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Collective bargaining models in Bolivia, Colombia, Ecuador and Peru

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Technical Report Regional Initiative for the of Strengthening Social Dialogue and Collective Labour Relations (IRDS)

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Preface

Collective bargaining is the form that constitutes and sustains social dialogue. It involves a process of voluntary bargaining, conducted in good faith, based on two fundamental principles and rights at work: freedom of association and the effective recognition of the right to collective bargaining. These principles, which are at the heart of the ILO and its Constitution, constitute the democratic foundations of labour markets and pave the way for inclusive and effective labour governance, underpinning progress towards social justice.

In Latin America and the Caribbean, where countries are characterized by diverse economic contexts but share many common challenges, the ILO created the Regional Initiative for the Strengthening of Social Dialogue and Collective Labour Relations (IRDS)[1] , reaffirming its commitment to support its constituents in improving their public policies related to the improvement of collective labour relations. The Initiative expresses the importance that governments, workers' organizations and employers' organizations attach to social dialogue in promoting a democratic, productive and equitable world of work. Among other axes, the Initiative aims to increase evidence-based advice on social dialogue by conducting studies and documenting industrial relations practices in the region, with a special focus on issues related to freedom of association and collective bargaining.

In this context, a process of systematization of collective bargaining models in the region is proposed, focusing this publication on countries covered by the ILO Decent Work Team and the ILO Office for the Andean Countries of Latin America: *Bolivia, Colombia, Ecuador and Peru*. This systematization includes official and normative information on the general context of collective bargaining in each country, the coverage of collective bargaining and the parties entitled to bargain, the scope, outcome and level of coordination of collective bargaining, methods of dispute prevention and resolution related to collective bargaining, and, where available, related statistical data.

We hope that the information gathered and the knowledge made available to constituents will contribute to inform national and regional debates aimed at promoting social dialogue, improving working conditions and achieving social justice.

Ana Virginia Moreira Gomes
ILO Regional Director for Latin America and the Caribbean

1 For more information, see: Regional Initiative for Strengthening Social Dialogue and Collective Labour Relations in Latin America and the Caribbean | International Labour Organization

Background

1. Collective bargaining is a fundamental right. It is rooted in the ILO Constitution and reaffirmed as such in the 1998 ILO Declaration on Fundamental Principles and Rights at Work. It is a key means through which employers and their organisations, and trade unions can establish fair wages and working conditions. Numerous discussions and decisions of the International Labour Conference refer to the importance of collective bargaining and the unique role of the ILO in promoting it.

2. The effective recognition of the right to collective bargaining, one of the important forms of social dialogue, and the right to freedom of association and freedom of association, understood as enabling rights, can be seen as part of the model of socio-economic development based on human capabilities theory, which was recently articulated at the international level through the United Nations Sustainable Development Goals (SDGs).[2] Moreover, the promotion of collective bargaining is also essential for building resilience in the short term, by facilitating the necessary trade-offs to ensure business continuity and preserve jobs and incomes, while in the long term it transforms working practices, especially as an effective response to different crises and to promote a balanced recovery.[3]

3. In this context, the ILO adopted an integrated strategy for the promotion and implementation of the right to collective bargaining as a voluntary means of determining terms and conditions of employment and as an important mechanism for promoting more inclusive, sustainable and just societies.[4] The proposed strategy suggests priority actions, as well as the range of services and activities that the Office could undertake, including knowledge development and advocacy.[5]

4. Collective bargaining requires as its basis the right to organise, as the right to form representative organisations to enable bargaining. This principle was enshrined in the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). It is therefore an essential mechanism for promoting participation and concerted regulation of industrial relations between workers and employers, contributing to the protection of fundamental rights at work.

5. International labour standards related to collective bargaining provide that this process should be carried out voluntarily and autonomously by one or more trade union organizations on the one hand and by one or more employers or employers' organization(s) on the other.[6] It also requires the existence of a legal and institutional framework that promotes and sets the necessary conditions for its development and enables the parties to negotiate voluntarily, freely and in good faith.[7]

6. The fact that all countries in Latin America and the Caribbean have ratified Convention No. 98 underlines the importance of collective bargaining systems in setting wages and working conditions in the region. In addition, 12 countries in the region have ratified the Labour Relations (Public Service Employment Relations) Convention, 1978 (No. 151) and 10 countries have ratified the Collective Bargaining Convention, 1981 (No. 154).[8]

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2 ILO: Social Dialogue Report 2022: Collective bargaining for an inclusive, sustainable and resilient recovery. Geneva: International Labour Office, 2022, p. 34.

3 ILO: Social Dialogue Report 2022: Collective bargaining for an inclusive, sustainable and resilient recovery, p. 17.

4 GB.349/POL/2, ILO Integrated strategy to promote and implement the right to collective bargaining, Governing Body, 349th Session, Geneva, 30 October-9 November 2023.

5 GB.349/POL/2, ILO Integrated strategy to promote and implement the right to collective bargaining, Governing Body, 349th Session, Geneva, 30 October-9 November 2023.

6 Article 4 of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

7 Technical Note Multilevel collective bargaining: Representativeness, extension mechanisms and treatment of MSMEs, ILO, 2025, p. 4.

8 Information extracted from the International Labour Standards Information System - NORMLEX: Ratifications by Convention.

7. In this context, it is proposed to document the collective bargaining models in *Bolivia, Colombia, Ecuador and Peru*, as a way of providing constituents in the region with information on the legal and institutional frameworks regulating collective bargaining in these countries.[9] The document is structured in country profiles and includes information on the role of public institutions in collective bargaining, procedures and mechanisms to facilitate the process, the representativeness of the parties involved in bargaining and the coverage of collective bargaining, coordination between collective instruments and labour legislation, means to prevent and resolve disputes arising from collective bargaining and, where available, relevant statistical information on union membership rates and the number of collective instruments concluded.

9 The description of the models applied by these countries in relation to collective bargaining is for information purposes only. These models may not reflect the recommendations of the ILO supervisory bodies on possible compliance with international labour standards. Furthermore, the description of collective bargaining models took into account the publicly available information at the date of publication.

Bolivia (Plurinational State of)

1. General context of collective bargaining

i) National regulatory framework for collective bargaining

8. Collective bargaining in the Plurinational State of Bolivia (henceforth Bolivia) is regulated at the constitutional level and by law. At the constitutional level, collective bargaining is regulated by Article 49 of the Political Constitution of the State of Bolivia (henceforth Constitution). This provision expressly recognises the right to collective bargaining, stipulating that the law shall oversee the regulation of labour relations regarding collective contracts and agreements. Specifically, paragraphs I and II of Article 49 of the Constitution state the following:

> *"I. The right to collective bargaining is recognised.*
>
> *II. The law shall regulate labour relations regarding contracts and collective agreements; general and sectoral minimum wages and wage increases; reinstatement; paid breaks and holidays; seniority calculation, working hours, overtime, night work, Sunday work; Christmas bonuses, bonuses, bonuses or other systems of participation in the profits of the company; indemnities and evictions; maternity leave; training and professional training, and other social rights".*

9. In turn, Article 53 of the Constitution guarantees the right of workers to strike, defining it as the legal right of workers to suspend their work in order to defend their rights, establishing a legal limit to this constitutional right.

10. Finally, the Constitution also recognises the right of workers and employers to organise. With regard to workers, Article 51 states that they may organise themselves into trade unions in accordance with the law, which are understood as means of defence, representation, assistance, education and culture. Furthermore, it establishes that the State shall respect the principles of unity, democracy, pluralism, self-support, solidarity and internationalism, as well as the ideological and organisational independence of trade unions. The Constitution also establishes the inviolability, non-seizability and non-delegability of trade union assets, the possibility for trade unions to enjoy legal personality and the trade union privilege of their representatives. With regard to employers, Article 52 of the Constitution enshrines the freedom of association of enterprises, guaranteeing their legal personality and inviolable and non-seizable assets.

11. Bolivia has also ratified ILO conventions on the matter, namely the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Labour Relations (Public Service) Convention, 1978 (No. 151). It should be noted that Article 410 of the Constitution provides that international human rights treaties and conventions form part of the constitutional bloc, and that the legal norms contained in international treaties shall take precedence over legal norms.

12. At the legal level, collective bargaining is mainly regulated by the General Labour Law and its respective Regulatory Decree.

ii) Role of public institutions

13. At the administrative level, the main public institution involved in collective bargaining is the Labour Inspectorate, which, according to Article 5 of the General Regulations of the Labour Inspectorate, Ministerial Resolution No. 1444/23, is under the responsibility of the Ministry of Labour, Employment and Social Security.

14. The Labour Inspectors of each Departmental and Regional Labour Headquarters intervene at various stages of collective bargaining. First, the labour inspectors will receive the complaints submitted by the trade unions, when there is a disagreement with the employers, in accordance with Article 106 of the General Labour Law.[10] In addition, the Inspector shall notify the employer of the document received and shall arrange for the establishment of a Conciliation Board, which shall preside over this institution, in accordance with Articles 107 and 109 of the General Labour Law. It should be noted that Article 110 of the same Law provides that in those cases where the Conciliation Board is convinced that any settlement is impossible, the dispute is taken to an arbitration tribunal which is presided over by the Inspector General of Labour or by the Chief of Labour. Also, Article 18 of the Regulations of the General Labour Law establishes that the Labour Inspectorate has the role of registration of collective agreements.

15. The Labour Inspectorate also carries out supervisory and sanctioning tasks in relation to collective bargaining and the functioning of trade union organisations in general. Article 101 of the General Labour Law empowers them to attend the deliberations of trade union organisations and to supervise their activities.[11] In addition, Article 2 of the General Regulations of the Labour Inspectorate states that the Labour Inspectorate must constantly monitor compliance with and enforcement of labour regulations.

16. The Ministry of Labour also plays a role in the recognition of trade union organisations, as they are in charge of issuing the supreme resolution granting them legal personality, following a report from the General Labour Inspectorate and the opinion of the Government Prosecutor, in order to be registered with the General Labour Inspectorate in accordance with Articles 124, 125, 126 and 127 of the Regulations of the General Labour Law.

17. At the judicial level, the competent authority to decide disputes arising from the application of collective labour contracts and collective bargaining procedures is the Labour Judiciary. It will also be responsible for enforcing arbitration awards in this area.[12] Specifically, Article 9 of the Labour Procedural Code states the following:

> *"The Labour Judiciary is competent to decide disputes arising from individual and collective labour contracts, the application of social security laws, social interest housing, complaints for infringement of social laws and occupational health and safety, the recovery of the assets of trade union organisations, trade union disqualification and other matters and procedures indicated by Law."*

iii) Procedures and mechanisms to facilitate collective bargaining (including the procedure for registration of collective agreements)

18. First, Article 27 of the General Labour Law provides that an employer who hires unionised workers is obliged to enter into collective bargaining agreements upon request.

19. Trade union organisations may initiate negotiations for the conclusion of a collective agreement by submitting a demand to the employer, which must be answered within 10 days, extendable by agreement of the parties.[13] If the employer rejects the complaint or does not reply within the time limit, a statement of grievances must be submitted to the labour inspector, signed by the union leadership or half plus one of the workers in conflict.[14]

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10 Article 106 of the General Labour Law states: *"Any trade union which has any dissent with the employers shall submit its statement of grievances to the respective Labour Inspector, signed by the members of the trade union leadership and, in their absence, by half plus one of the workers in dispute".*

11 Article 101 of the General Labour Law states, *"Trade unions shall be directed by a responsible committee, whose members shall be Bolivian by birth. Labour Inspectors shall attend their deliberations and supervise their activities."*

12 Article 218 of the Labour Procedural Code.

13 Article 151 of the Regulatory Decree of the General Law.

14 Articles 106 of the General Labour Law and 151 of the Regulatory Decree of the General Law.

20. Once the labour inspector receives the statement of claims, he will have 24 hours to communicate it to the employer and will demand that a Conciliation Board be constituted within 48 hours, which will be composed of two representatives of employers and trade unions, in accordance with Article 107 of the General Labour Law.

21. Article 109 of the General Labour Law states that the Conciliation Board must convene within 72 hours of receipt of the statement of claims. The Conciliation Board may not be dissolved until a conciliatory agreement is reached or until it is convinced that any settlement is impossible, in which case the dispute must be referred to an arbitration tribunal composed of one member appointed by each party and presided over by the Inspector General of Labour in La Paz, by the Chief of Labour in the other departments and by the political authority where there is no Labour authority, in accordance with Article 110 of the General Labour Law.

22. Pursuant to Article 112 of the General Labour Law, the arbitral tribunal must meet within 48 hours of notification of the parties and shall summon the parties to appear, seeking a settlement. It may hear the case and must issue an arbitration award within 15 days. The arbitration decision will be binding on the parties when the parties so agree, if the conflict affects essential public services or there is a special resolution of the executive in this sense. Specifically, Article 113 of the General Labour Law states:

> *"The decisions of the Tribunal shall be submitted by an absolute majority of votes, and shall be binding on the parties:*
>
> *a. When the parties agree;*
>
> *b. When the conflict affects essential public services;*
>
> *c. When the executive so determines by special resolution".*

23. As regards formalities, Article 18 of the Regulations of the General Labour Law provides that collective agreements shall be concluded in writing, in order to be registered with the Labour Inspector.

24. In cases where conciliation and arbitration efforts fail, workers or employers may declare a strike or lock-out, which requires a pronouncement by the Conciliation Board and the Labour Court and a decision by three quarters of the workers in active service. In particular, Article 114 of the General Labour Law states:

> *"Failed conciliation and arbitration efforts, workers may declare a strike, and employers may declare a lock-out, provided that the following circumstances concur;*
>
> *1° The pronouncement of the Conciliation Board and the Arbitration Tribunal on the issue raised;*
>
> *2°The resolution is taken by at least ¾ of the total number of workers in active service".*

▶ 2. Collective bargaining coverage and bargaining parties

iv) Workers covered by the collective bargaining framework and excluded categories

25. The definition of collective bargaining given by the Regulations of the General Labour Law leads to the conclusion that the parties to collective bargaining are one or more employers, on the one hand, and a trade union, federation or confederation on the other hand, in accordance with Article 17 of the Regulations of the General Labour Law.

26. It should be noted that Article 19 of the Regulations of the General Labour Law limits the trade union organisations that can conclude a collective bargaining agreement by stating that they can only do so if they have legal status recognised by the Supreme Government and if they are organised in accordance with the law.

27. Article 99 of the General Labour Law, in turn, establishes that union organisations may be employers', trade or professional, mixed or industrial or enterprise organisations. Furthermore, according to Article 120 of the Regulations of the General Labour Law, workers may bargain collectively to the extent that they are members of a trade union, whether they belong to the same enterprise, profession or trade, or to similar or related professional or trade enterprises.

28. In order to be clear about the categories of workers covered by a particular collective agreement, Article 24 of the General Labour Law provides that the professions, trades or specialities must be indicated in the collective agreement. Specifically, Article 24 states:

> *"The collective contract shall indicate: the professions, trades or specialties; the date on which the contract shall come into force; its duration; and the conditions for extension, rescission and termination."*

29. The collective agreement may also cover workers who join the agreement in writing or who join the union after the conclusion of the agreement. Specifically, Article 23 of the General Labour Law states:

> *"The collective contract does not only bind those who have concluded it, but also the workers who, thereafter adhere to it in writing, and those who subsequently join the contracting union."*

30. Civil servants are excluded from entering into collective agreements, as they cannot organise themselves into trade unions, which are the entities that can enter into collective agreements, in accordance with Article 104 of the General Labour Law.

31. Finally, also in relation to the exercise of strike action - which is understood as a stage of collective bargaining - it is prohibited in the case of public services, in accordance with Article 118 of the General Labour Law.

v) The parties to collective bargaining

32. The definition of collective agreements in the Regulations to the General Labour Law leads to the conclusion that the parties to collective bargaining are one or more employers on the one hand, and a trade union, federation or confederation on the other.[15] It should be noted that Article 19 of the same Regulations limits the trade union organizations that can conclude a collective agreement by stating that only those that have legal status recognized by the Supreme Government and provided that they are organized in accordance with the legal system can do so.

33. Article 99 of the General Labour Law provides that trade union organisations may be employers', trade or professional, mixed or industrial or company organisations. Furthermore, according to Article 120 of the Regulations of the General Labour Law, workers may bargain collectively to the extent that they are members of a trade union, whether they belong to the same enterprise, profession or trade, or to similar or related professional enterprises or trades.

34. In addition, workers may also be represented by federations and confederations, which must obtain legal personality and enjoy the same rights as trade unions, and may also represent affiliated trade unions, in accordance with Article 134 of the Regulations of the General Labour Law.

vi) Criteria for representativeness and procedures for recognition of the negotiating parties (including in the case of negotiations with workers' representatives in the absence of a trade union)

35. There is no express regulation establishing a criterion of representativeness in collective bargaining. However, the representativeness criterion is indirectly determined by the requirements for the establishment of industrial or trade unions.

36. The legislator indicates that a minimum of 20 members is required for the formation of a trade or professional workers' union. Industrial unions, on the other hand, must be formed by at least 50 per cent of the workers in an enterprise. This according to Article 103 of the General Labour Law. It should be noted that Article 2 of Supreme Decree No. 5.051 establishes that, if there are two or more trade unions

15 Article 17 of the Regulations of the General Labour Law.

in an enterprise, they must be organised into a single trade union representation for the signing of the collective agreement.[16]

37. With regard to the recognition of the parties, it is important to note that Article 19 of the Regulations of the General Labour Law limits the trade union organisations that can enter into a collective agreement by stating that only those that have legal status recognised by the Supreme Government and provided that they are organised in accordance with the legal system can do so. The legislator also indicates that an employer who hires unionised workers is obliged to conclude collective bargaining agreements at their request.[17]

vii) Specific requirements regarding the conduct of the negotiating parties

38. Article 135 of the Regulations of the General Labour Law establishes that trade union organisations must pursue purposes such as the conclusion of collective agreements, the representation and assistance of their members and, in general, pursue the purposes determined by their members and established in their statutes. In turn, Article 137 of the same Regulation establishes a prohibition against pursuing purposes other than those indicated above and affecting individual, labour and industrial freedom:

> *"Trade unions are forbidden to engage in objects other than those indicated above, as well as to execute acts tending to undermine individual freedom; freedom of labour and freedom of industry, in the manner guaranteed by the Constitution and the laws."*

39. Regarding the employer, there is an obligation to enter into collective agreements, as provided for in Article 27 of the General Labour Law. Moreover, as soon as a legal dispute arises, the employer may not suspend any worker from his or her job, unless the worker attacks the company's property or carries out acts of sabotage. This is stated in Article 150 of the Regulations of the General Labour Law:

> *"From the moment a collective dispute arises, no worker or employee may be suspended from his or her job, unless he or she attacks the goods or property of the enterprise or carries out acts of sabotage; nor may work in the enterprise be suspended."*

40. In the same sense, it must be highlighted that the Political Constitution of the State recognises the trade union privilege of the leaders until one year after the end of their term, and they cannot be dismissed, nor be affected in their social rights, nor be subject to persecution or deprivation of liberty. Specifically, Article 51 number 51 paragraph VI of the Political Constitution of the State states:

> *"Trade union leaders enjoy trade union privileges, they shall not be dismissed until one year after the end of their term of office and their social rights shall not be diminished, nor shall they be subjected to persecution or deprivation of liberty for acts carried out in the performance of their trade union work."*

41. During the strike, the legislator indicates that the strike must be a peaceful suspension of work and that offences against the freedom of labour and industry include pressures against the worker and actions aimed at the destruction of work property, in accordance with Article 162 of the Regulations of the General Labour Law.

42. Moreover, during this period workers and leaders are exempted from criminal liability if they peacefully enter the employer's premises. Article 232 paragraph II of the Penal Code states:

> *"The trade union leader or worker who, within a labour conflict and in the exercise of the right to strike, peacefully enters industrial, agricultural or mining establishments, in defence of labour interests or social conquests, is exempt from criminal responsibility."*

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16 Article 2 of Supreme Decree No. 5.051 states: *"Collective Labour Agreements shall be signed between the employer or its legal representative and the company's trade union. In the event that there are two or more trade unions in an enterprise, all of them shall organise a single trade union representation for the signing of the respective Collective Bargaining Agreement".*

17 Article 27 of the Regulations of the General Labour Law.

43. On the other hand, as indicated above, Article 118 of the General Labour Law establishes that in the case of services of a public nature, the suspension of work is prohibited.

44. Finally, in cases where one or more workers decide to withdraw from the decisions of the trade unions regarding strike action, they may not be subject to reprisals or liability of any kind, in accordance with Article 119 of the General Labour Law.

▶ 3. Scope and outcomes of collective bargaining

viii) Level of collective bargaining and hierarchy of collective agreements (including information on opt-out rules)

45. In defining collective bargaining, Article 5 of the General Labour Law indicates that the parties to collective bargaining are the employer or association of employers and a trade union organization, federation or confederation of trade unions of workers. Accordingly, collective bargaining procedures may be conducted through employers', trade or professional, mixed or industrial or enterprise unions, and at the sectoral or national level, through federations and confederations, all in accordance with the provisions of Article 99 of the same Law. It should also be noted that Article 134 of the Regulations of the General Labour Law establishes that federations and confederations have the same rights as trade unions and can therefore technically enter into collective agreements.

46. However, there is no systematic regulation on multilevel collective bargaining, nor on the hierarchy of collective agreements. In this context, the principle of workers' protection enshrined in Article 48 numeral II of the Political Constitution of the State[18] becomes relevant, which must be interpreted in accordance with Articles 2, 3 and 4 of Supreme Decree No. 4.668 of 17 February 2022, which establishes that this principle translates into the imperative nature of the minimum conditions in which labour relations are developed and that employers cannot alter acquired labour rights, such as those enshrined in collective labour contracts. Specifically, Articles 2, 3 and 4 of the Supreme Decree state:

> *"Article 2.*
>
> *I. It is that created under the mandate of a labour law and which has been incorporated into the patrimony of the worker, and cannot be taken away or violated by the employer.*
>
> *II. An acquired labour right is also considered to be any benefit created, defined or recognised by individual labour contracts, collective labour agreements or contracts or arbitration awards, for as long as it remains in force and in the manner agreed by the parties, signed in accordance with the regulations in force.*
>
> *Article 3. In accordance with Paragraph II of Article 48 of the Political Constitution of the State, labour regulations are interpreted and applied under the principle of protection of workers; consequently, in matters of acquired labour rights, they establish the minimum conditions under which the labour relationship must be developed.*
>
> *Article 4. Employers shall not undermine, diminish, alter or defer the acquired labour rights of workers, in contravention of the labour protection provisions defined in the Political Constitution of the State and the labour legislation in force.*

ix) The relationship between collective agreements, the law and individual employment contracts

47. Supreme Decree No. 5051 provides that collective agreements may not be contrary to the law, morality or public interest. In this regard, it is also worth noting once again the relevance of the principle of workers' protection enshrined in Article 48 numeral II of the Political Constitution of the State[19] , in accordance with Articles 2, 3 and 4 of Supreme Decree No. 4.668 of 17 February 2022. From

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18 Article 48 numeral II of the Political Constitution of the State states: *"II. Labour regulations shall be interpreted and applied under the principles of protection of workers as the main productive force of society; of primacy of the labour relationship; of continuity and stability of employment; of non-discrimination and of reversal of the evidence in favour of workers.*

19 Article 48 numeral II of the Political Constitution of the State states: *"II. Labour regulations shall be interpreted and applied under the principles of protection of workers as the main productive force of society; of primacy of the labour relationship; of continuity and stability of employment; of non-discrimination; and of reversal of the evidence in favour of the worker".*

the aforementioned rules, it could be concluded that the principle of the rule most favourable to the worker shall apply.

x) Extension of the applicability of collective agreements and *erga omnes* clauses

48. According to Article 23 of the General Labour Law, the stipulations of a collective agreement cover those who entered into it, those who joined it in writing and those who subsequently join the union.

xi) Duration of collective agreements (possibility of ultra-activity or retroactivity)

49. It is up to the parties to determine the duration of a collective agreement, as well as the date on which it may enter into force, in accordance with Article 24 of the General Labour Law, which states that:

> *"The collective contract shall indicate: the professions, trades or specialties; the date on which the contract shall come into force; its duration; and the conditions for extension, rescission and termination."*

50. It should be noted that, in the case of arbitration awards within the collective bargaining process, their duration may not be less than six months when the parties so determine, when it is a conflict with services of a public nature or when the executive power so determines by a special resolution, all this in accordance with the provisions of Article 157 of the Regulations of the Labour Law. [20]

51. Labour legislation provides for ultra-activity by incorporating collective contracts into the individual contracts of each worker. Specifically, Article 25 of the General Labour Law states:

> *"The stipulations of the collective contract shall be considered an integral part of the individual employment contracts".*

xii) Collective bargaining subjects (and exclusions)

52. When defining the collective agreement, it is stipulated that the purpose of the collective agreement is to determine general working conditions or to regulate work. Labour legislation does not indicate matters that are excluded from collective bargaining; however, it should be noted that Article 8 of Supreme Decree No. 5.051 states that there may be no provisions contrary to law, morality or public interest.

xiii) Enforcement, evaluation and renegotiation of collective agreements (the role of the labour inspectorate)

53. The authority responsible for the application and enforcement of collective agreements is the Ministry of Labour and Social Security, as the labour enforcement authority. This follows from Article 122 of the General Labour Law.

54. Article 2 of the General Regulations of the Labour Inspectorate stipulates that the Labour Inspectorate must constantly monitor compliance with and enforcement of labour regulations.

55. At the judicial level, the competent authority to decide disputes arising from the application of collective labour contracts and collective bargaining procedures is the Labour Judiciary, in accordance with Article 9 of the Labour Procedure Code, which states:

> *"The Labour Judiciary is competent to decide disputes arising from individual and collective labour contracts, from the application of social security laws, social housing, complaints for infringement of social laws and occupational health and safety, the recovery of the assets of trade union organisations, trade union disqualification and other matters and procedures indicated by law."*

56. The labour law does not contain any express regulation regarding the mechanisms for the revision of a collective agreement, however, Article 27 of the General Labour Law contains provisions

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20 Article 157 of the Regulations of the General Labour Law states, *"The arbitration award shall be issued by majority vote and shall be binding on the parties, for the period of time determined by it, which may not be less than six months, in the following cases:*
When the conflict affects services of a public nature;
When the Executive Power so determines by special resolution;
When the parties have agreed to it".

regarding the obligation of the employer to enter into collective agreements when requested by the trade union organisation. [21]The Regulations of the General Labour Law provide that during the term of the collective agreement no collective disputes on the same subject matter may arise, in accordance with Article 158 of the General Labour Law.

4. Methods of preventing and resolving collective bargaining-related disputes

xiv) Dispute prevention methods applicable to collective bargaining

57. Bolivian legislation does not expressly regulate dispute prevention methods in respect to collective bargaining. As explained above, the Regulations of the General Labour Law state that during the term of the collective agreement, collective disputes on the same subject matter cannot be raised.

xv) Dispute resolution methods applicable to collective bargaining

58. First, as indicated above, if during collective bargaining the employer rejects in whole or in part the claim made by the workers or has not responded to it within the time limit, the worker may submit a statement of claims, in accordance with Article 151 of the Regulations of the General Labour Law. Upon receipt of the statement of claims and within 24 hours thereafter, the Labour Inspector shall communicate it to the employer or employers concerned and request the parties to form a Conciliation Board, in accordance with the provisions of Article 107 of the General Labour Law.

59. Secondly, in those cases where the Conciliation Board is convinced that it is impossible to reach a settlement, the dispute will be brought before an Arbitral Tribunal, in accordance with Article 110 of the General Labour Law.

xvi) Resolution of disputes relating to the right to strike

60. Once a strike has been declared, the workers must inform the Labour Inspectorate of the composition of the Strike Committee responsible for reporting on the development of the movement and acting as an intermediary, in accordance with the provisions of Article 161 of the Regulations of the General Labour Law as follows:

> *"Once the strike has been declared, the workers shall communicate to the Labour Inspectorate, the composition of the responsible Strikers' Committee, in charge of giving an account to the associates or the rest of the staff of the development of the movement and of acting as an intermediary between the employers and the striking staff."*

5. Relevant statistical data

xvii) Trade union density

61. No official national statistical information has been found on trade union density in Bolivia. According to the ILOSTAT database, the latest update regarding union density in the country is from 2019 and it was around 12.05 per cent. [22]

xviii) Coverage of collective agreements

62. No official statistical information has been found on the coverage of collective agreements in Bolivia.

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21 Article 27 of the General Labour Law states: *"The employer who employs workers affiliated to workers' associations shall be obliged to conclude collective labour contracts with them upon their request".*

22 ILOSTAT Data Explorer

Colombia

1. General context of collective bargaining

i) National regulatory framework for collective bargaining

63. Collective bargaining in Colombia is regulated at the constitutional level and by legal provisions. At the constitutional level, Article 39 of the Colombian Constitution establishes the right of workers and employers to form trade unions or associations, without State intervention. This provision limits the internal structure and functioning of the organisations to the law and democratic principles, as well as regulating the privilege of trade union representatives. It also establishes that the legal recognition of a trade union or association is produced by the registration of the act of its constitution and that its cancellation or suspension only proceeds through the courts. Finally, it excludes members of the security forces from the right of trade union association. Specifically, Article 39 of the Political Constitution of Colombia states:

> *"Workers and employers have the right to form trade unions or associations, without State intervention. Their legal recognition shall come about with the simple registration of the act of constitution.*
>
> *The internal structure and functioning of trade unions and social and trade union organisations shall be subject to the legal order and democratic principles.*
>
> *The cancellation or suspension of the legal status of trade unions and social and trade union organisations is only possible by judicial means.*
>
> *Trade union representatives are granted the privileges and other guarantees necessary for the performance of their duties.*
>
> *Members of the public security forces do not enjoy the right of trade union association".*

64. On the other hand, collective bargaining is regulated in Article 55 of the Political Constitution of Colombia, a provision that guarantees it as a fundamental right to regulate labour relations, allowing the legislator to establish certain exceptions. In addition, this Article indicates that it is the duty of the State to promote peaceful means of conflict resolution in this area. In turn, Article 56 of the Constitution guarantees the right to strike, except in essential public services. [23]

65. It should be noted that Colombia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), which are part of domestic legislation, as provided for in Article 53, paragraph 4, of the Political Constitution of Colombia. [24]

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23 Article 55 of the Political Constitution of Colombia states:
"The right to collective bargaining to regulate labour relations is guaranteed, with the exceptions indicated by law.
It is the duty of the State to promote consultation and other means for the peaceful settlement of collective labour disputes".
In turn, Article 56 of the Political Constitution of Colombia states the following:
"The right to strike is guaranteed, except in essential public services defined by the legislator.
The law shall regulate this right.
A permanent commission composed of the Government, employers' and workers' representatives shall promote good labour relations, contribute to the settlement of collective labour disputes and agree on wage and labour policies. The law shall regulate its composition and functioning".

24 Article 53, paragraph four, of the Political Constitution of Colombia states the following:
'Duly ratified international labour conventions form part of domestic legislation.'
With regard to the exclusions provided for in Article 39 of the Political Constitution of Colombia, Article 9 of Convention No. 87 refers to possible limitations on the right of association in relation to the armed forces and the police.

66. At the legal level, mainly, the Substantive Labour Code (CST) regulates Collective Labour Law in its second part, between Articles 353 to 484. This section consists of 3 titles, the first related to trade unions, the second to collective labour conflicts and the third to conventions, collective agreements and contracts.

ii) Roles of public institutions

67. At the administrative level, the Ministry of Labour and Social Security plays an important role in relation to collective bargaining. First, this Ministry oversees the trade union registration, as provided for in Articles 365 et seq. of the CST. In addition, according to the provisions of Articles 435, second paragraph, and 436 of the CST, it also participates in the registration of total or partial agreements and disagreements reached in relation to the list of positions, in the framework of direct arrangements that may exist between a trade union or the workers and the employer. Finally, in cases where a collective contract is concluded, it must be deposited with the Ministry of Labour within 15 days of its signature, in accordance with Article 482 of the CST.

68. On the other hand, according to Article 485 et seq. of the CST, the Ministry of Labour has the role of monitoring and sanctioning the rules of the Code, which also include rules on trade union organisations and collective bargaining.

69. Finally, the Ministry of Labour may also participate during the strike by intervening in direct negotiations between the parties, in accordance with Article 445.3 of the CST. In addition, labour inspectors may authorise the employer to conclude new labour contracts during the strike, when the services are indispensable to avoid serious damage to the safety and preservation of certain goods, in accordance with Article 449 of the CST, which states the following:

> *"A strike only suspends employment contracts for the time it lasts. The employer may not, in the meantime, enter into new labour contracts for the resumption of the suspended services, except in those premises whose operation is indispensable in the opinion of the respective labour inspector, to avoid serious damage to the safety and conservation of workshops, premises, equipment, machinery or basic elements and for the execution of work aimed at the conservation of crops, as well as for the maintenance of livestock, and only in the case that the strikers do not authorise the work of the necessary personnel in these premises".*

70. Likewise, at the judicial level, the main public institution that intervenes in collective bargaining is the ordinary jurisdiction in its labour and social security speciality, which has jurisdiction in legal conflicts that originate in labour contracts, in actions on trade union privileges, as well as in the suspension, dissolution and liquidation of trade unions. [25]

71. Article 448 paragraphs 3 and 4 of the CST also allows the intervention of arbitration tribunals in case of strikes. This is allowed when the most representative union so decides or when the strike has lasted for a certain number of days and the intervention of a sub-commission of the Commission for the Coordination of Wage and Labour Policies has not been able to resolve the conflict. Specifically, Article 448 paragraphs 3 and 4 states:

> *"Once a strike has been declared, the union or unions that represent the majority of the workers in the company or, failing that, of the workers in general assembly, may submit to a vote of all the workers in the company whether or not they wish to submit the persistent differences to arbitration. If an absolute majority of them opt for the tribunal, work shall not be suspended or shall be resumed within a maximum of three (3) working days of being suspended.*
>
> *4. When a strike lasts for sixty (60) calendar days without the parties finding a solution to the conflict that gave rise to it, the employer and the workers may, during the following three (3) working days, agree on any mechanism of composition, conciliation or arbitration to put an end to the differences.*

25 Article 2 (1), (2) and (3) of the Labour and Social Security Procedural Code.

If within this period of time the parties are unable to agree on a settlement or establish an alternative composition mechanism for the solution of the conflict that distances them, either ex officio or at the request of a party, a sub-commission of the Commission for the Agreement on Wage and Labour Policies shall intervene, in accordance with the provisions of Article 9 of Law 278 of 1996.

This sub-commission shall exercise its good offices for a maximum period of five (5) working days from the working day following the expiry of the three (3) working day period referred to in this Article. This period shall be peremptory and shall run even if the Commission does not intervene. If after five (5) working days it is not possible to reach a definitive solution, both parties shall request the Ministry of Social Protection to convene the arbitration tribunal. Once the Arbitration Tribunal has been convened, the workers shall be obliged to resume work within a maximum period of three (3) working days".

iii) Procedures and mechanisms to facilitate collective bargaining (including the procedure for registration of collective agreements)

72. According to Article 432 of the CST, trade union organisations must submit a list of demands when there is a collective dispute that may result in the suspension of work or its solution through compulsory arbitration. Subsequently, Article 433 of the CST states that the employer or its representative must receive the delegates within 24 hours to start the conversations, which is extended by 24 hours if the recipient of the document considers that they do not have the authority to decide on it. In any case, the start of discussions in the bargaining stage cannot be delayed for more than five working days.

73. Pursuant to Article 434 of the CST, the bargaining discussions shall last for 20 calendar days, which may be extended by mutual agreement for up to the same period of time, and up to two representatives of the second- and third-degree trade union organisations may participate in these discussions as advisors.

74. In turn, Articles 435 and 436 of the CST provide that the negotiators are vested with full powers to reach agreements at the bargaining stage. In case of full or partial agreement on the list of demands, a collective agreement or pact is signed, depending on whether they are unionised or non-unionised workers, and a copy is sent to the Ministry of Labour through the respective inspector. In addition, in case of disagreement on any point in the list of demands, the parties must sign a minute recording the agreements and any remaining differences.

75. In cases where no full agreement has been reached at the bargaining stage, the workers may opt to declare a strike or to submit their decision to an arbitration tribunal, which must be decided by an absolute majority of the workers of the enterprise or of the general assembly of the members of trade unions comprising more than half of those workers, within 10 working days following the end of the bargaining stage by means of a secret, personal and non-delegable ballot, all in accordance with Article 444 of the CST. The strike can only be effective two working days after its declaration and no later than 10 working days after the strike, in accordance with Article 455 (1) of the CST.

76. If the strike lasts for 60 calendar days, the parties must agree on a composition, conciliation or arbitration mechanism to resolve the dispute; otherwise, a Subcommission of the Commission for the Coordination of Wage and Labour Policies must intervene, in accordance with paragraph 4 of Article 448 of the CST.

▶ 2. Collective bargaining coverage and bargaining parties

iv) Workers covered by the collective bargaining framework and excluded categories

77. At the constitutional level, Article 55 of the Colombian Constitution recognises collective bargaining as a fundamental right, except in cases where exceptions are provided for by law. Specifically, the provision states:

> *"The right to collective bargaining to regulate labour relations is guaranteed, with the exceptions provided by law.*
>
> *It is the duty of the State to promote consultation and other means for the peaceful settlement of collective labour disputes".*

78. The CST establishes a broad coverage of collective bargaining, as it does not establish explicit restrictions on who can bargain collectively. This interpretation is reinforced by the definition of collective agreement in Article 467 of the CST, which states that collective bargaining covers trade unions or trade union federations, on the one hand, and one or more employers, on the other.[26] This rule must be read together with Article 353 of the CST, which establishes that employers and workers have the right to associate freely in defence of their interests, a rule that does not establish restrictions as to which workers may not form a trade union organisation. [27]

79. In the public sector, Decree No. 243 of 2024 regulates the right to collective bargaining, stating that it applies to all public employees in all organs, agencies and entities of the State. However, the provision excludes i) workers employed at managerial and advisory levels, ii) official workers, iii) popularly elected public employees or managers elected by Congress, Departmental Assemblies, Municipal and District Councils, iv) as well as uniformed personnel. With regard to official workers, the exclusion is limited in the CST by stating that it only applies to public employees' unions, in accordance with Article 416.

v) The parties to collective bargaining.

80. In defining collective bargaining, Article 467 of the CST establishes that the parties to collective bargaining are the trade unions or trade union federations, on the one hand, and one or more employers, on the other.[28] With regard to trade union organisations, Article 356 of the CST provides that they are classified as i) enterprise unions, when they provide services for the same company, establishment or institution, ii) industry or economic sector unions, when they provide services for several companies in the same branch, iii) guild associations, when they are formed for the same profession, trade or speciality, and, finally, iv) unions, when they are formed by workers of different professions, in accordance with Article 356 of the CST.

81. Article 481 of the CST establishes the possibility of agreements between employers and non-unionised workers, unless there is a trade union organisation that assembles more than one third of the workers in an enterprise.

82. On the other hand, in the public sector, Decree No. 243 of 2024 states that the parties to collective bargaining are one or more competent public entities, bodies or agencies and one or more trade union organisations of public employees with legal personality.[29]

83. Without prejudice to the fact that the parties to collective bargaining are those indicated in the previous paragraphs, it should be noted that Article 446 of the CST indicates that a group of

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26 Article 467 of the Substantive Labour Code states: *"Collective labour agreement is that which is concluded between one or more (employers) or employers' associations, on the one hand, and one or more trade unions or trade union federations of workers, on the other hand, to establish the conditions that will govern employment contracts during their term".*

27 Article 353 of the Substantive Labour Code states: *"1. In accordance with Article 39 of the Constitution, employers and workers have the right to associate freely in defence of their interests, forming professional associations or trade unions; they have the right to unite or federate among themselves.*
2. Professional associations or trade unions shall, in the exercise of their rights and the performance of their duties, comply with the provisions of this Title and shall be subject to the inspection and supervision of the Government as far as public order is concerned.
Workers and employers, without prior authorisation, have the right to form the organisations they deem appropriate, as well as the right to join them on the sole condition that they observe their statutes".

28 Article 467 of the Substantive Labour Code states: *"Collective labour agreement is that which is concluded between one or more (employers) or employers' associations, on the one hand, and one or more trade unions or trade union federations of workers, on the other, to fix the conditions that will govern employment contracts during their term."*

29 Article 2.2.2.2.4.7.

non-unionised workers may declare a strike, i.e. there is a recognition that actors other than trade union organisations may exercise collective labour rights.[30]

vi) Criteria of representativeness and procedures for the recognition of the negotiating parties (including in the case of negotiations with workers' representatives in the absence of a trade union)

84. In the private sector, there is no express regulation establishing a representativeness criterion in regulated collective bargaining at enterprise level. The representativeness criterion is indirectly determined by the requirements for the formation of trade unions. The CST indicates that workers' unions must have a minimum of 25 workers and employers' unions must have a minimum of five employers. Specifically, Article 359 of the CST states that:

> *"Every workers' trade union needs in order to constitute or subsist a number of not less than twenty-five (25) members; and every employers' trade union not less than five (5) {employers} independent of each other."*

85. At the same time, a standard of representativeness is established with regard to the possibility of concluding collective agreements between employers and non-unionised workers, since these can only be signed when there are no unions that assemble more than one third of the workers in a company, in accordance with the provisions of Article 481 of the CST.[31]

86. The legislator regulates the procedure for the recognition of the bargaining parties in collective disputes that may result in the suspension of work or that must be resolved by compulsory arbitration, since in such cases there will be delegations that will submit petitions to the employer. In this context, Article 433 of the CST indicates that there is an obligation to receive the workers' delegates within 24 hours of the submission of the list of demands.

87. In the public sector, Article 2.2.2.2.4.8 of Decree No. 243 of 2024 establishes the possibility to negotiate at a singular level when first degree unions participate, at a territorial level when all public employees in certain territories negotiate, at a sectoral level when all public employees in each sector of the public administration negotiate, and at a national level when all public employees negotiate.

88. However, to determine the number of negotiators and the composition of the unified trade union negotiating committee, a multilevel representativeness criterion is used, whereby the central organisations or confederations represent federations, the federations represent trade unions, and the trade unions represent their members. Furthermore, the number of negotiators is limited to 40 at national level, 25 at sectoral level, 20 at territorial level and 10 at single level. In this context, the legislator establishes a table whereby, at the national level, confederations may use one negotiator for every 10,000 members, with a maximum of 10 negotiators, and federations may use one negotiator for every 5,000 members, with a maximum of 10 negotiators. At the sectoral and territorial level, federations are considered to have one negotiator for every 5,000 members, with a maximum of 10 negotiators, and industry or trade unions have one negotiator for every 2,500 members, with a maximum of 10 negotiators. Finally, at the individual level, distribution will be made in descending order, starting with the organisation with the largest number of members and ending with the organisation with the smallest number of members, without exceeding six representatives per organisation, and where each organisation will have one representative for every 25 members. [32]

89. On the other hand, with regard to the recognition of the negotiating parties in the public sphere, it must be certified by the authority that the trade union organisation is registered in the trade union register of the Ministry of Labour, in accordance with the provisions of numeral 1 of Article 2.2.2.2.4.9 of Decree 243 of 2024.

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30 Article 446 of the Substantive Labour Code states: *"Once the prior direct settlement and conciliation procedures have been completed, if the union or group of non-unionised workers declare a strike, the strike must be carried out in an orderly and peaceful manner".*

31 "The description of the models in relation to collective bargaining is purely informative. These models may not reflect the recommendations of the ILO supervisory bodies on possible compliance with international labour standards. In this regard, please see: "Colombia: Observation (CEACR) - Adoption: 2023, Publication: 112th ILC session (2024), Convention on the Right to Organise and Collective Bargaining, 1949 (No. 98)"

32 See: Articles 2.2.2.2.4.10 and 2.2.2.2.4.11 of Decree No. 243 of 2024.

vii) Specific requirements relating to the conduct of the negotiating parties

90. Regarding trade union organisations, at a general level, the CST establishes that they may not restrict freedom of work, and they are prohibited from influencing trade union membership, allocating social assets for purposes other than the trade union purpose, promoting stoppages except for strikes declared by law or attributable to the employer, promoting campaigns aimed at disregarding legal precepts or acts of legitimate authority, as well as ordering or sponsoring acts of violence against authorities, employers or third parties. [33]

91. Furthermore, in the specific case of strikes, their illegality is established when they involve public services, those that pursue aims other than professional or economic ones, when the direct bargaining procedure was not complied with, when it has not been declared by the general assembly of workers, when it is exercised outside the time limits indicated in the procedure, when it is not peaceful and when it seeks to make the authority carry out an act that is reserved to it. An illegal strike can lead to the dismissal of the workers involved, the loss of the trade union organisation's legal status and compensation for any damage that may have been caused. [34]

92. On the other hand, in relation to the employer's conduct, Article 59 numeral 4 of the CST establishes the prohibition of the employer to limit or put pressure on workers in the exercise of their right of association. In turn, the CST prohibits infringements of the right to trade union association, setting out as examples of infringing acts to influence trade union membership, dismissal for reasons of unionisation, refusal to negotiate with trade union organisations or retaliatory measures, according to Article 354.

93. The employer is also limited in its power to terminate the employment relationship without prior authorisation from a court in the case of union leaders who hold representative positions. Specifically, the CST regulates the privilege of this category of workers in Article 406 (c) and (d), in the following terms:

> *"They are covered by the trade union privilege:*
>
> *(c) The members of the board of directors and sub-directors of any trade union, federation or confederation of trade unions, not exceeding five (5) principals and five (5) alternates, and the members of the sectional committees, not exceeding one (1) principal and one (1) alternate. This protection shall be effective for the duration of the term of office and six (6) months thereafter;*
>
> *d) Two (2) members of the statutory grievance committee, appointed by the trade unions, trade union federations or confederations, for the same period as the board of directors and for a further six (6) months, without there being more than one (1) statutory grievance committee in a company".*

94. In turn, it establishes the obligation for the legislator to receive the workers' delegates within 24 hours of the presentation of the list of demands, and fines can be applied against them if there is a refusal to do so. Specifically, Article 433 of the CST states the following:

> *"1. The employer or the representative is obliged to receive the workers' delegates within twenty-four hours of the timely presentation of the list of demands in order to initiate talks. If the person to whom the statement of demands is presented considers that he or she is not authorised to decide on it, he or she must have it authorised or give notice to the employer within twenty-four hours of the presentation of the statement of demands, notifying the workers accordingly. In any case, the initiation of talks at the direct settlement stage may not be deferred for more than five (5) working days from the submission of the statement of case.*
>
> *2. The employer who refuses or evades initiating the direct settlement talks within the aforementioned term shall be sanctioned by the labour authorities with fines equivalent to the amount of five (5) to ten (10) times the highest monthly minimum wage for each day of delay, in favour of the National Apprenticeship Service (Servicio Nacional de Aprendizaje SENA). In order*

33 Articles 378 and 379 of the CST.

34 Article 450 of the CST.

to file the legal appeals against the fine resolutions, the interested party shall previously deposit the amount of the fine in the orders of the said establishment".

3. Scope and outcomes of collective bargaining

viii) Level of collective bargaining and hierarchy of collective agreements (including information on opt-out rules).

95. There is no systematic regulation on multilevel collective bargaining in the Substantive Labour Code. Notwithstanding this, Article 417 of the CST states that federations and confederations have the same powers as trade unions, except for the declaration of strike action, i.e. there is the possibility for them to bargain collectively.

96. Now, Article 472 of the CST coordinates collective agreements at different levels when there is a government extension of agreements covering two thirds of the workers in an industrial branch in a given economic region, in which case the agreements concluded at enterprise level prevail only when they enshrine better conditions for the workers. Specifically, it states:

> *"1. Where there are collective agreements covering more than two-thirds of the workers in an industrial branch in a given economic region, the Government may extend them, in whole or in part, to the other enterprises in the same industry in that region, which are of the same or similar technical and economic capacity, but provided that in such enterprises there are no agreements enshrining better conditions for the workers.*
>
> *2. For the purposes referred to in the preceding paragraph, the Government may divide the country into economic regions and catalogue the enterprises of equal or similar technical and economic capacity in each branch of industry".*

97. In addition, it is worth noting that Article 473 of the CST limits the possibility of disengagement by stating that once a collective agreement has been signed, the employer continues to be bound by the agreement even if it separates from the union that signed it.

98. In the public sector, Decree No. 243 of 2024 establishes the possibility of bargaining at a singular level when first-degree unions participate, at a territorial level when all public employees in certain territories bargain, at a sectoral level when all public employees in each sector of the public administration bargain, and at a national level when all public employees bargain. In turn, there is some coordination between the different levels by generically setting out the subjects to be addressed depending on the bargaining level. In this regard, Article 2.2.2.2.4.8 of the Decree states:

> *"Collective bargaining shall be Multilevel, which for all purposes of this Chapter shall be conducted as follows:*
>
> *1. The Confederations and/or Trade Union Centres and National Federations of public employees that have unified the list and that meet the appearance requirements set out in Article 2.2.2.2.4.9 of this Chapter shall negotiate at the national level on issues of this nature.*
>
> *2. Federations of public employees or sub-divisions of Confederations or Centrals, depending on the statutory organisation, shall negotiate matters of a regional character with territorial entities such as departments, departmental capitals, capital districts and special districts, and sectoral matters taking into account the administrative organisation of the State.*
>
> *3. Trade unions of public employees of the first grade shall negotiate with their corresponding organ, body, agency, entity or municipality on matters relating to their own affairs.*
>
> *Accordingly, the following areas of negotiation shall be taken into account:*
>
> *2. National level, with effect for all public employees, in which the bargaining process shall involve third-level trade union organisations or trade union confederations or centres representing public employees and national federations of public employees which have unified*

the specifications and which meet the requirements for appearance as set out in Article 2.2.2.4.9 of this Decree, the Ministry of Finance and Public Credit, the Ministry of Labour, the Department of National Planning and the Administrative Department of the Civil Service, representing the national Government, in which a single list containing matters of national competence shall be discussed.

1. Sectoral scope, with effects for all public employees in each sector of the national and territorial public administration, taking into account the administrative organisation of the State.

1. Territorial scope, with effects for all public employees of department, municipalities, capital district and special districts according to jurisdictional competence.

1. Singular scope, with effects for each of the entities, in whose negotiation process the first-degree trade unions shall participate exclusively. In this area, only matters within the competence of the entity's own jurisdiction shall be discussed, as appropriate.

PARAGRAPH 1. When the settlement is aimed at discussing institutional matters that specifically correspond to a body, agency or entity, the negotiation shall take place between each of the administrations and their first-tier public employee trade unions.

PARAGRAPH 2. For the purposes of the application of this Article, at the territorial, sectoral and individual levels, entities shall only engage in collective bargaining with those trade union organisations that have public employees who are members in accordance with the scope of bargaining.

ix) The relationship between collective agreements, the law and individual employment contracts

99. At the constitutional level, the minimum fundamental principle of the most favourable situation for the worker in case of doubts in the application of formal sources of law is enshrined, this being a criterion that regulates the relationship between collective agreements, law and individual employment contracts, according to Article 53 of the Political Constitution of Colombia.

100. In turn, the CST establishes a primacy of legal regulation over contractual stipulations whenever the former are more favourable to workers, as well as that legal provisions are unwaivable. Specifically, Articles 13 and 14 of the CST state:

"Article 13. The provisions of this Code contain the minimum of the rights and guarantees established in favour of workers. Any stipulation that affects or disregards this minimum shall have no effect whatsoever.

Article 14. The legal provisions regulating human labour are of public order and, consequently, the rights and prerogatives granted by them cannot be waived, except in cases expressly exempted by law".

x) Extension of the applicability of collective agreements and clauses *erga omnes*

101. Collective agreements are only applicable to the members of the union that concluded them, to those who adhere to them or to those who subsequently join the union. However, if the union exceeds one third of the workers in the enterprise, the collective agreement extends to all workers in the enterprise regardless of their union membership. Specifically, Articles 470 and 471 of the CST state:

"Article 470. Collective agreements between {employers} and trade unions whose number of members does not exceed one third of the total number of workers in the enterprise are only applicable to the members of the trade union that has entered into them, and to those who join them or subsequently join the union.

1. Where a trade union whose membership exceeds one-third of the total number of the workers of the undertaking is a party to the collective agreement, the provisions of the agreement shall

> *extend to all the workers of the undertaking, whether or not they are members of the trade union.*
>
> *2. The provisions of this Article shall also apply if the number of members of the trade union exceeds the limit indicated after the signing of the agreement.*

102. In turn, there may be a government extension of agreements covering 2/3 of the workers in an industrial branch in a given economic region, in accordance with Article 472 of the CST.

xi) Duration of collective agreements (possibility of ultra-activity or retroactivity)

103. With regard to the duration of collective agreements, the CST establishes that the duration of collective agreements is that established by the parties, however, it is presumed for successive terms of 6 months. Moreover, unless otherwise provided, an automatic extension takes place if within 60 days prior to the expiry of the term neither party expresses its wish to terminate it.[35]

104. The legislator also recognises the ultra-activity of collective agreements when the employer disengage from the employer's organisation or when the trade union is dissolved. In this regard, Articles 473 and 474 of the CST state the following:

> *"Article 473. If, once a collective agreement has been signed, the {employer} separates from the employers' union which concluded it, he nevertheless remains bound to comply with that agreement.*
>
> *Article 474. If the trade union which concluded a collective agreement is dissolved, it continues to govern the rights and obligations of the {employer} and the workers.*

105. Also, Article 479 of the CST recognises the ultra-activity of a collective agreement when it is denounced and as long as a new agreement is not signed.

xii) Collective bargaining subjects (and exclusions)

106. Collective agreements regulate the general conditions of work, and must have as a minimum content their subjective scope of application, the temporal and physical space in which they will govern, their duration, their conditions of extension and termination, as well as the responsibilities for non-compliance.[36]

107. In the public sector, Article 2.2.2.2.4.5 of Decree No. 243 of 2024 establishes as matters for collective bargaining the conditions of employment and the relations between public entities and trade union organisations for the determination of employment conditions. In addition, at the national level, negotiations may be held on wage and benefit aspects. Article 2.2.2.2.4.6 of the Decree excludes from the subjects of negotiation the structure of the State, its management, administrative and supervisory powers, merit in the civil service, the powers of the public authorities, the subordinate authority of the public authority and pension matters.

xiii) Enforcement, evaluation and renegotiation of collective agreements (the role of the labour inspectorate)

108. On the other hand, all collective agreements are subject to review in the event of unforeseeable situations or serious disruptions to economic normality. In turn, in case of discrepancies as to whether the collective agreement falls within the scope of the revision provisions prescribed by law, the labour courts must resolve these disputes, as provided for in Article 480 of the CST.

109. Moreover, as provided for in Articles 475 and 476 of the CST, the trade union organisation is the holder of actions to enforce the collective agreement, as well as the workers in those cases where non-compliance causes individual prejudice. This is consistent with the fact that, at the judicial level,

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35 Articles 477 and 478 of the CST.

36 Article 468 of the CST.

the main public institution involved in collective bargaining is the ordinary jurisdiction in its labour and social security speciality, which has jurisdiction in legal disputes arising from employment contracts, in actions on union privileges, as well as in the suspension, dissolution and liquidation of trade unions. In this regard, Article 2, paragraphs 1, 2 and 3 of the Labour and Social Security Procedural Code states the following:

> *"The Ordinary Jurisdiction, in its labour and social security specialities, hears:*
>
> *1. Legal disputes arising directly or indirectly from the employment contract.*
>
> *2. Actions concerning trade union privileges, whatever the nature of the employment relationship.*
>
> *3. The suspension, dissolution, liquidation of trade unions and the cancellation of trade union registration".*

110. In addition, at the administrative level, the Ministry of Labour has the role of monitoring and sanctioning the rules of the Substantive Labour Code, which also includes rules on trade union organisations and collective bargaining, in accordance with the provisions of Article 485 of the CST.

▶ 4. Methods of preventing and resolving collective bargaining-related disputes

xiv) Dispute prevention methods applicable to collective bargaining

111. Any collective dispute may be submitted to voluntary arbitration by agreement of the parties, in accordance with Article 452 of the CST. In addition, Article 7 of Law No. 2.220 of 2022 establishes that all matters susceptible to transaction, waiver or where the holder has the capacity to dispose and, in matters of a labour and social security nature, that do not affect certain and undisputed rights, may be conciliated.

112. On the other hand, Article 139 of the Code of Labour and Social Security Procedure provides that collective agreements may establish permanent arbitration tribunals or commissions.

113. In the public sphere, it is established that a bipartite commission composed of government representatives and trade union representatives, acting under the rules and schedule determined by them, must be set up to monitor the implementation and enforcement of a collective agreement. This bipartite commission is responsible for setting deadlines for compliance with the agreements reached and determining the causes of non-compliance. Specifically, Article 2.2.2.2.4.18 of Decree No. 243 of 2024 states the following:

> *"A bipartite committee shall be formed to monitor the implementation and fulfilment of all collective agreements, regulated as follows:*
>
> *1. A bipartite monitoring committee shall be formed for each area of negotiation, for each of the agreements entered into.*
>
> *2. The Committee shall be composed of one quarter of the same public employees representing the Government and one quarter of the trade union representatives who were involved as negotiators of the collective agreement. In any event, only the trade union organisations that have signed the respective collective agreement may participate.*
>
> *3. Trade union delegates may be chosen by consensus among the trade union negotiators themselves, within their trade union autonomy; if this is not possible, the appointment shall be made objectively in proportion to the number of representatives at the bargaining table.*
>
> *4. The Committee shall be established within thirty (30) working days following the signing of the National Collective Bargaining Agreement, shall appoint three (3) technical secretaries for each of the parties, and shall adopt regulations and a timetable for the implementation of the collective agreement;*

5. At the beginning of each working session, the Committee shall sign brief and precise minutes and shall evaluate the development of the compliance schedule.

6. In the event of non-compliance, the Committee shall personally summon the responsible entities and civil servants to agree on compliance deadlines, clarifying the causes that gave rise to the situation. Within the framework of their autonomy, the trade union organisations may take other actions to ensure compliance with the agreements.

7. The representatives of public employees shall enjoy the guarantees of trade union leave to attend monitoring activities."

xv) Dispute resolution methods applicable to collective bargaining

114. In cases where the direct bargaining stage is concluded and the parties have not reached full agreement, a strike may be declared or the dispute may be submitted to an arbitration tribunal, in accordance with the first paragraph of Article 444 of the CST.

115. Furthermore, the arbitration procedure will be mandatory in collective disputes in essential public services that cannot be settled by direct settlement, in accordance with Article 452 of the CST. It should be noted that public services are understood as organised activities that tend to satisfy needs of general interest on a regular and continuous basis and where the exercise of strike action is prohibited, in accordance with Article 430 of the CST.[37]

116. In the public sphere, if the negotiations of the strike list are extended for a period exceeding 20 working days or the extension by mutual agreement for the same period of time, the parties may turn to a mediator on those points that they do not agree on. The mediator will propose justified compromise formulas that consult equity, legal order and the constitutional criterion of fiscal sustainability, which may not be accepted or may be accepted in whole or in part by the parties. [38]

xvi) Resolution of disputes related to the right to strike

117. The strike must be effective between the second and tenth working day after its declaration. During the strike, the workers may submit the dispute to arbitration or the parties may hold negotiations directly or with the intervention of the Ministry of Labour and Social Security, in accordance with Article 445 of the CST.

118. During the course of the strike, the leaders of the movement may set up a Strike Committee to serve as an information and communication agent with the employers, in accordance with Article 447 of the CST.

119. Moreover, by decision of the absolute majority of the workers of the company or, failing that, of the workers in the general assembly, during the strike, it can be decided to submit the differences to an arbitration decision, thus putting an end to the strike. Furthermore, if the strike lasts for 60 calendar days, the parties must agree on a composition, conciliation or arbitration mechanism to put an end to the dispute; otherwise, a sub-commission of the Commission for the Coordination of Wage and Labour Policies must intervene. Specifically, Article 448 paragraphs 3 and 4 of the CST states:

"Once a strike has been declared, the union or unions that represent the majority of the workers in the company or, failing that, of the workers in general assembly, may submit to a vote of all the workers in the company whether or not they wish to submit the persistent differences to arbitration. If an absolute majority of them opt for the tribunal, work shall not be suspended or shall be resumed within a maximum of three (3) working days of being suspended.

37 "The description of the models in relation to collective bargaining is purely informative. These models may not reflect the recommendations of the ILO supervisory bodies on possible compliance with international labour standards. In this regard, please see: "Colombia: Observation (CEACR) - Adoption: 2023, Publication: 112th ILC session (2024), Convention on the Right to Organise and Collective Bargaining, 1949 (No. 98)"

38 Article 2.2.2.2.4.14 of Decree No. 243 of 2024.

4. When a strike lasts for sixty (60) calendar days without the parties finding a solution to the conflict that gave rise to it, the employer and the workers may, during the following three (3) working days, agree on any mechanism of composition, conciliation or arbitration to put an end to the differences.

If within this period the parties are unable to agree on a settlement or to establish an alternative composition mechanism for the solution of the conflict that distances them, a sub-commission of the Commission for the Agreement on Wage and Labour Policies shall intervene, either ex officio or at the request of a party, in accordance with the provisions of Article 9 of Law 278 of 1996.

This sub-commission shall exercise its good offices for a maximum period of five (5) working days from the working day following the expiry of the three (3) working day period referred to in this Article. This period shall be peremptory and shall run even if the Commission does not intervene. If after five (5) working days it is not possible to reach a definitive solution, both parties shall request the Ministry of Social Protection to convene the arbitration tribunal. Once the Arbitration Tribunal has been convened, , the workers shall be obliged to resume work within a maximum of three (3) working days.

Without prejudice to the foregoing, the permanent commission for the agreement of wage and labour policies may exercise the function indicated in Article 9 of Law 278 of 1996".

5. Relevant statistical data

xvii) Trade union density

120. According to ILOSTAT, the unionisation rate in Colombia in 2019 was 4.7 per cent, with a downward trend since 2013.[39] No updated official statistics were found.

xviii) Coverage of collective agreements

121. According to ILOSTAT, the collective bargaining agreement coverage rate in Colombia in 2016 was 15.7 per cent. [40] No official statistics could be found on the current coverage of collective agreements in Colombia.

39 ILOSTAT Data Explorer

40 ILOSTAT Data Explorer

Ecuador ▶▶▶▶

▶ 1. General context of collective bargaining

i) National regulatory framework for collective bargaining

122. Collective bargaining in Ecuador is mainly regulated by the Constitution of the Republic of Ecuador and the Labour Code. At the constitutional level, the rules guaranteeing the right to organise, the right to collective bargaining and the right to strike. Regarding the right to organise, this can be exercised without prior authorisation and includes the right to form, join and disaffiliate from trade union or employers' organisations. With regard to the right to collective bargaining, the constitution allows it to be limited in the cases established by law. Finally, in the case of strike action, its exercise is recognised for workers and employers, as well as their organisations, with a prohibition for certain activities.[41]

123. Ecuador has also ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). This is relevant because the Constitution of the Republic of Ecuador establishes that these conventions prevail over the domestic legal framework in those rights that are more favourable, in addition, international treaties have a supra-legal hierarchy. [42]

124. At the legal level, collective bargaining is mainly regulated in the Labour Code, specifically in Title II: Collective Labour Contract and Title V: Workers' Associations and Collective Disputes.

ii) Roles of public institutions

125. According to Article 538 of the Labour Code, the authorities and bodies in charge of the enforcement of labour standards correspond mainly to the Ministry of Labour and Employment, the Regional Labour Directorates, the Labour Mediation Directorates and sub-directorates, the Labour Courts, second instance and cassation courts and the Conciliation and Arbitration Courts.

126. At the administrative level, the Labour Inspectors are competent to receive the draft collective agreement and to notify the employer, in accordance with Article 223 of the Labour Code. Likewise, Article 6 of the Ministerial Agreement No. MDT-2024-080 provides that they must supervise the development of the negotiation process, referring the proceedings to the Labour Mediation Directorate of the Ministry of Labour in case of lack of agreement within the 30-day period to carry out the negotiation. [43] Finally, the collective bargaining agreement is signed before the Regional Labour Director or the Labour Inspector, who also keeps one of the copies of the collective agreement.[44]

127. In turn, according to Article 225 of the Labour Code, once the 30-day period for the negotiation of a collective agreement has elapsed, the matter must be submitted to the Conciliation and Arbitration Tribunal. This tribunal shall be presided over by the labour inspector, as provided for in Article 474 of the Labour Code. On the other hand, the Regional Labour Directorates are competent to intervene directly in collective contract review processes when the parties fail to reach an agreement.[45]

128. There is also the intervention of several administrative bodies when collective agreements become binding. First of all, the enforceability is determined by Executive Decree, as provided for in

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41 Article 326 paragraphs 7, 13 and 14 of the Constitution of the Republic of Ecuador.

42 Articles 424 and 425 of the Constitution of the Republic of Ecuador.

43 Article 6 of Ministerial Agreement No. MDT-2024-080 states:
"Of the Negotiation. Once the period of fifteen (15) fifteen days has elapsed and in accordance with the provisions of the previous Article, the parties shall proceed to negotiate the Collective Bargaining Agreement or its revision, within thirty days, which may be extended by mutual agreement of the parties by notifying the Labour Inspector who took cognizance within a maximum period of thirty (30) days. At the end of this period, the Labour Inspector shall refer the matter to the Directorate of Labour Mediation of the Ministry of Labour, which shall convene the parties to begin negotiations".

44 Article 236 of the Labour Code.

45 Article 248 of the Labour Code.

Article 252 of the Labour Code.[46] For this, an application must be submitted to the Ministry of Labour and Employment, which will use the Regional Labour Directorate to determine whether it has been concluded by two thirds of both employers and workers organised within the same branch of industry and in a given province, and then order its publication. [47]

129. It should be noted that the Labour Inspector must also receive reasoned objections to the declaration of the binding nature of a collective bargaining agreement, in accordance with Article 254 of the Labour Code[48] . This opposition will be heard by the Regional Labour Directorate, which will issue its opinion to the Ministry of Labour and Employment, in accordance with Article 256 of the Labour Code.[49]

130. The labour authority also plays a role in cases of strike. Specifically, the Labour Inspectorate must draw up an inventory report drawn up jointly with the parties and then a hand-over report when the strike is over. Furthermore, Article 499 of the Labour Code states:

> *"Once a strike has occurred, the police shall take the necessary measures to maintain order, guarantee the rights of both employers and workers, and prohibit agitators or strikebreakers from entering workplaces.*
>
> *Once the strike has been declared, the labour inspector shall proceed to draw up a record of the inventory together with the parties and, at the end of the strike, shall also draw up a record of the handing over and reception of the goods.*

131. Likewise, when the parties do not reach an agreement on minimum services, the Ministry of Labour and Employment will determine them, in accordance with Article 515 of the Labour Code.[50]

132. At the judicial level, the labour courts also have jurisdiction in collective dispute resolution, according to an overall reading of Articles 242 and 565 of the Labour Code.

iii) Procedures and mechanisms to facilitate collective bargaining (including the procedure for registration of collective agreements)

133. According to Article 220 of the Labour Code, a collective bargaining agreement may be concluded between one or more employers, or employers' associations, and one or more legally constituted workers' organisations. Its purpose is to establish the basis on which individual employment contracts are to be concluded between employers and workers represented by such organizations. The collective bargaining process is initiated when a workers' organisation submits a draft collective agreement to the Labour Inspectorate, which notifies the employer within 48 hours. [51]

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46 Article 252 of the Labour Code states: *"When the collective agreement has been entered into by two-thirds of both employers and workers organized within the same branch of industry and in a given province, it shall be binding on all employers and workers in the industry and province concerned, if so resolved by Executive Decree, issued in accordance with the following Articles."*

47 Article 253 of the Labour Code.

48 Article 254 of the Labour Code states: *"Within fifteen days of the publication of the application, any employer, worker or group of employers or workers belonging to the same industry in the province concerned may file a reasoned opposition against the compulsory application of the contract with the labour inspector, who shall refer it to the Regional Labour Directorate for the purposes of Article 256 of this Code."*

49 Article 256 of the Labour Code states: *"If, within the above-mentioned period, opposition is filed by the employers or workers of the industry or province concerned, it shall be heard by the Regional Labour Directorate, with a hearing of the opponents and representatives of the signatories of the collective contract. The authority hearing the case shall submit its opinion to the Minister of Labour and Employment, who shall decide on the matter in the light of the circumstances. If the opposition proves to be unfounded, the President of the Republic shall issue the corresponding decree declaring the collective bargaining agreement binding".*

50 Article 515 of the Labour Code states: *"Within forty-eight hours of receipt by the employer of the notification referred to in the previous Article, the parties shall agree on the modalities for the provision of minimum services to be maintained during the strike with the permanence at work of a number of workers not less than twenty per cent of the staff, in order to meet the essential needs of users and to safeguard the facilities, assets and property of the company, which require maintenance and attention. In the agricultural sector, only during the harvesting or collection of fruits, and in the commercial or industrial sectors, in the latter case only in relation to perishable products held by the employers at the date of the declaration of strike; these shall be harvested, collected or withdrawn, as the case may be, for marketing or export.*
For the purposes indicated in the preceding paragraph, if the workers refuse to carry out the work necessary for the fulfilment of the aforementioned, the employer may hire substitute personnel, solely for these purposes.
In the absence of agreement, the modality of the provision of the minimum services shall be established by the Ministry of Labour and Employment, through the respective regional labour directorates, which for this purpose may, in each case, carry out the consultations it deems necessary with specialised bodies".

51 Article 223 of the Labour Code.

134. Bargaining must begin within 15 days of the employer's notification and must be concluded within a maximum of 30 days, unless the parties agree to an extension.[52] The conclusion of a collective bargaining agreement must be made in writing before the Regional Labour Director or an inspector, in accordance with Article 236 of the Labour Code.

135. If after 30 days the parties are unable to reach an agreement, they shall submit the matter to a conciliation and arbitration tribunal, in accordance with Article 225 of the Labour Code. If there is no agreement between the parties on the claim, the President of the Conciliation and Arbitration Tribunal shall summon the parties and their respective members to a conciliation hearing, which shall be held within 48 hours.[53] If the conciliation does not take place, the Tribunal shall grant a period of six days for enquiries, and the parties may present their proposals on points of disagreement, and once this period has expired, the Tribunal shall resolve the matter in dispute within three days. [54]

136. According to Article 497(1) of the Labour Code, the declaration of strike is also understood as a stage in the collective bargaining procedure, as it can be exercised by the workers in the event of the employer's refusal to comply with the list of demands. [55]

2. Coverage of collective bargaining and bargaining parties

iv) Workers covered by the collective bargaining framework and excluded categories

137. At the constitutional level, the broad nature of the rules guaranteeing the right to organise and the right to collective bargaining stands out. In particular, Article 326 paragraphs 7 and 13 of the Constitution of the Republic of Ecuador states:

> *"The right to work is based on the following principles:*
>
> *7. The right and freedom of organisation of workers shall be guaranteed, without prior authorisation. This right includes the right to form trade unions, guilds, associations and other forms of organisation, to join those of their choice and to freely disaffiliate. Similarly, the organisation of employers shall be guaranteed.*
>
> *13. Collective bargaining between workers and employers shall be guaranteed, with the exceptions established by law.*

138. The conceptualisation of the collective contract in Article 220 of the Labour Code establishes that its purpose is to establish the conditions or bases on which the individual contracts of employers and workers represented by the organisations and determined in the pact shall be concluded, also covering the workers of an entity or enterprise who are not unionised. In addition, the collective contract must include the number of workers who are members of the trade union and the number of workers who provide their services to the employer at the time the agreement is concluded. [56]

139. Thus, we can argue that the workers covered by collective bargaining will be all those who are part of the trade union, as well as those who are part of the entity or company and are not unionised.

140. Moreover, in those cases in which the collective agreement has been concluded by the two-thirds of employers and workers organised within the same branch of industry and in a given province, it will be binding for all employers and workers of such industry and territory when so resolved by Executive Decree, this being a case of extension of the coverage of a collective instrument. [57]

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52 Article 224, first paragraph of the Labour Code.

53 Article 230 of the Labour Code states:
"On expiry of the time limit for replying if no reply has been made or if the reply is negative or partially favourable to the claimants' petition, the President of the Conciliation and Arbitration Tribunal shall summon the parties and the members, indicating the day and time for the conciliation hearing, which shall be held within forty-eight hours thereafter.
The provisions of Articles 476, 477 and 478 of this Code shall be observed for the conciliation hearing.

54 Article 231 of the Labour Code.

55 Article 497 numeral 1 of the Labour Code states:
"Workers may declare a strike in the following cases:
1. If the employer, having been notified with the list of demands, does not reply within the legal term, or if the reply is negative."

56 Article 240 of the Labour Code.

57 Article 252 of the Labour Code.

141. Regarding the category of excluded workers, the Labour Code, in its Article 247, excludes representatives or officials who hold managerial or administrative positions in entities with social or public purposes or that receive state or municipal financing.

142. The Organic Law on Public Enterprises excludes from the possibility of collective bargaining freely appointed and removed public servants and those holding executive, managerial, representative, managerial, advisory, trust, general proxy, consultant and career public servants positions.[58] In the same vein, collective bargaining shall not be open to representatives, agents or senior officials of State Institutions and Entities and Decentralised Autonomous Governments and, in general, to any State employee regulated by the Organic Law on Public Servants, in accordance with the provisions of Article 11 of Ministerial Agreement No. DT-2024-080.

v) The parties to collective bargaining

143. In defining collective bargaining, Article 220, paragraph 1 of the Labour Code states that the parties to collective bargaining are one or more employers or employers' associations and one or more legally constituted workers' associations. The legislator makes a distinction between the public sector and the private sector for the purpose of determining the parties to collective bargaining. In the private sector, collective agreements must be concluded with the works council and, in cases where there is no works council, with the association with the largest number of members, provided that it has more than 50 per cent of the workers in the enterprise. On the other hand, in the case of the public sector, the collective bargaining agreement must be concluded with a single central committee that represents at least 50 per cent of those workers, in accordance with Article 221 of the Labour Code.[59]

144. According to Article 459 of the Labour Code, the Works Council is allowed in establishments with 30 or more workers.

vi) Criteria for representativeness and procedures for recognition of bargaining parties (including in the case of bargaining with workers' representatives in the absence of a trade union)

145. According to Article 221 of the Labour Code, in the private sector, collective agreements must be concluded with the works council and, in cases where there is no works council, with the trade union with the largest number of members, provided that it has more than 50 per cent of the workers in the enterprise. Works councils will exist in establishments with 30 or more workers, in accordance with Article 459 of the Labour Code. On the other hand, in the case of the public sector, the collective agreement must be concluded with a single central committee representing at least 50 per cent of such workers.

146. In the case of mandatory collective agreements, it is required that the agreement is concluded by two-thirds of employers and workers organised in the same branch of industry and in the same province. [60]

147. With regard to the recognition of the negotiating parties, the capacity of the workers' representatives will be justified by the statutes and by legal appointment, whereas the employers will have their representation justified by the rules of ordinary law, in accordance with Article 222 of the Labour Code.

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58 Article 26 of the Organic Law on Public Enterprises of 16 October 2009.

59 Article 221 of the Labour Code states:
"In the private sector, the collective labour contract shall be concluded with the works council. If this does not exist, with the association that has the largest number of affiliated workers, provided that it has more than fifty per cent of the company's workers. In state institutions, entities and enterprises of the public sector or in those of the private sector with a social or public purpose, the collective contract shall be signed with a single central committee made up of more than fifty per cent of the said workers. In any case, their representatives may not exceed fifteen principal representatives and their respective substitutes, who shall accredit the aforementioned majority will, with the presentation of the document containing the full names and surnames of the workers, their signatures or fingerprints, citizenship or identity card number and place of work".

60 Article 252 of the Labour Code.

vii) Specific requirements relating to the conduct of the negotiating parties

148. Firstly, the employer's obligations include respect for workers' associations, respect for the functions exercised due to these positions and the obligation to facilitate internal propaganda in favour of the association, in accordance with Article 42 paragraphs 10, 11 and 28 of the Labour Code. Also, Article 44, letters *f* and *j*, of the Labour Code prohibits the employer from influencing trade union membership or the exercise of workers' rights within the enterprise. Furthermore, the legislator prohibits the dismissal of stable or permanent workers as soon as a draft collective agreement is presented and for the duration of collective bargaining. The penalty for non-compliance with this obligation will be a 12-month severance payment, to be added to any other severance payments that may be due.[61]

149. This prohibition of dismissal is also contemplated for those workers who exercised the right to strike, who may not be dismissed for a period of one year[62] , except in the case of the grounds contemplated in Article 172 of the Labour Code.[63] Regarding the exercise of the right to strike, the legislator prohibits the resumption of work through substitute workers, in accordance with Article 501 of the same Code.

150. Also, in the context of strike action, but in relation to conduct requirements for workers, Article 513 of the Labour Code provides that strikes shall be considered unlawful when acts of violence are carried out against persons or property, in which case workers may be dismissed. Generally, workers may also not declare the exercise of the right to strike during the compulsory bargaining phase. [64]

151. Finally, Article 326 numeral 15 of the Constitution of the Republic prohibits strikes in health services, environmental sanitation, education, justice, firefighters, social security, electricity, drinking water and sewage, hydro-carbon production, processing, transport and distribution of fuels, public transportation, post and telecommunications and, on the other hand, Article 514 of the Labour Code establishes that the declaration of strike by certain institutions and enterprises providing services of social or public interest may not suspend work until 20 days after the employer has been notified of the declaration of strike and must maintain the provision of minimum services.

3. Scope and outcomes of collective bargaining

viii) Level of collective bargaining and hierarchy of collective agreements (including information on opt-out rules)

152. There is no systematic regulation of multilevel collective bargaining in the Labour Code, but there are manifestations of multilevel collective bargaining in some parts of the Labour Code. Firstly, it establishes the freedom of association of workers in trade unions, which in turn have the right to form federations, confederations or any other trade union grouping.[65] This is relevant, since the legislation's conceptualisation of the collective contract refers to the possibility that such an instrument may be concluded by several workers' associations. Specifically, Article 220 of the Labour Code states:

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61 Article 233 of the Labour Code.

62 Article 503 of the Labour Code.

63 Article 172 of the Labour Code states:
"The employer may terminate the employment contract, subject to prior approval, in the following cases:

1. for repeated and unjustified failure to be punctual or to attend work or for abandonment of work for a period of more than three consecutive days, without just cause and provided that such causes have occurred within a monthly period of work;
2. For serious indiscipline or disobedience to legally approved internal regulations;
3. For lack of probity or immoral conduct on the part of the employee;
4. For serious insults to the employer, his or her spouse or common-law partner, ascendants or descendants, or his or her representative;
5. For manifest ineptitude on the part of the worker, with respect to the occupation or work for which he/she undertook;
6. By unjustified complaint against the employer in respect of his Social Security obligations. However, if the complaint is justified, the stability of the worker shall be assured, for two years, in permanent jobs; and,
7. For not complying with the safety, prevention and hygiene measures required by law, by its regulations or by the competent authority; or for contravening, without due justification, the prescriptions and medical opinions.
8. For committing violence and harassment at work, either individually or in coordination with other individuals, towards a co-worker, towards the employer or towards a subordinate in the company.
Prior to the request for approval, a conciliation procedure shall be initiated by the competent labour authority, in which, in addition to the interested party, the representatives of the workers and the employer or his representative shall be heard.

64 Article 471 of the Labour Code.

65 Article 440 of the Labour Code.

> *"Collective contract or collective agreement is the agreement concluded between one or more employers or employer associations and one or more legally constituted workers' associations, for the purpose of establishing the conditions or bases according to which the individual employment contracts determined in the agreement are to be concluded in the future between the same employer and the workers represented by the contracting association.*
>
> *The collective agreement covers all the workers of an entity or enterprise without discrimination of any kind, whether or not they are unionised".*

153. The possibility that a collective agreement may be concluded at several levels is also deduced from Article 238 of the Labour Code, which provides that the collective instrument must indicate the enterprises, establishments or units it covers.

154. Furthermore, in those cases where the collective agreement has been concluded by two thirds of employers and workers organized within the same branch of industry and in a given province, it will be binding on all employers and workers in that industry and territory when so resolved by Executive Decree, this being another manifestation of the multilevel regulation of collective bargaining. [66]

155. The Labour Code only refers to the hierarchy between collective instruments when regulating the compulsory collective contract, indicating that it prevails over another collective contract, except when these establish stipulations that are more favourable.[67] Although there is no specific provision on the rules of uncoupling, Article 241 of the Labour Code allows for the temporary suspension of collective agreements for reasons not foreseen or attributable to the employer.

156. In turn, in cases where a collective agreement is revised, as provided for in Article 248 of the Labour Code, an employer may not accept the reform of the collective agreement, in which case it will withdraw from the collective agreement and be obliged to conclude a collective agreement with its workers. Similarly, Article 249 of the Labour Code states:

> *"Once the contract has been revised, if any of the employers does not accept the reform, it may separate, being obliged to enter into a collective contract with its workers."*

ix) The relationship between collective agreements, the law and individual employment contracts

157. First, the Labour Code establishes the pre-eminence of collective agreements over individual contracts, the latter being hierarchically superior, in accordance with Article 244 of the Labour Code.

158. However, the Labour Code expressly establishes that workers' rights are unwaivable, indicating that stipulations to the contrary are null and void. In this sense, legislation takes precedence over individual and collective contracts in all matters that imply a waiver of labour rights, in accordance with Article 4 of the Labour Code.

159. Finally, mandatory contracts for a specific branch and province prevail over individual and collective company contracts, unless the provisions of the latter are more favourable to the worker, in accordance with Article 257 of the Labour Code.

x) Extension of applicability of collective agreements and *erga omnes* clauses

160. The stipulations of a collective agreement extend to all workers of the enterprise, regardless of their trade union affiliation, according to the Article 220 of the Labour Code.

161. With regard to the coverage of the collective agreement, the Labour Code states that the collective agreement itself shall indicate the enterprises, establishments or units covered by the application of the collective agreement and the workers serving the employer at the time of the conclusion of the agreement.[68] Finally, if a collective agreement is concluded by two-thirds of employers and workers organized within the same branch of industry and in a given province, it shall be binding on all employers and workers in that industry and territory when so decided by Executive Decree. Article 252 provides as follows:

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66 Article 252 of the Labour Code.

67 Article 257 of the Labour Code.

68 Articles 238 and 240 of the Labour Code.

> *"Binding nature of collective agreement. Where the collective agreement has been entered into by two-thirds of both employers and workers organized within the same branch of industry and in a particular province, it shall be binding on all employers and workers in the industry and province concerned, if so resolved by Executive Decree, issued in accordance with the following Articles".*

xi) Duration of collective agreements (possibility of ultra-activity or retroactivity)

162. The Labour Code establishes that collective agreements may be for a fixed term, indefinite term or for the duration of a specific undertaking or work.[69] In addition, all collective agreements may be reviewed in whole or in part within the term agreed in the agreement itself, but if nothing is established, either party may propose a review every two years. If the request for revision comes from the workers' organisation, the contract shall be revised to the extent that it represents more than 50 per cent of the totality of the workers affected by the contract. If it is requested by the employer, it will be granted when this or these employers have more than 50 per cent of the total number of workers affected by the contract in their service. [70]

163. With regard to collective contracts declared compulsory for a given branch and province, the Labour Code provides that the President of the Republic shall determine the term of the compulsory contract, which may not exceed two years. It shall be understood to be extended for the same period if three months before its expiry the majority of employers or workers do not express their will to terminate the contract, in accordance with Article 259.

164. There is no express regulation on the retroactivity of collective instruments, however, Article 224 of the Labour Code provides for ultra-activity by incorporating collective contracts into the individual contracts of each worker:

> *"The terms of the collective contract shall be understood to be incorporated into the individual contracts concluded between the employer(s) and the workers involved in the collective. Consequently, if the stipulations of such individual contracts contravene the terms of the collective contract, the latter shall govern, whatever the terms agreed in the individual contracts.*

xii) Collective bargaining subjects (and exclusions)

165. The regulation of the content of the collective bargaining agreement covers the subjects to be covered by a collective agreement, namely the working hours, the amount of remuneration, the intensity and quality of work, breaks and holidays, family allowances and other conditions to be agreed upon by the parties, in accordance with Article 237 of the Labour Code.

166. On the other hand, the legislator excludes certain matters in collective bargaining in the public sphere, prohibiting privileges and benefits that are considered exaggerated and against the general interest, such as (i) the payment of compensation for untimely dismissal whose amount exceeds the limit established in the Constitution; (ii) the stipulation of holiday pay and thirteenth and fourteenth remuneration in amounts exceeding the legal limit; (iii) holidays and rest days, as well as the payment of family allowances and other conditions agreed upon by the parties, in accordance with Article 237 of the Labour Code; iii) holidays and days of compulsory rest not established by law; iv) additional days and holidays outside those indicated in the Labour Code; v) calculation of overtime or overtime without considering the full week below 240 hours per month; vi) the amounts corresponding to indemnities for voluntary resignation for the retirement of public workers shall be calculated in accordance with Constituent Mandate No. 2. 2.[71]

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69 Article 239 of the Labour Code.

70 Article 248 of the Labour Code.

71 Article 224 of the Labour Code.

xiii) Enforcement, evaluation and renegotiation of collective agreements (the role of the labour inspectorate)

167. As already mentioned, and in accordance with the provisions of Article 248 of the Labour Code, all collective bargaining agreements can be revised in whole or in part. If it is for a fixed term, it will be reviewed at the end of the agreed term. Otherwise, it may be reviewed every two years at the request of either party. If the request for revision comes from the workers' association, the contract shall be revised to the extent that it represents more than 50 per cent of the totality of the workers affected by the contract. If it is requested by the employer, it will be granted if the employer or employers have more than 50 per cent of all the workers affected by the contract in their service.

168. On the other hand, in case of breach of the collective bargaining agreement by one of the parties, the provisions of the collective bargaining agreement shall apply and, if nothing is stated in the agreement, the complaining party may choose to terminate the agreement or demand its fulfilment with damages, in accordance with Article 251 of the Labour Code.

169. With regard to mandatory collective contracts, Article 258 of the Labour Code states that the President of the Republic shall determine the term of the mandatory contract and the contract shall be deemed to be extended for an equal period if, three months before its expiry, the majority of employers or workers do not express their will to terminate the contract. In this context, Article 259 determines that, within this three-month period, a revision of the compulsory collective agreement is permitted at the request of two-thirds of the workers and employers, which may also be carried out at any time, provided that there are economic conditions that justify it.

170. It should be noted that in cases where no agreement is reached in the revision or renegotiation of a compulsory collective agreement, its validity will be terminated, and employers and workers will be free to agree on new working conditions in each company. [72]

▶ 4. Methods of preventing and resolving collective bargaining-related disputes

xiv) Dispute prevention methods applicable to collective bargaining

171. Article 42 of the Labour Code establishes an obligation for the employer to agree on grievance procedures and the constitution of a workers' and employers' committee. Specifically, numeral 26 of the Article states:

> *"The employer has the following obligations:*
>
> *To agree with the workers or with the representatives of the majority association of them, the procedure for complaints and the constitution of the employer-worker committee, except in cases of violence and harassment at work, where it shall proceed with the corresponding legal procedure, and before the competent labour authority.*
>
> *The conduct reported as violence and harassment at work shall be assessed by the labour authority, according to the circumstances of the case and the seriousness of the conduct reported, trying to avoid any process of re-victimisation, which violates the right to the presumption of innocence, the right to a good name and reputation of persons, among others.*
>
> *The competent authority shall assess the circumstances in accordance with their capacity to subject a worker to pressure in order to provoke his marginalisation, resignation or abandonment of his job".*

172. This is in line with Article 326 of the Constitution of the Republic of Ecuador, which encourages social dialogue as a means of resolving labour disputes and formulating agreements.

173. In the event of any collective conflict between the employer and the workers, the latter have the right to submit a document with concrete demands to the respective labour inspector, who will notify the

72 Article 260 of the Labour Code.

employer within 24 hours, so that the employer may reply within three days.[73] If the employer does not reply or its response is not entirely favourable to the workers' requests, a mandatory mediation stage will be opened before the Directorate or Sub-Directorate of Labour Mediation for a period of 15 days, which may be extended at the joint request of the parties, in accordance with Article 470 of the Labour Code. The provision also establishes that in the event that no agreement is reached between the parties, a report shall be sent to the labour inspector who heard the petition, who shall submit the dispute to the Conciliation and Arbitration Court, in accordance with the provisions of Article 472 of the Labour Code.

xv) Dispute resolution methods applicable to collective bargaining

174. The Constitution of the Republic of Ecuador states that collective labour disputes shall be submitted, at all levels, to conciliation and arbitration tribunals. Specifically, Article 326, numeral 12, of the Constitution of the Republic of Ecuador prescribes:

> *"The right to work is based on the following principles:*
>
> *12. Collective labour disputes, in all their instances, shall be submitted to conciliation and arbitration tribunals".*

175. This means that, if after the 30-day period for the parties to negotiate there is no agreement on the entire contract, the matter will necessarily be submitted to the knowledge and resolution of the Conciliation and Arbitration Court, this in accordance with the provisions of Article 225 of the Labour Code. If there is no agreement between the parties, the president of the Conciliation and Arbitration Tribunal shall summon the parties and their respective members to a conciliation hearing, which shall be held within 48 hours, in accordance with Article 230 of the Labour Code. Finally, as provided for in Article 231 of the Labour Code, if conciliation does not take place, the Tribunal shall grant a period of six days for enquiries, and the parties may submit their proposals on points of disagreement.

xvi) Resolution of disputes relating to the right to strike

176. Pursuant to Article 471 of the Labour Code, it is impossible to strike until the compulsory mediation procedure regulated in Article 470 of the Labour Code and described in the section "Dispute prevention methods applicable to collective bargaining" has been exhausted.

▶ 5. Relevant statistical data

xvii) Trade union density

177. According to data from the Ministry of Labour, as of 2022 there were 5,783 trade union organisations representing 312,748 workers. No official national statistical information on union density is available. However, information provided by the Government on the application of ratified conventions to the Committee on the Application of Standards of the 2022 International Labour Conference indicated a unionisation rate of 3.65 per cent.[74]

178. Also, according to the Annual Labour Statistics Bulletin 2022 issued by the Ministry of Labour, as of December 2022, 5,835 trade union organisations were registered.[75]

xviii) Coverage of collective agreements

179. Although there is no official information on the coverage of collective agreements, the Ministry of Labour reported that a total of 99 collective labour contracts were signed and registered in Ecuador during 2023. Of these, 28 contracts correspond to the private sector, and 71 contracts correspond to the public sector. [76]

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73 Article 468 of the Labour Code.

74 CAN/D/Ecuador-C.87, Information on the application of ratified conventions provided by governments in the list of individual cases, International Labour Conference, 110th Session, Geneva, 2022.

75 Please see: Bulletin 2022 of the Ministry of Labour, page 37, see: trabajo.gob.ec/wp-content/uploads/2024/01/Boletin-Anual-2022-1_compressed.pdf

76 Please see: Presentation of Results Central Plant of the Ministry of Labour, 7 March 2024, p. 6. See: https://www.trabajo.gob.ec/wp-content/uploads/2024/03/PPT-PLANTA-CENTRAL-7-03-2024.pdf.

Peru

1. General context of collective bargaining

i) National regulatory framework for collective bargaining

180. Collective bargaining in Peru is regulated at the constitutional level and by legal provisions. At the constitutional level, there is recognition of the various manifestations of freedom of association in Article 28 of the Political Constitution of Peru (henceforth Constitution). Specifically, the rights to organise, collective bargaining and strike are recognised, guaranteeing freedom of association, encouraging collective bargaining and promoting the peaceful settlement of disputes, and regulating the right to strike.

181. It should be noted that the Constitution also indicates that treaties concluded by the State form part of national law, in accordance with Article 55.[77] This is relevant considering that Peru has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

182. The most relevant legal norms are the Law on Collective Labour Relations (LRCT) and its regulations (Supreme Decree No. 011-92-TR), Law No. 27.556, Legislative Decree No. 1.187. In addition, in the public sector, Law No. 30.057 and Law No. 31.188 are particularly relevant.

ii) Role of public institutions

183. At the administrative level, the main public institutions involved in collective bargaining are the Labour Inspectorates and the Ministry of Labour and Employment Promotion. With regard to the Labour Inspectorates, Article 3 of the General Law on Labour Inspection states that one of their purposes is to monitor and enforce legal norms, including trade union relations. Specifically, Article 3.1 of Law No. 28.806 states:

> *"The Labour Inspectorate is responsible for the exercise of the inspection function and those other competencies entrusted to it by the labour and social legal system, the exercise of which may not limit the effective fulfilment of the inspection function, nor prejudice the authority and impartiality of labour inspectors.*
>
> *The purposes of the inspection are the following:*
>
> *1. To supervise and demand compliance with the legal, regulatory and conventional norms and contractual conditions, in the socio-labour order, whether they refer to the regime of common application or to the special regimes:*
>
> *a. Labour organisation and trade union relations.*
>
> *a.1) Fundamental rights at work.*
>
> *a.2) Rules on individual and collective labour relations.*
>
> *a.3) Rules on protection, rights and guarantees of workers' representatives in enterprises".*

184. These purposes of the labour authority are projected in several moments linked to freedom of association and collective bargaining. In the first place, the labour authority participates in activities of registration and reception of information, for example, the reception of the statutes of trade union organisations, in accordance with the provisions of Article 10 letter d. of the LRCT, or the registration of

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77 Article 55 of the Political Constitution of Peru states: *"Treaties concluded by the State and in force are part of national law".*

the trade union organisation and its board of directors , in accordance with Article 17 of the same body of law. The labour authority also participates in the registration and filing of collective agreements, in accordance with Article 43 f. of the LRCT.

185. Collective bargaining begins with a statement containing the draft collective agreement, as provided for in Article 51 of the LRCT. In the case of agreements by branch of activity or trade union, the draft is always submitted through the labour authority, and in the case of company agreements, the draft is submitted directly to the company, but a copy must be sent to the labour authority. Specifically, Article 53 of the LRCT states:

> *"The statement of claim is submitted directly to the company, and a copy is sent to the Labour Authority.*
>
> *In the event that the latter refuses to receive it, it shall be submitted through the Labour Authority, and the date of submission shall be considered to be the date on which it is received by the labour authority.*
>
> *In agreements by branch of activity or union, the delivery shall always be made through the Labour Authority".*

186. The labour authority also participates when there is disagreement between the negotiating parties regarding the information to be provided to the workers' representatives, resolving this dispute by specifying the basic information that must be provided for the best outcome of the negotiation, in accordance with Article 55 of the LRCT. It should be noted that the Ministry of Labour and Employment Promotion may participate, at the request of a party, in the assessment of the workers' requests and in the examination of the financial situation of the enterprise, in accordance with Article 56 of the LRCT.

187. In addition, the labour authority also participates in a conciliation procedure within collective bargaining, either at the request of a party or in those cases where the labour authority deems it necessary in view of the characteristics of the case. Specifically, Articles 58 and 59 of the LRCT state:

> *"Article 58. The parties shall inform the Labour Authority of the termination of the negotiation, and may simultaneously request the initiation of a conciliation procedure.*
>
> *If neither of the parties so requests, the Labour Authority may initiate such a procedure ex officio, if it deems it necessary or appropriate, in view of the characteristics of the case.*
>
> *Article 59. The conciliation function shall be carried out by a specialised and qualified technical body of the Ministry of Labour and Employment Promotion; the parties may, however, if they so agree, entrust it to private persons, in which case they shall submit to the Labour Authority a copy of the minutes drawn up.*
>
> *In either case, the conciliation procedure should be characterised by flexibility and simplicity, with the conciliator playing an active role in promoting a settlement between the parties. If the parties so authorise, the conciliator may act as mediator, for which purpose, at such time as he/she deems appropriate, he/she shall submit one or more settlement proposals which the parties may accept or reject.*
>
> *There shall be as many conciliation meetings as necessary."*

188. The labour authority may also appoint a mediator when a strike has been declared, as provided for in Article 62 of the LRCT. Furthermore, in those cases in which the strike extends excessively in time, seriously compromises an enterprise or productive sector, derives in acts of violence or assumes serious characteristics, the administrative authority shall promote direct settlements or other forms of conflict resolution, which, if they fail, shall be definitively resolved by the Ministry of Labour and Employment Promotion. [78]

78 Article 68 of the LRCT.

189. Also in the area of strike action, the labour authority must decide whether it meets the requirements to be declared, in accordance with Article 74 of the LRCT. In addition, the labour authority participates in the resolution and registration of the characteristics of those workers who, according to the communication of the company, must maintain the services because they affect essential public services or guarantee the fulfilment of indispensable activities. Specifically, Article 82 of the LRCT states:

> *"When the strike affects essential public services or it is required to guarantee the fulfilment of indispensable activities, the workers in conflict must guarantee the permanence of the necessary personnel to prevent its total interruption and ensure the continuity of the services and activities that so require.*
>
> *Annually and during the first quarter, the companies that provide these essential services shall communicate to their workers or trade union organisations that represent them and to the Labour Authority, the number and occupation of the workers necessary for the maintenance of the services, the schedules and shifts that they must comply with, as well as the periodicity in which the respective replacements must take place. The purpose of the aforementioned communication is for the workers or the trade union organisation representing them to provide the respective payroll when the strike takes place. Workers who, without just cause, fail to perform their duties shall be sanctioned in accordance with the law. Cases of divergence on the number and occupation of workers to be included in the list referred to in this article shall be resolved by the Labour Authority".*

190. Finally, the labour authority can also participate as an arbitrator, in accordance with Article 64 of the LRCT.

191. At the judicial level, there is a labour justice system that intervenes in labour-related legal disputes, which may be collective or plural. Specifically, Article II of the New Labour Procedure Law No. 29.497 states:

> *"It is for the labour courts to resolve legal disputes arising from the provision of services of a personal nature, of a labour, training, cooperative or administrative nature; services of a civil nature are excluded, unless the claim is based on the concealment of labour relations. Such legal disputes may be individual, plural or collective, and may relate to substantive or related matters, even before or after the actual provision of services.*

iii) Procedures and mechanisms to facilitate collective bargaining (including the procedure for registration of collective agreements)

192. Collective bargaining in the private sphere begins with the submission by the workers of a statement containing a draft collective agreement, in accordance with Article 51 of the LRCT. The deadline for the submission of the requests may not be earlier than 60 or later than 30 calendar days after the expiry date of the current collective agreement, as provided for in Article 52 of the LRCT.

193. Within 10 calendar days from the date of the submission of the statement, bargaining must begin within the terms and in the manner established by the parties, and minutes must be drawn up recording the agreements adopted at each meeting. Specifically, Article 57 of the LRCT states:

> *"Collective bargaining shall take place in the terms and opportunities agreed upon by the parties, within or outside working hours, and must be initiated within ten (10) calendar days of the submission of the statement.*
>
> *The employer(s) may propose new or substitute clauses for those established in previous agreements.*
>
> *Minutes are only required to record the agreements adopted at each meeting, and it is up to the parties to record the requests or offers made by them".*

194. The parties must inform the labour authority of the termination of the negotiation and may also request the initiation of a conciliation procedure, in accordance with Article 58 of the LRCT. If no agreement is reached in either conciliation or direct negotiations, the parties may submit the dispute to arbitration, as provided for in Article 61 of the LRCT. Alternatively, the workers may declare strike, in response to which the parties themselves or the labour authority may appoint a mediator, according to Article 62 of the LRCT.

195. The manner in which the strike is declared shall be established in the statutes of each trade union organisation, and must be a decision of the majority of the voting members attending the assembly. If the decision to declare a strike is adopted by the majority of the workers within the scope of the strike, the employment relationship of all workers within the scope of the strike will be suspended, otherwise the employment relationship of only the workers of the union will be suspended, in accordance with Article 62 of Supreme Decree No. 011-92-TR.

196. However, if the parties reach an agreement, they may enter into a collective bargaining agreement, which is formalized in writing in three copies, the third copy of which must be submitted to the labour authority for registration and filing, in accordance with Article 43 f. of the LRCT.

197. In the public sector, collective bargaining begins with the submission of a draft collective agreement. This submission must contain, at a minimum, (i) identification of the public entities and trade union organisations; (ii) the negotiating commission; (iii) the clauses to be negotiated; and (iv) the signature of the representatives. [79]

198. The procedure following the submission of the agreement varies depending on whether the collective bargaining is centralised or decentralised, i.e. in the first case if it affects all state workers in the executive, legislative, judicial, regional and local governments and those bodies exercising administrative powers, and in the second case if it affects a specific sectoral, territorial and public entity, in accordance with Article 85 of Law No. 31.118 . In the case of centralised collective bargaining, the draft collective agreement is submitted to the Presidency of the Council of Ministers between 1 November and 30 January of the following year. within a maximum period of 10 days from the submission of the draft, direct negotiations begin, lasting for 30 days, and if no agreement is reached, the parties may use the mechanisms provided for by law, which will last for a maximum period of 30 days from the end of the direct negotiations. If an agreement with economic implications is reached, it shall be submitted to the Presidency of the Council of Ministers within five days for inclusion in the public budget law.

199. On the other hand, in the case of decentralised collective bargaining, the draft collective agreement is submitted to the public entity within the same period indicated for centralised collective bargaining, within a maximum period of 10 days from the submission of the draft, the direct agreement is initiated, which is extended for 30 days and, if no agreement is reached, conciliation mechanisms are used, conciliation mechanisms will be used, which may be extended for 30 days and, if no conciliation is reached, either party may initiate an optional arbitration process that must conclude by 30 June unless the workers decide to opt for strike action, in accordance with Article 13 of Law No. 31.188. 31.188.

2. Collective bargaining coverage and bargaining parties

iv) Workers covered by the collective bargaining framework and excluded categories

200. According to the LRCT, in the private sector, all regulations related to collective bargaining apply to workers subject to the private sector labour regime and who provide services for private employers, as well as workers of State entities and companies belonging to the State's Business Activity , subject to the private sector regime, insofar as they do not have special regulations on this matter. Specifically, Article 1 of the LRCT states:

> *"The present regulation applies to workers subject to the private activity labour regime who provide services for private employers.*
>
> *The workers of State entities and of companies belonging to the scope of the State Business Activity, subject to the private activity regime, are covered by the rules contained in this Single Orderly Text insofar as the latter do not oppose specific rules limiting the benefits provided for therein".*

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79 Article 12 of Law No. 31.188.

201. In turn, the conceptualisation of collective agreement indicates that the workers covered by the collective bargaining framework will be one or more trade union organisations or workers who are not unionised and one or more employers with or without an organisation that covers them. [80]

202. It should be noted that its scope of application is determined by the contracting parties themselves, who may define it as company-wide when it applies to all workers in a company, branch of activity when it covers workers in the same economic activity, and union-wide when it applies to all workers in the same profession, trade or speciality in different companies. Specifically, Article 44 of the LRCT states:

> *"The collective agreement shall have application within the scope agreed by the parties, which may be:*
>
> *a. Company-wide, when it applies to all the workers of an enterprise, or to those of a particular category, section or establishment of that enterprise.*
>
> *b. Branch of activity, where it covers all workers in the same economic activity, or a particular part of it.*
>
> *c. Of a trade, when it applies to all workers engaged in the same profession, trade or speciality in different enterprises".*

203. However, the legislation excludes workers who occupy management positions or hold positions of trust, since the collective bargaining agreement is not applicable to them, according to Article 42 of the LRCT.

204. In the public sector, Law No. 31.188 regulates collective bargaining among unions of state workers in the executive, legislative, judicial, regional and local governments and those bodies exercising administrative powers. Specifically, Article 2 of the Law states:

> *"The Law is applicable to collective bargaining carried out between trade union organisations of state workers of public entities of the Executive Branch, the Legislative Branch, the Judicial Branch, regional governments, local governments, bodies to which the Political Constitution of Peru and their organic laws confer autonomy and the other entities and bodies, projects and programmes of the State, whose activities involve the exercise of administrative powers.*
>
> *Collective bargaining in State enterprises is governed by the Single Ordered Text of the Law on Collective Labour Relations, approved by Supreme Decree 010-2003-TR, and its regulations.*
>
> *The Law is not applicable to public workers who, by virtue of the provisions of Articles 42 and 153 of the Political Constitution of Peru, are excluded from the rights to unionise and strike".*

205. Regarding excluded public workers, the Constitution refers to officials with decision-making powers and those who hold positions of trust or management, as well as members of the Armed Forces and National Police, this due to Article 42. In addition, Article 153 of the Constitution of Peru also excludes judges and prosecutors.

v) The parties to collective bargaining

206. In the private sector, the parties to collective bargaining are determined at the time of submission of the draft collective agreement, since at this stage it is necessary to indicate which trade unions are signatories, as well as the name and domicile of the companies or employers' organisations involved. Specifically, Article 51 of the LRCT states:

> *"Collective bargaining begins with the submission of a demand, which must contain a draft collective agreement, with the following:*
>
> *a. Name and registration number of the trade union or unions that sign it, and a single address to be provided for the purpose of notifications.*

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80 Article 41 of the LRCT.

If there is no trade union, the indications that allow the identification of the coalition of workers presenting it.

b. The list of the members of the negotiating committee with the requirements established by Article 49.

c. Name or company name and address of each of the companies or employers' organisations involved.

d. The demands made in respect of wages, working conditions, productivity and other matters, which shall be in the form of a clause and shall be integrated harmoniously into a single draft agreement.

e. Signatures of the trade union leaders designated for this purpose by the assembly, or of the accredited representatives, if there is no trade union".

207. In cases where a company collective bargaining agreement is being collectively negotiated, the trade union or, in its absence, representatives expressly elected by the absolute majority of the workers and by the employer, the employer himself or persons designated by him, shall negotiate on behalf of the workers. In the case of an agreement by branch of activity or guild, the trade union organisations of the corresponding branch or guild shall represent the workers and, on the side of the companies, the representative organisation of the employers in the respective economic activity. [81]

208. It should be noted that in the case of employers' representation, it shall be exercised by i) the employer itself, ii) by legally appointed representatives, iii) by proxies or, iv) by the head of the Industrial Relations Office, according to Article 37 of Supreme Decree No. 011-92-TR.

209. In the public sector, the trade union side shall be represented by the most representative trade union confederations in centralised collective bargaining and, in decentralised collective bargaining, by the most representative trade union organisations in the respective area. On the other hand, in centralised collective bargaining the employer shall be the executive branch and in decentralised collective bargaining it shall be represented by the corresponding public entities, in accordance with Article 7 of Law No. 31.188.

vi) Criteria for representativeness and procedures for recognition of bargaining parties (including in the case of bargaining with workers' representatives in the absence of a trade union)

210. Firstly, in the private sector, it is important to note that in order to constitute and survive, a company trade union organisation must have at least 20 affiliated workers and 50 workers in the case of other types of trade unions, in accordance with Article 14 of the LRCT. However, it should be recalled that collective agreements can be concluded by workers who are not affiliated to a trade union organisation, in accordance with the conceptualisation of the collective agreement regulated in Article 41 of the LRCT.

211. With regard to the representativeness criteria, the trade union which represents an absolute majority of the workers in its area of activity represents the entirety of the workers in collective bargaining, including non-affiliated workers. However, if there are several unions and together they represent more than half of the workers in their area, they may jointly represent all the workers, in accordance with Article 9 of the LRCT. On the other hand, pursuant to Article 4-A of Supreme Decree No. 011-92-TR, if the union does not affiliate the absolute majority of the workers in its area, it will only represent the affiliated workers.[82]

212. With regard to the procedure for the recognition of the negotiating party, the designation of the workers' representatives is set out in the statement of claim, and, in the case of the employers, their representation is set out in any of the forms admitted for the granting of powers of attorney. For this it

81 Articles 47 and 48 of the LRCT.

82 Article 4-A of Supreme Decree n°011-92-TR states the following: *"In collective bargaining, when the union does not affiliate an absolute majority of the workers within its scope, it represents only its members in accordance with the provisions of Article 9 of the Law."*

is necessary to expressly stipulate (i) the power to participate in negotiation and conciliation; (ii) to carry out procedural acts; (iii) to sign agreements. [83]

213. In the public sector, a distinction is made between centralised and decentralised collective bargaining. In the case of centralised collective bargaining, the most representative trade union confederations of state employees at the national level are entitled to do so. In the case of decentralised collective bargaining, the trade union organisation that represents the majority of the workers in the respective area may negotiate on behalf of all workers in the respective area. These representativeness criteria are expressed in Article 9 of Law No. 31.188, which states that:

> *"9.1 In centralised collective bargaining:*
>
> *The most representative trade union confederations of State workers at the national level shall be considered legitimate in centralised collective bargaining, based on the number of members of the trade union organisations.*
>
> *9.2 Decentralised collective bargaining:*
>
> *a. The respective trade union organisation at the local level is considered to be entitled to negotiate. In the event that there is more than one trade union organisation in the area, the majority trade union organisation is considered to have the right to negotiate.*
>
> *b. The trade union organisations negotiate on behalf of all workers in the respective area.*
>
> *c. The majority is the trade union organisation which has the majority of members in the relevant area.*
>
> *d. At the proposal of the most representative trade union organisations in the respective area, the number of trade union representatives for each decentralised bargaining process is established by resolution of the competent authority".*

214. In turn, in the public sector, the negotiating committee shall be informed when submitting the draft collective agreement, in accordance with the provisions of Article 12 of Law No. 31.188.[84]

vii) Specific requirements concerning the conduct of the negotiating parties

215. First, in the private sphere, Article 4 of the LRCT indicates that the State, employers must refrain from acts that coerce, restrict or undermine the right to organise, as well as from intervening in the creation, administration or maintenance of trade union organisations. Furthermore, the LRCT indicates that the parties are obliged to negotiate in good faith and to refrain from actions that are detrimental to the other party, without undermining the right to strike. Specifically, Article 54 of the LRCT states:

> *"It is mandatory to receive the statement, unless there is an objectively demonstrable legal or conventional cause.*
>
> *The parties are obliged to negotiate in good faith and to refrain from any action that could be detrimental to the other party, without prejudice to the legitimately exercised right to strike.*

216. Bargaining in good faith implies the receipt of the statement of grievances and the initiation of collective bargaining, the timely provision of information, attendance at meetings, making every effort to reach agreements and refraining from actions that may be detrimental to the other party. [85]

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83 Article 49 of the LRCT.

84 Article 12 of Law n°31.188 states the following:
"Collective bargaining begins with the submission of the draft collective agreement containing, as a minimum, the following:
a. Name and address of the public entities involved.
b. Name and registration number of the subscribing trade union(s) and its/their sole domicile.
c. The list of the members of the negotiating committee, duly accredited.
d. The clauses that are subject to negotiation and that are harmoniously integrated into a single draft collective agreement.
e. Signatures of the trade union representatives who are members of the negotiating committee".

85 Article 40-A of Supreme Decree No. 011-92-TR.

217. It should be noted that Article 69 of the LRCT establishes as a valid cause for the suspension of bargaining the use of violence against things or persons, even affecting the validity of agreements or awards in those cases where pressure was exerted.

218. In turn, the LRCT contains several provisions that establish specific requirements for the conduct of trade union organisations in relation to strike action. First, Article 79 of the LRCT indicates that the strike must be peaceful and without resorting to any kind of violence against persons or property. In addition, the legislation regulates the type of strikes that can be exercised by prohibiting the untimely stoppage of key areas or sections, work at a sluggish or slow pace or by regulation, the deliberate reduction of performance or the obstruction of entry to the enterprise, according to Article 81 of the LRCT.

219. Finally, in the private sector, Article 31 letter e of the LRCT also limits the possibility of dismissing or transferring the members of the negotiating committee for up to three months after the conclusion of collective bargaining. It should be noted that Article 12 of Supreme Decree No. 011-92-TR also extends this limitation on dismissal or transfer to delegates of trade union sections and leaders of trade union organisations participating in bipartite and tripartite social and labour dialogue.

220. In the public sphere, the legislation establishes a duty to negotiate in good faith, exemplifying as acts of bad faith i) not providing information, ii) not receiving the statement of positions, nor negotiating within the deadlines and opportunities established by law, iii) designating negotiators who do not have sufficient powers, (iv) failure to make proposals that lead to agreement, (v) denial of union leave, (vi) actions aimed at hindering, delaying, obstructing or making collective bargaining impossible, (vii) anti-union acts that prevent representatives from exercising the right to collective bargaining.[86]

221. In addition, it is important to note that in the public sector, strike action by workers subject to the public labour regime is regulated by the rules of Title IV of the LRCT, in accordance with Article 86 of the LRCT. This is relevant because there will be certain essential public services that are detailed in Article 83 of the LRCT and for which the workers in conflict must guarantee the permanence of the necessary personnel to prevent their total interruption and ensure the continuity of the service, in accordance with Article 82 of the LRCT.

▶ 3. Scope and outcomes of collective bargaining

viii) Level of collective bargaining and hierarchy of collective agreements (including information on opt-out rules)

222. It is important to note that, according to Article 5 of the LRCT, in the private sphere it is possible to distinguish between i) company unions, formed by workers who provide services to the same employer; ii) activity unions, formed by workers of different professions, specialities or trades from two or more companies in the same branch of activity; (iii) guild unions, which are formed by workers in the same trade, profession or speciality and in different enterprises; (iv) trade unions of various trades, formed by workers in different professions, trades or specialities working in different enterprises or in different activities. In turn, according to Article 7 of the LRCT, these unions can be organised on a local, regional or national basis. Finally, as provided for in Articles 35 and 36 of the LRCT, the rank-and-file unions may form or join higher-level bodies, where the formation of a federation requires at least two unions of the same activity or class, and the formation of a confederation requires the union of two or more federations. Federations and confederations are governed by the provisions regulating trade unions, in accordance with Article 38 of the LRCT.

223. It is important to note that Article 4 of Supreme Decree No. 011-92-TR establishes that workers are free to form trade union organisations at any level they deem appropriate, reiterating that these organisations may be company, group of companies, activity, guild, trade, production chain or subcontracting organisations.

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86 Article 16 of Law No. 31.188.

224. However, the level of collective bargaining is determined by the contracting parties themselves, who may define it as company-level when it applies to all workers in a company, branch-level when it applies to workers in the same economic activity, and union-level when it applies to all workers in the same profession, trade or speciality in different companies. Specifically, Article 44 of the LRCT states:

> *"The collective agreement shall have application within the scope agreed by the parties, which may be:*
>
> *a. Company-wide, when it applies to all the workers of an enterprise, or to those of a particular category, section or establishment of that enterprise.*
>
> *b. Branch of activity, where it covers all workers in the same economic activity, or a particular part of it.*
>
> *c. Of a trade, when it applies to all the workers engaged in the same profession, trade or speciality in different undertakings".*

225. It is the parties who determine the level of bargaining and, in cases where there is disagreement, this will be determined by alternative dispute resolution mechanisms. However, the possibility of determining the level of bargaining is limited to cases where there is an existing agreement at one level, as entering into another agreement at another level will require agreement between the parties. In addition, the parties will have to establish how the conventions at the different levels are articulated and, in case of conflict, the most favourable convention will apply. [87]

226. With regard to the public sphere, a centralised bargaining level and a decentralised bargaining level are recognised. Regarding the centralised level, this affects all state workers in the executive, legislative, judicial, regional and local governments and those bodies exercising administrative powers. Regarding the decentralised level, this will be carried out at the sectoral, territorial or public entity level. Specifically, Article 5 of Law No. 31.188 states:

> *"Collective bargaining by state workers' trade union organisations takes place at the following levels:*
>
> *a. The centralised level, in which the agreements reached have effect for all workers in the public entities referred to in Article 2 of the Law.*
>
> *b. The decentralised level, which takes place at the sectoral, territorial and public entity level, or at the level deemed appropriate by the trade union organisations, and which has effect at their respective level, in accordance with the rules set out in Article 9.2 of the Law. In local governments, collective bargaining is covered by the revenues of each municipality. In the case of local governments with fewer than 20 workers, they may join the federal collective bargaining agreement of their branch organisation or join the agreement of their choice with which there is affinity of scope, territory or others".*

227. Law No. 31.188 also articulates the levels by distinguishing the subjects that can be negotiated at the centralized and decentralized levels. At the centralised level, matters related to the pay structure and other working conditions with economic impact may be addressed, as well as other matters affecting all state workers in the executive, legislative and judicial branches, regional and local governments and bodies exercising administrative powers. At the decentralised level, matters related to employment or working conditions may be negotiated, including remuneration for a given area, provided that they have not been agreed at the centralised level. [88]

228. Finally, there are no rules, neither in the private nor in the public sphere, regarding the opt-out of a collective agreement regardless of the level at which it is negotiated.

87 Article 45 of the LRCT.

88 Article 6 of Law No. 31.188.

ix) The relationship between collective agreements, the law and individual employment contracts

229. One of the characteristics of collective agreements is that they modify employment relationships as of right and therefore take precedence over individual contracts. In this sense, individual employment contracts may not contain provisions contrary to a collective bargaining agreement that are detrimental to the worker. [89]

230. Likewise, the characteristics are also applicable to the collective bargaining agreement established for industrial relations in the public sector, which according to Article 17 of Law No. 31.188 also has the force of law for the parties that adopt it and modifies as of right the labour relations, and individual contracts must automatically adapt to the collective bargaining agreement and may not contain provisions detrimental to the worker, which would be null and void as of right.

231. However, it should also be considered that the Political Constitution of Peru establishes the inalienable nature of the rights recognised in the Constitution or the laws, therefore, these will take precedence over collective agreements and individual work contracts, establishing a minimum floor in the regulation of labour relations. Article 26 of the Political Constitution of Peru states:

> *"The following principles shall be respected in the labour relationship:*
>
> *1. Equality of opportunities without discrimination.*
>
> *2. Unwaivable character of the rights recognised by the Constitution and the law.*
>
> *3. Interpretation in favour of the worker in the event of insurmountable doubt as to the meaning of a rule".*

x) Extension of the applicability of collective agreements and *erga omnes* clauses

232. In the private sphere, collective agreements at company level have binding force for the persons on whose behalf the agreement was concluded, as well as for the workers who subsequently join the companies, in accordance with Article 42 of the LRCT.

233. It should be noted that the employer is restricted from unilaterally extending the scope of a collective agreement to workers who are not covered by its scope of application. Specifically, Article 28 of Supreme Decree No. 011-92-TR states:

> *"In the collective agreement, the parties may establish the scope, limitations or exclusions that they agree upon as long as they do not establish unjustified differences among the workers within the scope or are contrary to the legal system*
>
> *The employer may not unilaterally extend the scope of the collective agreement to workers outside its scope".*

234. On the other hand, collective bargaining by branch of activity or trade union may also have general effects for all workers in the area, provided that the trade union organisation represents the majority of the companies and workers in the activity or trade union and that all companies are convened. Otherwise, the effectiveness of the collective instrument will be limited to the workers affiliated to the corresponding trade union organisation and the bargaining that has existed at a certain level will remain in force. Specifically, Article 46 of the LRCT states:

> *"For the product of collective bargaining by branch of activity or guild to have general effects for all workers in the area, it is required that the trade union organisation or trade union organisations represent the majority of the companies and workers in the respective activity or guild, at the local, regional or national level, and that all the respective companies are convened, directly or indirectly.*
>
> *If the majority requirements indicated in the previous paragraph are not met, the product of collective bargaining, whether it is an agreement or arbitration award, or an exceptional*

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89 Article 43 letter a. of the LRCT.

administrative resolution, has an effectiveness limited to the workers affiliated to the corresponding trade union organisation or organisations. If there is a level of bargaining in a given branch of activity, it shall remain in force".

235. In the public sector, collective agreements are binding on the persons on whose behalf they were signed and on the workers who subsequently join them, in accordance with Article 17 of Law No. 31.188.

xi) Duration of collective agreements (possibility of ultra-activity or retroactivity)

236. With regard to the duration of collective agreements in the private sphere, Article 43 c., d. and e. of the LRCT establishes that it shall be fixed for the period determined by the parties and, in the absence of agreement, its duration shall be extended for one year. Furthermore, there is ultra-activity when the collective agreement is not modified by a subsequent one and when there is a merger, transfer, sale, change of business line or other similar situation. Finally, with regard to retroactivity, the legislator contemplates this figure in Article 43 letter b. of the LRCT in those cases in which there is no collective instrument, since the validity of the collective agreement will begin prior to the signing of the collective agreement, namely at the time of the presentation of the collective bargaining agreement. Specifically, Article 43 of the LRCT provides as follows:

"The collective labour agreement has the following characteristics:

a. It modifies by operation of law the aspects of the employment relationship it affects. Individual contracts are automatically adapted to it and may not contain contrary provisions to the detriment of the worker.

b. It is in force from the day following the day on which the previous agreement expires; or, if there is none, from the date of presentation of the contract, except for the stipulations for which a different term is specified and which consist of obligations to do or to give in kind, which shall be in force from the date of their signing.

c. It is valid for the period agreed by the parties. In the absence of agreement, its duration is one (1) year.

d. It remains in force as long as it is not modified by a subsequent collective bargaining agreement, without prejudice to those clauses that have been agreed on a permanent basis or when the parties expressly agree to its total or partial renewal or extension.

e. It remains in force until the expiry of its term in the event of merger, transfer, sale, change of line of business and other similar situations.

f. It must be formalised in writing in three (3) copies, one for each party and the third for submission to the Labour Authority for registration and filing".

237. It is worth noting that there is another case of ultra-activity when the collective bargaining agreement is not submitted at least 30 calendar days before the expiry date of the agreement in force, since in this case the duration of the collective agreement is postponed proportionally to the delay, in accordance with Article 52 of the LRCT.

238. In the public sphere, the duration of a collective bargaining agreement is agreed by the parties, but in no case may it be less than one year. Moreover, its clauses are permanent and will only cease to have effect when a new agreement modifies them, in accordance with Article 17 of Law No. 31.188.

xii) Collective bargaining subjects (and exclusions)

239. In the private sector, it is established that the collective agreement has normative and mandatory clauses, depending on whether they regulate individual or collective labour relations, in accordance with Article 29 of Supreme Decree No. 011-92-TR. Now, although there is no express rule regarding the issues that can be addressed in collective bargaining, however, the conceptualisation of the collective agreement allows us to affirm that it includes, at least, aspects such as remuneration, working conditions and productivity, because the definition expresses "and others, concerning the relations between workers and employers", all this in accordance with Article 41 of the LRCT.[90]

240. Nor is there a rule that expressly indicates which matters are excluded from collective bargaining, although Article 45 of the LRCT indicates that matters that have not been dealt with in a higher-level agreement and that refer to working conditions that are specific and exclusive to the company may be negotiated at company level.

241. In the public sphere, collective bargaining covers the determination of conditions of work and employment related to remuneration and other conditions of work with an economic impact, as well as aspects relating to the relationship between workers and employers. Specifically, Article 4 of Law No. 31.188 states that:

> *"The determination of all types of terms and conditions of work and employment, including remuneration and other conditions of work with economic incidence, as well as all aspects relating to the relationship between employers and workers, and the relationship between employers' and workers' organizations, are the subject of collective bargaining."*

xiii) Enforcement, evaluation and renegotiation of collective agreements (the role of labour inspection)

242. First of all, the functions of trade unions include the enforcement of collective agreements and the exercise of the rights and actions arising from such instruments, in accordance with Article 8, b., of the LRCT. Moreover, according to Article 57 of the LRCT, it is in collective bargaining that the employer may propose new clauses or replace those established in previous agreements. Finally, one of the characteristics of collective agreements is that they are valid as long as they are not modified by subsequent collective agreements, according to Article 43 d. of the LRCT.

243. One of the purposes of the Labour Inspectorate is to monitor and enforce legal regulations, including trade union relations. Specifically, Article 3 numeral 1 of Law No. 28.806 states:

> *"The Labour Inspectorate is responsible for the exercise of the inspection function and those other competencies entrusted to it by the labour and social legal system, the exercise of which may not limit the effective fulfilment of the inspection function, nor impair the authority and impartiality of labour inspectors.*
>
> *The purposes of the inspection are the following:*
>
> *1. To supervise and demand compliance with the legal, regulatory and conventional norms and contractual conditions, in the socio-labour order, whether they refer to the regime of common application or to the special regimes:*
>
> *a. Labour organisation and trade union relations.*
>
> *a.1) Fundamental rights at work.*
>
> *a.2) Rules on individual and collective labour relations.*
>
> *a.3) Rules on the protection, rights and guarantees of workers' representatives in undertakings".*

90 Article 41 of the LRCT states: *"Collective bargaining agreement is the agreement intended to regulate remuneration, working conditions and productivity and other matters concerning the relations between workers and employers, concluded, on the one hand, by one or more trade union organizations of workers or, in the absence thereof, by representatives of the workers concerned, expressly elected and authorized, and, on the other hand, by an employer, a group of employers, or several employers' organizations. Only companies that have been in operation for at least one (1) year shall be obliged to bargain collectively".*

▶ 4. Methods of preventing and resolving collective bargaining-related disputes

xiv) Dispute prevention methods applicable to collective bargaining

244. Pursuant to Article 1 of Decree-Law No. 14.371 of 22 January 2022, enterprises with more than 100 workers must have an industrial relations unit. Among the functions of this unit are to deal with wage claims, non-compliance with provisions, and to promote harmony and collaboration between the enterprise and the workers.

245. In addition, it should be noted that Article 7 of the Conciliation Law No. 26.872 establishes that labour matters are among the matters that can be conciliated, provided that the unwaivable nature of the worker's rights is subtracted, and that this can be considered an additional method of conflict prevention applicable to collective bargaining.

246. In the public sphere, it is established that in centralised collective bargaining, a monitoring commission must be set up to supervise compliance with the agreement reached, in accordance with Article 13.1 letter e. of Law No. 31.188.

xv) Dispute resolution methods applicable to collective bargaining

247. In the private sphere, during collective bargaining there may be a conciliation procedure, which may be requested by the parties or requested by the labour authority when it deems it necessary in view of the characteristics of the case, in accordance with Article 58 of the LRCT.

248. According to Article 59 of the LRCT, the conciliation procedure shall be conducted by a specialised technical body or by private persons commissioned by the collective bargaining parties themselves. This procedure shall be characterised by flexibility and simplicity, and the conciliator may also act as mediator if the parties authorise him/her to do so.

249. In addition, in cases where no agreement is reached at either the direct negotiation or conciliation stage, both parties may submit the dispute to arbitration, in accordance with Article 61 of the LRCT. As agreed by the parties, the arbitration body may consist of a single arbitrator, an ad hoc tribunal, a representative institution, the Labour Authority itself and, if there is no agreement, a tripartite tribunal consisting of an arbitrator appointed by each party and a president to be appointed by the arbitrators or, failing that, by the Labour Authority, will be set up at . It should be noted that the arbitral award may not establish a solution different from the final proposal made by each of the parties. Specifically, Articles 64 and 65 of the LRCT state:

> *"Arbitration may be carried out by a sole arbitrator, an ad hoc tribunal, a representative institution, the Labour Authority itself, or any other modality that the parties specifically agree upon, which shall be recorded in the arbitration agreement. If there is no agreement on the arbitration body, a tripartite tribunal shall be set up ex officio, consisting of an arbitrator to be appointed by each party and a chairman appointed by both arbitrators or, in the absence of agreement, by the Labour Authority.*
>
> *In no case may lawyers, advisors, representatives, attorneys-in-fact or, in general, persons who have a relationship with the parties or an interest, direct or indirect, in the outcome, be arbitrators.*
>
> *The procedural rules shall be identical for all forms of arbitration and shall be governed by the principles of orality, simplicity, promptness, immediacy and loyalty.*
>
> *If the employer is a company within the scope of the State Business Activity, or if it is a State entity whose workers are subject to the labour regime of private activity, the Regulations of this rule shall establish the manner in which, in the absence of agreement between the parties, the president of the arbitration tribunal shall be appointed. In no case may such designation be made by the Labour Authority.*

Article 65. The award may not establish a solution different from the final proposals of the parties, nor combine the proposals of the parties.

The award shall reflect in its entirety the final proposal of one of the parties. However, because of its nature as a judgment in equity, it may mitigate extreme positions.

The conclusions of the opinion referred to in Article 56 shall be taken into account in the decision.

250. With respect to decentralised collective bargaining in the public sector and as provided for in Article 13 of Law No. 31.188, in those cases in which an agreement is not reached in direct bargaining, the parties may use conciliation mechanisms that have an extension of 30 days. In turn, in the event that an agreement is not reached at the conciliation stage, either party may submit the dispute to an optional arbitration process that must be concluded by 30 June, unless a strike is chosen.

xvi) Resolution of disputes relating to the right to strike

251. Firstly, during the strike the labour authority may appoint a mediator whose final proposal will be brought to the attention of the parties. Specifically, Article 62 of the LRCT states:

"In the case of the previous Article, the workers may alternatively, declare the strike in accordance with the rules of Article 73. During the course of the strike, the parties or the Labour Authority may appoint a mediator.

The final proposal of the mediator shall be brought to the attention of the parties.

Mediation formulas, if not accepted by the parties, shall not compromise subsequent arbitration decisions".

252. In turn, according to Article 63 of the LRCT, during the strike, the worker may propose to submit the dispute to arbitration, which will require the acceptance of the employer.

253. Finally, in those cases in which the strike extends excessively in time, seriously compromises a company or productive sector, derives in acts of violence or assumes serious characteristics, the labour authority must promote direct settlements or other forms of conflict resolution, which, if unsuccessful, will be definitively resolved by the Ministry of Labour and Employment Promotion. [91]

5. Relevant statistical data

xvii) Trade union density

254. In 2024 the Ministry of Labour and Employment Promotion published the report Labour Economy No. 55 - Unionisation in the formal private sector in Peru, 2015- 2022.[92] The report indicates that the unionisation rate in 2022 was around 4.9 per cent. Moreover, the information provided in the report shows that men account for 86 per cent of unionised workers and women for 12 per cent.

255. On the other hand, in the public sector in 2018, 16 per cent of public servants were members of a trade union, according to the statistical information provided by the report "Collective Bargaining in the Public Sector 2020" prepared by the National Civil Service Authority.[93]

91 Article 68 of the LRCT.

92 Please see: Ministry of Labour and Employment Promotion, Economía Laboral No. 55 - La sindicalización en el sector privado formal en Perú, 2015- 2022.

93 Please see: National Civil Service Authority, Collective Bargaining in the Public Sector 2020.

xviii) Coverage of collective agreements

256. In 2024, the Ministry of Labour and Employment Promotion published the report "Collective Bargaining in Peru 2023".[94] The report indicates that during 2023 there were 385 complaints, of which 233 were settled collective bargaining agreements. Of these, 91.84 per cent were signed through direct negotiations, 6.87 per cent in the conciliation stage, 0.86 per cent in an extra-process and 0.43 per cent in arbitration.

257. There is no official statistical information on the percentage coverage of collective agreements in Peru.

94 Please see: Ministry of Labour and Employment Promotion, Collective Bargaining in Peru, 2023.

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