

**LAW NO. 5/2012
OF 29 FEBRUARY**

STRIKE LAW

The recent approval of the Labour Law marked the beginning of the process of conformation of the new legal framework regulating labour relations in Timor-Leste. In furtherance of this process, and in compliance with article 51 of the Constitution, the present law approves the legal regime for the exercise of the right to strike. In accordance with the constitutional text, the law shall define and prohibit *lock out* and shall provide for sanctions applicable to it, in addition to establishing other guarantees aimed at protecting workers from any conduct limiting the exercise of their right to strike.

The legal framework defined by the present law takes into account the different interests at stake and attempts to find a balanced and proportional solution by establishing vital moderating rules for the growth of the economy and the dynamisation of labour relations in the country.

Thus,

Pursuant to article 51 and to article 95.1 of the Constitution of the Republic, the National Parliament enacts the following to have the force of law:

**CHAPTER I
General provisions**

**Article 1
Object**

The present law shall establish the legal regime for regulating strike actions.

**Article 2
Notion**

1. For the purposes of the present law, strike shall mean the total or partial, concerted, temporary collective voluntary abstention of provision of services by workers in a continuous or interpolated manner.
2. No form of collective, concerted and temporary reduction of or alteration to the rhythms and methods of work that does not imply abstention from work and which is liable of disciplinary accountability pursuant to the labour legislation shall not be considered a strike.

**Article 3
Scope of application**

The present law shall apply to all workers, including functionaries and agents of public administration, save as provided for in article 6 below.

Article 4
Right to strike

1. Pursuant to the Constitution, strike action shall constitute a right of the workers.
2. The right to strike shall be exercised by the workers for defending and promoting socio-professional interests.
3. It shall be incumbent upon the workers to define the scope and nature of the interests to be defended through strike.

Article 5
Freedom to adhere to a strike

1. Workers shall be free to individually adhere to a strike.
2. Under no circumstances shall workers undergo discrimination or, in any manner whatsoever, be adversely affected in their relations with the employing entity or in their trade union rights for adhering or not adhering to a strike.
3. Any act whatsoever that is contrary to the provisions of the preceding paragraph shall be considered null and void.

Article 6
Prohibition of the exercise of the right to strike

The right to strike shall not be allowed in the following areas and to the following workers:

- a) Military forces;
- b) Police forces;
- c) National Intelligence Service;
- d) Agents and workers belonging to prison administration services.

Article 7
Limitations to the exercise of the right to strike

1. The right to strike by workers assigned to ports, airports, air and maritime transports, as well as to other services producing goods or providing services considered to be

indispensable to the Armed and the Police forces shall be exercised in such a manner as to avoid jeopardising national defense and national interests.

2. With a view to preserving such objectives, the exercise of the right to strike by the workers referred to in the preceding paragraph shall observe the following regime:
 - a) The timeframe for negotiations referred to in article 8.4 shall be extended to 30 days;
 - b) The intervention of the Civil Service Commission, hereinafter referred to as CFP, and of the General Labour Inspectorate, hereinafter referred to as IGT, provided for in article 13, with a view to finding a settlement by agreement, shall be mandatory.
3. In case of a strike undertaken by the workers referred to in this article, such workers shall be obliged to take all the measures aimed at ensuring the performance of the activities deemed necessary to meet the essential needs of the population and ensure the national defense during the period of the strike, pursuant to article 18.
4. The exercise of the right to strike may be suspended by resolution of the Council of Ministers provided there are alterations to the public order and such a measure reveals to be adequate to the re-establishment of normalcy.
5. The resolution referred to in the preceding paragraph shall specify the institutions, services and professional categories affected by the suspension, as well as the duration of a period not exceeding 60 days, without prejudice to its renewal by equal periods of time following prior authorisation by the National Parliament.

CHAPTER II

Declaration and protection of a strike

Article 8

Negotiations aimed at obtaining agreement

1. Workers interested in undertaking a strike shall not resort to it before attempting to settle the conflict by agreement.
2. The declaration of strike shall mandatorily be preceded by a presentation of the claims of the workers to their respective employing entity.
3. The employing entity shall provide the workers representatives with its response to the workers claims in writing within five days, save where the workers have granted it a longer timeframe.
4. Where the employing entity fails to provide the response within the timeframe referred to in the preceding paragraph or, having done so, no agreement is reached after a period of twenty days has elapsed, the relevant workers shall be free to declare the strike pursuant to the provisions of article 9 below.

Article 9

Power to declare a strike

1. The decision to resort to a strike shall be made by the workers and their respective trade union organisations.
2. Without prejudice to the right recognised to trade union organisations referred to in the preceding paragraph, the workers' assemblies may decide to resort to a strike, by secret vote, provided the majority of the workers in the same company, body or service is not represented by trade union organisations and the assembly is expressly convened to that effect by 20% of the workers.
3. The workers' assemblies referred to in the preceding paragraph shall decide validly provided the majority of the workers of the company take part in the vote and the declaration of strike is approved by absolute majority of the voters.

Article 10

Representation of the workers

1. Workers on strike shall be represented by the trade union organisation or organisations or by a commission elected to that effect for the case referred to in article 9.2 above.
2. It shall be incumbent upon the trade union organisation or organisations, or to the elected commission, to represent the striking workers before the employing entity, CFP and IGT.

Article 11

Advance notice of a strike

1. Once the strike has been decided pursuant to article 9, the trade union organisation, or the workers' assemblies, as the case may be, shall provide the employing entity and the relevant structures of CFP and IGP with a five-day advance written notice of a strike.
2. The advance notice of a strike shall contain at least the following elements:
 - a) The grounds and objectives of the strike;
 - b) An indication of the institutions, services and professional categories affected by the strike;
 - c) An indication of the trade union organisations or elected commission;
 - d) The date and time of the beginning of the strike and its respective duration;
 - e) A proposal defining the services deemed necessary for ensuring the security, protection and maintenance of equipment and facilities of the relevant company, institution, body or service.

3. In the cases provided for in article 18 below, the advance notice period shall be ten days and shall contain a proposal for the provision of minimal services.

Article 12

Formality of the acts

The presentation of the documents referred to in the present law, notably the claims and the response thereto, the communication to convene the workers assembly, and the communication to declare the strike, shall be certified by the relevant entity, which shall issue a certifying document mentioning the respective date of the act.

Article 13

Conciliation and mediation

1. The competent services of CFP and IGT or of the administrative body coordinating the sector which comprises the activities of the relevant company, body or service may, at their own initiative or at the request of any of the parties, undertake measures with a view to settling the conflict and guaranteeing the functioning of the essential services referred to in article 18 below.
2. Participation in the conciliation meetings by all the parties involved in the conflict shall be mandatory.

Article 14

Prohibition of change of equipment

During the period of advance notice of the strike and while the strike is in progress, the employing entities shall not be allowed to remove any working machines or instruments from the workplace; they shall nevertheless be allowed to take any measure deemed necessary for the conservation and maintenance of such equipment and instruments.

Article 15

Strike pickets

1. Trade union organisations or strike commissions may organise duly identified pickets which shall operate in the external limits of workplaces to develop activities aimed at peacefully persuading workers to adhere to the strike, without prejudice to the recognition of freedom of labour of those workers not adhering to the strike.
2. Striking workers preventing provision of services by those workers not adhering to the strike or exercising intimidation or violence against such workers shall be subject to criminal liability pursuant to the law.

Article 16

Prohibition of substitution of striking workers

While the strike is in progress employing entities shall not substitute the striking workers with people who did not work in the relevant institution or service at the time of the presentation of the claims pursuant to article 8, nor shall they, from that date on, accept new workers for that purpose, without prejudice to the provisions of article 18.8 below.

CHAPTER III

Obligation of workers during the strike

Article 17

Protection of, and access to, working facilities

1. During the strike, trade union organisations and workers shall be obliged to ensure the services deemed necessary for ensuring the security, protection and maintenance of the equipment and facilities of the relevant company, body or service.
2. During the strike, access to, and permanence of, striking workers inside the workplace affected shall be barred, except for workers who did not adhere to the strike, representatives of trade unions or strike commission, and people involved in operations of conservation and maintenance of such equipment and facilities.

Article 18

Obligations during the strike

1. In those companies or institutions whose purpose is to satisfy indispensable social needs, as well as in any other sector, body or service of the Public Administration, the trade union organisations and the workers shall be obliged to ensure the provision of minimal services deemed indispensable to ensure the satisfaction of such needs during the strike.
2. For the purposes of the preceding paragraph, the following shall be considered companies or institutions aimed at satisfying indispensable needs:
 - a) Telecommunications;
 - b) Pharmacies and transportation of medicines;
 - c) Fuel supply and distribution services;
 - d) Collective passenger transports, loading and unloading of animals, deteriorable food products and essential goods;
 - e) Mass media;
 - f) Medical and Hospital services

- g) Firefighters;
 - h) Civil security;
 - i) Banking services;
 - j) Funeral services;
 - k) Garbage collection;
 - l) Public attendance services ensuring satisfaction of needs falling under the responsibility of the State.
3. The minimal services provided for in paragraph 1 above may be defined by collective agreement or by agreement with the workers representatives.
 4. Where, prior to the advance notice of the strike, no agreement exists on the definition of the minimal services as provided for in paragraph 1 above, CFP and IGT shall convene the workers' representatives referred to in article 10, including the employers' representatives, with a view to negotiating an agreement on the minimal services and the means deemed necessary to ensure them.
 5. In the absence of an agreement by the end of the fifth day following the advance notice of the strike, the definition of the services and the means referred to in the preceding paragraph shall be established by a duly substantiated joint order of the Chairperson of the Civil Service Commission, the government member in charge of labour, and the Minister in charge of the relevant sector of activity, with due observance of the principles of necessity, adequation and proportionality.
 6. The joint order provided for in the preceding paragraph shall be effective immediately after the representatives referred to in paragraph 4 have been notified thereof and shall be posted in the facilities of the relevant company, institution, body or service, on those places usually reserved for posting information intended to workers.
 7. The workers' representatives referred to in article 10 shall designate the workers who shall provide the services referred to in article 17.1 up to forty-eight hours prior to the beginning of the strike; where the workers' representatives fail to do so, it shall be incumbent upon the employing entity to designate such workers.
 8. In case of non-compliance with the obligations provided for in paragraphs 1 and 7, and in cases of justified national interest, the Council of Ministers may, on an exceptional basis and by resolution of the Government, determine the placement of a requisition order with a view to ensuring the functioning of the companies, institutions, bodies and services referred to in the preceding paragraphs for the period of duration of the strike.

9. The decision on the requisition order shall be effective following its dissemination by the mass media.

Article 19 End of the strike

The strike shall end by decision of the entities that declared it, by agreement between the parties thereto, or automatically following the end of the period for which it has been declared, with the effects provided for in article 20 ceasing forthwith.

CHAPTER IV Effects of the strike

Article 20 Suspension of the labour relation

1. The strike shall suspend the labour relation for the period of its duration, notably as regards the right to remuneration and the duty to obey; the duties of mutual loyalty and respect shall nevertheless be maintained.
2. The suspension of the labour relation by force of the strike shall not affect the rights of the workers with respect to:
 - a) Vacations;
 - b) Social security;
 - c) Seniority and effects thereof.
3. The suspensive effects of the strike shall not apply to workers providing minimal services.

Article 21 Prohibition to transfer and dismiss workers

During the advance notice period, while the strike is in progress and up to ninety days after the end of the strike, the employing entity shall neither transfer nor dismiss the striking workers, save for disciplinary reasons pursuant to the applicable labour legislation.

Article 22 Suspension of deadlines

While the strike is in progress, the deadlines relating to:

- a) Forfeiture of disciplinary sanctions;

- b) Establishment and carrying out of disciplinary procedural acts;
- c) Probation of workers shall be suspended.

Chapter V Lock-out

Article 23 Prohibition of “Lock-out”

1. Lock-out shall be prohibited.
2. Lock-out shall refer to any unilateral action by the employing entity amounting to a total or partial paralysation of the company, body or service, or to an interdiction of access to the workplaces by some or all the workers, or to a refusal in assigning them work or working conditions and instruments and which determines or may determine the paralysation of all or some sectors of the company, body or service or which, in any case, is intended to attain objectives other than that of the normal activity of the company, body or service.

CHAPTER VI Violations and sanctions

Article 24 Non-observance of the law

1. A strike declared or undertaken without observing the provisions of the present law shall subject the striking workers to the regime of unjustifiable absences from work, without prejudice to the relevant civil and criminal liability.
2. Without prejudice to the preceding paragraph and to other more aggravating penalties provided for in the law, organisers of a strike declared or undertaken without due observation of the present law, or of a strike that has been prohibited or whose exercise has been suspended shall be punished with a penalty of imprisonment of up to 6 months or a penalty.

Article 25 Use of threats or coercion to force a strike

Anyone who, through violent means, threatens, coerces or by any fraudulent means whatsoever declares, exercises or prevents the holding of a strike shall be punished by a fine of not less than US\$ 1,000.00 (one thousand American dollars) and not more than US\$ 5,000.00 (five thousand American dollars), without prejudice to any stronger penalty provided for under the law.

Article 26
“Lock-out” and violation of the rights of the workers

1. A breach of the provisions of article 5.2 and of articles 14, 16 and 21 of the present law shall be punished by a fine of not less than US\$ 5,000.00 (five thousand American dollars) and not more than US\$ 50,000.00 (fifty thousand American dollars), without prejudice to any stronger penalty provided for under the law.
2. A breach of the provisions of article 23 shall be punished by a penalty of imprisonment of up to one year or a fine of not less than US\$ 5,000.00 (five thousand American dollars) and not more than US\$ 50,000.00 (fifty thousand American dollars), without prejudice to any stronger penalty provided for under the law.

Article 27
Competent courts

It shall be incumbent upon the competent judicial courts, pursuant to the law, to decide on the issues resulting from the enforcement of the present law.

CHAPTER VII
Final provisions

Article 28
Entry into force

The present law shall enter into force on the day immediately after its publication.

Approved on 16 January 2012.

The Speaker of the National Parliament,

Fernando La Sama de Araújo

Promulgated on 17/02/2012.

For publication.

The President of the Republic,

José Ramos-Horta