

International
Labour Office

Legislative Series
1949—S.M. 1

SAN MARINO 1

Act: Protection of Labour

Act No. 1, respecting the protection of labour in San Marino.
Dated 27 January 1949. (*Bollettino Ufficiale della Repubblica di San Marino*, 30 January 1949, No. 4, p. 4, corrigenda *ibid.*, 31 December 1950, No. 5, p. 34.)

1. The Government of the Republic shall assume the protection of the working and productive classes and shall regulate employer-employee relations for this purpose, in accordance with legislation and in relation to the necessities of present-day economic life, in order to promote equality between all the productive forces and promote social justice.

2. The Government of the Republic undertakes to draw up and execute a basic social insurance plan to guarantee and protect industrial health, to safeguard the health of the productive classes and to establish social protection in general, such measures being considered as the essential and fundamental conditions for the development and improvement of production in the interest of every worker.

Insurance shall include sickness, accident, maternity, invalidity and old-age insurance, medical and pharmaceutical aid, treatment in hospitals and at dispensaries, and unemployment insurance in the case of all workers whose income is below a limit to be fixed.

This basic plan shall be executed by means of contributions from employers and workers, with the assistance of the State.

3. Freedom of association shall be guaranteed to all trade unions and occupational organisations within the Republic; for the purposes of representation, however, recognition shall be given to the San Marino Confederation of Labour, which groups together in one body the various categories of intellectual and manual workers and technicians, producers, and workers, co-operative societies, recreation and assembly halls, workers' associations and consumers' co-operative societies.

In view of the activities of a public and social nature carried on by the Confederation and by the placement office, the Government of the Republic shall grant to the said Confederation a subsidy, the amount of which shall be fixed each year.

4. Workers of every category, public and private salaried employees, farmers, heads of industrial and commercial undertakings and credit and insurance establishments shall be grouped together to form the San Marino Confederation of Labour.

The workers belonging to each of the above categories shall be grouped in separate trade unions.

The participation of the representatives from each category in the activities assigned by this Act to the San Marino Confederation of Labour shall be fixed by the above method of organisation.

5. Owners of undertakings and institutions of an administrative nature, both public and private, and all other employers shall form a union, which shall represent their interests for the purposes of this Act. The said union shall be governed by rules which must be approved by the Grand General Council of the Republic. It shall be composed of the following: owners of undertakings, industrialists and tradesmen, farmers and banking and financial establishments, grouped in separate unions and associations according to category.

For the purposes of this Act, the word "employer" shall mean any person who carries on as an occupation any organised economic activity for the production or exchange of goods or services and employs paid workers in order to carry out such activity.

6. Owners of small undertakings, *i.e.*, independent farmers, handicraftsmen, small tradesmen and all other persons who are engaged in some occupation and are either self-employed or employ only members of their families, shall form a mixed association which shall represent their interests for the purposes of this Act. The rules of the said association must also be approved by the Grand General Council of the Republic.

7. Government inspection and supervision of undertakings shall be ensured by a permanent arbitration board composed of a representative of the San Marino Confederation of Labour, a representative of the employers' union, a representative of the joint association, and four members designated by the Grand General Council. The San Marino Confederation of Labour and the employers' union shall be empowered, the necessary inquiries having been made, to bring the matter before the permanent arbitration board in the case of violation, by employers or workers, of the law or of rules, or of failure to carry out the obligations arising out of trade-union agreements or rules, and also in cases where the activity of the owner of the undertaking and the workers is prejudicial to the public economy.

The procedure of appeal to the board shall be subject to the existing rules for similar institutions.

8. The board, in deciding individual cases, shall be empowered to take all necessary measures and to impose a fine on every association or person found guilty of such violations.

9. An appeal may be made against the decision of the board to the labour authority (the law commissioner), who shall decide the matter according to the principles of equity. The labour authority shall decide the matters submitted to him in reports, at the request of the public prosecutor.

10. The labour authority shall likewise decide, in first and sole instance, all individual disputes arising out of employer-employee relations.

The San Marino Confederation of Labour and the union or association concerned shall be empowered to intervene both in the disputes referred to in sections 7 and 8 and in individual disputes.

The appeal to the labour authority and the designation of experts in appropriate cases shall be governed by the existing rules of procedure.

11. The Confederation of Labour and the employers' union shall make contracts and agreements of an economic character to govern employer-employee relations.

Neither collective nor individual contracts of employment shall contain provisions contrary to the rules laid down in the following sections.

The same rules shall likewise strictly govern contracts of employment made for work of a personal and domestic nature, which are not subject to the law requiring a collective agreement.

12. Every collective agreement shall contain, under pain of nullity, provisions respecting probationary periods, the amount of wages or salary, hours of work, rest periods, labour discipline, and modes of termination of the contract.

13. If provision is made for a probationary period, the said period must be fixed in writing. Any stipulation for a probationary period in excess of six months shall be null and void unless such stipulation be justified by the special nature of the tasks entrusted to the worker.

During the probationary period, either party may bring the contract to an end without notice or payment of compensation. On termination of the probationary period, the employment of the worker shall be confirmed and the probationary period which has expired shall be taken into account for all purposes.

14. The worker's remuneration may be fixed in accordance with the number of hours worked or on a piece-work basis, according to the nature of the work. Every contract must stipulate the absolute minimum amount of remuneration in respect of each working hour for every category covered by the contract. The scales for piece work, fixed according to the normal working capacity of the average worker, must stipulate a minimum wage in addition to the basic remuneration.

Remuneration may also be fixed, either partially or totally, as a share in profits or production, or in the form of commission or benefits in kind. In such cases, the stipulation shall be valid only if the average share calculated for one year is at least equal to the basic wage.

Remuneration shall be paid periodically, at least once every two weeks in the case of manual workers, and once a month in

the case of technicians and salaried employees; in the case of remuneration by way of a lump sum or as a share in profits or production, the worker shall be entitled to fortnightly or monthly settlement of the remuneration due to him.

15. The hours of work for all workers in every category shall be 48 a week or eight a day. Application for permission to extend the working hours up to a limit not exceeding two hours a day may be made to the San Marino Confederation of Labour; such overtime shall be paid for at the rate of time-and-a-quarter. Compensatory rest periods shall not be permitted.

Where, in exceptional circumstances, a worker is required to work on Sundays or public holidays, the wage must be doubled.

All categories of workers in domestic service or casual employment (for seasonal work, according to the tables annexed to this Act) shall not be covered by this rule. Such workers must not, however, exceed a total of 72 working hours per week (Schedule A).

The provisions of this section shall not apply in the case of managers of undertakings or persons who occupy supervisory posts.

16. Every worker shall be entitled to Sunday rest and to rest on public or religious holidays, such holidays to be fixed each year by the Grand General Council. The duration of the rest period shall be 24 consecutive hours.

Every worker shall likewise be entitled, after one year of uninterrupted service, to holidays with pay, the duration of which is fixed in a schedule to this Act (Schedule B). The period of holidays with pay shall be, as far as possible, continuous; the time of year when holidays are granted shall be fixed by agreement between the employer and the worker, having regard to the interests of each party.

No worker shall be entitled to waive his right to holidays, and no compensation may be given in lieu of holidays.

17. Every worker shall be entitled, as a bonus, in Christmas week, to one month's salary if he is a salaried employee and one week's salary if he is a wage-earner. Such payment shall obviate the necessity for any other bonus.

If the worker was taken on after 1 January or dismissed after payment of the bonus, the said bonus shall be calculated by fractions of 12 according to the number of months in which he was employed during the course of the year in the case of a salaried employee, and by fiftieth parts according to the number of weeks during which he worked in the course of the year in the case of a worker.

Every worker shall likewise be entitled to the entire amounts due to him for the public holidays of 1 April, 28 July, 3 September and 1 October, when these days do not fall on a Sunday.

18. Every worker must be punctual and diligent in his work; he shall be bound to obey the instructions given to him for the execution and organisation of the work, and to respect the technical and administrative hierarchy. It is forbidden for any worker to compete with his employer in carrying on a trade or occupation for himself or on behalf of a third party, or to impart information respecting the organisation or methods of production of the undertaking or to make use of such information in any other way.

19. Failure to observe the provisions of the foregoing section may entail, according to the gravity of the infringement, one of the following disciplinary measures:

verbal reprimand;
severe reprimand;
warning;
suspension from employment not exceeding one month;
dismissal.

20. Every worker must be made to perform the work for which he was employed. An employer shall be entitled, however, taking into account the requirements of the undertaking and if there are no stipulations to the contrary, to transfer the worker to some other type of work, but only if such transfer does not cause any reduction of the total remuneration or any appreciable change in the worker's circumstances.

21. Up to the promulgation of the Act respecting social insurance in the case of sickness, pregnancy and confinement, every worker shall be entitled to full remuneration for the periods fixed in Schedule C.

Every worker shall be entitled to reinstatement in his employment at the end of a period of absence caused by an accident, sickness, pregnancy or confinement, but only if such absence does not last longer than 24 weeks in the first two cases and 12 weeks in the last two cases.

22. Neither party shall terminate a contract of employment made for an unspecified period without giving notice of such termination in the manner laid down in Schedule D. This provision shall apply equally in the case of interruption or restriction of the activity of the undertaking or the closing down of the latter, save in case of *vis major*.

Compensation shall likewise be payable by the employer in cases where the employer-employee relation ceases through the death of the worker; in such cases, the compensation shall be payable to the worker's next of kin in accordance with section 8 of Act No. 25 of 15 June 1946.

23. Apart from the period of notice referred to above, or where such period of notice is not given, compensation in propor-

tion to the period of service accomplished shall be payable in every case to the worker in addition to the corresponding compensation, save where he has been dismissed through his own fault.

The amount of the said compensation shall be fixed in accordance with Schedule E.

24. In calculating the compensation referred to in sections 22 and 23, account shall be taken of all sums of a fixed amount paid regularly, commissions, output bonuses and shares in profits, not including, however, sums paid to reimburse expenses.

If the worker is paid wholly or partially by commission or output bonus or a share in profits, these sums shall be calculated according to the average amount paid during the preceding year.

25. In the case of transfer to another owner or an internal change in the undertaking, where the previous owners have not paid the sums referred to in the foregoing sections, the transferees or persons who have become the new owners of the undertaking as a result of the internal change must, unless they intend to reinstate the workers with all the rights to which they are entitled, fulfil the obligations of the previous owners.

26. Both employers and workers shall be bound to pay the contributions provided for in the special Acts respecting assistance and welfare in the case of accident, sickness, invalidity and old age, pregnancy, confinement and unemployment, in the amounts laid down in the said Acts, as from the date of their promulgation.

Such contributions shall be in proportion to the earnings, salary, wages or remuneration.

The fact that a private system of insurance is stipulated for, even if the cost of such system is entirely defrayed by the employer, shall not exonerate the employer and the workers from paying the said contributions.

Assistance and welfare benefits shall be payable to workers, irrespective of whether the employer has paid the required contributions or not. Where the employer has failed to pay the said contributions, he must make good any loss caused by his omission, without prejudice to his liability to the penalties laid down in the legislation covering the matter.

The same obligation shall rest with the owner of the land in the case of contributions payable by tenant farmers and by agricultural workers employed by the owner of the land for the purpose of cultivating the land.

In the case of agricultural work paid for on a piece-work basis, the obligation to pay the contributions shall rest with the employer.

27. On cessation of the employer-employee relation, the employer shall be bound to deliver to the worker a certificate in respect of the work accomplished by him, and setting forth the duration of employment and the nature of the work performed.

28. Any agreement made to waive the wages or salary payable to the worker by law or under a collective agreement, or any agreement to modify such wages or salary, made while the contract of employment is still valid, shall be null and void. The plea of nullity shall, however, be entered within three months of cessation of the employer-employee relation.

29. Every employer shall engage unemployed workers through the placement office referred to in the following provisions.

For the purpose of engaging skilled workers, the employer shall be entitled to choose from the names of skilled workers belonging to the appropriate category appearing in the lists of unemployed persons.

Any contract of employment for manual work which is not made through the intermediary of the placement office may be declared null and void at the request of the San Marino Confederation of Labour, in addition to any other penalties prescribed by the law, unless such contract is for a post of special trust. In engaging a worker for such a post, the employer must obtain the prior approval of the placement office.

30. All unemployed persons, both workers and salaried employees, must enter their names on the list drawn up by the placement office. The registration shall be carried out by the office, on lists established according to occupational categories and types of production.

Placements shall be effected in the order of registration, subject to the provisions of section 29.

31. Every employer must notify the placement office, within 48 hours, of the dismissal of any worker or of the fact that any worker has left his service.

32. Every employer who infringes the provisions of sections 27, 29 or 31 shall be liable to a fine of not less than 1,000 and not more than 5,000 lire in respect of every worker taken on by him without notification to the office, in breach of the obligations imposed on him.

Any worker who neglects to register with the placement office and accepts employment without the intervention of the placement office shall be liable to a fine of not less than 500 and not more than 1,000 lire.

All fines shall be payable to the Social Insurance Institution.

33. The placement office shall be established in the head offices of the San Marino Confederation of Labour. It shall be managed by a committee composed of a delegate from the Confederation of Labour, who shall act as secretary, a delegate from the employers' union, and a Government delegate, who shall act as chairman.

The services of the placement office shall be free of charge.

34. Every worker, irrespective of the category to which he belongs, shall possess an individual work book, which shall be issued by the Government of the Republic through the registry of births, deaths and marriages, after consultation with the placement office.

The book, the pages of which must be numbered consecutively, shall indicate the name, marital status, nationality and place of residence of the owner of the book, together with the work category to which he belongs and shall also indicate all periods of work performed in the service of any employer, either public or private (including Government service), all remuneration paid, all sums reimbursed to cover expenses defrayed, all accidents in which the worker may have been involved, and all periods during which he received assistance, with details of all social insurance benefits received.

35. During periods of employment, the employer shall be responsible for the custody of the work book and for keeping it up to date. On termination of employment, the book must be transmitted to the placement office for examination and inspection and must be submitted to the Office periodically during all periods of unemployment, in accordance with regulations.

36. Every employer who neglects to make an exact entry in the book of the information required under this Act shall be liable to a fine of not less than 500 and not more than 5,000 lire in respect of every work book which is not kept properly. Any employer who fails to take delivery of the work book and keep the same in his possession shall be liable to a similar fine; if he fails to produce the work book on request he shall be liable to a fine of not less than 300 and not more than 1,000 lire.

37. All industrial and commercial undertakings and credit and insurance establishments, whether directed by corporate bodies, trading corporations or individuals, shall be obliged—

- (1) to observe the instructions of the placement office respecting the engagement of workers, the notification of the engagement of staff of any category, and any changes in the staff employed by them;
- (2) to keep up to date all paybooks and all other documents connected with the payment of remuneration of any kind to the said staff;
- (3) to make monthly returns to the labour inspection service on forms to be adopted for the purpose by the social insurance system, of all wages, salaries and benefits paid to the said staff.

38. Every employer shall be bound to take, in carrying on his business, all the necessary measures to protect the physical well-being and the interests and morals of his workers.

39. A labour inspection service shall be established to ensure the proper organisation of labour and the strict observance of the provisions of this Act.

40. There shall be established, within the labour inspection service, a register of undertakings in which any undertaking carrying on any activity whatsoever within the territory of the Republic shall be listed according to the various categories enumerated below.

41. All private individuals, trading corporations and bodies corporate who or which own and operate or carry on—

any industrial, commercial or agricultural undertaking;

any public service;

any banking, financial or insurance establishment;

any catering, supply or victualling undertakings;

any health establishment;

any undertaking which is ancillary or auxiliary to the foregoing;

any workers', producers' or consumers' co-operative society—

shall be obliged to carry out the provisions respecting registration.

42. The labour inspection service shall register the undertaking, at the request of the person concerned, the owner or the legal representative of the undertaking, after making sure that the said undertaking fulfils the conditions prescribed by law for the purposes of carrying on its proper activity. The registration must indicate the style of the business, the purpose and registered offices of the undertaking, any dependent companies or auxiliary establishments, the name of the private firm, joint-stock company or body corporate, the name of the legal representatives, directors, managers and agents of the company, mentioning the powers given to each respectively and, in appropriate cases, a brief synopsis of the articles of association.

Every application for registration must be made in the course of the month following the commencement of work in the undertaking.

43. Every employer must notify the labour inspection service of any changes affecting the above information, within one month of any such change, for the purpose of modifying the information contained in the register of undertakings.

44. Every dispute respecting the obligation to register, or respecting any refusal to comply on the part of an undertaking or respecting the classification of any undertaking, shall be decided, on application by the person concerned, by the law commissioner.

45. Every employer who fails to observe the provisions respecting registration and notification of any subsequent changes shall be liable to a fine not exceeding 10,000 lire, which may be

trebled in the case of a repeated offence, without prejudice to the suspension or withdrawal of the licence, authorisation, concession or permit necessary for the working of the undertaking.

46. Every co-operative society and workers' association formed within the Confederation of Labour for the performance of seasonal work or for the execution of public work shall be bound to register in a special section of the register of undertakings.

47. In the case of piece work or constructional work by direct labour being carried out by workers' associations which are dependent on the Confederation of Labour, the Government Technical Office must enter in a special register kept for the purpose the number of days' work in each calendar year performed by each worker.

Such register shall be admitted as evidence of the rights and benefits granted to self-employed persons.

48. All workers' and producers' co-operative societies and similar institutions (including those which are worked exclusively by their own members) shall be bound, in the interests of their workers and in order to fulfil their obligations to provide assistance and social welfare, to observe the requirements of this Act. The said requirements shall likewise apply to trade unions in so far as they undertake to perform contract work.

49. The Government of the Republic and all bodies directly dependent upon it shall be bound to observe only the provisions respecting assistance and social welfare, the payment of remuneration for the aforementioned public holidays and for the fifty-third week, and to grant leave in proportion to the number of days worked, to the exclusion of any other charges and obligations imposed on employers by this Act.

50. The making of the first collective agreements shall be subject to the approval of the Congress of State.

51. If any worker is entitled to more favourable conditions under an existing contract (either individual or collective) or by custom, he shall retain his right to such conditions.

SCHEDULE A

CATEGORIES TO WHICH THE LIMITATION OF HOURS OF WORK DOES NOT APPLY

(A) persons employed in domestic work, including non-manual work: persons employed in work which is necessary for the normal running of the material life of families or institutions such as communities, colleges, convents, etc.;

(B) farmers and workers who are party to a contract entitling them to a share in profits or production;

(C) persons employed for work in connection with the cultivation of the soil;

(D) the worker's wife and relations by blood or marriage, up to the third degree of kinship, living with the worker and supported by him;

(E) persons entrusted with the technical or administrative management of the undertaking or with a section of the latter and directly responsible for the smooth running of the same;

(F) persons who work intermittently; supervisory and maintenance staff, such as—

1. custodians;
2. day and night watchmen;
3. porters;
4. messengers, doormen, lodge-keepers;
5. waiters, kitchen and service staff in hotels, restaurants and all other public establishments;
6. scalesmen, store-keepers, caterers, and their assistants;
7. fire-fighting staff;
8. transport workers (passenger or goods);
9. supervisors who do not take part in the work;
10. staff of hospitals and health establishments (not including staff of isolation wards, staff entrusted with the care of the seriously sick in hospitals, or of patients suffering from infectious or contagious illnesses);
11. shop workers;
12. persons whose work consists in the inspection or supervision of machinery for the pumping or distribution of drinking water;
13. persons whose work is connected with the heating, ventilation and humidification of public and private establishments;
14. staffs of health and sanitation services, dispensaries, ambulances, nursing establishments and public aid posts;
15. ladies' and gentlemen's hairdressers;
16. workers in electric power stations whose work consists in the inspection or supervision of machinery or transformation and distribution indicators, or the inspection and maintenance of power lines and hydraulic plant;
17. workers in the highways maintenance department;
18. hotel workers whose duties bring them into contact with guests;
19. petrol station workers on the highways;

(G) seasonal workers—

1. employed in harvesting and threshing;
2. employed in ploughing, land reclamation and drainage schemes by mechanical means;
3. employed in the harvesting and silage of cattle fodder;
4. employed in the wine harvest.

SCHEDULE B

ANNUAL HOLIDAYS WITH PAY

One week for workers with one to three years' service.

Two weeks for workers with four to 12 years' service.

Three weeks for workers with more than 12 years' service.

Ten days for salaried employees with one to three years' service.

Fifteen days for salaried employees with three to five years' service.

Twenty days for salaried employees with five to 10 years' service.

Twenty-five days for salaried employees with 10 to 15 years' service.

Thirty days for salaried employees with more than 15 years' service.

SCHEDULE C
ACCIDENTS AND DISEASES. DURATION OF PERIOD OF FULL REMUNERATION

<i>Wage-earners</i>		Duration
Length of service		
One to five years		two weeks
Five to 10 years		three weeks
More than 10 years		four weeks

<i>Salaried employees</i>		Duration
Length of service		
One to five years		one month
Five to 10 years		two months
More than 10 years		four months

SCHEDULE D

NOTICE OF TERMINATION OF CONTRACT TO BE GIVEN BY THE EMPLOYER

<i>Wage-earners</i>		Notice
Length of service		
One to five years		one week
Five to 10 years		three weeks
More than 10 years		four weeks

<i>Salaried employees</i>		Notice
Length of service		
One to three years		one month
Three to five years		two months
Five to 10 years		three months
More than 10 years		four months

The period of notice shall be doubled in the case of employees in a higher grade (agents, managers and other managerial staff).

The period of notice of termination of the contract to be given by the worker shall be obtained by dividing by three the period of notice which the employer would have been obliged to give.

SCHEDULE E

LONG-SERVICE BONUSES

Wage-earners. Six months to one year's service: one normal day's wages for every three months' service in the course of the year; six months to five years' service: one week's normal wages for every year's continuous service or fraction of a year greater than six months; more than five years' service: one week's normal wages for each of the first five years, and five days' wages for each subsequent year or fraction of a year greater than six months.

Salaried employees. Two to three years' service: one month's salary for each year's service; three to five years' service: one month's salary for each year's service, in the case of the first three years, and 20 days' salary for every subsequent year; more than five years' service: one month's salary for each year's service in the case of the first three years, 20 days' salary for each subsequent year, up to a limit of five years, and 15 days for each year or fraction of a year in excess of five.

Long-service bonuses shall be doubled in the case of salaried employees in a higher grade (agents, managers and other managerial staff).