

Law 4/2012

LABOUR CODE

The Labour Code of the Democratic Republic of Timor-Leste was approved through UNTAET Regulation No. 2002/05 of 1 May. Since then, labour relations in the country have been governed by such Code.

The country's social and economic progress over the last decade requires the approval of a legislative instrument that responds to the current needs of the labour and entrepreneurial market in the country, thereby enabling investment in, and development of, entrepreneurial activities as well as the protection and professional development of workers in a harmonious manner.

In this connection, the drafting of a new legal framework regulating the labour relations represents a critical contribution towards the development process of the Timorese society and economy.

Organisations representing employers and employees have been listened to.

Thus, pursuant to article 95.1 of the Constitution of the Republic, the National Parliament enacts the following, to have the force of law:

PART I INTRODUCTORY PROVISIONS AND FUNDAMENTAL PRINCIPLES

CHAPTER I OBJECT AND SCOPE

Article 1 Object

1. This law establishes the legal regime applicable to individual as well as collective labour relations.
2. The provisions of this law may not be removed by individual employment contracts or collective employment agreements, save where the intention is to establish more favourable conditions for the worker.

3. The provisions of the preceding paragraph shall not apply to imperative norms provided for in this Code.

Article 2

Scope of application

1. This law shall be applicable in the national territory to workers and employers and respective organisations from all sectors of activity.

2. This law shall neither apply to civil servants nor to members of the Defense Force or the Police.

3. This law shall also not apply to labour relations among family members in the framework of small family agricultural or industrial businesses the result of which is intended for family subsistence.

Article 3

Temporal scope of application

Individual employment contracts as well as collective employment agreements entered into prior to the entry into force of this law shall be subject to the regime provided for therein, save as regards the conditions for their validity and the effects or situations already established prior to its entry into force.

Article 4

Counting of deadlines

Save where otherwise provided for expressly, delays established in this Code shall be counted as consecutive days.

Article 5

Definitions

For the purposes of this law:

- a) Work accident shall mean an accident that occurs in the course of work, or while the worker travels between their house and the workplace and *vice-versa* while at the service of the employer, causing bodily injury, functional disturbance or disease resulting in death or permanent or temporary impairment of the worker's capacity to work;

- b) Collective agreement shall mean an agreement between a trade union and an employer or organisation of employers, with the main objective of establishing the work conditions for a group of workers or a professional category;
- c) Seniority shall mean the length of service counted from the date of the beginning of the execution of the employment contract until its termination;
- d) Professional category shall mean the definition of the position of the worker following the description of the functions to be performed by the worker;
- e) Termination of contract shall mean cessation of the work relation between the worker and the employer;
- f) Apprenticeship contract shall mean an employment contract entered into by participants in a training programme or a professional qualification programme or by people in search of their first employment;
- g) Employment contract shall mean an agreement through which a worker undertakes to provide their activity to the employer, under the authority and direction of the latter, in return for a remuneration;
- h) Minor shall mean a person whose age is less than 17 years, pursuant to the applicable Civil Code;
- i) Employer shall mean an individual or corporate body, including, *inter alia*, a liberal professional and a non-profit organisation, for whom another person, i.e. the worker, carries out a certain activity under their authority and direction, in return for a remuneration;
- j) Leave shall mean the absence of the worker from the workplace during the normal daily working hours they are obliged to work;
- k) Working hours shall mean the establishment of the time for starting and ending the daily normal working period, including the intervals for resting;
- l) Workplace shall mean the place where the worker should carry out their activity as provided for in the employment contract or any other place that results from the agreement of the parties;

- m) Collective negotiation shall mean the process through which a trade union and an employer or organisation of employers discusses the establishment of a Collective Agreement;
- n) Organisation of employers shall mean a permanent association of individuals or corporate bodies, of private law, holders of a company, who habitually have workers at their service;
- o) Working period shall mean the period of time between the beginning and the end of the daily activity of the employer;
- p) Normal working hours shall mean the daily period of time during which the worker is obliged to carry out his or her activity, as provided for in the employment contract or as determined by the employer;
- q) Probationary period shall mean the initial, remunerated period of the employment contract during which the parties to the contract assess their interest in maintaining the employment contract, notably the performance of the worker and the working conditions made available by the employer, with either party having the power to terminate the employment contract without prior notice or without invoking good cause and with no right to compensation;
- r) Remuneration shall mean the compensation the worker is entitled to, pursuant to the employment contract, the collective agreement, or usage, against the provision of services, including the basic salary and other payments of a regular and periodic nature taking in place in the form of money or in kind;
- s) Basic salary shall mean the minimum amount as defined in the employment contract paid to the worker as direct compensation for the work undertaken;
- t) Sector of activity shall mean the area in which an individual or corporate body undertakes a profitable or non-profitable activity;
- u) Trade union shall mean a permanent and voluntary workers organisation the objective of which is to promote and defend the rights and interests of workers;
- v) Night work shall mean work provided between 21 hours of one day and 06 hours of the ensuing day;

- w) Shift work shall mean the mode of organizing work in teams in which workers occupy successively the same work posts in different periods of work;
- x) Seasonal work shall mean work the cycle of production of which takes place in a certain epoch of the year;
- y) Overtime work shall mean work provided beyond the normal working period;
- z) Worker shall mean a physical person who undertakes an activity under the authority and direction of the employer in return for remuneration;
- aa) Foreign worker shall mean a citizen other than a Timorese citizen who resides and provides services in Timor-Leste.

CHAPTER II FUNDAMENTAL PRINCIPLES

Article 6 Principle of equality

1. All workers, men and women, have the right to equality of opportunities and treatment insofar as access to employment, training and capacity building, work conditions and remuneration are concerned.
2. No worker or employment candidate may, either directly or indirectly, be benefited, negatively affected, deprived of any right or exempted from any duty on the basis of colour, race, civil status, gender, nationality, ascendancy or ethnical origin, social position or economic status, political or ideological convictions, religion, physical or mental condition, age or health status.
3. Any distinction, exclusion or preference based on qualifications required for accessing to or executing a certain work shall not constitute discrimination.
4. Any specifically defined legislative measure of a temporary nature that benefits certain disadvantaged groups, notably on the basis of gender, reduced work capacity or deficiency, with the objective of ensuring the exercise, under conditions of equality, of the rights provided for in this Code, shall not be considered discriminatory.

5. Retributive differences shall not constitute discrimination where they are based on objective criteria common to men and women, notably distinction on the basis of merit, productivity, assiduity or seniority of workers.

6. It shall be incumbent upon the person alleging discrimination to substantiate such allegation, indicating the worker in relation to whom they consider to have been discriminated, and it shall be the responsibility of the employer to prove that the preference in the access to employment or the differences in working conditions are not based on any of the factors indicated in paragraph 2 above.

Article 7 Harassment

1. Harassing a job applicant or a worker shall be prohibited.

2. Harassment shall mean any undesired behavior that affects the dignity of women and men or that is considered to be offensive either verbally, nonverbally or physically, or that results in an intimidating, hostile, humiliating and destabilizing work atmosphere for the harassed person.

3. Sexual harassment shall mean any undesired behavior of a sexual nature that affects the dignity of women and men or that is considered to be offensive, in a verbal, non-verbal, or physical manner, such as contact or insinuations, commentaries of a sexual nature, exhibition of pornography and sexual demands, or that creates an intimidating, hostile, humiliating and destabilizing work environment to the harassed person.

4. The employer must take all necessary measures to prevent cases of harassment, notably sexual harassment, at the workplace.

Article 8 Prohibition of forced labour

1. Forced or compulsory labour shall be prohibited.

2. Forced or compulsory labour shall mean any labour or service demanded from a person under threat or coercion and that is not offered voluntarily, notably:

a) Labour performed for payment of personal or third party's debt;

- b) Work performed as a means of coercion or political education, or of punishment for expressing certain political or ideological opinions;
- c) Work performed as a method of mobilization and utilization of manpower for economic development purposes;
- d) Work performed as a measure of racial, social, national or religious discrimination;

3. The following shall not constitute forced or compulsory labour:

- a) Any work or service exacted by force of compulsory military service laws for work of a purely military character;
- b) Any work or service that is part of the normal civic obligations of the citizens;
- c) Any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and the said person is not hired to or placed at the disposal of private individuals, companies or associations;
- d) Any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity, such as fire, flood, epidemics, or in any other circumstance that endangers the life or the security of the whole or part of the population;
- e) Minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services.

PART II
INDIVIDUAL WORK RELATIONS

CHAPTER I
EMPLOYMENT CONTRACT
SECTION I
RULES OF THE EMPLOYMENT CONTRACT

Article 9
Employment contract

1. An employment contract is an agreement through which an individual, the worker, commits themselves to provide their services to another person, the employer, under the authority and direction of the latter in return for a payment or remuneration.
2. Any clause contained in an employment contract that is contrary to imperative provisions of this law or other applicable legislation shall be considered null and void.
3. The partial invalidity of an employment contract shall not determine the invalidity of the entire contract unless it can be inferred that the contract would not have been entered into without the part affected by the invalidity.
4. The null and void clauses shall be considered as having been replaced by the relevant provisions provided for in applicable legislation.

Article 10
Form of employment contracts and respective requirements

1. Employment contracts shall be made in writing in one of the official languages, shall be signed by both parties, and shall contain at least the following clauses:
 - a) The identification of the employer and the worker;
 - b) The position to be held, and the functions to be exercised, by the worker;
 - c) The workplace;

- d) The normal working schedule and the periods of rest;
 - e) The amount and form of remuneration and the respective periodicity;
 - f) The professional category of the worker;
 - g) The date the contract has been entered into and the date of the beginning of its execution, where the latter is different;
 - h) The duration of the probationary period;
 - i) The duration of the contract and respective justification, where it is a fixed-term contract;
 - j) The collective work agreement, if any.
2. Without prejudice to paragraph 1 above, the lack of the written form shall not affect the validity of the employment contract nor the rights and duties of the worker and the employer, notably those provided for in articles 20 and 21, and it shall be presumed that the lack of the form is attributable to the employer, who shall be automatically responsible for all its legal consequences.
3. Where the contract is silent as regards the date for the beginning of its execution, it shall be presumed that the employment contract is in force from the date it has been entered into.

Article 11

Duration of the employment contract

1. The employment contract may be entered into:
- a) For an unspecified period of time;
 - b) For a specific period of time.
2. An employment contract that does not adopt the written form shall always be considered as an employment contract for an unspecified period of time.
3. An employment contract that does not establish the respective duration shall be presumed to have been entered into for an unspecified period of time, but the

employer may refute such presumption through a proof of temporality or transitoriness of the activities forming the object of the employment contract.

4. An employment contract for a specified period of time may not exceed the period of three years, including renewals.

Article 12 Fixed-Term contracts

1. Fixed-term contracts may only be entered into in order to cater for temporary needs of the employer, notably:

- a) To substitute an absent worker or a worker who, for some reason, is prevented from working;
- b) To undertake seasonal activities;
- c) To carry out activities in the framework of specific works, projects or other specified and temporary activities;

2. Fixed-term contracts must clearly establish the justification for its signing as well as the relation existing between the justification invoked and the delay stipulated for its completion, on pain of considering the justification null and void with the contract being considered an employment contract for an unspecified period of time.

3. Without prejudice to paragraph 1 above, apprenticeship contracts for an unspecified period of time may also be entered into.

4. A fixed-term employment contract entered into on the basis of the same justification and with the same worker with whom an earlier fixed-term employment contract had been entered into before a period of 90 days from the end of the first contract and the beginning of the second contract has elapsed shall be considered as employment contract for unspecified period of time.

5. An employment contract initially entered into for a fixed-term period that exceeds the maximum period of duration shall also be considered employment contract for an unspecified period of time.

6. An employment contract entered into with people participating in training of professional qualification programmes shall not exceed six months.

7. Where an employment contract for a specified period of time is declared to be a contract for an unspecified period of time, the seniority of the worker shall count from the date of the beginning of the provision of their services.

Article 13 Renewal of contract

1. In the cases provided for in paragraph 1 of the preceding article, fixed-term employment contracts may be renewed by written agreement of the parties provided the facts justifying the initial celebration are maintained, without however exceeding the maximum period established under paragraph 4 of article 11.

2. Fixed-term employment contracts shall forfeit once the duration stipulated therein has elapsed, except where the parties agree on their renewal.

3. The fixed-term employment contract and its respective renewal shall be considered to be one sole employment contract.

Article 14 Probationary period

1. Employment contracts shall be subject to a probationary period during which any of the parties may terminate the contract without prior notice and without invoking good cause, and there shall be no right to compensation unless otherwise stated in a written agreement.

2. In contracts for unspecified periods of time, the duration of the probationary period may be of up to 1 month, save where they apply to workers exercising functions of high technical complexity or responsibility, or to workers exercising confidence-based functions, in which case the probationary period may be established for up to 3 months.

3. Fixed-term employment contracts the duration of which is:

a) Equal to or less than 6 months, the probationary period shall not exceed 8 days;

b) Longer than 6 months, the probationary period shall not exceed 15 days;

4. The seniority of the worker shall be counted from the date of the beginning of the probationary period.

Article 15

Suspension of contract or reduction of normal working schedule

1. The employer may temporarily suspend the employment contract or reduce the normal work period due to market, technological or structural reasons or to disasters or other events falling outside of their control which have seriously affected the normal activity of the company whenever such measures show themselves to be indispensable for ensuring the feasibility of the company and the maintenance of the employment contracts.

2. Suspension of employment contracts shall not exceed 2 months.

3. The temporary reduction of the work period shall not exceed 40 percent of the normal work period nor shall it last for more than 3 months.

4. The employer must inform in writing all the workers to be affected by the suspension or reduction of the normal work period, the trade union representing them, as well as the Mediation and Conciliation Service of their intention to adopt any of the measures referred to in the preceding paragraphs, including the justifying reasons for adopting such measures, at least 15 days prior to the date expected for the beginning of the suspension or temporary reduction.

5. During the period of suspension or reduction of the normal work period the rights and duties of the workers and employers that are not conditional upon the effective provision of services shall be maintained.

6. The period of suspension or reduction shall count for purposes of seniority and shall neither affect the wage nor the duration of vacations.

7. During the period of suspension of the employment contract, the worker shall have the right to be paid one half of the respective remuneration.

8. During the period of suspension of the employment contract, the worker shall have the right to be paid a remuneration that is proportional to the number of hours of work provided.

9. Once the period of suspension of the employment contract has ended, the employer and the worker may agree on the termination of the employment contract

and the worker shall have the right to be paid the compensation provided for in article 55.

SECTION II ALTERATION OF THE EMPLOYMENT CONTRACT

Article 16 Changes to the object of the employment contract

1. The worker shall perform the activities relating to the position for which he or she has been hired or promoted to and shall not be placed in a lower category or demoted, except where such changes are imposed by imperative needs of the company or following a strict need on the part of the worker and accepted by the latter.
2. Without prejudice to the preceding paragraph, the employer may, in case of *force-majeure* or of unpredictable and pressing needs of the company, assign the worker, for the period of time deemed necessary, activities not comprised in the object of the contract, provided that such a measure does not imply a reduction in the remuneration or in any other rights and guarantees of the worker.
3. The worker may, for a specified period of time, perform activities pertaining to a position higher than the position for he or she has been hired, in which case he or she shall be remunerated in accordance with the pay and the privileges attributed to such position.

Article 17 Transfer of a worker to another workplace

1. The worker shall exercise his or her functions at the workplace established in the employment contract, save as provided in the following paragraphs.
2. Unless otherwise provided for in the employment contract, the employer may transfer the worker to another workplace provided it is proven that there is such a need on the part of the company, that the work cannot be undertaken by another worker, and that the transfer shall not be prejudicial to the worker.
3. Where it is prejudicial to the worker, the latter may rescind the contract, and shall be entitled to compensation, pursuant to article 55.

4. The costs with the definitive or temporary transfer of the worker shall be of the exclusive responsibility of the employer and under no circumstance shall they be borne by the worker.

5. The employer shall observe the provisions of the preceding article whenever the transfer of the worker to another workplace implies a change to the object of the employment contract.

Article 18

Transmission of company or business

1. Change of ownership of a company or business shall not imply rescission of employment contracts, and the rights and duties of the previous owner as established in the employment contracts of the relevant workers shall be transferred to the new owner.

2. The new owner shall be held solidarily responsible for the employment obligations due until the two months prior to the transmission, even where such obligations refer to workers whose contracts have already terminated.

CHAPTER II

PROVISION OF WORK

SECTION I

RIGHTS AND DUTIES OF THE PARTIES

Article 19

Mutual duties

1. Both employers and workers shall respect and enforce the laws and collective agreements applicable to them and shall collaborate for achieving high levels of productivity of the company and for the human and social promotion of the worker.

2. The party which culpably disrespects their duties shall be held responsible for the damages caused to the other party.

Article 20 Duties of the employer

Without prejudice to other obligations provided by law, the collective agreement or the employment contract, the employer shall:

- a) Provide the worker good working conditions, both from the physical and moral viewpoint, particularly insofar as labour health, hygiene and security are concerned;
- b) Contribute towards the elevation of the level of productivity of the workers by providing them, at the company or outside of it, opportunities for professional training adequate to their work post;
- c) Regularly pay a remuneration that is fair and proportional to the quantity and quality of the work provided;
- d) Allow workers to hold leadership positions within workers organisations and trade union and not harm them for holding such functions;
- e) Prevent risks from diseases and occupational accidents, providing workers with information and equipment deemed necessary for preventing such risks;
- f) Permanently keep an updated registry of the personnel at the service of the company containing their names, date of admission, type of employment contract, position held, remuneration, vacations and justified as well as unjustified absences;
- g) Treat workers with respect and fairness, and not attempt against their honour, good name, public image, private life and dignity.

Article 21 Duties of the worker

Without prejudice to other obligations provided by law, the collective agreement or the employment contract, the worker shall:

- a) Report to work with punctuality and assiduity and work with zeal and diligence;

- b) Comply with the orders and instructions of the employer, or his or her representative, in all that refers to work execution and discipline, save where such orders and instructions are contrary to their rights and guarantees;
- c) Take part in professional training activities provided to them by the employer, save where there is a relevant impeding reason;
- d) Keep loyalty to the employer by not engaging, on their own behalf or on behalf of third parties, into competition with the employer nor disseminating information relating to their organisation, methods of production or businesses;
- e) Ensure the maintenance and sound utilization of the working instruments entrusted to them by the employer;
- f) Promote and execute all acts aimed at improving the level of productivity of the company;
- g) Cooperate towards the improvement of the system of occupational security, hygiene and health implemented by the company and respect the rules established by the law or the collective agreement, including the orders of the employer on this subject-matter;
- h) Treat the employer, hierarchical superiors and work colleagues with respect and not attempt against their honour, good name, public image, private life and dignity.

Article 22 Guarantees of the worker

Without prejudice to the guarantees provided by law, the collective agreement or the employment contract, it shall be prohibited for the employer to:

- a) Prevent, in any manner whatsoever, the workers from exercising their rights by rescinding their contracts, applying them sanctions, or treating them unfavorably for exercising their rights;
- b) Unjustifiably prevent workers from effectively exercising their functions;

- c) Reduce the remuneration, save in those cases provided by law or the collective agreement;
- d) Lower the category of workers, save in those cases provided by law or the collective agreement;
- e) Compel the worker to acquire goods or services supplied by the employer or by people indicated by the employer.

Article 23

Powers of the employer and disciplinary power

1. Within the limits imposed by law, the collective agreement or the employment contract, the employer, or his or her representative, has the right to establish the terms pursuant to which the work shall be carried out.
2. The employer has the disciplinary power over the worker so long as the employment contract is in force.
3. The disciplinary power may be exercised by the employer or his or her representative pursuant to the terms established by the employer.
4. In case of violation by the worker of the duties provided by law, the employment contract or the collective agreement, the employer may apply the following disciplinary measures:
 - a) Verbal admonition in a language that is understandable to the worker;
 - b) Written admonition containing the reasons substantiating it, in a language that is understandable to the worker;
 - c) Suspension of the worker for a maximum period of three days, with loss of remuneration, following three written admonitions;
 - d) Rescission of the employment contract for good cause without any compensation being paid to the worker, pursuant to article 50.
5. The disciplinary measure must be proportional to the seriousness of the infraction and degree of culpability of the worker.

6. The disciplinary measures provided for in subparagraphs c) and d) of the preceding paragraph may only be applied after the establishment and completion of the respective disciplinary proceeding.

7. For each violation of labour discipline, only one disciplinary sanction may be imposed.

8. Disciplinary infractions shall forfeit within six months from the date of their occurrence.

9. The employer must promote the enforcement of the disciplinary sanction within thirty days from the date of the decision made in the framework of the disciplinary proceeding.

Article 24 Disciplinary proceeding

1. The disciplinary proceeding shall be instituted in writing and shall initiate within a maximum of 20 days from the date on which the employer, or his or her representative with disciplinary powers, takes knowledge of the infraction.

2. The disciplinary proceeding shall forfeit if, after a period of six months has elapsed from the date of its institution, the worker has not been notified of the final decision thereof.

3. The employer must notify the worker in writing of the facts for which he or she is accused, and the notification shall contain a detailed description of the charges.

4. The worker shall be guaranteed the right to defense, to be exercised within 10 days from the date of being notified of the charges.

5. The worker shall present his or her defense in writing and may present documents and request a hearing as well as other means of evidence.

6. Where the worker refuses to receive the notification of the facts for which he or she is being accused, such refusal shall be registered in the same notification and confirmed by two witnesses, who shall be workers.

7. In the case provided for in the preceding paragraph, as well as in the case where the worker subject to disciplinary proceeding is absent and in an unknown

place, a public notice shall be issued through which the worker shall be summoned to receive the accusation with a special warning indicating that any delay in presenting his or her defense shall count from the date of publication of the public notice.

8. Summoning workers through the media for the purpose of receiving accusation and present defense shall be prohibited.

9. The employer shall make the final decision on the disciplinary proceeding in writing, which shall be mandatorily substantiated and contain a clear indication of the sanction applied, within ten days from:

- a) The date of presentation of the defense by the worker, or after the 10 days have elapsed without the defense being presented;
- b) The date of the completion of the evidentiary proceedings requested by the worker.

10. The worker may file an appeal against a decision applying a disciplinary measure with the employer or the hierarchical superior immediately above the one who applied the disciplinary measure, as the case may be, without prejudice to the right of requesting the intervention of the mediation and conciliation bodies with a view to settling the conflict.

SECTION II DURATION OF THE TIME OF WORK

Article 25 Normal work period

1. Normal work period shall neither exceed 8 hours per day nor 44 hours per week.

2. After a period of 5 hours of uninterrupted work, the worker shall be entitled to a rest break of not less than 1 hour.

Article 26
Working hours

It shall be incumbent upon the employer to define the working hours of the worker within the limits established by law, the collective agreement, or the employment contract.

Article 27
Overtime

1. Work provided overtime shall be remunerated with normal hourly remuneration added by 50 per cent.
2. Work provided on a weekly rest day or on a mandatory holiday shall be remunerated on the basis of normal hourly remuneration added by 100 per cent.
3. The duration of the work provided on a weekly rest day or on a mandatory holiday shall not exceed 8 hours per day.
4. Each worker shall not provide more than 4 hours of overtime work per day or 16 hours of overtime work per week.
5. The provisions of paragraph 3 and 4 above shall not apply to work provided in cases of *force-majeure* or where such work is indispensable in order to prevent or repair serious damages for the company or for its feasibility.
6. The employer shall keep a file for each worker containing the time of commencement and termination of the overtime work provided.

Article 28
Night work

Provision of night work, between 21 p.m. of one day and 06 a.m. of the ensuing day, shall be remunerated on the basis of the normal hourly remuneration added by 25 percent.

Article 29
Shift work

1. Shifts comprising different staff shall be organised whenever the working hours of the company exceed the normal work period, pursuant to article 25.
2. The duration of each shift shall not exceed the maximum limits of the normal working period.

SECTION III
SUSPENSION OF WORK PROVISION

Article 30
Weekly rest

1. The worker has the right to a remunerated weekly rest period of at least 24 consecutive hours.
2. Sunday shall be the weekly rest day unless the work provided by the worker is indispensable to the continuity of services that cannot be interrupted or that are to be provided necessarily on Sundays.

Article 31
Mandatory holidays

1. Mandatory holidays shall mean those holidays established by law.
2. Non provision of work on mandatory holidays shall not imply loss of remuneration or of any other rights of the worker.

Article 32
Vacations

1. The worker shall have the right to remunerated vacations for each year of work provided.
2. The period of vacation shall not be less than 12 working days.

3. In cases of termination of the employment contract prior to the worker completing the one-year working cycle, the worker shall have the right to proportional vacations at the rate of 1 day per each month worked.

4. The period of vacation shall be defined by agreement between the worker and the employer and it shall be incumbent upon the employer to define it in the absence of an agreement.

5. Where the employer, culpably, prevents the worker from enjoying vacations within the 12 months subsequent to the date on which the worker has acquired the right to vacation, the worker shall have the right to a compensation corresponding to the double of the remuneration of the unused days of vacation.

Article 33 Absences

1. Absences from work may be justified or unjustified.

2. Justified absences from work shall be communicated in advance or as soon as possible to the employer and shall not imply loss of remuneration or of any other rights.

3. The worker has the right to 3 days of justified absences from work per year in case of marriage, death of family members, or community and religious events.

4. The worker also has the right to be justifiably absent from work in case of illness or accident, against presentation of the respective medical certificate, up to 12 days per year, 6 days of which shall be remunerated in full while the remaining 6 days shall be remunerated at 50 percent of the daily remuneration value.

5. Unjustifiable absences from work shall constitute a breach to the duty of assiduity and shall imply loss of remuneration corresponding to the period of absence, to be deducted from the length of service of the worker, and may also constitute ground for rescinding the employment contract, pursuant to article 50.

6. Justified absences from work shall have no effect on the right of the worker to vacation.

7. The employer may demand the worker to provide evidence of the facts alleged for justifying the absences from work.

SECTION IV
OCCUPATIONAL SECURITY, HYGIENE AND HEALTH

Article 34
General principles

1. The worker has the right to work under dignified conditions of occupational security, hygiene and health to be guaranteed by the employer.
2. The worker has the right to compensation to repair damages resulting from occupational accidents or professional diseases occurred during the regular exercise of their functions and that are caused by the omission of information or the failure to provide adequate equipment to the worker.
3. Where death results from an occupational accident or a professional disease as referred to in the preceding paragraph, the compensation shall be paid to the spouse of the worker, or to his or her descendants, or to his or her parents or, in the absence of the latter, to his or her siblings.

Article 35
General obligations of the employer

1. The employer shall be obliged to ensure dignified conditions of occupational security, hygiene and health, preventing the occurrence of accidents and dangers resulting from work irrespective of whether these are related to work or occur during work, and reducing the causes of risks inherent to the work environment to the minimum.
2. For the purposes of the preceding paragraph, the employer must adopt the following measures:
 - a) Identification and assessment of the professional risks;
 - b) Elimination or, where this is not possible, reduction of the risk or accident factors;
 - c) Planning and organisation at the company of an occupational risk-prevention system, a first-aid system, a fire-fighting system and an evacuation system in case of a sinister;

- d) Provision of information, training, consultation and participation of the workers and their representatives on the risks for their health and security, as well as on the protection and prevention measures and the manner in which such measures are applied both to the work post or function and to the company in general;
- e) Promotion and surveillance of the security and health of the workers, as well as of third parties that may be affected inside or outside of the workplace.

3. In applying the adopted measures, the employer must employ the necessary means as well as the adequate services, internal or external to the company, including the necessary protection equipment, and give instructions, either verbally or in writing, in a language accessible to the worker, regarding the correct manner in which to use such equipment.

Article 36

General obligations of the worker

1. For the purposes of this section, the worker shall have the following duties:
 - a) Comply with instructions on occupational security, hygiene and health as established by law and the collective agreements, as well as with instructions given by the employer, or their representatives, that have been adopted for the same purpose;
 - b) Care for their security and health, as well as for the security and health of other people who may be affected by their acts or omissions at work;
 - c) Correctly utilise the machines, devices, instruments, dangerous substances and other means made available to them, particularly individual and collective protection equipment, in accordance with the instructions given by the employer or their representatives;
 - d) Cooperate in the establishment and improvement of the occupational security, hygiene and health system of the company;
2. The measures and activities relating to occupational security, hygiene and health shall not imply any financial charges for the worker, without prejudice to the disciplinary and civil responsibility arising from the faulty breach of the respective obligations.

Article 37
Parity commission

1. The establishment of a parity commission shall be mandatory for companies with more than 20 workers or for companies whose activities, irrespective of the number of workers, represent special risks for the health, security and hygiene of the workers.
2. The parity commission shall be made up of:
 - a) 2 members, one representing the workers and the other representing the employer, in companies with up to 20 workers;
 - b) 4 members, two representing the workers and two representing the employer, in companies with more than 20 workers.
3. The members of the parity commission shall be responsible for regularly promoting the awareness of the workers on the risks inherent to their work and on the measures to be taken with a view to eliminating or reducing such risks.
4. The representatives of the workers shall be elected in a worker's assembly specifically convened for that purpose.

CHAPTER III
REMUNERATION

Article 38
General principles

1. Every worker, without any distinction whatsoever, shall have the right to a fair remuneration that takes into account the quantity, nature and quality of the work provided, on the basis of the principle of equal pay for equal work.
2. The remuneration of the worker shall not be less than the minimum remuneration defined by law or by the collective agreement for the respective category.
3. Any clause in the employment contract by which the worker renounces his or her right to remuneration or that makes his or her payment conditional upon the occurrence of an uncertain event or fact shall be considered to be null and void.

Article 39
Modalities of remuneration

1. Remuneration may be fixed or variable.
2. Fixed remuneration shall mean an amount specified and defined in the employment contract to be paid periodically to the worker in return for the work provided.
3. Variable remuneration shall mean a remuneration that, in addition to the fixed remuneration, is paid to the worker on the basis of his or her performance or level of productivity.
4. The following shall not be considered to be part of the remuneration:
 - a) Amounts paid as cost of living allowances, including transport, meals and accommodation allowances, or the amounts paid following the transfer of the worker to another workplace;
 - b) Gratifications or profits sharing as a result of the economic performance of the company or undertaking;
 - c) Amounts paid against the provision of overtime work;
 - d) Other extraordinary benefits granted by the employer.

Article 40
Form, place and time for paying the remuneration

1. Remuneration shall be paid in the form of money, and the payment shall be effected in a currency with legal tender in the country through a check or bank transfer;
2. Payment of remuneration must take place on a working day and at the place where the worker exercises his or her activities. Exceptionally, another place may be agreed upon if it is more favourable to the worker.
3. Remuneration must be paid directly to the worker on a regular basis, and the interval between the payments shall not exceed one month.

4. At the time of payment the employer shall hand the worker a receipt containing the period of the remuneration, the respective gross and net amount received, the discounts and retentions made as well as any additional payment.

5. The remuneration must be paid to the worker on the day it is due or, where this falls on a Saturday, a Sunday, or a holyday, on the working day immediately before.

Article 41

Remuneration of part-time work

1. A worker who works on a part-time basis shall be remunerated proportionally for the amount of work time provided.

2. The amount of the remuneration for a part-time worker shall be calculated on the basis of the amount for the hourly remuneration of a full-time worker holding a similar position or work post.

Article 42

Discounts in the remuneration

1. Any discounts or retentions to be made from the remuneration shall be authorised by the worker in writing.

2. Without prejudice to the preceding paragraph, the employer shall be authorised to make discounts or retentions for the Social Security System, as well as for other cases established by law or judicial decision.

3. The discounts made shall not exceed 30 percent per month of the total amount of remuneration to be paid to the worker.

4. The employer must indicate in receipt of the remuneration all the discounts and retentions made.

Article 43

Protection of remuneration

1. Save where expressly provided by law, the employer may not make any deductions for debts or repayments on a worker's remuneration.

2. Payment of any credits resulting from the remuneration due to the worker, as well as respective arrears interest or indemnities resulting from the termination of the employment contract, shall enjoy preference even in relation to credits due to the State in case of declaration of bankruptcy or of liquidation of the company or business.

Article 44
Annual allowance

1. The worker shall be entitled to an annual allowance the amount of which shall not be less than 1 month's salary to be paid by the employer by 20 December of every civil year.

2. The calculation of the annual allowance shall be proportional to the number of months of work provided in each year.

CHAPTER IV
TERMINATION OF THE EMPLOYMENT CONTRACT

Article 45
Prohibition to dismiss without good cause

1. Dismissal without good cause for political, religious or ideological reasons, or on the basis of the reasons listed in paragraph 2 of article 6, shall be prohibited.

2. The following shall also not be considered good cause for dismissal:

- a) To be a member of a trade union or to take part in trade union activities outside of the normal working hours;
- b) To take part in the election of, or for exercising, or having exercised, functions in a trade union;
- c) To have signed a claim or to have participated in a proceeding against the employer involving violation of the law or regulations or for resorting to the competent authorities;
- d) Age, save as pursuant to the law and the rules of the Social Security on retirement;

- e) Pregnancy or absence from work during maternity leave, pursuant to article 59;
 - f) Temporary absence due to illness or accident, pursuant to paragraph 4 of article 33;
 - g) Absence from work by force of the national service or other civil obligation.
3. Dismissal pursuant to this article shall be null and void and shall confer the worker the right to compensation pursuant to article 55.

Article 46

Forms of termination of the employment contract

1. The employment contract may be terminated by:
 - a) Expiry;
 - b) Agreement between the parties;
 - c) Rescission at the initiative of the worker;
 - d) Rescission at the initiative of the employer based on good cause;
 - e) Rescission due to market, technological or structural reasons relating to the company of business.

Article 47

Termination by expiry

1. The employment contract shall expire:
 - a) After the duration of a fixed-term employment contract has elapsed;
 - b) Where there is an absolute and definitive impossibility on the part of the worker to continue providing his or her work or on the part of the employer to continue receiving such work, such as death of the worker or of the employer that results in the closing of the activities of the company, or the total and definite

closing of the company due to other reasons, in this case without prejudice to the provisions of articles 18 and 52;

c) Following retirement of the worker due to old age or disability;

2. The fixed-term employment contract shall expire after its duration has elapsed, except where the parties agree on its renewal.

Article 48

Termination of employment contract following agreement by the parties

The employer and the worker may terminate the employment contract by mutual agreement, which should be concluded in writing and signed by both parties, containing the terms under which the termination takes place, the date of such agreement, the beginning of its entry into force, as well as the compensation to be paid to the worker, if any.

Article 49

Rescission at the initiative of the worker

1. Where there is good cause, the worker may immediately terminate the employment contract.

2. Communication of rescission shall be done in writing, shall contain the facts justifying it, and shall be presented within fifteen days from the date of occurrence of such facts.

3. The following shall constitute good cause for rescinding the employment contract:

a) Culpable violation of the rights and guarantees of the worker established in law, in the employment contract, or in the collective agreement;

b) Lack of timely payment of remuneration;

c) Offences to the physical or moral integrity, freedom, honour or dignity of the worker committed by the employer or their representative;

d) Need to carry out legal obligations that are incompatible with the execution of the employment contract;

- e) Substantial and lasting change of the working conditions in the legitimate exercise of powers of the employer where such change exceeds three months.
4. Rescission on the grounds provided for in subparagraphs a) to c) of the preceding paragraphs shall confer the worker the right to a compensation without prejudice to the establishment of the respective due process of law in order to determine the civil and criminal liabilities of the employer or their representative.
5. The compensation referred to in the preceding paragraph shall be calculated pursuant to the contents of article 55, with the worker being entitled to the double of the amounts indicated in that article.
6. The employer may refute in court the rescission initiated by the worker within sixty days from the date of such notification, without prejudice of resorting to mediation and conciliation services pursuant to article 97.
7. Where the court dismisses the good cause invoked by the worker, the employer shall have the right to be compensated for the damages caused.
8. The worker may also terminate the employment contract, irrespective of good cause, through written communication sent to the employer with a minimum of 30 days advance notice.
9. Lack of total or partial observance of the advance notice established in the preceding paragraph shall determine the payment of compensation by the worker to the employer of an amount equal to the remuneration corresponding to the number of days not observed in the advance notice.

Article 50

Rescission at the initiative of the employer based on good cause

1. The culpable conduct of the worker which, due to its gravity and consequences, makes it impossible to maintain the work relations, shall be considered good cause for rescinding the employment contract.
2. In examining the good cause consideration shall be taken of the degree of the damages to the interests of the employer, the character of the relations between

the parties, or between the worker and workmates, as well as other circumstances relevant to the case.

3. The following conduct on the part of the worker shall constitute good cause for the employer to rescind the employment contract without need of advance notice:

- a) Illegitimate and repeated disobedience to instructions given by the employer of the worker's hierarchical superiors;
- b) Unjustifiable absence from work for more than three consecutive days or five intercalated days in a month;
- c) Repeated disinterest in diligently complying with the obligations inherent to their respective position or functions;
- d) Intentional or negligent conduct that jeopardises the security or the health conditions at the workplace or that results in damages to another worker;
- e) Intentional or negligent conduct resulting in material damages to goods, tools or equipment of the employer;
- f) Physical violence against people at the workplace, save where such violence is exercised in self-defense;
- g) Dishonest or immoral conduct that offends other workers and/or the employer;
- h) Breach of professional secrecy and disclosure of information or secrets relating to the activity carried out by the employer;
- i) Final judicial sentencing of the worker, provided the penalty to be served by the worker makes it impossible for him or her to continue working.

3. The employment contract shall not be rescinded without the worker presenting his or her defense, observing the rules provided for in articles 23 and 24.

Article 51

Unlawfulness of rescission by initiative of the employer based on good cause

1. Rescission by initiative of the employer based on good cause shall be unlawful where:
 - a) The justification for the rescission is dismissed.
 - b) No disciplinary proceeding has taken place prior to it;
 - c) Any of the formalities provided by law, notably the lack of hearing of the worker and the lack of justification of the decision has not taken place during the disciplinary proceeding;
 - d) The deadline for establishing the disciplinary proceeding, for forfeiting the violation, and for the disciplinary proceeding, and for enforcing the disciplinary sanction have elapsed.
2. The unlawfulness of the rescission shall be declared by the courts, with the relevant legal action be filed within sixty days from the date of its notification to the worker, without prejudice to resort to the mediation and conciliation services pursuant to article 97.
3. The declaration of unlawfulness by the court shall grant the worker the rights provided for in article 55.

Article 52

Rescission due to market, technological and structural reasons

1. The employer may rescind employment contracts due to market, technological or structural reasons provided the rescission is indispensable for the economic feasibility or reorganisation of the company.
2. Rescission of the employment contract pursuant to the preceding paragraph may only take place after resorting to the measures provided for in article 15.
3. The employer may, based on the grounds referred to in paragraph 1 above, rescind one or more employment contracts.
4. Whenever the employer wishes to rescind employment contracts pursuant to this article, they shall communicate such intention in writing to the affected workers and their representatives, if any, forwarding a copy thereof to the Mediation and Conciliation Service.

5. The communication referred to in the preceding paragraph shall contain the following data:

- a) The grounds for the rescission;
- b) The number, identification and categories of the workers to be affected;
- c) The criteria on the basis of which the workers whose employment contracts are rescinded have been selected;
- d) The period of time during which the rescissions shall take place.

6. Within five days from sending the communication referred to in paragraph 2 above, the employer shall initiate negotiations with the workers or their representatives with a view to reaching an agreement on the process for rescinding the employment contracts.

7. The Mediation and Conciliation Service shall participate in the meetings held between the employer and the workers or their representatives, pursuant to the preceding paragraph, with the objective of conciliating the interests of the parties.

8. In the absence of representatives of the workers at the time of the communication referred to in paragraph 2 above, the latter may appoint a representative commission within a maximum period of three days.

Article 53

Communication of rescission

1. Once the negotiation process between the parties has been completed without being possible to prevent the rescission of the employment contracts, the employer shall inform each affected worker of the decision to rescind the employment contract expressly indicating the reason substantiating such decision, the date of termination of the employment contract and the amount of compensation to be paid. Such information shall be copied to the representative commission, if any, and to the Mediation and Conciliation Service.

2. The information referred to in the preceding paragraph shall be communicated with a minimum of 15 days prior to the date of termination of the employment contract where the worker's seniority is less than or equal to 2 years,

and with a minimum of 30 days where the worker's seniority is higher than 2 years.

3. Non-observance of the period of advance notice referred to in the preceding paragraph shall imply the payment of the remuneration corresponding to the number of days not observed in the advance notice.

4. During the period of advance notice, the worker shall be entitled to use a credit of hours corresponding to two days of work per week without prejudice to the right to the corresponding remuneration.

5. The worker shall inform the employer of the mode of utilizing the credit of hours with a minimum of 1 day advance notice.

Article 54

Unlawfulness of rescission of employment contract due to market, structural and technological reasons

1. Rescission due to market, technological and structural reasons shall be considered to be unlawful where:

- a) The reasons stated for the rescission are manifestly non-existent;
- b) The procedures or deadlines provided for in articles 52 and 53 have not been observed;

2. Unlawfulness of the rescission shall be declared by the courts, with the relevant law suit being filed within sixty days from the date of its notification to the worker, without prejudice to resorting to mediation and conciliation services pursuant to article 97.

3. The declaration of unlawfulness by the court shall confer the worker the rights provided for in article 55.

Article 55

Reintegration and compensation

1. Where the decision to rescind the employment contract based on good cause or on market, technological or structural reasons is declared to be unlawful, the worker shall have the right to be reintegrated into his or her position and to be paid

the remuneration due from the date of the rescission of the employment contract to the date of his or her reintegration.

2. The period of time between the date of the rescission of the employment contract and the date of reintegration of the worker shall be taken into account for purposes of seniority of the worker.

3. Without prejudice to paragraph 1 above, where the worker declares expressly that he or she does not intend to be reintegrated, or where the court, at the substantiated request of the employer, declares that the reintegration is harmful to the functioning of the company, the worker shall have the right to be paid the following compensation:

- a) Half a month's salary where the duration of the employment contract is longer than 1 month but shorter than 6 months;
- b) 1 month's salary where the duration of the employment contract is longer than 6 months but shorter than 1 year;
- c) 2 month's salary where the duration of the employment contract is longer than 1 year but shorter than 2 years;
- d) 3 month's salary where the duration of the employment contract is longer than 2 years but shorter than 3 years;
- e) 4 month's salary where the duration of the employment contract is longer than 3 years but shorter than 4 years;
- f) 5 month's salary where the duration of the employment contract is longer than 4 years but shorter than 5 years;
- g) 6 month's salary where the duration of the employment contract is longer than 5 years.

Article 56 Compensation for the length of work

Irrespective of the reasons, in case of termination of employment contract, the worker shall have the right to a compensation for the length of work in an amount

corresponding to 1 month-salary per every 5 years of work at the service of the employer.

Article 57
Work certificate

1. In case of termination of employment contract, irrespective of the cause originating it, the employer shall issue a work certificate containing the name of the worker, the commencement and termination dates of the employment contract and the functions exercised by the worker.

2. The employer shall also provide the worker with a document containing data on the discounts and retentions made in the framework of the social security system as well as other discounts and retentions established by law or judicial decision.

CHAPTER V
SPECIAL LABOUR PROTECTION REGIMES

SECTION I
PROTECTION OF MATERNITY AND PATERNITY

Article 58
General principles

Maternity and paternity constitute an essential social value and all rights relating thereto shall be guaranteed to the working mother and father.

Article 59
Maternity leave

1. Female workers shall have the right to paid maternity leave for the minimum period of 12 weeks, 10 weeks of which shall necessarily be taken after delivery, without loss of remuneration and seniority rights.

2. The period of maternity leave shall neither affect the remuneration nor the length of the vacation period.

3. Without prejudice to maternity leave provided for in paragraph 1 above, female workers shall be entitled to leave of absence prior to delivery in situations

of clinical risks for the worker or the new-born that hamper the exercise of her functions for the period of time established by medical prescription and deemed necessary for preventing such risks.

4. In case of interruption of pregnancy the worker shall have the right to a leave for 4 weeks.

Article 60 Paternity leave

1. Male workers shall have the right to a five-day remunerated paternity leave after the birth of their children without losing the right to seniority.

2. The period of paternity leave shall neither affect the salary nor the duration of the length of the vacation period.

3. In case of birth of a child followed by the death of the spouse or of a person with whom the worker lives in cohabitation, the worker shall have, at that very moment or up to two weeks after delivery, the right to the leave provided for in paragraph 1 of article 59 above, without loss of the remuneration and the right to seniority.

Article 61 Responsibility

It shall be the responsibility of the employer to pay the remuneration to the workers during the period of maternity and paternity leave until such time as the social security system is established.

Article 62 Leave of absence for medical consultation and breastfeeding

1. Pregnant workers shall have the right to be away from work without loss of remuneration or of any rights in order to undergo medical examinations for the time and frequency deemed necessary against presentation to the employer of the relevant justification.

2. Female workers shall have the right to be away from work in order to breastfeed their children until such time as the latter reach 6 years of age, without loss of remuneration or of any rights.

3. For the purposes of the preceding paragraph, the worker shall have the right to two breastfeeding periods per day with the duration of one hour each.

Article 63

Health and security protection

1. Pregnant or breastfeeding workers shall have the right, without reduction to their remuneration, of not performing functions that are not advisable to their health status, notably works that imply physical efforts or their exposure to dangerous substances for them and the child.

2. Pregnant or breastfeeding workers shall have the right of not to provide night or overtime work.

Article 64

Leave for assisting children

1. Workers with children aged less than 10 years shall have the right to be away from work up to a maximum of 5 days per annum in order to provide pressing and indispensable assistance to them in case of disease or accident against presentation of relevant certification.

2. The right to be away from work referred to in the preceding paragraph shall only originate loss of remuneration corresponding to the days the worker was away from work.

Article 65

Protection against dismissal

1. Once the maternity leave has ended, female workers shall have the right to be reintegrated in their work position or in an equivalent work position with the same remuneration.

2. Dismissal of the female worker due to pregnancy, breastfeeding or child feeding shall be prohibited.

3. It shall be incumbent upon the employer dismissing the pregnant, breastfeeding or child feeding worker to prove that the dismissal is not based on these facts.

SECTION II WORK OF MINORS

Article 66 General principles

1. With respect to minors who can work pursuant to the law, the employer shall ensure working conditions adjusted to their respective age and which take into account their security, health status, physical, mental and moral development, including their education and training, and shall particularly prevent them from any risk resulting from their lack of experience and their unconsciousness insofar as the potential or existing risks are concerned.
2. The employer shall specifically assess the risks associated to their work before the minor starts working and whenever there is an important change in the working conditions.

Article 67 Special protection

1. The hiring of minors for undertaking dangerous works or works likely to compromise their education or jeopardise their health status or physical, mental, moral or social development shall be prohibited.
2. The following shall also be prohibited:
 - a) All forms of slavery or practices analogous to slavery, such as sale and trafficking of children, subjection due to debts, servitude, forced or compulsory labour, including forced or compulsory recruitment of children to be used in armed disputes;
 - b) The use, demand and offer of children for purposes of prostitution, production of pornographic materials or pornographic shows;
 - c) The use, demand and offer of children for unlawful activities, particularly for the production and trafficking of drugs as defined in minors relevant international treaties;

- d) Any work that, by its nature or from the conditions under which it is exercised, is likely to jeopardise the health, security or morality of children.

Article 68

Minimum age for admission at work

1. The minimum age for admission to work shall be 15 years.
2. No minor who has not reached the minimum age referred to in the preceding paragraph shall be admitted to work, except for providing light work in legally recognised professional, technical, or artistic training programmes.
3. Minors between 13 and 15 years of age may undertake light works pursuant to article 69 below.
4. No minor shall undertake insalubrious or dangerous tasks or tasks requiring major physical efforts as defined by the relevant authority.
5. Employers hiring minor workers shall allow and encourage them to attend official education schools or equivalent education institutions recognised by the relevant government body, and the rules provided for in article 76 shall apply.

Article 69

Light work

1. Light work shall mean an activity characterized by simple and defined tasks the performance of which presupposes only elementary knowledge, not involving physical and mental efforts likely to jeopardise the health and development of the minor and his or her studies or participation in professional training programmes approved by the Government.
2. The following shall not be considered light work:
 - a) Work that exceeds 5 hours per day and 25 hours per week;
 - b) Night work;
 - c) Work that implies a weekly rest of less than two days;

- d) Work that implies a consecutive duration exceeding 3 hours without being interrupted for a break of not less than 1 hour;
3. Requesting or allowing overtime work by a minor hired to carry out light work shall be prohibited.

Article 70
Medical examination

1. A minor may only be admitted to work after being submitted to a medical examination that certifies his or her physical and mental fitness for the exercise of the functions, to be mandatorily conducted prior to commencing work.
2. The medical examination referred to in the preceding paragraph shall be repeated on an annual basis so as to prevent the professional activity from resulting in damages to the health and the physical and mental development of the minor.

SECTION III
WORKER WITH A DISABILITY OF CHRONIC DISEASE

Article 71
General principles

A worker, or a job applicant, with a disability or a chronic disease shall enjoy the rights provided for in this Code and shall not be discriminated against in his or her access to employment, professional training, promotion and working conditions, and under no circumstances shall their employment contract cease on these grounds.

Article 72
Medical examinations

1. The employer shall not require a job applicant or a worker to undergo medical tests, including HIV-detecting tests, save where such medical examinations are indispensable for the protection and security of the worker and with the written consent of the latter.

2. For the purposes of the preceding paragraph, the employer shall not exert pressure, either directly or indirectly, on the job applicant or worker to consent in writing to undergoing of such tests.

3. Any act by the employer through which a job applicant or a worker is compelled, either directly or indirectly, to consent to the medical tests shall be null and void.

4. The physician responsible for conducting the medical examinations shall only inform the employer whether the worker is fit or not fit to carry out the work.

5. The employer shall ensure the preservation of the confidential nature of the results of any medical examinations.

Article 73 Confidentiality

Workers or job applicants shall be guaranteed the right to confidentiality of information relating to their health status.

Article 74 Workplace precaution measures

The employer shall ensure that the workers are not exposed to risks that are harmful to their health, notably risks of contamination, and shall promote awareness programmes and, where necessary, provide equipment for safeguarding the security of the workers.

Article 75 Adjustment of type of work and work schedule

The work post and the work schedule shall be adjusted and adapted to the health status of the worker with a disability or chronic disease.

SECTION IV WORKING STUDENT

Article 76 Protection of working students

1. Working student shall mean a worker who attends any level of official education or equivalent education institution recognised by the relevant government body.
2. The employer shall organise the work schedule in such a manner as to enable the working student to attend his or her classes at ordinary schools or professional training courses, pursuant to the preceding paragraph.
3. The working student shall have the right to be away from work in order to undergo evaluation tests without loss of remuneration or of any other rights.
4. Minor working students shall have the right to make coincide their period of vacation at work with their period of vacation at school.
5. For the purposes of this article, the worker shall provide proof of his or her student status by presenting a document certifying the respective registration with the teaching institution, the respective timetable, and a school performance certificate shall be presented periodically in accordance with calendar of the education institution.
6. For the purposes of hiring a minor working student, the employer shall observe the rules provided for in article 68.

SECTION V FOREIGN WORKER

Article 77 Foreign worker

1. A foreign worker exercising a professional activity shall enjoy the same rights and be subject to the same duties applicable to national workers, pursuant to this law and the International Labour Conventions ratified by Timor-Leste.

2. The employment contract entered into with a foreign worker shall be in writing and authorised by the relevant authority, with observance of the rules provided for in specific legislation.

PART III
COLLECTIVE WORK RELATION

CHAPTER I
FREEDOM OF ASSOCIATION AND TRADE UNION FREEDOM

Article 78
General principles

1. All workers and employers, without any discrimination and without any need for prior authorization, shall be free to establish, and to become members of, organisations the objective of which is to promote and defend their rights and interests.

Article 79
Objectives

In the exercise of their activities, trade unions' and employers' organisations shall aim at:

- a) Promoting and defending the rights and interests of their members;
- b) Collaborating with the Government in the development and fulfillment of the objectives provided for in the labour policy;
- c) Exercising the right to collective negotiation;
- d) Collaborating with the Labour Inspectorate as regards the enforcement of the rules provided by law and the collective agreement;
- e) Participating in the process of preparation of labour legislation, pursuant to the law.

Article 80 Rights

Trade unions and employers' organisations duly registered shall have the right to:

- a) Negotiate and enter into collective labour agreements, pursuant to the law;
- b) Provide services to their members;
- c) Initiate and intervene in administrative proceedings in order to defend the rights and interests of their members, pursuant to the law;
- d) Join international organisations.

Article 81 Freedom and trade union protection

1. No worker shall be compelled to join, not to join, or cease to join a trade union organisation.
2. No worker may join more than one trade union of the same level and branch of activity simultaneously while in the same profession or activity.
3. Any act aimed at reaching the following objectives shall be considered null and void:
 - a) To make access to employment conditional upon membership or non-membership in a certain trade union;
 - b) Dismiss, transfer or harm the worker for being or not being a member of a trade union or for exercising activities relating to his or her trade union freedom.

Article 82 Right to assemble and posting

1. Trade unions may hold meetings at the company or business with the objective of informing and discussing trade union matters of interest for the workers.

2. The meetings shall be held outside of the normal working hours, save where expressly authorised by the employer.
3. Meetings shall be convened at least 48 hours in advance.
4. Trade unions shall have the right to post summons, texts, or information notices relating to the trade union activity at places inside the workplace where such summons, texts or information notices can easily be accessed to and visualized by all workers.

Article 83 Independence and autonomy

1. Workers' organisations and employers' organisations shall be independent and autonomous among them and from the State, political parties, religious institutions and any association of a different nature, and any interference of the latter in their organisation or functioning shall be prohibited.
2. Employers shall not, either individually or through another person, promote the establishment, maintenance or funding of the functioning, by any means whatsoever, of the workers' organisations or intervene by any means whatsoever in their organisation or management, or prevent and hamper the exercise of their rights.
3. Public authorities shall refrain from any intervention that may limit the exercise of the trade unionist rights provided for by law or prevent the lawful exercise of such rights.
4. Workers' organisations may organise themselves into:
 - a) Trade unions;
 - b) Federations – association of three or more trade unions of the same profession or branch of activity; or
 - c) Confederations – national association of trade unions.
5. Employers' organisations may organise themselves into:

- a) Organisation of employers;
 - b) Federation, made up of the association of three or more organisations of employers of the same branch of activity;
 - c) Confederation, composed of the national association of the employers' organisations.
6. Trade unions and employers' organisations may establish organisations at the regional and national level.

Article 84
Right to self-regulation

Trade unions' organisations and employers' organisations shall have the right to draft their own by-laws and elect their members and shall be governed by applicable principles of democracy and rule of law.

Article 85
Registration, corporate entity and accountability

1. Request for registration trade unions or employers' organisations shall take place against presentation of the following documents:
 - a) Request for registration signed by the chairperson of the constituent assembly addressed to the relevant government body;
 - b) Minutes of the constituent assembly;
 - c) Approved by-laws;
 - d) Nominal list of the founding members.
2. Once the requirements for registration have been met, the relevant government body shall transcribe the registration into a specific book and publish the by-laws in the Official Gazette within a maximum of 30 days, and shall publish a notice in two largely circulated newspapers in the country, thereby informing the public of the issuance of the relevant certificate on behalf of the organisation.

3. Trade unions' and employers' organisations shall acquire corporate entity following registration of their by-laws with the government body in charge of labour.

4. Once the corporate entity has been acquired, trade unions' and employers' organisations shall have the capacity to hire, purchase and dispose of movable and immovable property and to be a party in a judicial proceeding.

5. Trade unions' and employers' organisations may only start exercising their activities after the publication of their by-laws or, in the absence of the publication, after 30 days have elapsed from the date of the respective registration.

6. No member or leader of a trade union or employer's organisation shall be held accountable for the obligations and liabilities contracted on behalf of the institution, save in cases of proven fraud.

Article 86 Contents of the by-laws

1. By-laws of trade union organisations and employers' organisations shall expressly contain and regulate the following:

- a) The name, the head office and the branch of activity they represent;
- b) The objectives of the organisation and respective geographical level of operation;
- c) The requirements for acquiring and forfeiting membership;
- d) The rights and duties of the members;
- e) The manner in which the collection of dues is made;
- f) The disciplinary regime;
- g) The bodies making up the institution, their respective powers, the rules for their election and the length of the respective terms of office;
- h) The meetings of the assembly and the voting manner;

- i) The financial administration regime;
 - j) The process for amending the by-laws;
 - k) The applicable regime for merging and dissolving the organisation, as well as for liquidating the respective property.
2. Amendments to by-laws, to be approved by the organisation's assembly, shall be registered with the relevant organisation within 30 days.
3. Registration of, and amendments to, by-laws of such organisations shall be subject to paragraphs 2 and 3 of article 85 above and shall only be enforceable against third parties after their effective publication.

Article 87 Cancellation of registration

1. Registration of a trade union or employer's organisation may only be cancelled by decision of the respective organisation's assembly pursuant to the respective internal by-laws or judicial decision.
2. Voluntary or judicial dissolution of a trade union or employer's organisation shall be notified to the relevant government body for the cancellation of the respective registration and publication thereof, pursuant to paragraph 3 of article 86 above.

Article 88 Subsidiary legislation

The legal regime governing associations shall apply *mutatis mutandis* to trade unions' and employers' organisations.

Article 89 Union dues collection system

1. Workers shall not be obliged to pay dues to trade unions of which they are not members.
2. The workers shall be required to authorise in writing the collection of dues to be deducted directly from their salary, with due mention of the name of the trade union, the amount to be deducted and the periodicity of the discount.

3. Where the worker cannot read and write or is visually impaired, the authorization referred to in the preceding paragraph shall contain his or her fingerprint as well as the signature of two duly identified witnesses.

4. The amount of dues collected by the trade union shall not exceed 2 percent of the salary of the worker.

5. The employer shall make the authorised deductions and shall immediately forward the amounts collected to the trade union together with a list containing the names of the employees, the amount of the dues paid individually and the total amount deducted.

Article 90 Annual report

1. Within two months of end of each fiscal year, workers' and employers' organisations shall provide the relevant government body with a report containing the following data:

- a) The financial balance sheets;
- b) The identification of their elected representatives; and
- c) The number of registered members.

2. Workers' and employers' organisations shall make the financial reports available to all its members.

CHAPTER II RIGHT TO COLLECTIVE NEGOTIATION

Article 91 General principles

1. The objective of collective negotiation is to establish and stabilise collective labour relations by, notably:

- a) Regulating mutual rights and duties of workers and employers linked by individual employment contracts;

- b) Reviewing or renewing previously concluded collective agreements;
- 2. The right to collective negotiation shall be guaranteed to all workers and employers, pursuant to article 92 below.
- 3. Parties involved in the collective negotiation process shall observe the principle of good faith.
- 4. The parties involved shall reply as soon as possible to the proposals and counter-proposals tabled during collective negotiations and shall appear to meetings convened for such purpose.
- 5. The parties shall be subject to the duty of secrecy insofar as any information received under confidentiality is concerned.
- 6. The parties shall consult with their workers on the stages of the negotiation process and shall not use such right to suspend or interrupt the negotiation process.

Article 92

Parties to collective negotiations

- 1. The following shall be parties in a collective negotiation:
 - a) Trade unions organisations, pursuant to subparagraph a) of article 80, and organisations duly authorised to negotiate on behalf of the workers;
 - b) The employer or the employer's organisation, pursuant to subparagraph a) of article 80, duly authorised to negotiate on behalf of the employer or the employers;
- 2. Employers shall allow the workers' representatives to be away from their workplace during normal working hours of the company, without loss of remuneration, so as to take part in collective negotiations.

Article 93
Negotiation process

1. The collective negotiation process shall start with a presentation to the other party of the proposal aimed at concluding or reviewing a collective agreement.
2. The negotiation proposal shall be in writing, duly substantiated, and shall contain, at least, the following:
 - a) The name of the proposing entity that shall subscribe it;
 - b) The matters on which the negotiation shall focus;
3. The party receiving the collective negotiation proposal shall convene the first meeting within fifteen days from the date of receiving the proposal.
4. On the day of the meeting, the reply to be handed over shall express a stance relating to each clause contained in the proposal, i.e., accepting it, refusing it, or presenting a counter-proposal.
5. Where a party does not convene a meeting within the period of time provided for in paragraph 3 above, either for lack of will from one of the parties or following non recognition of a trade union by an employer, or where no agreement has been reached, any of the parties may resort to the Mediation and Conciliation Service to request the establishment of a mediation process.
6. The Mediation and Conciliation Service shall initiate the mediation process and convene a meeting within 48 hours and shall complete the process within a maximum of 10 days.

Article 94
Collective labour agreement

1. Collective agreements shall be made in writing and no provision thereof shall be contrary to the applicable legislation, save where it is to establish conditions which are more favourable to the workers.
2. Collective agreements shall contain at least:
 - a) The name of the parties thereto;

- b) The professional category and sector of activity it applies to;
 - c) The matters regulated therein;
 - d) The relations between the trade unions and the employers who took part in the collective negotiation process;
 - e) The form of settlement of disputes that may arise from the interpretation of the agreement;
 - f) The date of conclusion and the duration of the agreement.
3. The collective agreement shall be registered with the relevant government body.
4. The registration of the collective agreement may be refused where it does not comply with the provisions of paragraphs 1 and 2 above and where it violates the mandatory legal regime protecting the rights of the workers.
5. Once the duration of the collective agreement has elapsed without new negotiations being requested, the collective agreement shall be automatically renewed for the same period of time.

- 1. The collective agreement shall only be binding upon the parties thereto.

Article 95

Right to strike and lockout

- 1. The State shall protect the right to strike, pursuant to the Constitution.
- 2. Lockout shall be prohibited.
- 3. The exercise of the right to strike and lockout shall be the object of specific legislation.

PART IV
LABOUR DISPUTES

Article 96
Principles

1. In settling labour disputes the parties shall act in conformity with the principle of good faith.
2. Bodies responsible for settling labour disputes shall observe the principles of impartiality, independence, procedural celerity and justice.

Article 97
Settlement of disputes

1. Disputes arising from individual or collective relations provided for in this Code may be settled by the parties through conciliation, mediation or arbitration, through the Mediation and Conciliation Service and through the Labour Arbitration Council, without prejudice to the intervention of courts.
2. Individual labour disputes shall be mandatorily submitted to conciliation and mediation before the parties involved resort to courts.
3. The provisions of the preceding paragraph shall not apply to disputes relating to unlawfulness of rescission of employment contracts by the employer or the worker based on good cause and on rescission of employment contracts based on market, technological or structural reasons.
4. In settling individual labour disputes, resorting to arbitration shall be voluntary and may result from a request by the parties involved or by one the parties involved, in which case the other party shall be notified to declare its acceptance or refusal to resort to arbitration.
5. At the request of the parties involved, collective labour disputes shall be settled by arbitration through the Labour Arbitration Council.

PART V
MONITORING AND SANCTIONATORY REGIME

Article 98
Control of legality

Monitoring and control of employment legality shall be undertaken by the Labour Inspectorate, the nature and status of which shall be determined by a specific statute.

Article 99
Sanctions

1. Violation of any norm contained in this Code shall be punishable with fines and other accessory sanctions, taking into account the relevance of the violated interests, pursuant to the terms to be established by specific legislation.
2. Violation of the rights of children and exaction of forced labour, as provided for in this law and in international conventions ratified by Timor-Leste, shall be communicated to the Public Prosecution to enable it to initiate prosecution and establish civil and criminal liability of the parties involved.

PART VI
FINAL AND TRANSITIONAL PROVISIONS

Article 100
National Labour Council

The Government shall promote the establishment of the National Labour Council, to be composed of three representatives of the Government, two representatives of employers' organisations and two representatives of trade unions, with powers to:

- a) Promote social dialogue and concertation among stakeholders;
- b) Issue opinions on policies and legislation on labour relations;
- c) Propose the national minimum wage;
- d) Perform any other functions entrusted to it by law.

Article 101
Settlement of disputes and Labour Arbitration Council

1. The procedures to be applied in the settlement of labour disputes and the establishment of bodies with responsibility to settle such disputes shall be defined in a specific statute to be approved by the Government.
2. The Mediation and Conciliation Service and the Labour Arbitration Council shall have representative offices in all districts.
3. The Labour Arbitration Council shall be made up of at least one representative of the Government, one representative of the employers' organisations and one representative of trade unions.
4. The Labour Arbitration Council shall particularly have the following powers:
 - a) Examine and decide on labour disputes submitted to it;
 - b) Any other powers conferred to it by law.
5. Decisions referred to in subparagraph *a)* of the preceding paragraph shall be submitted to district courts for review of legality and ratification of judgment, having the same legal effect to the full as a sentence handed down by a court, and shall constitute an enforcement order against the losing party.
6. Until such time as the bodies referred to in paragraph 2 above have been established, it shall be incumbent upon the courts to decide on labour disputes.
7. The norms established in the civil procedure law shall apply to judicial proceedings relating to labour disputes.

Article 102
Regulation

The rights, duties, limitations and procedures to be applied by the Labour Inspectorate, including the regime for application of sanctions, shall be regulated by a specific legislative instrument.

Article 103
Revocatory norm

UNTAET Regulation No. 2002/5 of 1 May, including any other legislation contrary to the norms contained in this Code, is hereby revoked.

Article 104
Entry into force

This law shall enter into force 120 days after its publication in the Official Gazette.

Approved on 20 December 2011

The Speaker of the National Parliament,

Fernando La-Sama de Araújo

Promulgated on

For publication

The President of the Republic,

José Ramos-Horta.