

Collective agreements

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1. Definitions

1.1 What is the definition of the collective agreement in your country?

A collective agreement is a written agreement between trade unions and employers or the Confederation of Employers relating to workers wages and terms of employment and applies to every member of the trade union.

1.2 Is there a distinction made between different types of collective agreements according to their source, content or scope (occupational or territorial)?

Not in the sense of definition or legal status.

2. Please summarize the history of collective agreements in your country.

In one of Sigurður Línadal's essays on Icelandic labour law he says that modern time is entered Iceland at the turn of the 20th century with new technology in the fishing industry, foreign money and wireless connection with the outside world.¹ This evolved into a modern labour market, where labour organizations were established and employers formed their federations. The situation led to industrial disputes, but legislation on labour, as on so many other things at that time, was limited, until a general law on Trade Unions and Industrial Disputes was passed from the parliament, Althingi, in 1938, Act no. 80/1938. The act is still valid, but has been revised several times, and forms the basis of industrial relations in the private sector of the Icelandic labour market.

The model of the legislation came from Denmark and was based on the September agreement from 1899, which was natural, as Iceland was a Danish colony until 1918.

The first trade unions were established just after the turn of the 20th. century, the big unions in Reykjavik, Dagsbrún, the male workers' union in 1906, and Framsókn, the female workers' union in 1914 and the Icelandic Federation of Labour was established in 1916.

Today the Icelandic Federation of Labour, ASÍ, is the largest federation of workers, with the majority of trade unions in the private sector.² The public sector is divided up into the Confederation of Workers of the State and Communities (BSRB) and the Confederation of Academic Workers (BHM). Membership in labour unions is over 85%.

¹ Sigurður Línadal is former professor at the University of Iceland.

² The membership of ASÍ is app. 70.000, which amounts to 2/3 of the whole labour force.

Approximately $\frac{3}{4}$ of the labour market belongs to the private sector, and $\frac{1}{4}$ to the public sector.

In the early days of the labour movement the characteristics of the Icelandic labour market were severe industrial disputes with great participation from the political parties, the left wing, both Communists and Social democrats, and also from the Independence Party (the conservative party in Iceland) that had great influence on the labour movement.

Today political influence within the labour movement is insignificant.

Historically the two blocks on the labour market were ASÍ, The Icelandic Federation of Labour with most labour organizations in the private sector, and VSÍ, the Confederation of Employers. The big disputes were basically between these two and they are traditionally the big blocks. In the last decades the organizations in the public sector (BSRB, The Confederation of Workers of the State and Communities, and BHM, The Confederation of Academic Workers) have gained the right to strike, so the disputes have been more based on the public sector.

The characteristics of the Icelandic labour market can be simplified two major factors: The main industry in the country has until recently been the fishing industry, with between 60-80% of all export trade, and the fact that the population of Iceland is only 280.000 today. (Now 300.000). This has characterized the whole picture. Unstable economy and fluctuation in the employment rate can all be related more or less to those two major factors. Two other significant characteristics should also be mentioned here, high membership of unions, over 85% of workers are affiliated members,³ and high participation of women in the labour market.⁴

One of the peculiarities of the Icelandic system is that the collective agreements between trade unions and employers relating to workers' wages and terms are legally binding as the minimum right of the worker according to the Act on Wage Earners' Terms no. 55/1980. The worker can negotiate for better wages and terms, but all agreements with less right than the collective agreement states are by law invalid. This applies to all workers and employers, regardless of their membership in unions.⁵

3. Collective agreement as a source of law

3.1 What are the constitutional or/and legal grounds of collective agreements?

According to the Icelandic Constitution, Article 75, it shall be stated in a statute that people are entitled to negotiate for working wages and terms. The right of people to negotiate terms of employment and other labour-related matters shall be regulated by law.

The basic legal grounds of collective agreements is set out in the the Act on Trade Unions and Industrial Disputes no. 80/1938 which was passed in 1938. The law set out the rules in industrial disputes, the foundation and open admittance to trade unions, rules on collective agreements, shop stewards, strikes and lockouts, conciliation in industrial disputes and labour court.⁶

3.2 Does a collective agreement have a contractual or statutory status (or both)?

³ Figures from 1998, Statistical Bureau, Nov. 1999.

⁴ 46% women, 54% men, Statistical Bureau 2001.

⁵ This historical summary is by Lára V. Júlíusdóttir: Icelandic Labour Law, Scandinavian Studies in Law Volume 43, page 358-359.

⁶ Lára v. Júlíusdóttir, Icelandic Labour Law, Scandinavian Studies in Law Volume 43, page 359.

A collective agreement has mainly contractual status but statutory status in the sense that it is legally binding as the minimum right of the worker according to the Act on Wage Earners' Terms no. 55/1980.

3.3 The relationship between collective agreements and other sources of law

3.3.1. How do collective agreements receive legal status from the Constitution and the constitutional principles in force in your country?

According to the Icelandic Constitution, Article 74, people are entitled to form associations for any lawful purpose, including political groups and trade unions, without having to seek prior authorization. It is also stated in the Constitution that people shall have legal right to negotiate for working wages and terms.

3.3.2. Relationships between collective agreements and general principles

A) Hierarchy of standards

1) Principle of hierarchy

- a) Are collective agreements and covenants subject to superior standards?

Yes they are.

Does a hierarchy of levels exist between collective agreements?

No.

2) Derogations

- a) Are collective agreements subject to the "principle of favour" (exemption "in melius" from the laws or higher-ranked agreements)?

Yes, collective agreements can provide for better terms of employment than provided for by law.

- b) Can they be less favourable than the latter or is it acceptable that lesser ranked agreements contradict unfavourably ("in pejus") to higher ranked agreements?

No, collective agreements can not provide for worse terms of employment than provided for by law.

B) Principle of equality: non-discrimination and "equal pay for equal work"

- 1) May collective agreements set conditions of unequal treatment and are these upheld as legal?

No.

- 2) Are collective agreements subject to the principle of equality?

Yes.

C) Law and order

- 1) Is there a definition of "social" law and order (which is different from "economic" or "management" law and order)?

- 2) Is there a distinction between absolute and relative law and order?
No, there is no such definition or distinction in Icelandic law.

D) Is there a duty of good faith in collective bargaining?

Not as a special legal obligation, but the basic legal rules of collective agreements and collective bargaining are set out in the Act on Trade Unions and Industrial Disputes no. 80/1938. See also 3.1.

3.3.3. Collective agreements and other sources of law

A) Collective agreements and law

- 1) Are collective agreements allowed to abridge rights that employees have been given by law?

No, the worker can negotiate for better wages and terms, but all agreements with less right than the collective agreement states are by law invalid, ref. question 3.2. and 3.3.2. A.2 b.

- 2) May the law itself annex a collective agreement?

As this issue is not relevant to Icelandic law the answer here is no.

- 3) May a law delegate some of its powers to a collective agreement?

Yes, pursuant to article 1. of the Act on Wage Earners' Terms no. 55/1980 collective agreements are legally binding as the minimum right of the worker ...

B) Collective agreements and regulations

- 1) Should collective agreements be extended by a regulation to govern the whole profession, even businesses that are not members of the signatory unions?

Collective agreements have "erga omnes" effect according to the Working Terms act No. 55/1980.

- 2) Are some collective agreements subject to approval by ministerial order?

No, that would be against the principles of freedom to negotiate for working wages and terms and other labour-related matters.

C) Collective agreements and customs

- 1) Does a collective agreement challenge custom when its object is the same?

Yes, collective agreement challenges custom when it provides for better terms of employment than the custom.

- 2) Does the voluntary enforcement by the employer of a collective agreement that normally does not apply to him/her constitute a custom?

No, as a rule not.

- 3) Have you something else to say about this point?

No.

D) Collective agreements and the labour contract

- 1) Is the contract of employment allowed to contain clauses less favourable to the employee than the relevant collective agreement?

No, ref. question no. 3.2. and 3.3.2. A.2 b.

- 2) Is the collective agreement incorporated into the contract of employment or does it remain independent from it?

The collective agreement is considered as incorporated into the contract of employment as the latter must be in conformity with the former, ref. Questionnaire no. 3.2. and 3.3.2. A) 2 b.

- 3) May a new collective agreement modify the contract of employment?

Yes, with better wages and terms.

4. Elaboration of collective agreements

4.1. Collective bargaining

- 4.1.1 How many levels of bargaining exist in your country?

One level, national or local.

- 4.1.2 How are they related?

Ref. question above.

- 4.2.3 Is collective bargaining freely decided or mandatory?

Mandatory in the way that employers, or their organizations, and trade unions, shall draw up a schedule for the conduct of negotiations on the renewal of collective agreements according to the Act on Trade Unions and Industrial Disputes, No. 80/1938, art. 23. Negotiation schedules, signed by both contracting parties, shall be sent to the State Conciliation and Mediation Officer immediately. A negotiation schedule shall be drawn up not later than ten weeks before the valid collective agreement comes up for review. If the contracting parties have not made a negotiation schedule by this date, the conciliation and mediation officer shall issue a negotiation schedule for the contracting parties not later than eight weeks before the valid collective agreement comes up for review, in which case the conciliation and mediation officer shall take account of other negotiation schedules that have been made.

- 4.1.3 What subjects may collective bargaining include?

Wages and terms of employment such as hours of work, annual leave, parental leave, occupational health, termination of employment, duration of the contract, vocational retraining, accident insurance etc.

4.2. Conclusion of collective agreements

4.2.1. Signatories

- a) Who can be parties to the collective agreement?

Only trade unions from the employees' side but individual employers or confederation of employers from the employers' side. In the public sector the parties to collective agreements are the State, on the other side, trade unions that fulfil certain requirements according to the Act no 94/1986 on the Collective Agreements of Public Servants.

b) Must the parties meet a condition of representativity?

No, the only condition is that the signatories have the power to negotiate on behalf of the their unions. (parties)

c) May the agreement be signed by only one union, though in the minority, or is it necessary that a majority of unions do not oppose the text of the agreement?

This does not seem to be relevant to Icelandic law. Any trade union has the right to sign its own collective agreements independent of others.

d) Does a right of opposition exist?

No.

4.2.2 Formal requirements

a) Must collective agreements be made in writing?

Yes, all agreements between trade unions and employers relating to workers' wages and terms shall be in writing, specifying the period of validity and respite for notice of termination. (Act no. 80/1938, art. 6).

b) Must a notice be given?

According to Act no. 80/1938, art. 22, the State Conciliation and Mediation Officer shall keep a register of valid collective agreements, and employees' and employers' organizations, and non-affiliated employers, shall be obliged to send him copies of all collective agreements they conclude as soon as they are signed. Amendments to previously made collective agreements shall be sent to him in the same way. The same parties shall also send the conciliation and mediation officer copies of all pay-scales and terms of service issued on the basis of valid collective agreements. The contracting parties shall furthermore send the State Conciliation and Mediation Officer copies of terminations of wages and terms agreements, and also of demands, as soon as they are sent to their opposite parties.

c) Must collective agreements be registered?

See 4.2.2 b.

5. The enforcement of collective agreements

5.1 Scope of collective agreements

5.1.1. Geographic area

a) National, regional, local?

All of the above.

b) International?

No

5.1.2 Professional sphere

What jobs, professions or branches are concerned?

Collective agreements cover most of the professional spheres in all sectors of society, both in the private sector as well in the public sector. Only a small number of top-level state public servants, members of parliament, judges, are exempted from collective agreements.

5.2 Determining which collective agreement is enforceable

5.2.1 Is the main activity of the business a criterion?

No, the criterion is the employee's trade union.

5.2.2 What about the mandatory application of "extended" collective agreements?

See 3.3.3, B.1.

5.2.3 Is it possible for an employer to voluntarily apply a collective agreement that does not apply to his/her business? Then, how to prove this voluntary enforcement?

Only if it is to ameliorate the terms of employment for the employee. This can be proven by stating in the labour contract that this specific collective agreement applies.

5.2.4 Which collective agreement is to be enforced in case of coincidence of several agreements? According to what criteria?

Coincidence of collective agreements is not possible in the Icelandic system.

5.3 Binding force of collective agreements

5.3.1 Are collective agreement enforceable upon signing?

No, they are always signed with the reservation that the majority of the trade union members accept the agreement.

5.3.2 Do collective agreements apply automatically?

Yes

5.3.3 Are collective agreements binding (imperative)?

Yes, see 3.

6. Content of collective agreements

6.1 Is the content mandatory, or can the parties choose it freely (or both)?

Some of the content is mandatory and some the parties can choose freely.

6.2 Different subjects dealt with

6.2.1 Freedom of collective industrial organization?

This is not dealt with in the collective agreement.

6.2.2 Form and content of the contract of employment

- Requirements concerning the use of fixed-term contracts?
This is not dealt with in the collective agreement.
- Form of the contract: in writing; compulsory mentions?
This is not dealt with in the collective agreement.
- Various clauses
 - Covenant not to compete?
This is not dealt with in the collective agreement.
 - Compensation (financial) for covenant not to compete?
This is not dealt with in the collective agreement.
 - Probationary period?
This is not dealt with in the collective agreement.

6.2.3 Minimum wages?

Yes.

6.2.4 Classification and career of staff members?

Yes.

6.2.5 Hours of work

- On-call time and hours of “equivalence”? Yes.
- Vacation? Yes.
- Overtime and fixed wages? Yes.
- Compensatory rest? Yes.
- Part-time work? Yes.
- Minimum rest time and maximum work time? Yes.

6.2.6 Rights of an employee who is on sick leave?

- Suspension of performance of the contract of employment? No.
- Guaranteed resources? Yes, in addition to basics in law.
- Job security? No.

6.2.7 Discipline

No

6.2.8 Vocational training?

Yes.

6.2.9 Follow-up of the agreement?

Yes.

7. Interpretation of and litigations relating to collective agreements

7.1 Which bodies are responsible for interpreting the collective agreements?

7.1.1 Joint boards?

Yes

7.1.2 Other bodies or organizations?

No

7.1.3 What is the scope of their interpretation?

a) Is it binding for the judge?

No

b) Can it be retroactive?

No

7.1.4 Is the judge entitled to interpret him/herself collective agreements?

Yes, in accordance with the evidence brought before the Court in an individual case.

7.2 Remedies against breach of collective agreements

7.2.1 Are penalties provided?

Yes, penalties are provided for in the collective agreements.

7.2.2 Which body or authority ascertains violations?

The Labour Court which jurisdiction is the whole country. It is the function of the Labour Court to pass judgments in cases arising on account of charges concerning violation of the Act no. 80/1938 and loss sustained due to unlawful stoppage of work. Also to pass judgments in cases arising on account of charges concerning violations of a collective agreement or due to disagreement relating to the interpretation of a collective agreement or its validity.

7.2.3 What are the civil remedies?

a) Individual claims?

b) Collective lawsuits?

Federations of trade unions and employers' associations proceed with cases before the Labour Court for and on behalf of their members. Associations not being members of the Federations proceed with their cases themselves. Unaffiliated parties will proceed with their cases themselves. Applicable sanction for breach of collective agreement is fine as stated in the collective agreement but can be damages in an individual case.

7.3 Proceedings related to collective agreements

7.3.1 Is there a distinction made between individual and collective litigations in this matter?

Yes, there is a distinction between individual and collective litigations. The jurisdiction of the Icelandic Labour Court is mainly confined to collective disputes of rights, see 7.2.2. The General Courts have jurisdiction over disputes where individuals claim wages, in dismissal cases, in discrimination cases etc. Also most claims based on individual employment contract. The legal proceedings are similar before the Labour Court and the General Courts.

7.3.2 Which court(s) or body(ies) have jurisdiction over legal matters relating to collective agreements?

The Labour Court. See, 7.2.2 and 7.2.3 above.

- 7.3.3 How is the judge informed of the existence and content of a collective agreement? What is the role of the judge and the parties in litigation relating to collective agreements?

The collective agreement is put forward as a document of evidence in each case. The judge and the parties have the same role as in any other litigation.

8. Altering and challenging of collective agreements

8.1 Cases and procedures

- 8.1.1 Do procedures exist for the review and termination of collective agreements?

Yes, see 4.1.3.

- 8.1.2 What happens to collective agreements in the case of a transfer of undertaking or change of employer?

Nothing because it is the employee's trade union which is the criterion for the applicable collective agreement. According to Act. no.72/2002 which incorporated EU Directive 2001/23/ the transferee is bound by the collective agreement by which the transferor was bound.

- 8.1.3 What happens before and during the time of expiration of the agreement?

See 4.1.3. The collective agreement remains in force until a new one has been signed by the parties and agreed to.

- 8.1.4 What is the procedure for substituting a collective agreement with another one?

There is no such procedure according to Icelandic labour law. One who is bound by a collective agreement will usually be so for the period of its validity.

- 8.2 Can employees retain vested or established rights ("droits acquis") in case of termination of collective agreements?

Yes, that is the main rule.

9. Conclusions

- 9.1 Is there a policy promoting collective bargaining and contractual collective law?

No, not a clear one.

- 9.2 Are there problems concerning the relationship between contract of employment and collective agreements?

No.

- 9.3 Does the connection between law and collective agreements operate in favour of employees (principle of favour, ratchet effect), or does it allow less favourable conditions?

See 3.3.2, A.2.a,b, and 3.3.3, A, 1.

- 9.4 Are there any additional conclusions or problems you want to mention?

No.