwise assured for the workers concerned.</p>
Employment Service Convention, 1948 (No. 88)	Free public employment service.	<b>Applicable to domestic workers.</b>
Employment Service Recommendation, 1948 (No. 83)		<p><b>Explicitly applicable to domestic workers.</b></p> <p>I.4. Measures should be taken in appropriate cases to develop, within the general framework of the employment services:</p> <p>(a) separate employment offices specialising in meeting the needs of employers and workers belonging to particular industries or occupations such as ... domestic service, wherever the character or importance of the industry or occupation or other special factors justify the maintenance of such separate offices.</p>
Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96)	Progressive abolition of fee-charging employment agencies and regulation	<b>Applicable to domestic workers.</b>

Title	Aim of the standard	Comment
	of other employment agencies, or (as the ratifying State shall elect) the regulation of fee-charging employment agencies.	

### ***Vocational guidance and training***

Title	Aim of the standard	Comment
Human Resources Development Convention, 1975 (No. 142), and Recommendation (No. 150)	The development of policies and programmes of vocational guidance and vocational training, closely linked with employment.	<b>Applicable to domestic workers.</b> Art. 4. Each Member shall gradually extend, adapt and harmonise its vocational training system to meet the needs for vocational training throughout life of both young persons and adults in all sectors of the economy and branches of economic activity and at all levels of skill and responsibility.

### ***Employment security***

Title	Aim of the standard	Comment
Termination of Employment Convention, 1982 (No. 158), and Recommendation (No. 166)	Protection against termination of employment without valid reason.	<b>Applicable to domestic workers, but allows implicit exclusion of them.</b> Art. 2. 1. This Convention applies to all branches of economic activity and to all employed persons. 5. In so far as necessary, measures may be taken by the competent authority ... to exclude from the application of this Convention or certain provisions thereof other limited categories of employed persons in respect of which special problems of a substantial nature arise in the light of the particular conditions of employment of the workers concerned or the size of the undertaking that employs them.

### ***Social policy***

Title	Aim of the standard	Comment
Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117)	All policies shall be primarily directed to the well-being and development of the population and to the promotion of its desire for social progress.	<b>Applicable to domestic workers.</b>

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## Labour administration

### General

Title	Aim of the standard	Comment
Labour Administration Convention, 1978 (No. 150), and Recommendation (No. 158)	The establishment of an effective labour administration with the participation of employers and workers and their organisations.	<b>Applicable to domestic workers.</b>

### Labour inspection

Title	Aim of the standard	Comment
Protocol of 1995 to the Labour Inspection Convention, 1947 (No. 81)	To secure, by regular inspections of workplaces that are not considered as industrial or commercial, the enforcement of legal provisions for the protection of workers.	<b>Applicable to domestic workers.</b> Art. 1. 3. This Protocol applies to all workplaces that do not already fall within the scope of the Convention.
Labour Inspection (Agriculture) Convention, 1969 (No. 129), and Recommendation (No. 133)	To secure, by regular inspections of workplaces, the enforcement of legal provisions for the protection of workers.	<b>Applicable to domestic workers in rural areas.</b> Art. 1. 2. Where necessary, the competent authority shall ... define the line which separates agriculture from industry and commerce in such a manner as not to exclude any agricultural undertaking from the national system of labour inspection. 3. In any case in which it is doubtful whether an undertaking or part of an undertaking is one to which this Convention applies, the question shall be settled by the competent authority.

### Industrial relations

Title	Aim of the standard	Comment
Collective Bargaining Convention, 1981 (No. 154), and Recommendation (No. 163)	To promote free and voluntary collective bargaining.	<b>Applicable to domestic workers.</b> Art. 1. 1. This Convention applies to all branches of economic activity.

## Conditions of work

### Wages

Title	Aim of the standard	Comment
<p>Minimum Wage Fixing Convention, 1970 (No. 131), and Recommendation (No. 135)</p>	<p>Protection against excessively low wages.</p>	<p>Up-to-date instrument on this subject.  <b>Applicable to domestic workers, but allows implicit exclusion of them.</b>            Art. 1.1. Each Member of the International Labour Organisation which ratifies this Convention undertakes to establish a system of minimum wages which covers all groups of wage earners whose terms of employment are such that coverage would be appropriate.            2. The competent authority in each country shall ... determine the groups of wage earners to be covered.</p>
<p>Minimum Wage-Fixing Machinery Convention, 1928 (No. 26), and Recommendation (No. 30)</p>	<p>To create or maintain machinery whereby minimum rates of wages can be fixed for workers employed in certain of the trades or parts of trades (and in particular in home working trades) in which no arrangements exists for the effective regulation of wages by collective agreement or otherwise and wages are exceptionally low.</p>	<p><b>Applicable to domestic workers.</b>            Art. 1. 1. Each Member of the International Labour Organisation which ratifies this Convention undertakes to create or maintain machinery whereby minimum rates of wages can be fixed for workers employed in certain of the trades or parts of trades (and in particular in home working trades) in which no arrangements exists for the effective regulation of wages by collective agreement or otherwise and wages are exceptionally low.            Art. 2. Each Member which ratifies this Convention shall be free to decide ... in which trades or parts of trades, and in particular in which home working trades or parts of such trades, the minimum wage-fixing machinery referred to in Article 1 shall be applied.</p>

Title	Aim of the standard	Comment
<p>Minimum Wage-Fixing Machinery (Agriculture) Convention, 1951 (No. 99)</p>	<p>To create or maintain adequate machinery whereby minimum rates of wages can be fixed for workers employed in agricultural undertakings and related occupations.</p>	<p><b>Applicable to domestic workers in rural areas, but allows implicit exclusion of them.</b></p> <p>Art. 1.1. Each Member of the International Labour Organisation which ratifies this Convention undertakes to create or maintain adequate machinery whereby minimum rates of wages can be fixed for workers employed in agricultural undertakings and related occupations.</p> <p>2. Each Member which ratifies this Convention shall be free to determine ... to which undertakings, occupations and categories of persons the minimum wage fixing machinery referred to in the preceding paragraph shall be applied.</p> <p>3. The competent authority may exclude from the application of all or any of the provisions of this Convention categories of persons whose conditions of employment render such provisions inapplicable to them, such as members of the farmer-s family employed by him.</p>
<p>Protection of Wages Convention, 1949 (No. 95) and Recommendation (No. 85)</p>	<p>Full and prompt payment of wages in a manner which provides protection against abuse.</p>	<p><b>Applicable to domestic workers, but allows implicit exclusion of them.</b></p> <p>Art. 2.1. This Convention applies to all persons to whom wages are paid or payable.</p> <p>2. The Competent authority may, after consultation ... exclude from the application of all or any of the provisions of the Convention categories of persons ... employed in domestic service or work similar thereto.</p>
<p>Protection of Workers- Claims (Employer-s Insolvency) Convention, 1992 (No. 173), and Recommendation (No. 180)</p>	<p>Protection of workers' claims in the event of the insolvency of their employer.</p>	<p><b>Applicable to domestic workers, but allows implicit exclusion of domestic workers.</b></p> <p>Art. 4.1. Subject to the exceptions provided for in paragraph 2 below, and to any limitations specified in accordance with Article 3, paragraph 3, this Convention shall apply to all employees and to all branches of economic activity.</p> <p>2. The competent authority ... may exclude from Part II, Part III or both Parts of this Convention specific categories of workers.</p> <p>Art. 3.3. A member which accepts the obligation of both Parts of this Convention may ... limit the application of Part III to certain categories of workers and to certain branches of economic activity. Such limitations shall be specified in the declaration of acceptance.</p>

## General conditions of employment

Title	Aim of the standard	Comment
Reduction of Hours of Work Recommendation, 1962 (No. 116)	Progressive reduction of normal hours of work, when appropriate, with a view to attaining the standard of the 42-hour week without any reduction in the wages of the workers as at the time hours of work are reduced.	Up-to-date instrument on this subject. <b>Applicable to domestic workers.</b> I.1 Each Member should formulate and pursue a national policy designed to promote by methods appropriate to national conditions and practice and to conditions in each industry the adoption of the principle of the progressive reduction of normal hours of work.
Forty-Hour Week Convention, 1935 (No. 47)	The principle of a 40-hour week applied in such a manner that the standard of living of workers is not reduced in consequence.	<b>Applicable to domestic workers.</b>
Night Work Convention, 1990 (No. 171), and Recommendation (No. 178)	Adoption of specific measures required by the nature of night work shall be taken for night workers in order to protect their health, assist them to meet their family and social responsibilities, provide opportunities for occupational advancement, and compensate them appropriately.	<b>Applicable to domestic workers, but allows implicit exclusion of them.</b> Art. 2.1. This Convention applies to all employed persons except those employed in agriculture, stock raising, fishing, maritime transport and inland navigation. 2. A Member which ratifies this Convention may ... exclude wholly or partly from its scope limited categories of workers when the application of the Convention to them would raise special problems of a substantial nature.
Holiday with Pay Convention (Revised), 1970 (No.132)	Annual paid holiday of three weeks or more.	<b>Applicable to domestic workers, but allows implicit exclusion of them.</b> Art. 2.1. This Convention applies to all employed persons, with the exception of seafarers. 2. In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country ... to exclude from the application of this Convention limited categories of employed persons in respect of whose employment special problems of a substantial nature, relating to enforcement or to legislative or constitutional matters, arise.
Paid Educational Leave Convention, 1974 (No. 140), and Recommendation (No. 148)	To promote education and training working hours, with financial entitlements.	<b>Applicable to domestic workers.</b>

Title	Aim of the standard	Comment
Part-Time Work Convention, 1994 (No. 175), and Recommendation (No. 182)	Part-time workers shall be accorded the same protection than comparable full-time workers.	<p><b>Applicable to domestic workers but, allows implicit exclusion of part-time domestic workers.</b></p> <p>Art. 3.1. This Convention applies to all part-time workers, it being understood that a Member may ... exclude wholly or partly from its scope particular categories of workers or of establishments when its application to them would raise particular problems of a substantial nature.</p>

### ***Occupational safety and health***

Title	Aim of the standard	Comment
Maximum Weight Convention, 1967 (No. 127), and Recommendation (No. 128)	The protection of workers against hazards arising out of the weight of loads.	<p><b>Applicable to domestic workers if the Member concerned maintains a system of labour inspection in that branch.</b></p> <p>Art. 2.2. This Convention applies to all branches of economic activity in respect of which the Member concerned maintains a system of labour inspection.</p>

### ***Social services, housing and leisure***

Title	Aims of the standard	Comment
Workers= Housing Recommendation, 1961 (No. 115)	That adequate and decent housing accommodation and a suitable living environment are made available to all workers.	<b>Applicable to domestic workers.</b>

## Social security

### Comprehensive standards

Title	Aim of the standard	Comment
Social Security (Minimum Standards) Convention, 1952 (No. 102)	To establish with the requisite flexibility, given the wide variety of conditions obtaining in different countries, minimum standards for benefits in the main branches of social security.	<p><b>Applicable to domestic workers, but allows implicit exclusion of them.</b></p> <p>Art. 9. The persons protected shall comprise:</p> <p>(a) prescribed classes of employees, constituting not less than 50 per cent. of all employees, and also their wives and children; or</p> <p>(b) prescribed classes of economically active population, constituting not less than 20 per cent. of all residents, and also their wives and children; or</p> <p>(c) prescribed classes of residents, constituting not less than 50 per cent. of all residents; or</p> <p>(d) where a declaration made in virtue of Article 3 is in force, prescribed classes of employees constituting not less than 50 per cent of all employees in industrial workplaces employing 20 persons or more, and also their wives and children.</p>
Equality of Treatment (Social Security) Convention, 1962 (No. 118)	To ensure within the territory of any ratifying State equality of treatment in respect of social security to refugees, stateless persons and nationals of another ratifying State.	<p>Up-to-date instrument on this subject.</p> <p><b>Applicable to migrant domestic workers under condition of reciprocity.</b></p> <p>Art. 3.1. Each Member for which this Convention is in force shall grant within its territory to the nationals of any other Member for which the Convention is in force equality of treatment under its legislation with its own nationals, both as regards coverage and as regards the right to benefits, in respect of every branch of social security for which it has accepted the obligation of the Convention.</p> <p>3. Nothing in the preceding paragraphs of this Article shall require a Member to apply the provisions of these paragraphs, in respect of the benefits of a specified branch of social security, to the nationals of another Member which has legislation relation to that branch but does not grant equality of treatment in respect thereof to the nationals of the first Member.</p>



Title	Aim of the standard	Comment
Equality of Treatment (Accident Compensation) Convention, 1925 (No.19)	To grant to the nationals of any other Member which shall have ratified the Convention, who suffer personal injury due to industrial accidents happening in its territory, or to their dependants, the same treatment in respect of workmen's compensation as it grants to its own nationals.	<b>Applicable to domestic workers.</b>
Maintenance of Social Security Rights Convention, 1982 (No. 157)	An international system for the maintenance of rights to medical care and sickness benefit, maternity, invalidity, old-age, survivors, employment injury, unemployment and family benefits in respect of persons working or residing outside their country.	<b>Applicable to migrant domestic workers under condition of reciprocity or under conditions to be determined by mutual agreement between the Members concerned.</b>  Art. 4.1. Members may give effect to their obligations under the terms of Parts II to VI of this Convention by bilateral or multilateral instruments giving effect to these obligations, under conditions to be determined by mutual agreement between the Members concerned.

### ***Protection in the various social security branches***

Title	Aims of the standard	Comment
Medical Care and Sickness Benefits Convention, 1969 (No. 130), and Recommendation (No. 134)	To secure to the persons protected, subject to prescribed conditions, medical care of a curative or preventive nature, and incapacity for work resulting from sickness and involving suspension of earnings.	<b>Applicable to domestic workers, but allows implicit exclusion of certain categories of employees at the discretion of the Government.</b>

Title	Aims of the standard	Comment
<p>Invalidity, Old-Age and Survivors=Benefits Convention, 1967 (No. 128), and Recommendation (No. 131)</p>	<p>To secure to the persons protected the provision of invalidity, old-age and survivors=benefits.</p>	<p><b>Applicable to domestic workers, but allows implicit exclusion of them.</b></p> <p>Art. 9.1. The persons protected shall comprise:</p> <p>(a) all employees, including apprentices, or</p> <p>(b) prescribed classes of the economically active population, constituting not less than 75 per cent of the whole economically active population; or less than 75 per cent of the whole economically active population; or</p> <p>(c) all residents, or residents whose means during the contingency do not exceed limits prescribed in such a manner as to comply with the requirements of Article 28.</p> <p>2. Where a declaration made in virtue of Article 4 is in force, the persons protected shall comprise:</p> <p>(a) prescribed classes of employees, constituting not less than 25 per cent of all employees;</p> <p>(b) prescribed classes of employees in industrial undertakings, constituting not less than 50 per cent of all employees in industrial undertakings.</p>
<p>Employment Injury Benefits Convention, 1964 (No. 121) [Schedule I amended 1980], and Recommendation (No. 121)</p>	<p>To ensure that national legislation concerning employment injury benefits protect all employees, including apprentices, in the public and private sectors, including co-operatives, and, in respect of the death of the breadwinner, prescribed categories of beneficiaries.</p>	<p><b>Applicable to domestic workers, but allows implicit exclusion of them.</b></p> <p>Art. 4.1. National legislation concerning employment injury benefits shall protect all employees, including apprentices, in the public and private sectors, including co-operatives, and, in respect of the death of the breadwinner, prescribed categories of beneficiaries.</p> <p>2. Any Member may make such exceptions as it deems necessary in respect of: ...</p> <p>(d) other categories of employees, which shall not exceed in number 10 per cent of all employees other than those excluded under clauses (a) to (c).</p> <p>Art. 5. Where a declaration provided for in Article 2 is in force, the application of national legislation concerning employment injury benefits may be limited to prescribed categories of employees, which shall total in number not less than 75 per cent of all employees in industrial undertakings, and, in respect of the death of the breadwinner, prescribed categories of beneficiaries.</p>

Title	Aims of the standard	Comment
Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168) and Recommendation (No. 176)	States shall co-ordinate the system of protection against unemployment and their employment policy. To ensure that its system of protection against unemployment, and in particular the methods of providing unemployment benefit, contribute to the promotion of full, productive and freely chosen employment, and are not such as to discourage employers from offering and workers from seeking productive employment.	<p><b>Applicable to domestic workers, but allows implicit exclusion of them.</b></p> <p>Art. 11.1. The persons protected shall comprise prescribed classes of employees, constituting not less than 85 per cent. of all employs ...</p> <p>3. Where a declaration made in virtue of Article 5 is in force, the persons protected shall comprise:</p> <p>(a) prescribed classes of employees constituting not less than 50 per cent. of all employees; or</p> <p>(b) where specifically justified by the level of development, prescribed classes of employees constituting not less than 50 per cent of all employees in industrial workplaces employing 20 persons or more.</p>

## Employment of women

### *Maternity protection*

Title	Aim of the standard	Comment
Maternity Protection Convention, 2000 (No. 183), and Recommendation (No. 191)	Fourteen weeks of maternity leave with entitlement to cash benefits and medical care.	<p>Up-to-date instrument on this subject.</p> <p><b>Applicable to domestic workers, but allows implicit exclusion of them.</b></p> <p>Art.1.1. This Convention applies to all employed women, including those in atypical forms of dependent work.</p> <p>2. However, each Member which ratifies this Convention may, after consulting the representative organizations of employers and workers concerned, exclude wholly or partly from the scope of the Convention limited categories of workers when its application to them would raise special problems of a substantial nature.</p>

Title	Aim of the standard	Comment
Maternity Protection Convention (Revised), 1952 (No. 103), and Recommendation (No. 95)	Twelve weeks of maternity leave with entitlement to cash benefits and medical care.	<p><b>Explicitly applicable to women domestic workers, but allows also explicit exclusion of them.</b></p> <p>Art.1.1. This Convention applies to women employed in industrial undertakings and in non-industrial and agriculture occupations, including women wage earners working at home. ...</p> <p>3. For the purpose of this Convention, the term &gt;non-industrial occupations=&lt; includes all occupations which are carried on in or in connection with the following undertakings or services, whether public or private: ...</p> <p>(h) domestic work for wages in private households; and ...</p> <p>Art. 7.1. Any Member of the International Labour Organisation, which ratifies this Convention may, by a declaration accompanying its ratification, provide for exceptions from the application of the Convention in respect of ... (c) domestic work for wages in private households.</p>

### **Night work**

Title	Aim of the standard	Comment
Night Work of Women (Agriculture) Recommendation, 1921 (No. 13)	To ensure to women wage-earners employed in agricultural undertakings during the night a period of rest compatible with their physical necessities and consisting of not less than nine hours which shall, when possible, be consecutive.	<b>Applicable to women domestic workers in rural areas.</b>

### **Employment of children and young persons**

#### **Night work**

Title	Aim of the standard	Comment
Night Work of Children and Young Persons (Agriculture) Recommendation, 1921 (No. 14)	To ensure to children under the age of 14 years employed in agricultural undertakings during the night, a period of rest compatible with their physical necessities and consisting of not less than ten consecutive hours.	<b>Applicable to child domestic workers in rural areas.</b>

Title	Aim of the standard	Comment
Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 79)	Abolition of night work for children and young persons.	<p><b>Applicable to child domestic workers, but allows explicit exclusion of child domestic workers.</b></p> <p>Art. 1.1. This Convention applies to children and young persons employed for wages, or working directly or indirectly for gain, in non-industrial occupations.</p> <p>4. National laws or regulations may exempt from the application of this Convention:</p> <p>(a) domestic service in private households.</p>
Night Work of Young Persons (Non-Industrial Occupations) Recommendation, 1946 (No. 80)		<p>I.2 ... the attention of Members is drawn to the desirability of:</p> <p>(a) adopting appropriate legislative and administrative measures for restricting the night work of children and young persons under eighteen years of age who are engaged in domestic service.</p>

### Medical examination

Title	Aim of the standard	Comment
Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78)	Compulsory thorough medical examination (periodically renewable) before admission to employment of children and young persons.	<p><b>Applicable to child domestic workers.</b></p> <p>Art. 1.1. This Convention applies to children and young persons employed for wages or working directly or indirectly for gain, in non-industrial occupations.</p>
Medical Examination of Young Persons Recommendation, 1946 (No. 79)	To extend to all occupations carried on for profit, without consideration of the family relationship existing between the persons engaged in them, the application of the regulations concerning medical examination for fitness for employment.	<p><b>Explicitly applicable to child domestic workers.</b></p> <p>I.1 The provisions of the Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946, should be applied to all occupations carried on or in connection with the following undertakings and services, whether public or private: ...</p> <p>(e) ... and domestic service for wages in private households.</p>

### Older workers

Title	Aim of the standard	Comment
Older Workers Recommendation, 1980 (No. 162)	To promote equality of opportunity and treatment for workers, whatever their age and to improve working conditions and the working environment at all stages of working life.	<p><b>Applicable to domestic workers.</b></p> <p>I.1 (1) This Recommendation applies to all workers who are liable to encounter difficulties in employment and occupation because of advancement in age.</p>

## Migrant workers <sup>445</sup>

Title	Aim of the standard	Comment
Migrant for Employment Convention (Revised), 1949 (No. 97), and Recommendation (No. 86)	Assistance, information, protection and equality of treatment for migrant workers.	<b>Applicable to migrant domestic workers.</b>
Protection of Migrant Workers (Underdeveloped Countries) Recommendation, 1955 (No. 100)	Protection of migrant workers during their outward and return journeys, and prior and during the period of their employment.	<b>Applicable to migrant domestic workers.</b>
Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)	Equality of opportunities and treatment and the elimination of abuses.	<b>Applicable to migrant domestic workers, but:</b> Art. 14. A Member may: ... (c) restrict access to limited categories of employment or functions where this is necessary in the interest of the State.
Migrant Workers Recommendation, 1975 (No. 151)	Equality of opportunities, treatment and access to social services.	<b>Applicable to migrant domestic workers, but:</b> I.6. A Member may: ... c) restrict access to limited categories of employment or functions where this is necessary in the interest of the State.

<sup>445</sup> ILO, 1980, paragraphs 31-32.

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