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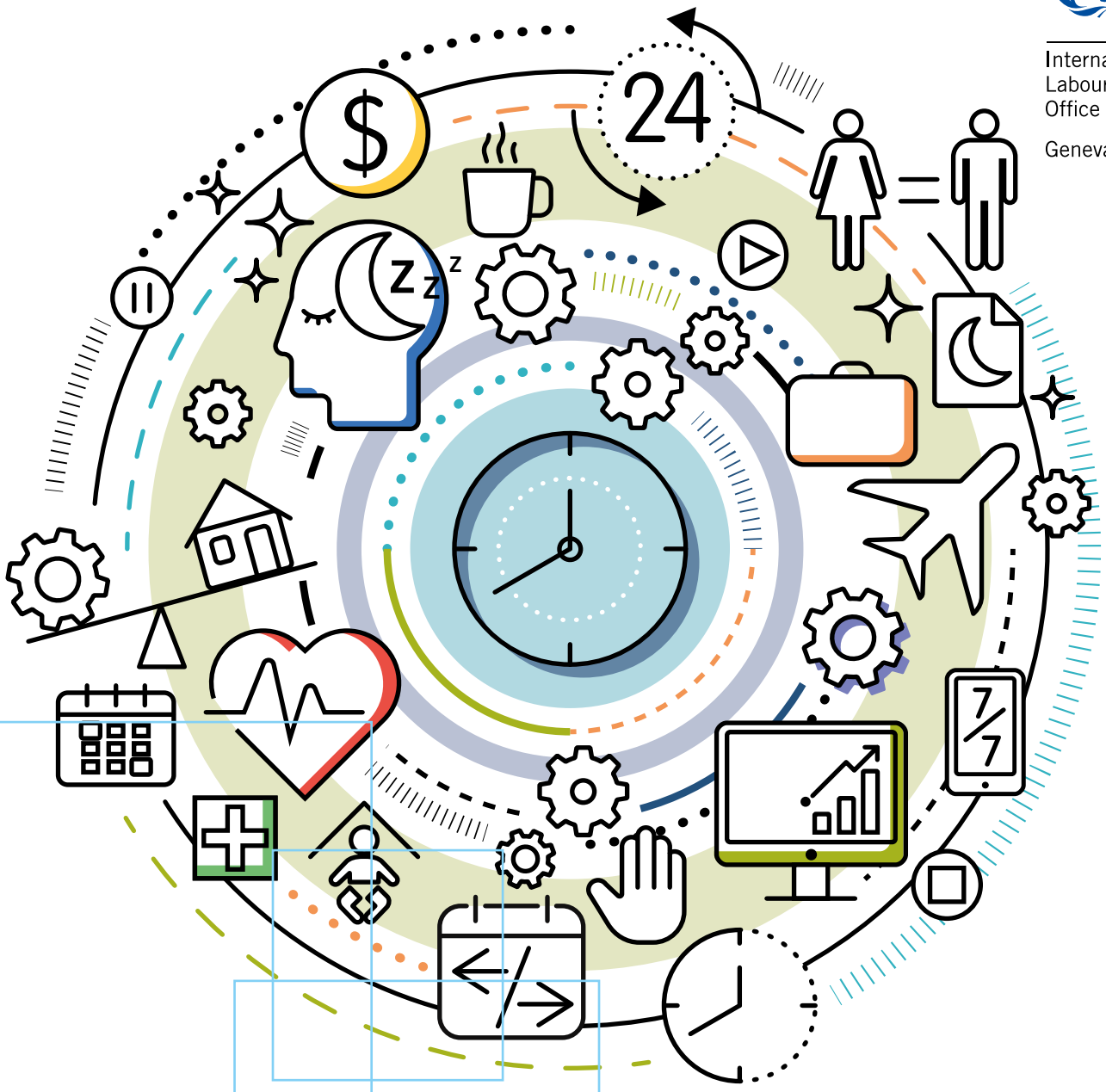

Ensuring decent working time for the future

INTERNATIONAL LABOUR CONFERENCE
107th SESSION, 2018

International Labour Conference, 107th Session, 2018

General Survey concerning working-time instruments

Third item on the agenda:
Information and reports on the application of Conventions and Recommendations

Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution)

Report III (Part B)

International Labour Office, Geneva

Ensuring decent working time for the future

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Summary

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Introduction

1. Background and scope of the General Survey

1. In accordance with article 19 [1] of the Constitution of the International Labour Organization, the Governing Body of the International Labour Office decided, at its 325th Session (October–November 2015), that the General Survey to be prepared by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) and submitted to the International Labour Conference in 2018 would examine the instruments on working time. [2] The instruments covered by this General Survey are the following nine Conventions, one Protocol and six Recommendations on working time: the Hours of Work (Industry) Convention, 1919 (No. 1); the Weekly Rest (Industry) Convention, 1921 (No. 14); the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30); the Forty-Hour Week Convention, 1935 (No. 47); the Night Work (Women) Convention (Revised), 1948 (No. 89); the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948; the Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106); the Holidays with Pay Convention (Revised), 1970 (No. 132); the Night Work Convention, 1990 (No. 171); the Part-Time Work Convention, 1994 (No. 175); the Night Work of Women (Agriculture) Recommendation, 1921 (No. 13); the Holidays with Pay Recommendation, 1954 (No. 98); the Weekly Rest (Commerce and Offices) Recommendation, 1957 (No. 103); the Reduction of Hours of Work Recommendation, 1962 (No. 116); the Night Work Recommendation, 1990 (No. 178); and the Part-Time Work Recommendation, 1994 (No. 182). [3]

Reports received by region

2. Following this decision, at its 326th Session, the Governing Body adopted the report form to be used by member States for their reports under article 19 of the ILO Constitution for the preparation of the General Survey. The Committee notes that 124 governments provided reports on the position of national law and practice with respect to working-time issues: 32 reports from Africa, 23 reports from the Americas, six reports from the Arab States, 18 reports from Asia and the Pacific and 45 reports from Europe and Central Asia.

[1] The obligations of Members with regard to Conventions are laid down in paragraph 5(e) of article 19 of the ILO Constitution. Paragraph 6(d) deals with Recommendations and Paragraph 7(a) and (b) deals with the particular obligations of federal States.

[2] ILO: Choice of Conventions and Recommendations on which reports should be requested under article 19 of the ILO Constitutions in 2017, Governing Body, 325th Session, Geneva, Oct.–Nov. 2015, GB.325/LILS/4 and dec-GB.325/LILS/4.

[3] The instruments on working time that have been considered outdated, shelved and withdrawn, as well as certain sectoral instruments such as the Hours of Work and Rest Periods (Road Transport) Convention, 1979 (No. 153), and the Hours of Work and Rest Periods (Road Transport) Recommendation, 1979 (No. 161), are excluded from the scope of the General Survey.

Full indications on the reports due and received are contained in Appendix III. Moreover, according to its usual practice, the Committee has also made use of the information contained in the reports submitted under articles 22 and 35 of the Constitution by those member States that have ratified the Conventions. Finally, the Committee has duly taken into account the observations submitted by 11 employers' and 29 workers' organizations, the list of which is contained in Appendix IV.

2. Decent working time in a transforming world of work

3. Working time, rest and the organization of working hours and rest periods (working-time arrangements) are central to the employment relationship. The number of hours worked, the length and number of rest periods and how they are organized in a day, week, month or year, have important consequences for both workers and employers. The regulation of working time and rest periods also plays an important role in upholding the principle, enshrined in the Treaty of Versailles of 1919 and in the Declaration of Philadelphia of 1944, that labour is not a commodity and should not be regarded merely as an article of commerce. While the views of workers, employers and governments differ on the most appropriate approaches to these issues, their common recognition of the importance of regulating hours of work and rest periods has led to the adoption of a series of ILO standards on these issues which are covered by the present General Survey. Given that the earliest Convention on the issue dates from 1919, historically working-time instruments have been some of the most important linchpins for international labour standards, catalysing labour law, policy and practice at the national and local levels. This interlinks significantly with the centrality of international labour standards and the centenary of the International Labour Organization in 2019.

4. Working time, perhaps second only to wages, is the working condition that has the most direct impact on the day-to-day lives of workers. The number of hours worked and the way in which they are organized can significantly affect not only the quality of work, but also life outside the workplace. Working hours and the organization of work can have a profound influence on the physical and mental health and well-being of workers, their safety at work and during the transit to and from their homes, and their earnings. The *International Trade Union Confederation (ITUC)* emphasizes the importance of regulating working hours in order to ensure that the hours worked are safe and productive.

5. Working time is also critical for enterprises. Hours of work and their organization are important in determining productivity and whether an enterprise is profitable and sustainable. The *International Organisation of Employers (IOE)* observes that appropriate working-time regulation can play an important role in the development of rules for the effective organization of working time, which has an important effect on enterprise performance, productivity and competitiveness. This includes: the efficient use of machinery and other means of production; the availability of worker expertise when markets and customers so require; the achievement of production targets with the existing workforce in cases where there is a scarcity of skilled workers; and the minimization of labour costs.

6. For the national economy and society as a whole, decisions on working time can have wide-ranging consequences, often going well beyond the immediate interests of a particular enterprise or group of workers. These decisions can have repercussions for the health of the economy, the competitiveness of industry, levels of employment and unemployment, the need for transport and other facilities, and the organization of public services. Working-time regulation can also contribute to the resolution of social problems

including notably the work–life balance, the protection of the health, safety and well-being of workers. It is therefore clear why issues relating to working time and rest periods have long been at the centre of debates, not only between workers and employers, but in society at large.

7. The regulation of working time is all the more important given the transformations currently taking place in the world of work. Some of these changes have been facilitated by developments and improvements in technology and communications which are disrupting, and even contributing to the elimination of, many of the traditional time and space dimensions in work. Work today is increasingly performed at any time and almost anywhere, [4] which has consequences for the organization of work and production with the development, among others, of a "24/7" society. [5] While in today's world of work the agricultural and manufacturing sectors continue to be very important, by 2013 nearly half of all employment around the world was located in the burgeoning services sector. [6] In contrast to other sectors, the nature of the services sector often means it must respond to fluctuating demands and to time periods that are both shorter and often less predictable. However, in a world of instant communications and sophisticated technology, even the manufacturing industry is not immune from the pressures of being able to respond "on demand" to changing consumer trends (for example, in fashion, but also in many other commodities) through "in time" production. This, in turn, imposes demands for organizational flexibility which may require workers to work in non-traditional ways (or in non-standard employment) which are characterized, among other aspects, by variability of time (across a day, week, and/or a longer period). These are all part of the pressures arising out of globalization. There is no doubt that market competition has intensified and created pressure for enterprises to become efficient and reduce costs, and technologies have allowed the enormous increase in the transnational provision of global services. While this has positive effects in terms of increased labour market participation and productivity, it may also have negative effects on workers' health and well-being, as the boundaries between work and private life tend to become blurred. This has always been a feature of work for women, who have traditionally carried out much of their unpaid work from home (such as taking in laundry, and child-minding); with new technologies the phenomenon of "home-working" has increased exponentially.

8. The increased feminization of labour markets also highlights in different ways the issue of working time. Even when women are employed, they still carry out the larger share of unpaid household and care work, which limits their capacity to increase their hours in paid, formal, and wage and salaried work. As a consequence, women are more likely than men to work short hours, whether voluntarily or against their choice (thus finding themselves in "time-related underemployment"). [7] Thus the participation of women undertaking paid work in the labour market in recent decades has knock-on consequences, for instance, in the demands for the provision of services relating to the unpaid work that has traditionally been performed by women for the family and in the home. This unpaid domestic work, which is now recognized as work by the International Conference of Labour Statisticians in its 2013 resolution, has never been confined within the same time constraints as much paid work in the labour market. Thus, as women have

[4] J. Messenger et al: *Working anytime, anywhere: The effects on the world of work*, ILO and Eurofound, Luxembourg, 2017.

[5] Twenty-four hours per day, seven days per week.

[6] ILO: *Global Employment Trends 2014* (Geneva, 2014), as referred to in ILO: *Non-standard employment around the world: Understanding challenges, shaping prospects* (Geneva, 2016), p. 47.

[7] ILO: *Women at Work: Trends 2016* (Geneva, 2016), p. XV.

moved into the paid labour market, there has been a growing need to find an alternative means of performing work traditionally undertaken in the home. [8] The "care economy" has grown dramatically in many countries, and often requires work "around the clock" to respond to the needs of children, the elderly, persons with disabilities or who are ill, and those otherwise unable to care for themselves. Mismatches between the hours of work required in most workplaces and school hours now require the provision of services to care for children, for limited hours before and after school, and for longer hours during school holidays. The outsourcing to commercial enterprises of work previously undertaken in the home also requires the provision of services outside traditional hours of work. The growing number of domestic workers is another example of those whose working time is not usually confined to traditional industrial standards or hours of work. Recognition of gender equality has also resulted in a better understanding of the importance of sharing unpaid work in the home. In order to manage the conflict that may arise for workers with family responsibilities, there have been social demands for enterprises to recognize the importance of providing leave so that workers are able to manage this conflict without jeopardizing their position in the labour market. This in turn has also had an impact on hours of work.

9. In this context, the issue of working time has become a key element of the ILO Decent Work Agenda in the broader framework of the 2030 Agenda for Sustainable Development and, particularly, of Sustainable Development Goal (SDG) 8 on the promotion of sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all.

3. A multifaceted General Survey: Towards a new comprehensive approach

10. Working time was the subject of a number of General Surveys between 1964 and 2005. [9] However, this is the first time that a General Survey has addressed all the aspects of working time together. The rationale behind this integrated approach is that a General Survey on all the relevant instruments on working time can provide a comprehensive overview of the current situation in member States in relation to the extent to which effect has been given to their provisions as well as the difficulties that are preventing or delaying additional ratifications, and can assist in identifying potential gaps in international labour standards. [10]

11. Following the adoption of the ILO Declaration on Social Justice for a Fair Globalization in 2008 and the alignment of General Surveys with recurrent discussions, recent General Surveys have tended to cover an increasing number of instruments. The

[8] Across the world, it is a cultural given that women are the primary caregivers, yet the value and moral imperatives of care work are undervalued, unrecorded and invisible in most societies. As more and more women have entered the work force, some as primary breadwinners, family care has come under great stress. Finding solutions to care work is essential if women are to have equal opportunities in the world of work.

[9] More specifically, the first General Survey on two subcategories of working time, namely weekly rest and paid annual leave, was carried out in 1964 on Conventions Nos 14, 106, 52 and 132 and Recommendations Nos 103, 47, 98 and 101. Subsequently, the 1967 General Survey focused on hours of work and on Conventions Nos 1, 30 and 47 and Recommendation No. 116. In 1984, the Committee again examined Conventions Nos 14, 106 and 132 and Recommendations Nos 116 and 103 on reduction of working hours, weekly rest and holidays with pay. Night work of women in industry was the subject of the 2001 General Survey which examined Conventions Nos 4, 41, 89 and the Protocol of 1990 to Convention No. 89. Finally, the 2005 General Survey focused on hours of work and on Conventions Nos 1 and 30.

[10] ILO: Choice of Conventions and Recommendations on which reports should be requested under article 19 of the ILO Constitutions in 2017, op. cit., para. 9.

Follow-up to the ILO Declaration on Social Justice for a Fair Globalization seeks to make the fullest possible use of all the means of action provided under the Constitution for the ILO to fulfil its mandate. Certain measures to assist ILO Members may entail some adaptation of existing modalities of the application of article 19, paragraphs 5(e) and 6(d), of the ILO Constitution, without increasing the reporting obligations of member States. [11] In this context, General Surveys are not only intended to provide an overview of law and practice in ILO member States concerning certain instruments but also to feed into recurrent discussions by providing relevant information on trends and practices in relation to a specific strategic objective. [12] This is also the reason why some of the questions in the report form, which are only indirectly linked to a provision of an ILO instrument, have been identified as requests for "Information on trends and practices". The findings of the General Survey should also feed into a tripartite meeting of experts on working time and work–life balance, tentatively planned for 2019, contingent on available funding, as suggested in the conclusions of the 2015 recurrent discussion on social protection (labour protection), [13] which will examine the various developments and challenges and their impact on their organization and scheduling of working time, taking into account the needs of employers and workers. [14]

4. Working time at the heart of the ILO's standard-setting activities

12. The need to establish limits on hours of work is both a social issue, related to the need to safeguard the health and well-being of workers, and an economic issue related to production. At the beginning of the nineteenth century, during the early stages of the industrialization process, working days of 14 or 16 hours were not uncommon. [15] The priority given to the adoption of an international standard establishing an eight hour working day was also one of the most pressing demands by workers after the First World War. [16]

13. Since its foundation, working time has been at the heart of the rationale behind the ILO's mandate and had been on its agenda since its creation in 1919. The principles of the eight-hour day or the 48-hour week were already enshrined in the Treaty of Versailles as a method and principle for regulating labour conditions, which all industrial communities should endeavour to apply, so far as their special circumstances permit. [17] Thus, the preamble to the Constitution provides that "the regulation of the hours of work, including the establishment of a maximum working day and week" is urgently required.

[11] Follow-up to the ILO Declaration on Social Justice for a Fair Globalization, Point I.B.

[12] ILO: Proposed form for reports to be requested under article 19 of the Constitution in 2017 on the instruments on working time, Governing Body, 326th Session, Geneva, 10–24 Mar. 2016, GB. 326/LILS/4, p. 5.

[13] ILO: Resolution and conclusions concerning the recurrent discussion on social protection (labour protection), ILC, 104th Session, Geneva, 2015.

[14] ILO: Choice of Conventions and Recommendations on which reports should be requested under article 19 of the ILO Constitution in 2017, op. cit., para. 9.

[15] ILO: *Hours of work*, General Survey on the reports concerning the Hours of Work (Industry) Convention, 1919 (No. 1), the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30), and the Forty-Hour Week Convention, 1935 (No. 47), and the Reduction of Hours of Work Recommendation, 1962 (No. 116), ILC, Report III (Part III), 51st Session, Geneva, 1967, para. 2.

[16] *The International Labour Organisation: The first decade*, London, 1931, p. 105.

[17] Treaty of Versailles, 1919, Part XIII, Section II, General Principles, Art. 427.

14. Building on this framework, between the very first ILO Convention and the most recent ones, working time has continued to help shape the Organization's standard-setting activity. The ILO has adopted a number of instruments covering specific aspects of working time and particularly hours of work, weekly rest, paid annual leave, night work and part-time work. [18] Moreover, a number of sectoral ILO instruments contains provisions on working time. [19]

15. At its 323rd Session (March 2015), the Governing Body decided to establish a tripartite working group under the Standards Review Mechanism to ensure that the ILO has a clear, robust and up-to-date body of international labour standards that respond to the changing patterns of the world of work for the purpose of the protection of workers and taking into account the needs of sustainable enterprises. At its first meeting the Standards Review Mechanism Tripartite Working Group (SRM TWG) adopted an initial programme of work that includes 12 instruments concerning working time: Conventions Nos 1, 30, 47, 89, 132, 171 and 175, the Protocol of 1990 to Convention No. 89, and Recommendations Nos 13, 98, 178 and 182. These instruments will be examined by the SRM TWG at a later date yet to be determined.

5. Ratifications [20]

16. With reference to the three Conventions on hours of work examined in this General Survey, namely Conventions Nos 1, 30 and 47, a total of 67 countries have ratified at least one, and 27 countries have ratified at least two of them. [21] The most recent ratification of Convention No. 1 was in 1993 *(Slovakia)*, of Convention No. 30 in 1985 *(Equatorial Guinea)*, and of Convention No. 47 in 2011 *(Republic of Korea)*.

17. With regard to Conventions Nos 14 and 106 on weekly rest, a total of 128 countries have ratified at least one of the two Conventions, and 55 countries have ratified both Conventions. The most recent ratification of Convention No. 14 was by the Cook Islands in 2015, and Convention No. 106 was last ratified by Montenegro in 2006.

18. Convention No. 89 has received 67 ratifications and 23 countries have denounced it; the most recent ratification was in 2008 (Madagascar). The Protocol of 1990 to Convention No. 89, has received five ratifications and it has been denounced by two countries.

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[18] On hours of work, Conventions Nos 1, 30 and 47 and Recommendation No. 116; on weekly rest, Conventions Nos 14 and 106 and Recommendation No. 103; on holidays with pay, Holidays with Pay Convention, 1936 (No. 52), the Holidays with Pay (Agriculture) Convention, 1952 (No. 101), Convention No. 132, and Recommendation No. 98; on night work, the Night Work (Women) Convention, 1919 (No. 4), the Night Work (Women) Convention (Revised), 1934 (No. 41), Convention No. 89 and its 1990 Protocol, Convention No. 171 and Recommendations Nos 13 and 178; and on part-time work, Convention No. 175.

[19] For example, the Plantations Convention, 1958 (No. 110), and its Protocol of 1982, the Hours of Work and Rest Periods (Road Transport) Convention, 1979 (No. 153), the Hours of Work and Rest Periods (Road Transport) Recommendation, 1979 (No. 161), the Working Conditions (Hotels and Restaurants) Convention, 1991 (No. 172), the Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180), the Domestic Workers Convention, 2011 (No. 189), the Domestic Workers Recommendation, 2011 (No. 201), and the Maritime Labour Convention, 2006 as amended (MLC, 2006).

[20] The number of ratifications of the Conventions under examination is as follows: Convention No. 1, 52 ratifications; Convention No. 14, 120 ratifications; Convention No. 30, 30 ratifications; Convention No. 47, 15 ratifications; Convention No. 89, 67 ratifications; Protocol of 1990 to Convention No. 89, five ratifications; Convention No. 106, 63 ratifications; Convention No. 132, 37 ratifications; Convention No. 171, 15 ratifications; and Convention No. 175, 17 ratifications.

[21] Only *New Zealand* has ratified all three of the Conventions, Nos 1, 30 and 47, but it denounced Conventions Nos 1 and 30 in 1989.

19. Convention No. 171 has received 15 ratifications, and the latest ratifications were by *Côte d'Ivoire* and *Montenegro* in 2016, and *Lao People's Democratic Republic* and *Slovenia* in 2014.

20. Convention No. 132 has been ratified by 37 countries, and most recently by *Azerbaijan* in 2016 and the *Russian Federation* in 2010.

21. Finally, Convention No. 175 has received 17 ratifications, most recently by *Guatemala* in February 2017 and *Belgium* and the *Russian Federation* in 2016.

6. Structure of the Survey

22. The General Survey is organized in ten chapters focusing on the following thematic areas: Hours of work (Chapter I), Weekly rest (Chapter II), Annual holidays with pay (Chapter III), Night work (Chapter IV), Part-time work (Chapter V), Working-time arrangements (Chapter VI), Emerging issues (Chapter VII), Social dialogue and collective bargaining (Chapter VIII), Measures taken to ensure compliance with national laws and regulations on working time (Chapter IX) and Achieving the potential of the instruments (Chapter X). The first five chapters focus on the examination of a group of relevant Conventions and Recommendations. Chapter XI consists of final remarks and the way forward.

Chapter I. Hours of work

23. This chapter focuses on three Conventions, the Hours of Work (Industry) Convention, 1919 (No. 1), the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30), and the Forty-Hour Week Convention, 1935 (No. 47), and one Recommendation, the Reduction of Hours of Work Recommendation, 1962 (No. 116). [1] The subject of hours of work has been covered by General Surveys in 1967, 1984 and 2005.

24. The International Labour Conference (ILC) adopted Convention No. 1 as its first international labour standard, which embodied a combination of the two principles of eight and 48 hours as a legal limitation on hours of work in the industrial sector. The rationale behind the combination of the two principles in one instrument is explained by the fact that an eight-hour day alone would result in a 56-hour week if work is carried out for seven days a week. In contrast, a 48-hour week ensures that average hours of work do not exceed eight hours a day over a six-day week. This also implies an acknowledgment of the principle of 24 hours of rest a week. Moreover, Convention No. 1 authorizes a limited number of specific exceptions that allow the extension of normal hours of work.

25. In 1930, a similar protection was extended to salaried employees in commerce and offices with the adoption by the 14th Session of the ILC of Convention No. 30.

26. As indicated during the preparatory work, the need to adopt Convention No. 47 arose out of the widespread unemployment faced at the global level following the Great Depression in 1929. [2] As noted in the Preamble to the Convention, "unemployment has become so widespread and long continued that there are at the present time many millions of workers throughout the world suffering hardship and privation for which they are not themselves responsible and from which they are justly entitled to be relieved".

27. In this regard, Convention No. 47 requires ratifying countries to declare their approval of the principle of the 40-hour week applied in such a manner that the standard of living is not reduced in consequence. [3] As a promotional instrument, the Convention does not set out detailed rules, but calls on ratifying countries to take or facilitate such measures as are appropriate to secure the 40-hour working week. [4] The Preamble to Recommendation No. 116, adopted in 1962, indicates that the principle set out in Convention No. 47 is a social standard to be reached by stages if necessary.

28. Recommendation No. 116 was designed to supplement and facilitate the implementation of existing international instruments by indicating practical measures for the progressive reduction of hours of work, taking into account the different economic and social conditions in the various countries, as well as the variety of national practices for

[1] Conventions Nos 1, 30 and 47 are included in the group of 12 instruments on working time to be examined by the SRM TWG at a later date yet to be determined.

[2] ILO: *Record of Proceedings*, ILC, 19th Session, Geneva, 1935, p. 65.

[3] Article 1(a) of Convention No. 47.

[4] Article 1(b) of Convention No. 47.

the regulation of hours and other conditions of work, and by outlining in broad terms methods by which such practical measures might be applied. [5]

1. Actual hours of work in the world: An overview

29. The 1962 resolution of the International Conference of Labour Statisticians (ICLS) concerning statistics of hours of work defines "hours actually worked" as the hours that workers spend on work activities during a specified reference period. Figure 1.1 shows average weekly hours of work in the formal and informal economy across the world in recent years. Globally, average weekly working time is approximately 43 hours. With the exception of North America, Eastern Europe, and northern, southern and Western Europe, average weekly working hours for most subregions are above the 40-hour standard established in Convention No. 47. The northern, southern and Western European subregions have the lowest reported average, at 36.4 hours a week, followed by North America and Eastern Europe, both at 38.7 hours and the African continent with an average of 43.3 hours. In contrast, the southern and eastern Asian subregions have the highest reported weekly working time at 46.6 and 46.3 hours, respectively, followed by the Arab States at 45.8 hours. [6]

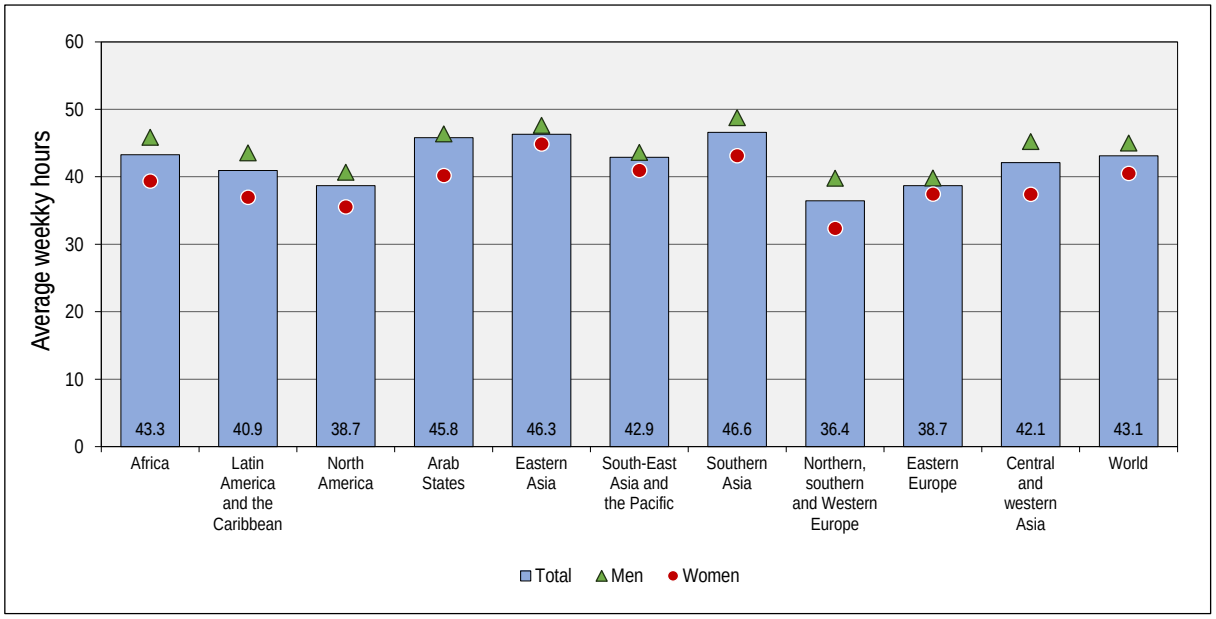
30. Overall, men work a higher weekly average of hours in paid work than women workers. [7] This gender gap is wider in Central and western Asia and northern, southern and Western European subregions, but less pronounced in the Arab States, Eastern Europe, southern Asia, South-East Asia and the Pacific.

[5] Preamble to Recommendation No. 116.

[6] ILO calculations based on ILOSTAT and microdata.

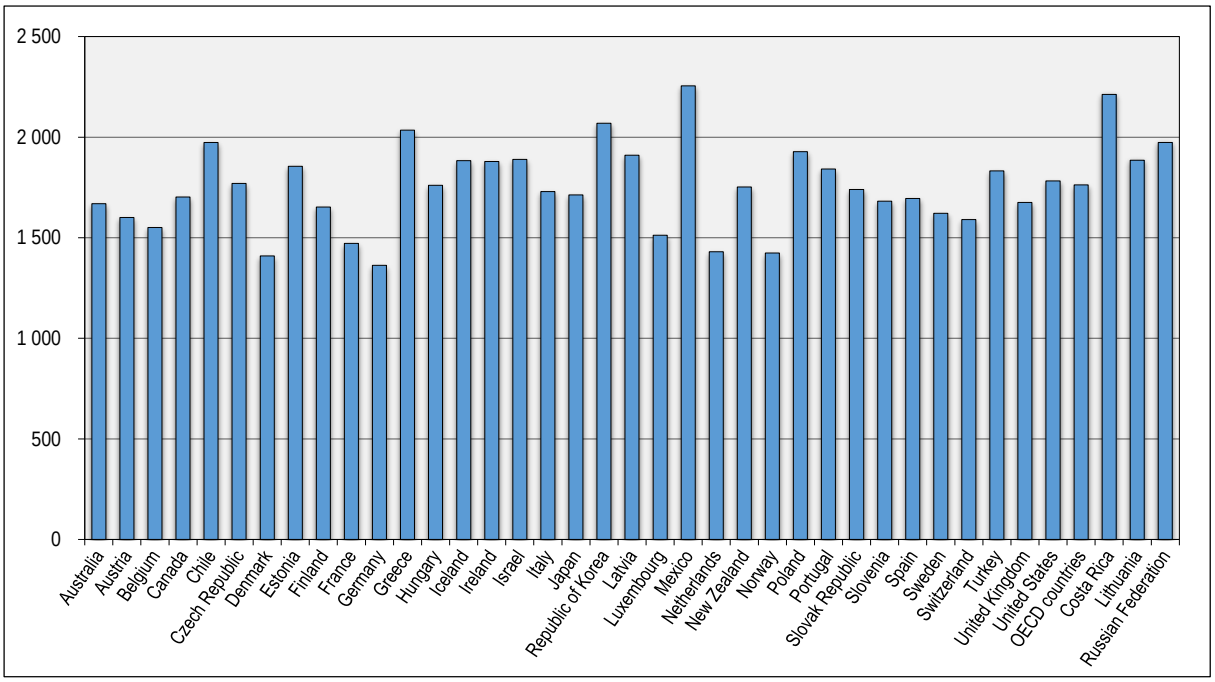
[7] Though when unpaid work is counted, the reverse is true. See ILO: *Women at Work: Trends 2016* (Geneva, 2016), p. 19.

Figure 1.1. Average weekly hours of work (weighted), by specific subregions, total employment, latest years (2015–16 for most countries)



Source: ILO calculations based on ILOSTAT and microdata.

Figure 1.2. Average annual hours actually worked per worker, 2016



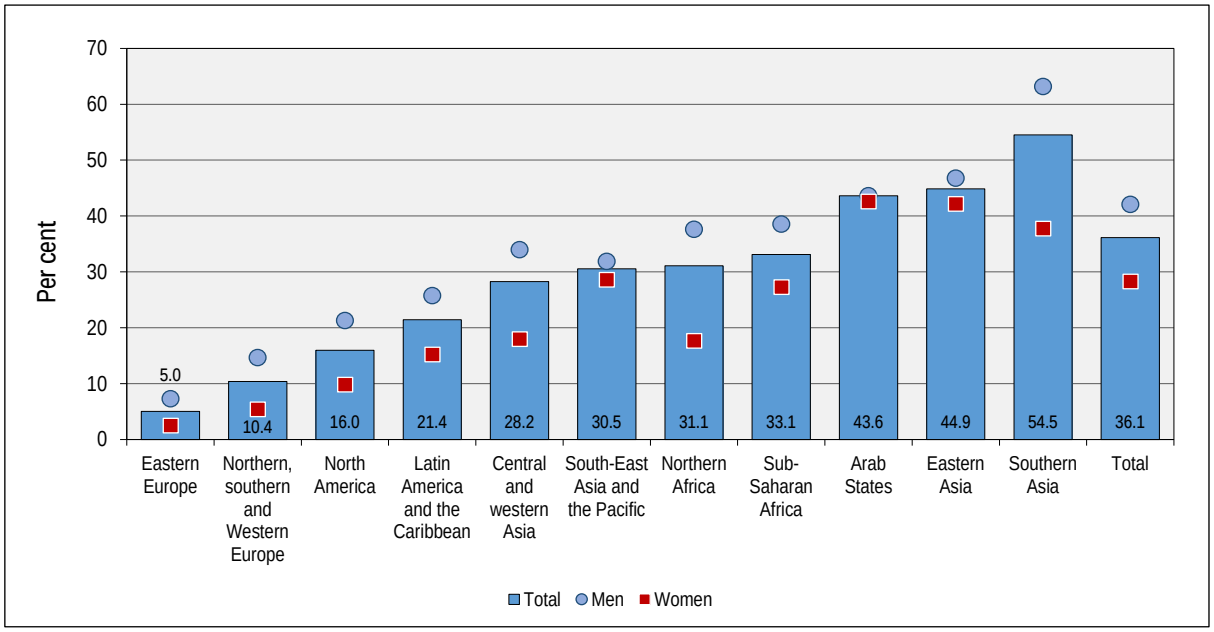
Source: OECD.

31. Long hours of work are defined as usual hours of more than 48 a week, as recommended by the Tripartite Meeting of Experts on the Measurement of Decent Work. [8] Working more than 48 hours a week regularly is associated with a range of safety and

[8] ILO: *Measurement of decent work*, Discussion paper for the Tripartite Meeting of Experts on the Measurement of Decent Work, 2008, p. 8.

health risks, as well as increased work–family interference. As shown in figure 1.3, workers in southern and eastern Asia (54.5 and 44.9 per cent, respectively) are the most likely to work such long hours, followed by those in the Arab States (43.6 per cent). In contrast, workers in Eastern Europe and in northern, southern and Western Europe, as well as in North America, have the lowest percentage of long hours of work (5 and 16 per cent, respectively). While men spend relatively longer hours in paid work than women workers in general, the percentages of hours of work are similar for men and women workers in eastern Asia, the Arab States, South-East Asia and the Pacific and Eastern Europe.

Figure 1.3. Percentage of workers working long hours (more than 48 hours a week) by specific subregions, total employment (2014–15 for most countries)

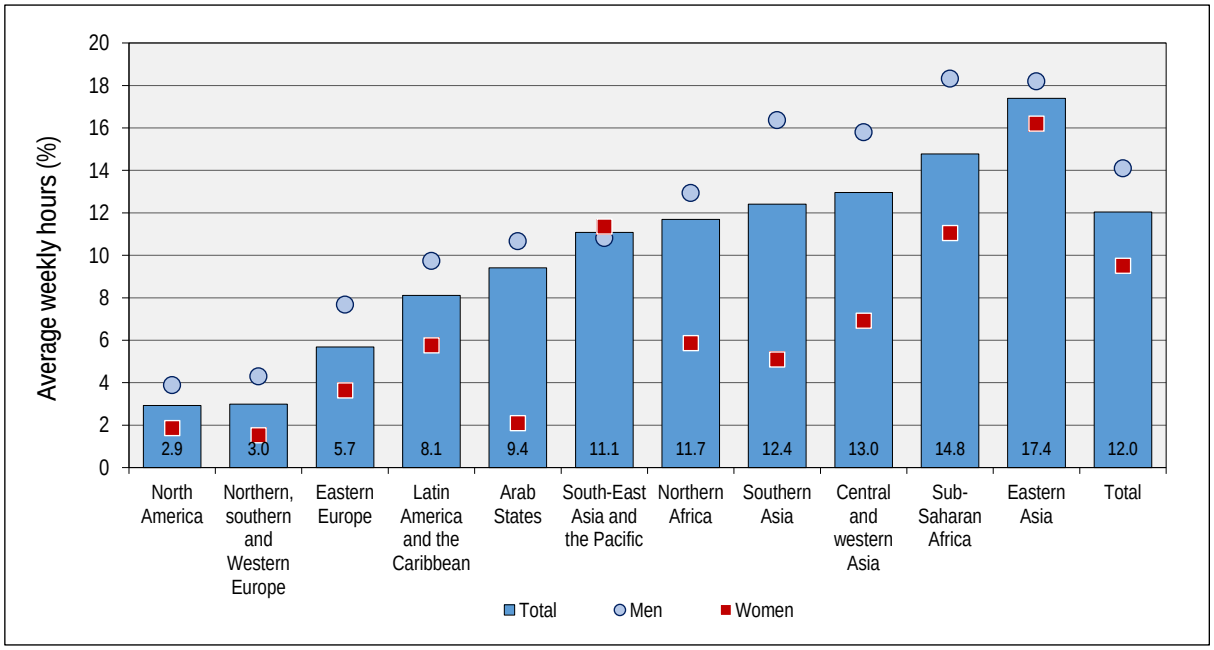


Source: ILO calculations based on ILOSTAT and microdata.

32. Figure 1.4 shows the percentage of workers working very long hours, defined as 60 hours a week or more, by subregion. At nearly 18 per cent, eastern Asia has the highest reported percentage of workers working over 60 hours a week, followed by sub-Saharan Africa, Central and western Asia and southern Asia. [9] In contrast, fewer than 6 per cent of workers work 60 hours a week or more in North America, northern, southern and Western Europe, and Eastern Europe. The percentage of men and women working 60 hours a week or more is similar in the eastern Asia, South-East Asia and the Pacific, and North American subregions.

[9] The expansion of global supply chains in emerging economies and the excessive working hours (above 60 hours per week) reported in this sector, contributes to the increase of working hours in these regions. See ILO: *Decent work in global supply chains*, ILC, 105th Session, Geneva, 2016. See also further on para. 147.

Figure 1.4. Percentage of workers working very long hours (more than 60 hours a week) by subregion, total employment (2014–15 for most countries)



Source: ILO INWORK based on ILOSTAT and calculations on microdata.

2. Ceiling on hours of work: Basic rules

A. Definitions

Box 1.1

Article 2 of Convention No. 30 provides that:

For the purpose of this Convention the term "hours of work" means the time during which the persons employed are at the disposal of the employer; it does not include rest periods during which the persons employed are not at the disposal of the employer.

33. Although Convention No. 1 does not include a definition of "hours of work", Convention No. 30 provides in Article 2 that the term hours of work does not include rest periods during which the persons employed are not at the disposal of the employer. [10] The legislation in the majority of countries contains a definition of hours of work which, in a substantial number of cases, reflects the definition in Convention No. 30. [11] However, in

[10] Article 11(b) of Convention No. 30 provides that every employer shall be required "to notify in the same way the rest periods granted to the persons employed which, in accordance with Article 2, are not included in the hours of work". Similarly, Article 8(1)(b) of Convention No. 1 provides that, in order to facilitate the enforcement of the provisions of the Convention, every employer shall be required to notify "such rest intervals accorded during the period of work as are not reckoned as part of the working hours".

[11] For example, **among countries that have not ratified either Convention**: *Antigua and Barbuda* (section C3 of the Labour Code), *Brazil* (section 4 of the Consolidation of Labour Laws), *Burkina Faso* (as reported by the Government), *Ecuador* (section 61 of the Labour Code), *El Salvador* (section 163 of the Labour Code), *Islamic Republic of Iran* (section 51 of the Labour Code), *Oman* (section 1(19) of the Labour Code) and *Serbia* (section 50 of the Labour Law); **among countries that have ratified one or both Conventions**: *Bangladesh* (section 2(iv) of the Labour Act), *Belgium* (section 19(2) of the Labour Act), *Plurinational State of Bolivia* (section 47 of the General Labour Act), *Burundi* (section 112(1) of the Labour Code), *Luxembourg* (section 211-4(1) of the Labour Code),

the majority of countries, the requirement of being at the disposal of the employer is supplemented or replaced by the need to perform actual work. [12] For example, in *Ethiopia*, [13] the Labour Proclamation defines normal hours of work as the time during which a worker actually performs work or is available for work in accordance with the law, collective agreement or work rules. In *Denmark*, [14] working time is the period during which workers are working and are at the employer's disposal and carrying out their activity or duties.

34. While most countries indicate that hours of work do not include rest periods, [15] in some countries rest periods are included in hours of work. [16] In a few countries, hours of work include some breaks and exclude others. For example, in *Poland*, [17] workers whose daily working time is six hours or more are entitled to a rest break included in their hours of work; by means of a collective agreement, labour regulation or the employment contract, workers may also be entitled to an additional break not included in their hours of work. In *Ethiopia*, [18] while short rest breaks during working hours are included in regular hours of work, meal breaks are not. In the *United States*, the time spent wearing and changing protective clothing and/or sanitation and safety equipment, so called "donning and

Mexico (section 52 of the Federal Labour Act), *Norway* (section 10-1 of the Working Environment Act) and *Bolivarian Republic of Venezuela* (section 167 of the Basic Labour Act).

[12] For example, **among countries that have not ratified either Convention**: *Azerbaijan* (section 89(1) of the Labour Code), *Bosnia and Herzegovina* (section 35 of the Labour Law of the Federation of Bosnia and Herzegovina, and section 56 of the Labour Law), *Croatia* (section 60 of the Labour Code), *Cyprus* (section 2 of the Organisation of Working Time Law), *Ecuador* (section 61 of the Labour Code), *Finland* (section 4 of the Working Hours Act), *Iceland* (section 52(1) of the Act on Working Environment, Health and Safety in Workplaces), *Italy* (section 1(2)(a) of Decree No. 66 of 2003), *Latvia* (section 130 of the Labour Law), *Republic of Moldova* (section 95(1) of the Labour Code), *Netherlands* (section 1:7(1)(k) of the Working Hours Act), *Russian Federation* (section 91 of the Labour Code), *Seychelles* (section 2 of the Employment (Conditions of Employment) Regulations 1991), *Singapore* (section 2 of the Employment Act), *Slovenia* (section 142 of the Employment Relationship Act), *Sri Lanka* (section 3(2) of the Shop and Office Employees Act), *Sweden* (section 1 of the Working Hours Act), *Tajikistan* (section 1 of the Labour Code), *the former Yugoslav Republic of Macedonia* (section 5(1)(8) of the Law on Labour Relations), *Turkmenistan* (section 58 of the Labour Code) and *United Kingdom* (section 2 of the Working Time Regulations); **among countries that have ratified one or both Conventions**: *Bulgaria* (section 1(11) of the Supplementary provisions of the Labour Code), *Chile* (section 21(1) of the Labour Code), *Cuba* (section 84(a) of the Labour Code), *Czech Republic* (section 78(1)(a) of the Labour Code), *Greece* (section 2(1) of Presidential Decree No. 88/1999), *Iraq* (section 66 of the Labour Code), *Lithuania* (section 142 of the Labour Code), *Portugal* (section 197(1) of the Labour Code), *Romania* (section 111 of the Labour Code) and *Slovakia* (section 85(1) of the Labour Code).

[13] Section 61(2) of the Labour Proclamation.

[14] Section 5(3) of the Working Time Act.

[15] For example, **among countries that have ratified one or both Conventions**: *Bangladesh, Belgium, Bulgaria, Chile, Colombia, Costa Rica, Czech Republic, Dominican Republic, Egypt, Greece, Guatemala, Kuwait, Lithuania, Luxembourg, Malta, Morocco, Nicaragua, Norway, Peru, Romania* and *Slovakia*. For example, **among countries that have not ratified either Convention**: *Algeria, Austria, Azerbaijan, Bahrain, Belarus, Brazil, Cambodia, Cabo Verde, Cyprus, El Salvador, Estonia, Ethiopia, Finland, France, Georgia, Germany, Guinea, Honduras, Hungary, Indonesia, Islamic Republic of Iran, Italy, Jamaica, Japan, Kazakhstan, Republic of Korea, Latvia, Madagascar, Mauritania, Mauritius, Republic of Moldova, Namibia, Netherlands, Qatar, Russian Federation, Rwanda, Samoa, Seychelles, South Africa, Sri Lanka, Sweden, Singapore, Switzerland, Tajikistan, Thailand, the former Yugoslav Republic of Macedonia, Tunisia, Turkey, Turkmenistan, Ukraine, United Kingdom* and *Uzbekistan*.

[16] For example, **among countries that have ratified one or both Conventions**: *Cuba, Equatorial Guinea, Ghana, Iraq, Mexico, Portugal* and *Spain*; **among countries that have not ratified either Convention**: *Antigua and Barbuda, Benin, Croatia, Gabon, Iceland, Montenegro, New Zealand, Oman, Serbia, Slovenia* and *Sudan*.

[17] Sections 134 and 141 of the Labour Code.

[18] Section 51 of Labour Proclamation No. 118/2001.

doffing", is considered as working time. [19] Similarly, in 2012 the Federal Labour Court of *Germany* established that the time spent on putting on and taking off corporate clothing is considered as working time. [20] In *France*, the Labour Code provides that when the wearing of work clothes is required by law or regulation, collective agreements, rules of procedure or by the work contract and when the dressing and undressing must be carried out at the workplace, the time spent for these activities is compensated, either financially or with time off. [21] In *Brazil*, the legislation establishes that changing of clothes or uniform is not considered as working time, unless it is compulsory to do such changing of clothes or uniform in the company. [22]

35. National legislation generally considers rest breaks as being included in hours of work if the employee remains at the disposal of the employer, or when the rest break is taken at the work premises, for instance in establishments where production is continuous and where the worker cannot leave the workplace due to the nature of the work. [23]

36. Neither Convention No. 1 nor Convention No. 30 contain explicit provisions on periods of "stand-by" or "on-call" work. [24] In most countries, the national legislation does not contain specific provisions on this subject. However, in a few cases, national law or practice provide that time spent "on-call" is included in working time. [25] For example, the Government of *Cyprus* reports that on-call hours are only considered working time if the employee is at the employer's premises and at the disposal of the employer.

37. In other cases, the law is silent on this subject, or specifically indicates that on-call time is not included in working hours. For example, in *Poland*, [26] the Labour Code provides that on-call time is not included in working time if the employee has not carried out any work. The *Independent and Self-Governing Trade Union "Solidarnosc"* considers that this provision is not in accordance with Article 2 of Convention No. 30, as employees on stand-by certainly remain at the disposal of the employer, even if they do not perform any actual work. In *Portugal*, the legislation does not specify whether on-call time is included in hours of work. In this regard, the *General Confederation of Portuguese*

[19] This was established in the Supreme Court decision *Iowa Beef* v. *Alvarez* (2005), where the Court held that donning and doffing plus walking to and from changing areas are hours of work under the Fair Labour Standards Act because they are integral and indispensable to the job's principal activities. In *Sandifer* v. *US Steel* (2014), the Supreme Court held the Act provides that donning and doffing need not be covered hours of work if a collective bargaining agreement provides that this time is not compensable.

[20] Federal Labour Court, 12 Nov. 2013, 1 ABR 59/12.

[21] Section L212.4 of the Labour Code.

[22] Section 4(2) of Law No. 13.467 of 13 July 2017 which revises the Consolidated Labour Laws.

[23] For example, *Bahrain* (section 53(b) of the Labour Act), *Belarus* (section 134(3), of the Labour Code), *Costa Rica* (section 137 of the Labour Code), *Dominican Republic* (section 151 of the Labour Code), *Honduras* (section 270 of the Labour Code), *Luxembourg* (section 21.4(1) of the Labour Code), *Namibia* (section 18(1) of the Labour Act), *Norway* (section 10-9(1) of the Working Environment Act), *Rwanda* (section 4(2), of Ministerial Order No. 4/19 of 2009) and *South Africa* (section 14(3) of the Basic Conditions of Employment Act).

[24] "On-call" time commonly includes situations in which the worker is required to either stay at home, be in a specified place or be able to be contacted by telephone, in the event that the worker is required to attend work. ILO: *Hours of work: From fixed to flexible?*, General Survey of the reports concerning the Hours of Work (Industry) Convention, 1919 (No. 1), and the Hours of Work (Commerce and Office) Convention, 1930 (No. 30), ILC, Report III (Part 1B), 93rd Session, Geneva, 2005, para. 48.

[25] For example, *Belarus* (as reported by the Government), *Chile* (as reported by the Government), *Croatia* (section 60 of the Labour Act), *Estonia* (section 48(3) of the Employment Contract Act), *France* (section L.3121-9 of the Labour Code), *Germany* (as reported by the Government), *Islamic Republic of Iran* (as reported by the Government), *Japan* (as reported by the Government), *Republic of Korea* (section 50(3) of the Labour Standards Act), *Lithuania* (section 143 of the Labour Code) and *Malta* (as reported by the Government).

[26] Section 151-5(2) of the Labour Code.

Workers – National Trade Unions (CGTP–IN) indicates that, when employees are on call, they are not free to use their time and that this period should therefore be considered as working time.

B. Scope of application and exclusions

38. Considered together, Conventions Nos 1 and 30 cover the vast majority of economic sectors, although there are some important exclusions, such as agriculture and domestic workers. [27] In particular, Convention No. 1 applies to public or private industrial undertakings, including: mines and quarries; industries in which articles are manufactured or materials are transformed, such as shipbuilding and energy generation; construction, maintenance and demolition of roads, bridges and tunnels; and transport of passengers or goods by road, rail, sea or inland waterway. [28] Convention No. 30 covers commercial establishments, and establishments and administrative services in which the persons employed are mainly engaged in office work. It does not apply to hospitals and similar institutions, hotels, restaurants, cafés or theatres. [29] Recommendation No. 116 does not specify its scope of application, although Paragraph 23 excludes agriculture, maritime transport and maritime fishing.

39. The legislation in certain countries establishes that provisions on working hours apply to workers and employers who are bound by a contract of employment or an employment relationship. [30] In other countries, provision on hours of work apply to private and/or public establishments subject to certain exclusions. [31]

40. In several countries, the private and public sectors are governed by different regulations. For example, in *Austria* the Government indicates that the Working Hours Act regulates the private sector, and that the public sector is governed by the Civil Service

[27] ILO: *Working time in the twenty-first century*, Report for discussion at the Tripartite Meeting of Experts on Working-time Arrangements, Geneva, Oct. 2011, p. 3. The Domestic Workers Convention, 2011 (No. 189), and the Domestic Workers Recommendation, 2011 (No. 201), are the first international instruments dedicated exclusively to this group of workers and aim at closing the gap in the regulation of working time at the global level, taking into account the specific characteristics of domestic work. They lay down principles and measures and provide guidance for the protection of domestic workers with respect to their hours of work, overtime compensation, rest and annual leave, as well as standby or on-call periods (Article 10 of Convention No. 189 and Paragraphs 5, 8, 9 and 11 of Recommendation No. 201). Domestic workers are overwhelmingly likely to be women and accordingly these exceptions create a gender gap.

[28] Article 1 of Convention No. 1.

[29] Article 1 of Convention No. 30.

[30] For example, *Belarus* (section 3 of the Labour Code), *Croatia* (section 1 of the Labour Act), *Cuba* (section 4 of the Labour Code), *Ecuador* (section 1 of the Labour Code), *Estonia* (section 1 of the Employment Contract Act), *Finland* (section 1 of the Working Hours Act), *Gabon* (section 1 of the Labour Code), *Ghana* (section 1 of the Labour Act), *Islamic Republic of Iran* (section 5 of the Labour Code), *Latvia* (section 2(1) of the Labour Law), *Mauritania* (section 1 of the Labour Code), *Nicaragua* (section 2 of the Labour Code), *Panama* (section 2 of the Labour Code), *Slovenia* (section 3 of the Employment Relationship Act) and *Togo* (section 1 of the Labour Code).

[31] For example, *Azerbaijan* (section 4 of the Labour Code), *Burundi* (section 14 of the Labour Code), *China* (section 2 of the Labour Law), *Equatorial Guinea* (section 3 of Act No. 10/2012 of 24 December 2012), *Greece* (section 1 of Presidential Decree No. 88/99), *Norway* (section 1-2(1) of the Working Environment Act) and *Syrian Arab Republic* (section 4 of the Labour Code).

Act. [32] In a few countries, the distinction between industry and commerce and offices is still present. [33]

41. Article 1(3)(b) of Convention No. 30 provides that competent authorities in each country can exempt from the application of the Convention offices in which the staff is engaged in connection with the administration of public authority. In several countries, this category of workers is specifically exempted from the scope of application of provisions on working hours. [34] As indicated above, in several countries there are separate regulations for the private and public sectors, as public sector workers are frequently covered by special rules respecting public officials. The exclusion from the scope of application, foreseen in Article 1(2)(b) of Convention No. 30, of hospitals, hotels, restaurants, theatres and places of public amusement is also reflected in the legislation in a few countries. [35] For example, in the *Netherlands*, performing artists are excluded from the application of the provisions on working time. [36] In other cases, categories of workers who are covered by Convention No. 30 are excluded by national provisions on working time. For example, educational and training institutions are excluded in a number of countries. [37] In this case, primary legislation normally provides that their working hours shall be set through special regulations. Finally, the legislation in several countries specifically excludes domestic workers from the scope of application of the provisions on working time. [38]

42. Other exceptions found in the great majority of countries relate to undertakings in which only members of the same family are employed (Convention No. 1, Article 2, and Convention No. 30, Article 1(3)) and to persons holding positions of supervision or management or who are employed in a confidential capacity (Convention No. 1, Article 2(a), and Convention No. 30, Article 1(3)(c)). [39]

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[32] Other examples include *Ecuador* (the Labour Code for the private sector and Basic Act on the Public Service for the public sector), *Gabon* (the Labour Code for the private sector and the General Provisions on the Public Service for the public sector) and *Seychelles* (the Employment (Conditions of Employment) Regulations 1991 (SI 34 of 1991) apply to the private sector and the Public Service Order of 2011 to the public sector).

[33] For example, *India* (Factories Act 1948, Mines Act 1952 and the Building and Other Construction Workers Act 1996) and *Myanmar* (Shops and Establishments Act 2016 and Factories Act 1951).

[34] For example, *Burundi* (section 14 of the Labour Code), *Cambodia* (section 4 of the Labour Law), *Cameroon* (section 1(3) of the Labour Code), *Eritrea* (section 3(1) of the Labour Proclamation), *Ghana* (section 1 of the Labour Act), *Guinea* (section 2 of the Labour Code) and *Qatar* (section 3 of the Labour Code).

[35] For example, *Algeria* (section 4 of Act No. 90-11 of 21 April 1990), *Honduras* (section 325(c) of the Labour Code) and *the former Yugoslav Republic of Macedonia* (section 125(1) of the Law on Labour Relations).

[36] Section 2(1) of the Working Hours Decree.

[37] For example, *Bangladesh* (section 1(4) of the Labour Act), *Estonia* (section 43(6) of the Employment Contracts Act), *Sri Lanka* (Regulation 37C of the Shop and Office Employees Act), *Switzerland* (section 3 of the Labour Act) and *the former Yugoslav Republic of Macedonia* (section 125(2) of the Law on Labour Relations).

[38] For example, *Argentina* (section 2 of Act No. 20744), *Bahrain* (section 2 of the Labour Act), *Cambodia* (section 1 of the Labour Law), *Egypt* (section 4 of the Labour Code), *Ghana* (section 44 of the Labour Act), *Greece* (section 1(4) of Presidential Decree No. 88/1999), *Luxembourg* (section 211-2 of the Labour Code), *Morocco* (section 4 of the Labour Code), *Oman* (section 2 of the Labour Code) and *Turkey* (section 4 of the Labour Law).

[39] See for example, for undertakings where only members of the same family are employed: *Bahrain* (section 2 of the Labour Act), *Belgium* (section 3(1) of the Labour Act), *Burundi* (section 2 of Ministerial Order No. 630/117), *Cyprus* (section 16 of the Organisation of Working Time Law), *Greece* (section 14 of Presidential Decree No. 88/1999), *Iraq* (section 67(4) of the Labour Code), *Malawi* (section 36(5) of the Employment Act). See for example, for persons holding positions of supervision or management or who are employed in a confidential capacity: *Algeria* (section 4 of Act No. 90-11 of 21 April 1990), *Brazil* (section 62(II) of the Consolidation of Labour Laws), *Burundi* (section 2 of Ministerial Order No. 630/117), *Canada* (section 167(2)(a) and (b) of the Federal Labour Code), *Cyprus* (section 16 of the Organisation of Working Time Law), *Estonia* (section 1 of the Employment Contract Act), *Germany* (section 18(1) of the Hours of Work Act), *Greece* (section 14 of Presidential

C. Limits on normal hours of work: General rules

43. ***Normal hours of work are the number of hours that may legally be worked during the day, week, month and/or year, excluding overtime. Overtime, or additional hours, are the hours worked in excess of normal hours of work, and total hours of work are the maximum number of working hours allowed to be worked during a certain period, including normal hours of work and overtime.***

Box 1.2

Article 2 of Convention No. 1 provides that:

> The working hours of persons employed in any public or private industrial undertaking or in any branch thereof … shall not exceed eight in the day and forty-eight in the week …

Article 3 of Convention No. 30 provides that:

> The hours of work of persons to whom this Convention applies shall not exceed forty-eight hours in the week and eight hours in the day …

44. With regard to the type of statutory limit on hours of work, the national legislation in a majority of countries establishes a weekly limit on normal hours of work. [40] As shown in figure 1.5, while many countries provide for a 40-hour working week, [41] a working week of 48 hours is envisaged in a number of countries. [42] Moreover, in certain countries, the working week is longer than 40 hours but shorter than 48. [43] Finally, in a few countries, the legislation provides for a working week of more than 48 hours, [44] or less than 40 hours. [45]

Decree No. 88/1999), *Iraq* (section 67(4) of the Labour Code), *Japan* (section 61 of the Labour Standards Act), *Republic of Korea* (section 63 of the Labour Standards Act), *Peru* (section 5 of Supreme Decree No. 007-2002-TR) and *Philippines* (section 82 of the Labour Code).

[40] Exceptions include *Germany*, *Hungary*, *Islamic Republic of Iran*, *Netherlands*, *United Kingdom* and *United States*.

[41] For example, **among countries that have not ratified either Convention**: *Algeria, Austria, Azerbaijan, Belarus, Benin, Bosnia and Herzegovina, Burkina Faso, Cameroon, Central African Republic, China, Côte d'Ivoire, Croatia, Ecuador, Estonia, Finland, Gabon, Georgia, Guinea, Iceland, Indonesia, Italy, Jamaica, Japan, Kazakhstan, Latvia, Republic of Korea, Madagascar, Mauritania, Republic of Moldova, Montenegro, New Zealand, Poland, Russian Federation, Samoa, Senegal, Serbia, Slovenia, Sweden, Tajikistan, the former Yugoslav Republic of Macedonia, Togo, Turkmenistan* and *Uzbekistan*; **among countries that have ratified one or both of the Conventions**: *Belgium, Bulgaria, Canada, Czech Republic, Ghana, Greece, Lithuania, Luxembourg, Malta, Portugal, Romania, Slovakia* and *Norway*.

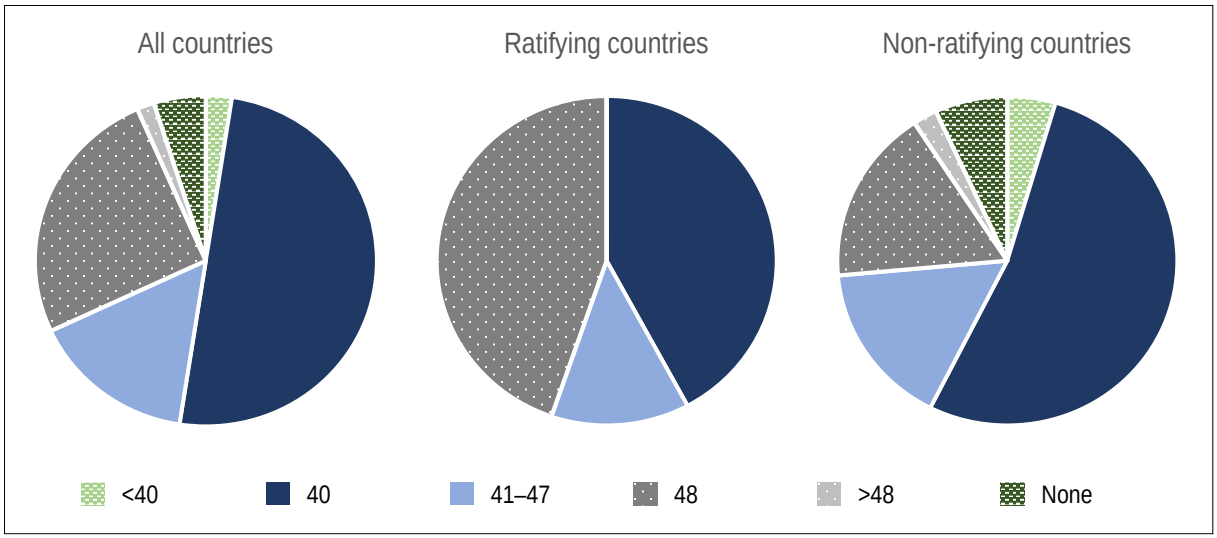
[42] For example, **among countries that have not ratified either Convention**: *Antigua and Barbuda, Bahrain, Cambodia, Eritrea, Ethiopia, Malawi, Philippines, Qatar, Sudan, Suriname, Thailand* and *Tunisia;* **among countries that have ratified one or both of the Conventions**: *Argentina, Bangladesh, Plurinational State of Bolivia, Colombia, Costa Rica, Egypt, Equatorial Guinea, India, Iraq, Kuwait, Mexico, Myanmar, Nicaragua, Panama, Peru, Syrian Arab Republic* and *Uruguay*.

[43] *Brazil, Burundi, Cabo Verde, Chile, Cuba, Dominican Republic, El Salvador, Guatemala, Honduras, Mauritius, Morocco, Namibia, Oman, Rwanda, Singapore, South Africa, Sri Lanka, Turkey* and *Zimbabwe.*

[44] *Kenya, Seychelles* and *Switzerland*.

[45] *Cyprus* and *France.*

Figure 1.5. Statutory normal weekly hours in reporting countries



Source: Based on information provided by reporting countries.

45. In many countries where the legislation sets a weekly limit on normal hours of work, daily limits are also set. [46] In only a few cases, [47] a limit on normal daily hours of work is the only limit established in the legislation. In many cases, this limit is set at eight hours a day, [48] while in only a few cases is the working day prescribed by legislation longer than eight hours. [49]

46. In this respect, the Committee has recalled that the Conventions set a double limit – daily and weekly – on hours of work and that this limit is cumulative, not alternative. [50]

47. In some countries, an annual limit is set for certain categories of workers. For example, in certain African countries there is an annual limit on working hours in agriculture. For instance, in *Burkina Faso*, [51] *Cameroon*, [52] *Côte d'Ivoire*, [53] *Gabon*, [54]

[46] In 87 out of 119 reporting countries, both a daily and a weekly limit is established.

[47] *Germany*, *Hungary* and *Islamic Republic of Iran.*

[48] For instance, **among countries that have not ratified either Convention**: *Algeria, Antigua and Barbuda, Austria, Azerbaijan, Bahrain, Bosnia and Herzegovina, Brazil, Cambodia, Cabo Verde, China, Ecuador, El Salvador, Eritrea, Estonia, Ethiopia, Finland, Germany, Guinea, Honduras, Hungary, Iceland, Indonesia, Islamic Republic of Iran, Jamaica, Japan, Kazakhstan, Republic of Korea, Latvia, Madagascar, Mauritania, Mauritius, Mexico, Panama, Philippines, Poland, Qatar, Republic of Moldova, Samoa, Serbia, Singapore, Sri Lanka, Sudan, Tajikistan, Thailand, Turkmenistan* and *Uzbekistan*; **among countries that have ratified one or both Conventions**: *Argentina, Bangladesh, Belgium, Plurinational State of Bolivia, Bulgaria, Burundi, Canada, Colombia, Costa Rica, Cuba, Dominican Republic, Egypt, Equatorial Guinea, Ghana, Greece, Guatemala, Iraq, Kuwait, Lithuania, Luxembourg, Malta, Myanmar, Nicaragua, Peru, Portugal, Romania, Slovakia, Syrian Arab Republic, Uruguay* and *Bolivarian Republic of Venezuela.*

[49] For example, **among countries that have not ratified either Convention**: *Oman, Seychelles, Suriname, Tunisia* and *Zimbabwe;* **among countries that have ratified one or both Conventions**: *Chile, India, Morocco, Norway* and *Spain.*

[50] See *Syrian Arab Republic* – CEACR, Convention No. 1, direct request, published in 2016.

[51] As reported by the Government.

[52] Section 80(2) of the Labour Code.

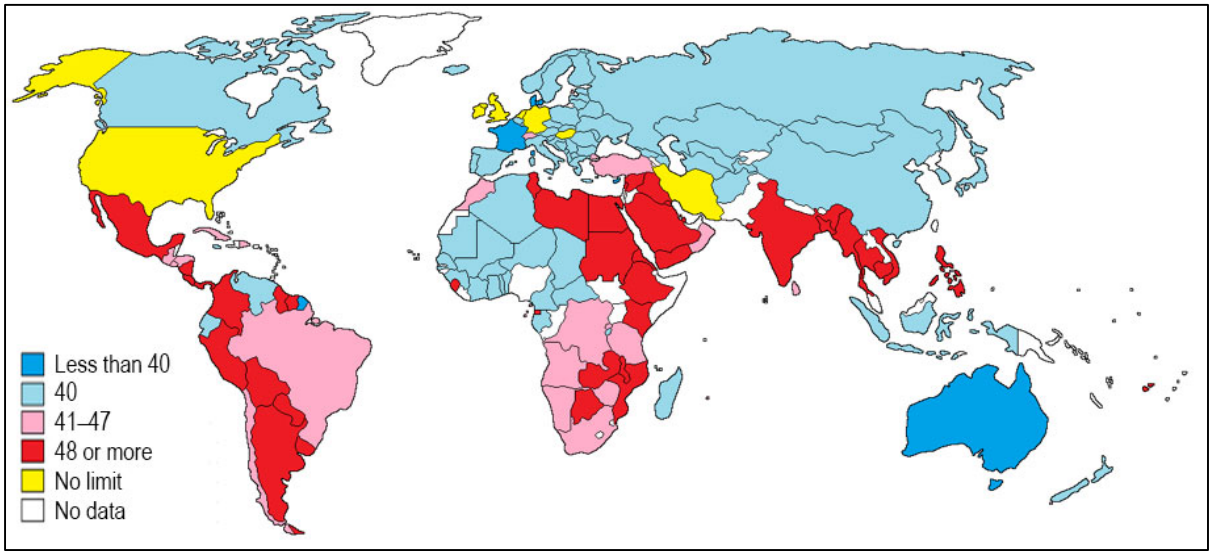
[53] Section 21(2) of the Labour Code.

[54] Section 165 of the Labour Code.

Mauritania [55] and *Togo*, [56] the legislation provides that in agricultural undertakings statutory hours of work are 2,400 a year. In *Algeria*, [57] the limit is 1,700 hours a year, while it is 2,200 hours in *Madagascar* [58] and 2,700 in *Tunisia*. [59]

48. In a few countries, no general statutory limit is fixed for normal hours of work. For example, the Government of *Denmark* reports that the average working time in a seven-day period calculated over a period of four months must not exceed 48 hours, including overtime. However, in most collective agreements and employment contracts, full-time employment implies a weekly average working time of 37 hours. [60] Moreover, in the *United Kingdom*, [61] hours of work, including overtime, in any applicable reference period, shall not exceed an average of 48 hours for each seven days.

Figure 1.6 Statutory normal weekly hours around the world (2017)



Source: Based on information provided by reporting countries and ILO databases.

49. The Committee welcomes the fact that the legislation in most reporting countries establishes statutory limits on normal weekly and/or daily hours of work and that these limits are, in a majority of cases, in conformity with those provided for in the Conventions. However, the Committee also observes that in certain cases only daily or weekly limits are fixed, or that there is no limit at all to normal hours of work. ***In this regard, the Committee wishes to emphasize the importance of the eight-hour day and the 48-hour week as a legal standard for hours of work in order to provide protection against undue fatigue and to ensure reasonable leisure and opportunities for recreation and social life for workers. The Committee recalls that when fixing limits to working hours governments should also take into consideration the health and safety of the workers and the importance of work–life balance.***

[55] Section 171 of the Labour Code.

[56] Section 142 of the Labour Code.

[57] Section 5 of Ordinance No. 97-03.

[58] Section 75(2) of the Labour Code.

[59] Section 89 of the Labour Code.

[60] Section 4 of the Working Time Act.

[61] Section 4 of the Working Time Regulations.

D. Variations in the distribution of normal hours of work

50. Conventions Nos 1 and 30 and Recommendation No. 116 recognize that adjustments in the distribution of hours of work are sometimes necessary in order to adapt to the production requirements and technical variations inherent in certain sectors of activity, to respond to exceptional circumstances or to meet the specific needs of workers or the establishment. The modification of the normal work schedule is authorized in these instruments either by exceeding the legal limits on working hours through permanent and temporary exceptions, when the conditions are met, or by modifying the distribution of normal hours of work over the week or periods longer than a week. Exceptions to normal limits on hours of work are analysed in the next section, while the present section focuses on adjustments in the distribution of working hours through averaging.

51. The variable distribution of hours of work is a system that consists of averaging normal weekly hours of work over a defined period (known as the *reference period*), to allow the extension of working hours beyond their normal length on certain days, and their shortening on other days, without resorting to overtime. The reference period for averaging can be weekly, monthly or annual. In particular, the Conventions and the Recommendation provide for the following possibilities:

- the distribution of working hours within the week;
- the distribution of working hours over a period longer than a week;
- averaging in the case of shift work in continuous processes;
- averaging in the case of shift work.

52. The different sets of requirements foreseen for each type of variation are considered below.

(a) Within weekly limits

Box 1.3

Article 2(b) of Convention No. 1 provides that:

> Where by law, custom, or agreement between employers' and workers' organisations, or, where no such organisations exist, between employers' and workers' representatives, the hours of work on one or more days of the week are less than eight, the limit of eight hours may be exceeded on the remaining days of the week by the sanction of the competent public authority, or by agreement between such organisations or representatives; provided, however, that in no case under the provisions of this paragraph shall the daily limit of eight hours be exceeded by more than one hour;

Article 4 of Convention No. 30 provides that:

> The maximum hours of work in the week laid down in Article 3 may be so arranged that hours of work in any day do not exceed ten hours.

53. While both Conventions Nos 1 and 30 allow for variations in the extension of daily hours within the 48-hour week, they set different limits for this variation. Convention No. 1 allows the limit of eight hours a day to be extended by up to one additional hour, while Convention No. 30 permits this limit to be extended by two hours, reaching a total of ten hours of work a day. Moreover, unlike Convention No. 1, which requires this extension to be approved by the competent authority or by agreement between workers' and employers' organizations, Convention No. 30 does not set out any specific requirements in this regard. Conventions Nos 1 and 30 do not establish any restrictions in relation to the circumstances under which these variations are allowed.

54. The national legislation in a number of countries allows the averaging of working hours within the week. [62] For instance, in *Bulgaria*, after consultations with worker representatives, employers can, for production reasons, extend hours of working on certain days of the week and reduce them on other days. [63] In *Côte d'Ivoire*, [64] an unequal distribution of working hours throughout the week is possible on condition that the statutory limits are respected.

55. In other countries, a variable distribution of weekly working hours is implicitly allowed by the legislation. In many countries, only a weekly limit is set for hours of work, but no daily limit. [65] In some cases, the legislation prescribes the number of days that make up the working week. [66] In a small number of cases, the only prescription regarding the distribution of working hours over the week is respect for the statutory weekly rest period. [67]

56. In a few countries, the legislation is silent on how hours of work are distributed over the working week, although their governments refer to existing practice in this respect. For example, the Government of *Cyprus* reports that a working week may be extended up to six days, although the vast majority of employees work a five-day week. The Government of *Senegal* indicates that working hours can be distributed over six, five or five-and-a-half days in the week. In *Switzerland*, the working week normally consists of five days.

[62] For instance, **among countries that have not ratified either Convention**: *Austria* (section 4(2) of the Working Time Act), *Burkina Faso* (section 2 of Order No. 1243/FTP/DGTLS), *Burundi* (section 3(2) of Ministerial Ordinance No. 630/117 of 9 May 1979), *Cambodia* (section 141 of the Labour Code), *Cabo Verde* (section 150 of the Labour Code), *Cuba* (section 87 of the Labour Code), *Ecuador* (section 47(2) of the Labour Code), *El Salvador* (section 170, third paragraph, of the Labour Code), *Ethiopia* (section 63 of the Labour Proclamation), *Islamic Republic of Iran* (note to section 51 of the Labour Code), *Madagascar* (as reported by the Government), *Senegal* (as reported by the Government), *Singapore* (section 38(1)(ii) of the Employment Act) and *Thailand* (section 23 of the Labour Proclamation Act); **among countries that have ratified one or both Conventions**: *Argentina* (section 1(b) of Decree No. 16.115/33 implementing Act No. 11544 of 6 Jan. 1933), *Belgium* (section 20(1) of the Labour Act), *Plurinational State of Bolivia* (section 51 of the General Labour Act), *Chile* (section 28(1) of the Labour Code), *Colombia* (section 161(d) of the Labour Code), *Dominican Republic* (section 157 of the Labour Code), *Equatorial Guinea* (section 55(5) of the Labour Code), *Ghana* (section 34 of the Labour Act), *Guatemala* (section 118 of the Labour Code), *Nicaragua* (section 63 of the Labour Code), *Portugal* (section 209 of the Labour Code), *Romania* (section 113(2) of the Labour Code) and *Uruguay* (section 3 of Act No. 5.350).

[63] Section 136(a) of the Labour Code.

[64] Section 5 of Decree No. 96-203 of 7 March 1996.

[65] For example, *Belarus* (section 112 of the Labour Code), *Benin* (section 142(1) of the Labour Code), *Cameroon* (section 80(1) of the Labour Code), *Croatia* (section 61 of the Labour Act), *Czech Republic* (section 79(1) of the Labour Code), *France* (section L.3121-27 of the Labour Code), *Gabon* (section 2 of Decree No. 0933/PS/MTEPS of 30 December 2009), *Georgia* (section 14(1) of the Labour Code), *Italy* (section 3 of Decree No. 66 of 2003), *Malawi* (section 36(1) of the Employment Act), *Montenegro* (section 44 of the Labour Code), *Netherlands* (section 5:7(2) and (3) of the Working Hours Act), *New Zealand* (section 11B of the Minimum Wage Act 1983), *Russian Federation* (section 91(2) of the Labour Code), *Rwanda* (section 49 of Act No. 13/2009 on labour relations), *Senegal* (section 135(1) of the Labour Code), *Slovenia* (section 143 of the Employment Relationship Act), *Sweden* (section 5 of the Working Hours Act), *Switzerland* (section 9 of the Labour Act), *the former Yugoslav Republic of Macedonia* (section 116(1) of the Law on Labour Relations), *Togo* (section 142 of the Labour Code), *Turkey* (section 63 of the Labour Law) and *Ukraine* (section 50 of the Labour Code).

[66] For example, *Czech Republic* (section 81(2) of the Labour Code), *Gabon* (section 2 of Decree No. 0933/MTEPS of 30 December 2009), *Malawi* (section 36(4) of the Employment Act), *Russian Federation* (section 100 of the Labour Code), *Switzerland* (section 16(2) of the Ordinance on the Labour Act No. 1) and *the former Yugoslav Republic of Macedonia* (section 116(2) of the Law on Labour Relations).

[67] For example, *Croatia* (as reported by the Government), *Denmark* (as reported by the Government) and *Italy* (sections 3 and 9 of Decree No. 66 of 2003).

57. ***With regard to limits on the uneven distribution of working hours over the week, the Committee is pleased to note that specific daily limits have been established in most countries.*** In most countries, the limit is one hour a day on certain days, within the weekly limit. [68] In a few countries, there is a maximum extension of two hours a day or ten hours of total daily working time. [69] For example, in *Colombia*, [70] the Labour Code permits the conclusion of an agreement between the employer and the worker under which working hours may be distributed unevenly within the week, with the working day varying between four and ten hours, on condition that the limit of 48 hours in a week is not exceeded. [71] In some cases, the uneven distribution of working hours over the week is allowed on condition that the eight hour daily limit is respected, which implies that averaging occurs through the extension of the number of days that make up a working week. [72]

58. The Committee observes that, among countries where there are explicit provisions on the uneven distribution of weekly hours of work, there is no daily limit in a few of them. [73] Moreover, in a certain number of countries, there are only implicit provisions on the uneven distribution of working hours over the week. In these cases, the legislation only provides for the establishment of limits which may optionally be weekly *or* daily limits, [74] or a minimum period of daily rest. [75] In the latter case, as the daily rest period provided for in national legislation varies between 11 and 12 consecutive hours, this would imply that daily hours of work could potentially be extended up to 12 or 13 hours a day. In this respect, the Committee has recalled that Conventions Nos 1 and 30 allow the limit of eight hours a day and 48 hours a week to be exceeded only in very limited and clearly defined circumstances: Convention No. 1 prescribes an overall daily work limit of nine hours in the case of variable distribution of working hours within a week while Convention No. 30

[68] **Among countries that have not ratified either Convention:** *Austria, Cabo Verde, Cambodia, El Salvador, Singapore* and *Thailand*. **Among countries that have ratified one or both Conventions:** *Argentina, Belgium, Plurinational State of Bolivia, Burundi, Cuba, Equatorial Guinea, Ghana* and *Uruguay*.

[69] This is in line with the provisions of Article 4 of Convention No. 30, but not with Convention No. 1. **Among countries that have ratified Convention No. 1**, this type of provision is found in *Bulgaria, Chile* and *Romania*; **among countries that have ratified both Conventions**, *Guatemala* and *Nicaragua*; and **among countries that have not ratified either Convention**, *Eritrea, Ecuador* and *Ethiopia*.

[70] Section 161(d) of the Labour Code.

[71] The Committee has noted that this is not in accordance with the provision of Convention No. 1 which allows daily working hours to be extended for a maximum of one hour. See *Colombia* – CEACR, Convention No. 1, direct request, published in 2014.

[72] For example, *Burkina Faso, Côte d'Ivoire, Estonia* and *Madagascar*.

[73] For example, **among countries that have not ratified either Convention**: *Bahrain* (section 57 of the Labour Act); and *Islamic Republic of Iran* (section 51 of the Labour Code); **among countries that have ratified one or both Conventions**: *Peru* (section 2(1)(b) of Legislative Decree No. 854, as consolidated by Supreme Decree No. 007-2002 TR).

[74] For example, *Egypt* (section 80 of the Labour Code), *Finland* (section 6 of the Working Hours Act), *Ghana* (section 33 of the Labour Act), *Iraq* (section 67 of the Labour Code), *Kuwait* (section 64 of the Private Sector Labour Law), *Peru* (article 25 of the Constitution), *Qatar* (section 73 of the Labour Code), *Samoa* (section 47(1) of the Labour and Employment Relations Act), *Seychelles* (section 3 of the Employment (Conditions of Employment) Regulation 1991), *Sudan* (section 42(1) of the Labour Code) and *Syrian Arab Republic* (section 106(a) of the Labour Code).

[75] For example, *Argentina* (section 1 of Act No. 11544 of 1929), *Croatia* (section 74 of the Labour Act), *Cyprus* (section 4(1) of the Organisation of Working Time Law), *Czech Republic* (section 90(1) of the Labour Code), *Denmark* (section 3 of Order No. 324 of 2002), *Georgia* (section 14(2) of the Labour Code), *Italy* (section 7 of Legislative Decree No. 66 of 2003), *Iraq* (section 68, second paragraph, of the Labour Code), *Montenegro* (section 61 of the Labour Law), *Samoa* (section 47(4)(b) of the Labour and Employment Relations Act of 2013), *Seychelles* (Regulation 4 of the Employment (Conditions of Employment) Regulations 1991), *Slovenia* (section 155 of the Employment Relationship Act), *Sweden* (section 13 of the Working Hours Act) and *the former Yugoslav Republic of Macedonia* (section 133 of the Law on Labour Relations).

provides that the maximum hours of work in the week may be so arranged that hours of work in any day do not exceed ten hours. [76]

(b) Averaging over periods longer than a week

59. The possibility of distributing hours of work over periods longer than a week is envisaged in Conventions Nos 1 and 30, and also in Recommendation No. 116: (i) in general; (ii) in the case of shift work; and (iii) in the case of shift work in continuous processes.

Box 1.4

Article 5 of Convention No. 1 provides that:

1. In exceptional cases where it is recognised that the provisions of Article 2 cannot be applied, but only in such cases, agreements between workers' and employers' organisations concerning the daily limit of work over a longer period of time may be given the force of regulations, if the Government, to which these agreements shall be submitted, so decides.

2. The average number of hours worked per week, over the number of weeks covered by any such agreement, shall not exceed forty-eight.

Article 6 of Convention No. 30 provides that:

In exceptional cases where the circumstances in which the work has to be carried on make the provisions of Articles 3 and 4 inapplicable, regulations made by public authority may permit hours of work to be distributed over a period longer than the week, provided that the average hours of work over the number of weeks included in the period do not exceed forty-eight hours in the week and that hours of work in any day do not exceed ten hours.

60. In analysing the averaging of hours over periods longer than a week, several aspects need to be taken into account: the circumstances justifying recourse to this type of averaging; the reference period for the averaging; the daily and weekly limits to be respected; and the procedure of authorization.

61. In exceptional circumstances, when the normal limit on working hours of eight hours a day and 48 hours a week cannot be applied, the Conventions allow the averaging of hours of work over periods longer than a week. [77] Although the instruments do not specify the circumstances in which this type of averaging can take place, the preparatory work and the interpretation of Article 5 of Convention No. 1 by the Conference of Ministers of Labour held in London in 1926 indicate that examples of cases in which such averaging may be used include railways, the building trade and seasonal industries. [78] Furthermore, Conventions Nos 1 and 30 require the daily and weekly working time calculated over the reference period to respect the limit of 48 hours a week. Finally, under the terms of Convention No. 30, the introduction of averaging over periods longer than a week has to be through regulations made by public authority, while Convention No. 1 requires the introduction of averaging to be by agreement between workers' and employers' organizations. [79]

[76] See *Argentina* – CEACR, Convention No. 30, observation, published in 2013. See also: *Syrian Arab Republic* – CEACR, Convention No. 1, direct request, published in 2016; and *United Arab Emirates* – CEACR, Convention No. 1, direct request, published in 2015.

[77] Paragraph 12(1) of Recommendation No. 116 indicates that averaging over a period longer than a week should be permitted when it is justified by special conditions in certain branches of activity or technical needs.

[78] See ILO: *International Labour Code*, Geneva, 1952, Vol. I, footnote 204.

[79] Paragraph 20(2)(b) of Recommendation No. 116 calls for consultation in these cases.

62. The Committee observes that the legislation in a large majority of countries provides for the possibility of averaging hours of work over a period longer than a week. It also observes that this type of averaging is a very common practice, both in countries that have ratified one or both Conventions and in countries that have not ratified either of the Conventions. [80] In some European countries, averaging over periods longer than a week is established as the primary working-time arrangement. For example, in *Denmark*, the Working Time Act provides that the average working time during a seven-day period calculated over a period of four months shall not exceed 48 hours, including overtime. [81] In the *United Kingdom*, working time, including overtime, must not exceed 48 hours a week over a reference period of 17 weeks. [82]

63. The Committee observes that in most reporting countries the uneven distribution of hours of work over a period longer than a week is allowed without any restriction as to circumstances. [83] Only in a minority of countries does the legislation specifically set out the circumstances under which this uneven distribution of working hours is allowed. In those cases, the legislation refers to the conditions of production or the nature of the work. [84] For example, in *Serbia*, employers may reschedule hours of work when the nature of the business, the organization of work, the better use of occupational means, a more effective use of working hours and the performance of certain jobs so require. [85] Similarly, in *Tajikistan*, the uneven distribution of hours of work over a period longer than a week is allowed in cases where the normal limit on working hours cannot be respected due to

[80] For example, **among the countries that have ratified Convention No. 1**: *Bangladesh* (section 102(2) of the Labour Code), *Belgium* (section 1 of the Act of 1987 introducing new working time regimes), *Burundi* (section 113(3) and (4) of the Labour Code), *Canada*, in the states of British Columbia (section 37 of the Employment Standards Act), Manitoba (section 12(1) of the Employment Standards Code), Nunavat (section 7 of the Labour Standards Act) and Quebec (section 53 of the Act respecting Labour Standards), *Czech Republic* (section 86 of the Labour Code), *Greece* (section 42 of Act No. 3986/2001), *Malta* (Regulation 7 of the Organisation of Working Time Regulations); *Portugal* (sections 204 and 206 of the Labour Code) and *Slovakia* (section 86 of the Labour Code); **among countries that have ratified Convention No. 30:** *Morocco* (section 184 of the Labour Code) and *Norway* (section 10:5 of the Working Environment Act); **among countries that have ratified both Conventions:** *Bulgaria* (section 142 of the Labour Code), *Ghana* (section 34(b) of the Labour Act) and *Luxembourg* (section 211-6(1) and (2) of the Labour Code).

[81] Section 4 of the Working Time Act.

[82] Section 4 of the Working Time Regulations.

[83] For example, *Azerbaijan* (section 96 of the Labour Code), *Brazil* (section 59 of the Consolidation of Labour Laws), *Croatia* (section 67 of the Labour Act); *Cyprus* (section 7 of the Organisation of Working Time Law), *Denmark* (section 4 of the Working Time Act), *Estonia* (section 46 of the Employment Contracts Act), *France* (section L.3121-22 of the Labour Code), *Germany* (section 3 of the Working Hours Act), *Guinea* (section 221(4) of the Labour Code), *Iceland* (section 55 of the Working Environment, Health and Safety in the Workplace Act), *Italy* (section 4 of Decree No. 66/2003), *Japan* (section 32-2 of the Labour Standards Act), *Republic of Korea* (section 51 of the Labour Standards Act), *Mauritius* (section 14(2) of the Employment Rights Act), *Republic of Moldova* (section 99(1) of the Labour Code), *Netherlands* (section 5:7 of the Working Hours Act), *Poland* (section 129 of the Labour Code), *Singapore* (section 38(1)(iv) of the Employment Act), *South Africa* (section 12(1) of the Basic Conditions of Employment Act), *Sweden* (section 10(b) of the Working Hours Act), *Tunisia* (section 79 of the Labour Code), *Turkey* (section 63 of the Labour Law), *United Kingdom* (section 4 of the Working Time Regulations) and *Uzbekistan* (section 123 of the Labour Code).

[84] For example, *Belarus* (section 126 of the Labour Code), *Bosnia and Herzegovina* (section 39 of the Labour Law of the Federation of Bosnia and Herzegovina and section 69 of the Labour Law of the Republika Srpska), *China* (section 39 of the Labour Law), *Eritrea* (section 50 of the Labour Proclamation), *Ethiopia* (section 64 of the Labour Proclamation), *Georgia* (section 16 of the Labour Code), *Latvia* (section 140 of the Labour Law), *Kazakhstan* (section 75 of the Labour Code), *Russian Federation* (section 104 of the Labour Code), *Slovenia* (section 148 of the Employment Relationship Act), *Turkmenistan* (section 69 of the Labour Code) and *Ukraine* (section 61 of the Labour Code). **Among the countries that have ratified at least one of the Conventions**: *Canada* (section 16 of the Labour Standards Regulations) and *Romania* (section 113(2) of the Labour Code).

[85] Section 57(1) and (2) of the Labour Law.

working conditions. [86] In a few other cases, such schemes are permitted for specific sectors of the economy, types of activities or categories of workers. [87] For example, in *Austria*, the legislation allows hours averaging schemes over a period longer than a week in the commercial sector and for mobile workers in public transport undertakings. [88] In the *United States*, the legislation allows for averaging over as long as 28 days for employees in fire protection and law enforcement activities. [89] In *Côte d'Ivoire*, [90] *the former Yugoslav Republic of Macedonia* [91] and *Switzerland*, [92] the averaging of hours of work for periods longer than a week is possible in the case of seasonal activities or activities that are subject to interruption due to bad weather.

64. In this regard, the Committee has consistently recalled that the instruments only permit the redistribution of working time over periods longer than a week in exceptional circumstances when the normal limits of eight hours a day and 48 hours a week cannot be observed. [93]

65. With regard to the reference periods for averaging, national legislation and practice vary greatly between countries, ranging from reference periods of two weeks to one year or more. For example, in *Mauritius*, [94] the employer and the employee can agree on a distribution of 90 working hours over a period of two weeks. In the *Republic of Korea*, [95] weekly working time can be extended up to 48 hours within a reference period of two weeks, on condition that hours of work do not exceed 40 on average. In many European countries, the reference period is four months or 17 weeks. [96]

66. In some countries, the legislation allows for a certain degree of flexibility in the determination of the reference period for averaging. For example, in *China*, a comprehensive calculation of working time can be undertaken on a weekly, monthly,

[86] Section 78 of the Labour Code.

[87] Other examples include: *China*, in the transport sector and for corporate executives, field staff, sales personnel and employees whose work cannot be measured by standard working hours (section 4 of the Notice for the Examination and Approval Method of Irregular Working Systems and Comprehensive Calculation of Working Hours System of Enterprises, issued by the Ministry of Labour); *Chile*, in the transport sector (sections 25, 25bis and 25ter of the Labour Code); *Finland*, among others, for the police, customs, postal workers, hospitals, loading and unloading, transport and guard services (section 7 of the Working Hours Act); and *Bolivarian Republic of Venezuela*, for managerial positions, surveillance work and intermittent work (section 175 of the Basic Labour Act).

[88] Sections 4 and 18 of the Working Time Act.

[89] Section 207(k) of the Fair Labour Standards Act.

[90] Section 21(3) of the Labour Code.

[91] Section 124(3) of the Labour Code.

[92] Section 22 of the Ordinance on Labour Law No. 1.

[93] See, for example, *Ghana* – CEACR, Convention No. 1, direct request, published in 2015; *Czech Republic* – CEACR, Convention No. 1, direct request, published in 2014; *Cuba* – CEACR, Convention No. 1, direct request, published in 2014; *Chile* – CEACR, Convention No. 1, direct request, published in 2009.

[94] Section 14(2) of the Employment Rights Act.

[95] Section 51 of the Labour Standards Act.

[96] This is in line with the EU Directive on Working Time 2003/88/EC. For example, *Austria* (section 9 of the Working Time Act), *Cyprus* (section 7 of the Organisation of Working Time Law), *Denmark* (section 4 of the Working Time Act), *Estonia* (section 46 of the Employment Contracts Act), *Iceland* (section 55 of the Working Environment Act), *Italy* (section 4 of Decree No. 66/2003), *Lithuania* (section 149 of the Labour Code), *Luxembourg* (section 211-6 of the Labour Code), *Malta* (Regulation 7 of the Organisation of Working Time Regulations), *Netherlands* (section 5:7(2) of the Working Hours Act), *Poland* (section 129(1) of the Labour Code), *Slovakia* (section 87 of the Labour Code) and *Sweden* (section 10b of the Working Hours Act).

quarterly or yearly basis. [97] In *Belarus*, the reference period can be determined by calendar periods, such as months or quarters. [98]

67. In many countries, reference periods of one year [99] or 52 weeks are applied. [100] In a number of countries, collective agreements can provide for longer reference periods than those established by the legislation. [101] For example, in the *Czech Republic*, the statutory reference period of 26 weeks can be extended to 52 weeks by collective agreement. [102] Similarly, in *Poland*, the Labour Code sets a reference period of two months, which can be increased up to 12 months by collective agreement. [103] In *Turkey*, the reference period is two months, which can be increased to four months by collective agreement. [104] In *France*, collective agreements can bring the reference period up to three years. [105] In a few cases, the legislation sets annual working time as a general rule. For example, in some African countries, only an annual limit is set for working hours in the agricultural sector. [106] This leads to a form of annualization in which there are no daily or weekly limits.

68. ***In this regard, the Committee has recalled that calculating hours of work as an average over a reference period of up to one year allows for too many exceptions to normal hours of work and can result in highly variable working hours over long periods, long working days and the absence of compensation.*** [107]

69. National legislation varies greatly with regard to daily and weekly limits in the case of the averaging of hours of work over periods longer than a week. Among countries in which there are daily or weekly limits, the maximum number of hours of work can rise to

[97] Section 5 of the Notice for the Examination and Approval Method of Irregular Working System and Comprehensive Calculation of Working Hours System of Enterprises, issued by the Ministry of Labour.

[98] Section 126 of the Labour Code.

[99] Cases in which the reference period is one year and/or the number of hours is distributed over a full year are normally referred to as "annualization". For more details, see Chapter VI.

[100] For example, in *Azerbaijan* (section 96 of the Labour Code), *Brazil* (section 59(2) of the Consolidation of Labour Laws), *Guinea* (section 221(4) of the Labour Code), *Japan* (section 32-4 of the Labour Standards Act), *Kazakhstan* (section 75 of the Labour Code), *Republic of Moldova* (section 99(1) of the Labour Code), *Russian Federation* (section 104 of the Labour Code), *Tajikistan* (section 78 of the Labour Code), *Tunisia* (section 79 of the Labour Code) and *Uzbekistan* (section 123 of the Labour Code).

For example, **among countries that have ratified Convention No. 1**: *Bangladesh* (section 102 of the Labour Act) and *Burundi* (section 113(3) of the Labour Code); **among countries that have ratified Convention No. 30**: *Morocco* (section 184 of the Labour Code) and *Norway* (section 10:5 of the Working Environment Act); **among countries that have ratified both Conventions**: *Spain* (section 34 of the Workers' Charter).

[101] For example, *Cabo Verde* (section 150-A of the Labour Code), *Latvia* (section 140 of the Labour Law), *Malta* (Regulation 18(b) of the Organisation of Working Time Regulations) and *Romania* (section 114(2.1) of the Labour Code).

[102] Section 78(1)(m) of the Labour Code.

[103] Section 207(1) of the Labour Code.

[104] Section 63 of the Labour Code.

[105] Section L.3121-44 of the Labour Code.

[106] See, for example, *Algeria*, *Côte d'Ivoire*, *Morocco*, *Togo* and *Tunisia*.

[107] See *Belarus* – CEACR, Convention No. 47, direct request, published in 2015; *Belgium* – CEACR, Convention No. 1, direct request, published in 2014; *Azerbaijan* – CEACR, Convention No. 47, direct request, published in 2010.

60 a week, [108] while daily hours of work can be increased up to 12 hours. [109] For example, in *Luxembourg*, [110] a Grand-Ducal Regulation may determine a limited number of sectors, branches, activities or occupations in which maximum daily hours of work may be extended to 12 hours by means of collective agreements or otherwise by the Minister of Labour and Employment, on condition that actual weekly working time does not exceed 40 hours. In *Latvia*, [111] the Labour Code provides that in the case of averaging it is in any case prohibited to employ a worker for more than 24 consecutive hours and 56 hours a week. [112]

70. The Committee observes that in about half of the reporting countries in which the legislation envisages averaging schemes, no maximum number of hours is specified which may be worked in a day or a week. [113] ***In this connection, the Committee has recalled the substantial impact that prolonged working days can have on the health of workers, on the work–life balance and the risks entailed for their well-being, and has requested governments to avoid extending working days beyond reasonable limits in the case of the uneven distribution of hours of work over a period longer than a week.*** [114]

71. With regard to the procedure for authorizing the averaging of hours over periods longer than a week, hours averaging schemes are mostly regulated through legislation. Several governments report that the legislation was drafted in consultation with the social partners. [115] In some cases, while the law provides the general framework, it leaves the definition of the terms of the averaging scheme to collective agreements. For example, in *South Africa*, hours of work can be averaged over a period of four months in accordance with the terms of a collective agreement. [116] Similarly, in the *Bolivarian Republic of Venezuela*, averaging over a period of eight weeks can be introduced through a collective agreement, [117] which has to be approved by the labour inspectorate. [118] ***In this regard, in the context of Convention No. 30, the Committee has emphasized the importance, when***

[108] For example, *Bangladesh* (section 102 of the Labour Code), *Bosnia and Herzegovina*, for seasonal work (section 39(1) of the Labour Law of the Federation of Bosnia and Herzegovina), *Croatia*, a collective agreement can increase weekly working time up to 60 hours, including overtime (section 66 of the Labour Law), *Portugal* (section 204(2) of the Labour Code) and *Serbia* (section 57 of the Labour Act).

[109] For example, **among countries that have not ratified either of the Conventions or have ratified Convention No. 1**: *Azerbaijan* (section 96 of the Labour Code), *Belgium* (section 2(3) of the Act of 17 March 1987 establishing new working regimes and section 51(2) of the Labour Standards Act), *Republic of Moldova* (section 99 of the Labour Code), Tajikistan (section 78(1) of the Labour Code); **among countries that have ratified Convention No. 30**: *Bulgaria* (section 142(4) of the Labour Code).

[110] Section 211-12(2) of the Labour Code.

[111] Section 140(5) of the Labour Code.

[112] See also in *Poland*, section 137 of the Labour Code.

[113] For example, **among countries that have not ratified either Convention**: *China, Cyprus, Eritrea, Georgia, Guinea, Italy, Kazakhstan, Mauritius, Montenegro, Russian Federation* and *Tunisia;* **among countries that have ratified one or both Conventions:** *Burundi, Canada, Iraq, Malta, Romania* and *Uruguay.*

[114] See *Luxembourg* – CEACR, Convention No. 1, direct request, published in 2010; and *Belgium* – CEACR, Convention No. 1, direct request, published in 2015.

[115] See, for example, the Government reports of *Austria, Bangladesh, Belarus, Belgium, Bosnia and Herzegovina, Brazil, Bulgaria, Burundi, Cabo Verde, Colombia, Cyprus, Denmark, Ethiopia, Eritrea, Finland, Italy, Japan, Republic of Korea, Malta, Mauritius, Morocco, Netherlands, Norway, Poland, Portugal, Samoa, Suriname, Tunisia* and *Uruguay.*

[116] Section 12(1) of the Basic Conditions of Employment Act.

[117] Section 175 of the Basic Labour Act.

[118] Section 8 of the Partial Regulations implementing the Basic Labour Act.

introducing the averaging of hours of work over periods longer than a week, of the conclusion of an agreement between employers' and workers' organizations. [119]

72. The Committee observes that several European workers' organizations highlight the negative effect of averaging hours of work over periods longer than a week. The *Confederation of Independent Trade Unions of Bulgaria* indicates that the calculation of working time as an average over longer periods is not beneficial to workers, especially with regard to the enjoyment of free time, and emphasizes that averaging has become a common working-time regime and is not exceptional. The *Independent and Self-Governing Trade Union "Solidarnosc"* considers that the broad scope of hours averaging provisions in the Labour Code implies that there is hardly any guarantee of abiding by general regulations on the health and safety of workers, as working hours can be extended above the statutory limits for prolonged periods of time. Similar concerns are raised by the *Greek General Confederation of Labour*, which adds that this manner of reorganizing working time also has the effect of depriving workers of the financial benefit of overtime for hours in excess of the statutory weekly and daily limits.

73. The Committee also notes the indication by the *International Organisation of Employers (IOE)* that working-time regulations should support the use of hours averaging over short, medium and long periods, including annualization, as this allows greater cost predictability for the employers. [120]

74. ***Recalling that going beyond the daily and weekly limits established by the Conventions is likely to affect the health and well-being of workers and their work–life balance, the Committee encourages all governments to ensure that in devising flexible arrangements, reasonable limits are set to total and weekly working hours in compliance with those set in the Conventions.***

(c) Shift work in general [121]

Box 1.5

Article 2(c) of Convention No. 1 provides that:

> Where persons are employed in shifts it shall be permissible to employ persons in excess of eight hours in any one day and forty-eight hours in any one week, if the average number of hours over a period of three weeks or less does not exceed eight per day and forty-eight per week.

75. Convention No. 1 allows for the possibility of the averaging of hours of work in the case of shift work and permits the extension of normal hours of work on condition that the average number of hours over a period of three weeks respects the limits of eight hours a day and 48 hours a week. [122]

[119] See for example, *Ghana* – CEACR, Convention No. 1 direct request, published in 2015; *Slovakia* – CEACR, Convention No. 1, direct request, published in 2010.

[120] In its 2005 General Survey on hours of work, the Committee recalled that "[i]n order to be compatible with the Conventions, annualized working hours arrangements must satisfy simultaneously the following three conditions: (i) the arrangement is introduced in exceptional cases where it is recognized that the eight-hour and 48-hour limits cannot apply; (ii) the arrangement is introduced through an agreement between the workers' and employers' organizations transformed into regulations by the government, to which this agreement is submitted; and (iii) the average number of hours worked per week over the number of weeks covered by any such agreement does not exceed 48." ILO: *Hours of work: From fixed to flexible?*, op. cit., para. 227.

[121] Concerning the definition of shift work, see Chapter VI.

[122] This type of averaging appears to be more common in national legislation than the type applied for continuous processes, which is analysed below. Some countries apply the same provisions to averaging in shift work and in

76. At the national level, the reference period over which hours may be calculated varies greatly, ranging from three weeks to one year. The limit of three weeks is set out in the legislation in a number of countries. [123] For example, in *Argentina,* when work is carried out in successive teams, normal working time can be exceeded over a period of three weeks or for a total of 144 hours in 18 working days such that the average does not exceed the limits of eight hours a day and 48 hours a week, and in any case may not exceed 56 hours a week. [124] A reference period of one month or four weeks is also quite common at the national level. [125] Finally, the limit of one year is set, for example, in *Austria* [126] and *Burkina Faso,* [127] where an annual limit of 1,783 hours is established for shift work.

77. With regard to the number of hours that can be worked as an average over a three-week period, the limits differ significantly between countries, and the limit of permitted weekly working hours can sometimes be as high as 56 hours. [128] For example, in *Burundi,* the labour inspector can authorize longer working hours in the case of shift work, on condition that the limit does not exceed 56 hours a week on average and that the weekly rest entitlement is observed. [129] As in the case of averaging in general, a daily limit of up to 12 hours is set in some countries. [130] In *Austria,* collective agreements may permit normal daily hours of work to be extended up to 12 hours in the case of shift work, on condition that an occupational medicine expert has ascertained that such an extension ensures safety and health protection that is appropriate to the nature of the work. [131] ***In this respect, the Committee has recalled that, with regard to shift work in general, Convention No. 1 allows work to be performed in excess of eight hours in one day and 48 hours in any one week only if the average number of hours over a period of three weeks or less does not exceed eight per day and 48 per week.*** [132] ***The Committee recalls that prolonged daily and weekly working hours can involve risks to the health and well-being of workers and can make it difficult to reconcile work and private life.***

continuous processes. For example, *Luxembourg* (section 211-19 of the Labour Code) and *Bolivarian Republic of Venezuela* (section 176 of the Basic Labour Act).

[123] **Among countries that have not ratified either Convention:** *Samoa* (section 49(1) of the Employment Relations Act of 2013) and *Singapore* (section 40 of the Employment Act). **Among countries that have ratified Convention No. 1:** *Plurinational State of Bolivia* (section 46 of the General Labour Act), *Burundi* (section 3(3) of Ministerial Order No. 630/117 of 1979), *Colombia* (section 165 of the Labour Code), *Equatorial Guinea* (section 55(6) of the Labour Code) and *Uruguay* (section 21 of the Decree of 29 October 1957).

[124] Section 2 of Decree No. 16.115/33 implementing Act No. 11544 of 1933.

[125] See, for example, **among the non-ratifying countries**: *Bosnia and Herzegovina* (section 68 of the Labour Act of Republika Srpska), *Croatia* (section 71(2) of the Labour Act), *Islamic Republic of Iran* (section 57 of the Labour Code) and *Serbia* (section 56 of the Labour Law); **among countries that have ratified Convention No. 1:** *Ghana* (section 36 of the Labour Act) and *Luxembourg* (section 211-19 of the Labour Code).

[126] Section 4(2) and (6) of the Working Time Act.

[127] Section 9 of Order No. 2009-013.

[128] See, for example, *Argentina* (section 2 of Decree No. 16.115/33 implementing Act No. 11544 of 1933) and *Austria* (section 4a of the Working Time Act).

[129] Section 4 of Ministerial Order No. 630/117 of 1979.

[130] See, for example, *Bosnia and Herzegovina* (section 68 of the Labour Act of Republika Srpska), *Samoa* (section 49(1) of the Employment Relations Act) and *Serbia* (section 56 of the Labour Law).

[131] Section 4a of the Working Time Act.

[132] *Bulgaria* – CEACR, Convention No. 1, direct request, published in 2010; and *Argentina* – CEACR, Convention No. 1, direct request, published in 2009.

(d) Shift work in necessarily continuous processes

Box 1.6

Article 4 of Convention No. 1 provides that:

> The limit of hours of work prescribed in Article 2 may also be exceeded in those processes which are required by reason of the nature of the process to be carried on continuously by a succession of shifts, subject to the condition that the working hours shall not exceed fifty-six in the week on the average. Such regulation of the hours of work shall in no case affect any rest days which may be secured by the national law to the workers in such processes in compensation for the weekly rest day.

78. Hours averaging arrangements for shift work in continuous processes are envisaged not only in Convention No. 1, but also in Paragraph 13(2) of Recommendation No. 116, although with differences in the number of hours allowed as an average over the reference period. While Convention No. 1 provides for a limit of 56 hours a week on average, Recommendation No. 116 suggests that working hours should not exceed in any case the normal hours of work fixed for the economic activity concerned. Neither Convention No. 1 nor Recommendation No. 116 specify a reference period in the case of averaging in this specific case.

79. Provisions on averaging for continuous processes do not appear to be very common at the national level. However, as noted above, national legislation most frequently appears to permit averaging without restrictions as to the circumstances. This presumably means that general provisions on the variable distribution of working hours also apply to shift work in continuous processes.

80. Where specific provisions have been adopted on this type of averaging, national legislation does not provide a definition of continuous processes, and normally recalls the terms of the Conventions. For example, in *Gabon* the variable distribution of hours of work is allowed when, due to the nature of the work, it is necessary to ensure that the activity continues non-stop day and night. [133]

81. Analysis of national legislation shows that in many countries there tends to be a lower limit on hours of work than that set in Convention No. 1. For example, in the *Dominican Republic*, daily hours of work in the case of shift work in continuous processes can be extended by a maximum of one hour a day, with an average weekly working time of up to 50 hours. However, overtime becomes payable after 44 hours a week. [134]

82. In certain countries, the limits applicable to continuous processes are higher than the normal national statutory limits. For example, in *Belgium*, normal working time in the case of continuous production can be extended up to 12 hours a day and 50 hours a week. Weekly working time can be increased up to 56 hours on condition that daily working time does not exceed eight hours. [135] In the *Bolivarian Republic of Venezuela*, daily and weekly working hours can be exceeded on condition that a working week of 42 hours on

[133] Section 2 of Decree No. 726/PR/MTEFP of 29 June 1998.

[134] Section 158 of the Labour Code.

[135] Section 27 of the Labour Act.

average over a period of eight weeks is respected. [136] In very few cases, the limit of 56 hours a week is set out at the national level. [137]

83. In national legislation, the reference period for hours averaging for shift work in continuous processes ranges between one and 16 weeks. For example, in *Colombia*, [138] the reference period is one week, while in *Luxembourg* [139] averaging is carried out over a period of four weeks. In *Switzerland*, the reference period is 16 weeks, which may exceptionally be increased to 20 weeks. [140] In *France*, in the case of continuous production, the law allows employers to organize averaging over several weeks. [141]

E. Reduction of hours of work

84. Among the countries [142] which report that measures have been taken for the reduction of hours of work to 40 or less, [143] a number of countries refer to measures, predominantly legislative, that are applicable to all workers.

85. For example, the Government of the *Republic of Korea* indicates that the 40-hour working week was phased in between 2004 and 2011, based on company size to replace the previous 44-hour week, in accordance with the provisions of the Labour Standards Act, as amended in 2003. The Government adds that, since 2011, it has provided financial support to companies for their labour and facility costs in order to support the reduction of working time and job creation, for example by modifying shift work systems. Moreover, a tripartite agreement was concluded in September 2015 to reduce actual hours of work. Under the agreement, the tripartite partners decided to promote: (a) a gradual reduction of working hours; (b) systemic improvement in businesses covered by special provisions on working hours or which are exempt from the limits on hours of work; and (c) flexible work arrangements, and more use of leave. The Government of *New Zealand* refers to the Minimum Wages Act, which gives effect to the Convention by setting 40 hours as the maximum number of hours to be worked in a week, unless the employee and the employer agree otherwise. It also refers to the possibility for employees to request a variation in their hours of work under the Employment Relations Act, 2000. [144]

86. The legislation in *South Africa* (Schedule One to the Basic Conditions of Employment Act) provides for the recording of the procedures adopted to reduce the

[136] Section 176 of the Basic Labour Act.

[137] For example, *Colombia* (section 166 of Labour Code) and *Uruguay* (section 22 of the Decree of 29 October 1957).

[138] Section 166 of the Labour Code.

[139] Section 211(19) of the Labour Code.

[140] Section 38 of the Ordinance of Labour Law No. 1.

[141] Section L.3121-46 of the Labour Code.

[142] *Argentina, Azerbaijan, Bahrain, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Burundi, Chile, China, Croatia, Czech Republic, Denmark, Dominican Republic, Ecuador, Egypt, Eritrea, Germany, Guatemala, Hungary, Iceland, Islamic Republic of Iran, Japan, Kazakhstan, Kenya, Republic of Korea, Kuwait, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, Portugal, Romania, Serbia, South Africa, Spain, Switzerland, Syrian Arab Republic, Tunisia, United States* and *Bolivarian Republic of Venezuela*.

[143] The Committee notes that in their replies to the question concerning the policies implemented and measures adopted for the progressive reduction of hours of work, many countries assumed they were being requested to refer to "new" measures to reduce the working week to 40 hours or less. Countries where measures are already in place in line with the Convention therefore replied negatively, indicating that there have been no further measures to reduce the working week (e.g. *Italy* and *Montenegro*).

[144] Section 69AA-69AAF of the Employment Relations Act, 2000.

working hours of employees to the goal of a 40-hour working week and an eight-hour working day: (a) through collective bargaining and the publication of sectoral determinations; and (b) having due regard to the impact of a reduction of working hours on existing employment and opportunities for employment creation, economic efficiency and the health, safety and welfare of employees. The Government indicates that a report is prepared and published every two years on the reduction of hours of work and that the progress made in reducing working hours is monitored.

87. A number of governments refer to legislative measures establishing the duration of the working week at 40 hours, and for a reduced duration of the working week in selected occupations or for certain categories of workers for reasons related, inter alia, to conditions hazardous to the health and safety of workers, [145] age [146] or persons with disabilities. [147] The legislation in other countries provides for the reduction of hours of work in proportion to the harmful effects of the work on health and working ability. This is the case, for example, in *Bosnia and Herzegovina*, [148] *Croatia* [149] and *Serbia.* [150]

88. A number of governments refer to legislation providing that, in the case of the reduction of hours of work, employees have the right to the same wages and other entitlements as for full-time working hours. [151]

89. Some governments report that collective agreements are the main instrument for the reduction of hours of work. The Government of *Serbia* refers to the Labour Law, which allows the reduction of hours of work to no fewer than 36 hours a week through collective agreements, [152] as well as to collective agreements for certain categories of workers which provide for reduced working hours ranging between 35 and 38 hours a week. The Government of *Italy* reports that collective agreements or individual contracts may provide for a lower number of weekly hours of work than the legal limit of 40 hours. The Government of *Greece* indicates that, by virtue of relevant arbitral awards [153] and the National General Collective Labour Agreement, working hours have been reduced to 40 a week.

[145] For example, *Azerbaijan* (sections 90–93 of the Labour Code), *Belarus* (sections 113 and 114 of the Labour Code), *Czech Republic* (section 79 of the Labour Code) and *Latvia* (section 131(3) of the Labour Law).

[146] For example, *Kazakhstan* (section 69 of the Labour Code) and *Romania* (section 10 of Government Decision No. 600/2007 on the protection of young people at work).

[147] See, for example, *Kazakhstan* (section 69 of the Labour Code).

[148] Section 37 of the Labour Law of the Federation of Bosnia and Herzegovina and section 59 of the Labour Law of Republika Srpska.

[149] Section 64 of the Labour Act.

[150] Section 52(1)–(3) of the Labour Law.

[151] For example, *Belgium* (Royal Decree of 16 May 2003 implementing Chapter 7, Title IV, of the Act of 24 December 2002), *Bosnia and Herzegovina* (section 37 of the Labour Law of the Federation of Bosnia and Herzegovina and section 59 of the Labour Law of Republika Srpska), *Bulgaria* (section 137 of the Labour Act and the Ordinance determining the types of work for which reduced hours of work arrangements are established), *Croatia* (section 64 of the Labour Act) and *Kazakhstan* (section 69 of the Labour Code).

[152] Section 51(2) of the Labour Law.

[153] Arbitral awards Nos 6/79, 1/82 and 25/83.

3. Exceptions

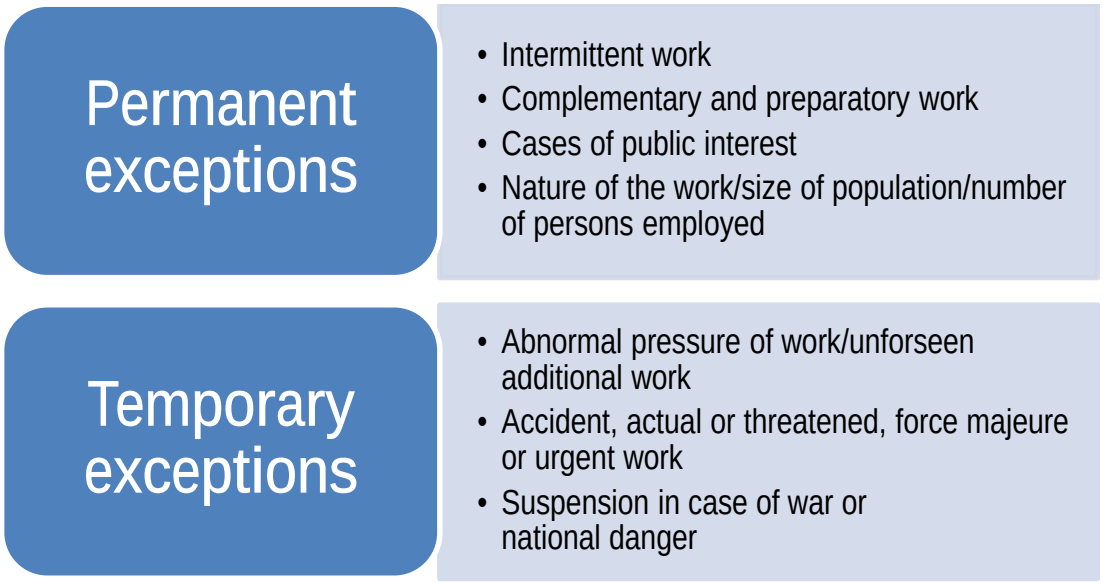
90. As noted above, Conventions Nos 1 and 30 allow derogations, in certain circumstances, from the principle of the eight-hour day and the 48-hour week in order to extend the normal limits of daily and weekly hours of work. In this respect, several aspects need to be taken into account:

- the type of exceptions and the related circumstances or conditions;
- the limits to the additional hours allowed in the relevant circumstances;
- the compensation entailed by these exceptions.

91. The exceptions allowed by both Conventions can be categorized as shown in figure 1.7.

A. Conditions of application

Figure 1.7. Exceptions to normal hours of work



(a) Permanent exceptions

92. Permanent exceptions apply when the need to extend hours of work beyond normal working hours is regular and may be regarded as part of the normal conditions of work. As shown in figure 1.7, Conventions Nos 1 and 30 allow these exceptions in cases of intermittent work and preparatory or complementary work. Moreover, Convention No. 30 allows permanent exceptions for shops and other establishments, where the nature of the work, the size of the population or the number of persons employed justify them. Paragraph 14(a)(ii) of Recommendation No. 116 also includes in this category certain exceptional cases required in the public interest.

(i) Intermittent work

Box 1.7

Article 6(1)(a) of Convention No. 1 provides that:

1. Regulations made by public authority shall determine for industrial undertakings:

(a) the permanent exceptions that may be allowed … for certain classes of workers whose work is essentially intermittent.

Article 7(1)(a) of Convention No. 30 provides that:

Regulations made by public authority shall determine –

1. The permanent exceptions which may be allowed for –

(a) certain classes of persons whose work is inherently intermittent, such as caretakers and persons employed to look after working premises and warehouses.

93. Paragraph 14(a)(i) of Recommendation No. 116 adds that the competent authority or body in each country should determine the circumstances and limits in which exceptions to the normal hours of work may be permitted permanently in work which is essentially intermittent.

94. ***In this connection, the Committee has recalled that inherently "intermittent work" should be defined narrowly, as work which is not concerned with production as such and which, by its nature, is interrupted by long periods of inaction, during which the workers concerned have to display neither physical activity nor sustained attention, and remain at their post only to reply to possible calls.*** [154] ***Examples include doorkeepers, security guards and janitors.***

95. The legislation in a large number of countries allows permanent exceptions for intermittent work. [155] In many cases, a varied range of categories of workers are referred

[154] See *Egypt* – CEACR, Convention No. 30, direct request, published in 2015.

[155] For example, **among countries that have not ratified either Convention**: *Algeria* (section 23 of the Act on labour relations), *Antigua and Barbuda* (section 24(4)(a) of the Labour Code), *Bahrain* (section 1 of Decision No. 25 of 2013, and section 56 of the Labour Act), *Benin* (section 144 of the Labour Code), *Burkina Faso* (section 3 of Decree No. 2007-004 and section 5 of Order No. 1243), *Cameroon* (section 4 of Decree No. 95/677/PM), *Cabo Verde* (section 152 of the Labour Code), *Côte d'Ivoire* (section 15 of Decree No. 96-203 of 7 March 1996), *France* (section L.7211-3 of the Labour Code), *Guinea* (section 2 of Ministerial Decree No. 1391/MASE/DNTLS/90), *Honduras* (section 325 of the Labour Code), *Hungary* (section 92(2) of the Labour Code), *Islamic Republic of Iran* (section 54 of the Labour Code), *Italy* (section 16 of Decree No. 66 of 2003), *Kenya* (section 6 of the Regulation of Wages (Road transport) Order), *Republic of Korea* (section 59 of the Labour Standards Act), *Mauritius* (section 14(4) of the Employment Rights Act, section 1 of the Security Guards Remuneration Regulations), *Malawi* (section 37 of the Employment Act), *Namibia* (section 16(3) of the Labour Act), *Senegal* (section 4(1) of Decree No. 70-183), *Seychelles* (Regulation 3(3) of the Employment (Conditions of Employment) Regulations 1991 (SI 34 of 1991)), *Suriname* (section 4(1) of the Labour Code), *Thailand* (section 65(3) and (8) of the Labour Protection Act), *Switzerland* (section 45(a) of the Ordinance under Labour Act No. 2 and section 27(m) of the Labour Act) and *United Kingdom* (section 4(1) of Road Transport Regulations); **among countries that have ratified one or both Conventions**: *Bangladesh* (section 102 of the Labour Act), *Burundi* (section 8(1) and (2) of Ministerial Order No. 630/117 of 9 May 1979), *Chile* (sections 25, 25bis and 25ter of the Labour Code), *Colombia* (section 162(1)(c) of the Substantive Labour Code), *Costa Rica* (section 143 of Labour Code), *Czech Republic* (section 91(3)(g) of the Labour Code), *Dominican Republic* (section 150 of the Labour Code), *Egypt* (section 82 of the Labour Code and section 1 of Ministerial Decision No. 115 of 2003), *Guatemala* (section 124 of the Labour Code), *India* (section 64 of the Factories Act 1948), *Iraq* (section 71(5)(d) of the Labour Code), *Morocco* (section 190 of the Labour Code), *Nicaragua* (section 61(c) of the Labour Code), *Lithuania* (sections 144(4) and 148 of the Labour Code and Government Resolution No. 587 of 14 May 2003), *Luxembourg* (section 211-4(2) of the Labour Code), *Malta* (Regulation 15(b) and (e) of the Organisation of Working Time Regulations), *Myanmar* (section 71(2)(c) of the Factories Act), *Norway* (section 10-4(2) of the Working Environment Act), *Peru* (section 5 of Supreme Decree No. 007-2002-TR of 3 July 2002), *Portugal* (section 210(1)(b) of the Labour Code), *Qatar* (section 76(2)(2) of the Labour Code), *Spain* (sections 3(1) and 4(1)

to in the legislative provisions including, most commonly, workers in: road, rail and public transport, security and surveillance, such as security guards and caretakers, cleaners, hairdressers, hotel and restaurant employees and emergency and health-care services. In other cases, intermittent work is defined by law as tasks that include to a large extent a simple presence or long moments of inactivity.

96. In this respect, the Committee has drawn the attention of governments to the limited nature of the permanent exceptions that are allowed by the Conventions to the normal limits on working hours for workers engaged in intermittent work. It has emphasized that the Conventions provide for permanent exceptions in cases where attendance at the workplace must necessarily exceed normal hours of work only in relation to persons whose work is essentially intermittent. It has recalled that this is obviously not the case of persons engaged in activities which require sustained and permanent attention, such as all transport, port or health-care workers. [156]

97. ***The Committee emphasizes the importance of confining permanent exceptions to the normal rules on working hours to employees whose work is inherently intermittent, that is interrupted by long periods of inaction, within the meaning of the Conventions.***

(ii) Complementary and preparatory work

Box 1.8

Article 6(1)(a) of Convention No. 1 provides that:

1. Regulations made by public authority shall determine for industrial undertakings:

(a) the permanent exceptions that may be allowed in preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working of an establishment.

Article 7(1)(b) of Convention No. 30 provides that:

Regulations made by public authority shall determine –

1. The permanent exceptions which may be allowed for:

…

(b) classes of persons directly engaged in preparatory or complementary work which must necessarily be carried on outside the limits laid down for the hours of work of the rest of the persons employed in the establishment.

98. In this connection, Paragraph 14(a)(iii) of Recommendation No. 116 includes, among permanent exceptions, work in operations which for technical reasons must necessarily be carried on outside the limits laid down for the general working of the undertaking, part of the undertaking or shift. Examples of this category of exceptions identified in the preparatory work included the work of persons who have to come in before the normal hour for beginning work, or to remain after the day's work is over, such as boiler attendants, engine operators, electricians, oilers and greasers, cleaners, timekeepers and checkers and the work of persons who have to come in earlier to prepare materials, such as sponge makers in the baking trade, moulders and labourers in foundries. [157]

of Royal Decree No. 1561/1995 of 21 September 1995), *Syrian Arab Republic* (section 112 of the Labour Code) and *Bolivarian Republic of Venezuela* (section 175(2) and (3) of the Basic Labour Act).

[156] See, for example, *Haiti* – CEACR, Convention No. 1, direct request, published in 2015; and *Egypt* – CEACR, Convention No. 1, direct request, published in 2010.

[157] League of Nations: *Report on the eight-hours day or forty-eight hours week*, Report I (London, Harrison and Sons), 1919, p. 3.

99. The national legislation in a number of countries, although in fewer cases than for intermittent work, recognizes permanent exceptions for workers engaged in complementary and preparatory work. [158] For example, the Government of *Greece* [159] reports that exemptions to normal limits on hours of work are allowed in the case of preliminary or supplementary work which, due to the nature of the work, has to be performed outside the daily working hours that apply to work in general. In *Luxembourg*, [160] the Minister of Labour may authorize the performance of hours of work outside the normal limits in the case of preparatory or complementary work which, due to technical reasons, has to be executed outside these limits.

(iii) Cases required in the public interest

100. Paragraph 14(a)(ii) of Recommendation No. 116 proposes that the competent authority or body in each country should determine the circumstances and limits in which exceptions to the normal hours of work may be permitted permanently in certain exceptional cases required in the public interest. In some countries, the national legislation envisages this type of exception. [161] For example, in *Portugal*, [162] permanent exceptions are allowed by law for workers in non-profit entities or those strictly devoted to the public interest where it is not possible to apply the normal limits on working hours.

[158] For example, **among countries that have not ratified either Convention**: *Austria* (section 8 of the Working Hours Act), *Bahrain* (section 56 of the Labour Act), *Benin* (section 146 of the Labour Code), *Burkina Faso* (section 6(1) of Order No. 1243), *Cambodia* (section 141(3) of the Labour Law), *Cameroon* (section 4(1) of Decree No. 95/677/MP), *Côte d'Ivoire* (section 15 of Decree No. 96-203 of 7 March 1996), *Finland* (section 20 of the Working Hours Act), *Gabon* (section 10 of Decree No. 726/PR/MTEFP), *Madagascar* (various legal texts issued by the general labour inspectorate), *Senegal* (section 2(1) of Decree No. 70-183), *Tunisia* (section 83(3) of the Labour Code) and *Turkey* (section 70 of the Labour Law); **among countries that have ratified one or both Conventions**: *Argentina* (section 4(a) of Act No. 11544 on working time of 1929), *Plurinational State of Bolivia* (section 46 of the General Labour Act), *Burundi* (section 7(1) and (2) of Ministerial Order No. 630/117 of 1979), *Egypt* (section 87 of the Labour Code), *Equatorial Guinea* (sections 56(1) and 55(5) of the General Labour Act), *Greece* (section 4 of the Presidential Decree of 27 June 1932, as amended by section 1 of Legislative Decree No. 515 of 1970), *India* (section 64 of the Factories Act 1948), *Iraq* (section 71(3)(a) of the Labour Code), *Morocco* (section 190 of the Labour Code), *Luxembourg* (section L.221-20 of the Labour Code), *Myanmar* (section 71(2)(b) of the Factories Act), *Portugal* (section 218(1)(b) of the Labour Code), *Syrian Arab Republic* (sections 110(a)(3) and 112(2) of the Labour Code), *Uruguay* (section 15(a) of the Decree of 29 October 1957) and *Bolivarian Republic of Venezuela* (section 179(a) of the Basic Labour Act (LOTTT) and section 5 of the LOTTT Regulations).

[159] Section 4 of the Presidential Decree of 27 June 1932.

[160] Section L.211-20 of the Labour Code.

[161] For example, **among countries that have not ratified either Convention**: *Antigua and Barbuda* (section 24(4)(b) of the Labour Code), *Burkina Faso* (section 4 of Decree No. 2007-004 and sections 5 and 6(7) of Order No. 1243), *Italy* (section 16 of Decree No. 66 of 2003), *Poland* (section 138(2) of the Labour Code), *Singapore* (Part III of the Criminal Code (temporary provisions) Act (Chapter 67)), *Switzerland* (section 27(g) of the Labour Act) and *Thailand* (section 65(6) of the Labour Protection Act); **among countries that have ratified one or both Conventions**: *Malta* (section 15(c)(iv) of the Organisation of Working Time Regulations) and *Portugal* (section 210(1)(a) of the Labour Code).

[162] Section 210(1)(a) of the Labour Code.

(iv) Exceptions allowed in view of the nature of the work, the size of the population, or the number of persons employed

Box 1.9

Article 7(1)(c) of Convention No. 30 provides that:

> Regulations made by public authority shall determine –
>
> 1. The permanent exceptions which may be allowed for:
>
> …
>
> (c) shops and other establishments where the nature of the work, the size of the population or the number of persons employed render inapplicable the working hours fixed in Articles 3 and 4.

101. The legislation in certain countries contains provisions on permanent exceptions to normal hours of work based on the nature of the work in commerce, mainly for wholesale and retail, restaurants and hotels, cafés and public performances. [163]

(b) Temporary or periodical exceptions to normal hours of work

102. Temporary and periodical exceptions to normal hours of work may be permitted when work has to be carried out occasionally outside normal hours to address the temporary necessities of an undertaking, and when the exact period during which such work has to be carried out cannot be foreseen. [164] As shown in figure 1.7, Conventions Nos 1 and 30 and Recommendation No. 116 provide for these types of exceptions in the case of abnormal pressure of work and unforeseen additional work, accidents or force majeure, or the occurrence of a national emergency.

(i) Abnormal pressure of work and unforeseen additional work

Box 1.10

Article 6(1)(b) of Convention No. 1 provides that:

> 1. Regulations made by public authority shall determine for industrial undertakings –
>
> …
>
> (b) the temporary exceptions that may be allowed, so that establishments may deal with exceptional cases of pressure of work.

Article 7(2)(b), (c) and (d) of Convention No. 30 provides that:

> Regulations made by public authority shall determine –
>
> …
>
> 2. The temporary exceptions which may be granted in the following cases:
>
> …
>
> (b) in order to prevent the loss of perishable goods or avoid endangering the technical results of the work;

[163] For example, **among countries that have not ratified Convention No. 30**, *Bahrain* (section 1(e) of Decision No. 25 of 2013 (wholesale trading involving fruit, vegetables and fish), *Cameroon* (section 3(2)(b) of Decree No. 95/677/MP), *Ecuador* (section 2 of Ministerial Agreement No. 169 of 24 September 2012 (specific needs of the business), *Jamaica* (section 4 of the Shops Regulations 1961), *Kenya* (section 6 of the Regulation of Wages (wholesale and retail distributive trades)), *Republic of Korea* (section 59 of the Labour Standards Act), *Switzerland* (section 27 of the Labour Act (hotels, restaurants, cafés and public performances) and *Myanmar* (section 12(b) and (c) of the Shops and Establishments Act 2016).

[164] League of Nations: *International Labour Conference: Hours of work of salaried employees*, Report II, Geneva, 1930, p. 216.

(c) in order to allow for special work such as stocktaking and the preparation of balance sheets, settlement days, liquidations, and the balancing and closing of accounts;

(d) in order to enable establishments to deal with cases of abnormal pressure of work due to special circumstances, in so far as the employer cannot ordinarily be expected to resort to other measures.

103. Both Conventions Nos 1 and 30 provide for temporary exceptions in case of abnormal pressure of work (see box 1.10). While Convention No. 30 provides that the exception is subject to the condition that the employer cannot ordinarily expect to resort to other measures, no such requirement is set out in Convention No. 1. Paragraph 14(b)(iv) of Recommendation No. 116 also refers to the possibility of providing for temporary exceptions to the normal working hours in case of abnormal pressure of work; Paragraph 14(c) adds the possibility for periodical exceptions in case of annual stocktaking and the preparation of annual balance sheets, and for specified seasonal activities. Temporary and periodical exceptions are similar in the sense that the necessity to work overtime is due to pressure of work.

104. Abnormal pressure of work refers not only to a sudden increase in orders arising out of unforeseen events, [165] but also the impossibility to accurately prescribe the time for the completion of the work or process by reason of its nature. [166]

105. Analysis of national legislation shows that an increase in working hours in the case of an exceptional workload is envisaged in many countries. [167] In a number of other countries, the national legislation establishes the general principle of an exceptional increase in work, but uses more general terms to describe the circumstances, which allow for broader interpretation. This is the case, for example, in countries where an extension of working hours is allowed to increase production, [168] or because it is necessitated by

[165] Schedule C to the proposed draft text of the Convention also included the making up of wearing apparel, job dyeing and dry cleaning, biscuit making, warehouses in which goods are made up for shipping orders, packing case making for shipping orders, ferries, ship repairing and dock labouring. League of Nations: *Report on the eight-hours day or forty-eight hours week*, op. cit., p. 146.

[166] Schedule C to the proposed draft text of the Convention also included bleaching and dyeing, textile printing, metal rolling mills and foundries, lead pipe making, copper refining, wire drawing, paper mills, baking of bread or biscuits, tanneries, starch and corn flour works, vulcanising of rubber, sheathing or covering of electric cables. ibid., p. 146.

[167] For example, **among countries that have not ratified either Convention**: *Antigua and Barbuda* (section C24(4) of the Labour Code), *Austria* (section 7(4) of the Working Hours Act), *Bosnia and Herzegovina* (section 21 of the Labour Law in the Institutions of Bosnia and Herzegovina, section 38 of the Labour Law of the Federation of Bosnia and Herzegovina and section 60 of the Labour Law of Republika Srpska), *Cambodia* (section 141(4) of the Labour Law), *Cameroon* (section 9 of Decree No. 95/677/PM), *Cabo Verde* (section 159(2) of the Labour Code), *Croatia* (section 65 of the Labour Code), *Gabon* (section 14 of Decree No. 276/PR/MTEPF), *Guinea* (as reported by the Government), *Latvia* (section 136 of the Labour Law), *Malawi* (section 38(1) of the Employment Act), *Oman* (section 72 of the Labour Code), *Rwanda* (section 5 of Ministerial Order No. 04/19.19 of 27 May 2009), *Senegal* (section 5 of Decree No. 70-183), *Serbia* (section 53 of the Labour Law), *Slovenia* (section 144 of the Employment Relationship Act), *Switzerland* (section 12(1) of the Labour Act) and *Tunisia* (section 83 of the Labour Code); **among ratifying countries**: *Belgium* (section 25 of the Labour Act), *Burundi* (section 10(3) of Ministerial Order No. 630/117 of 1979), *Cuba* (section 120 of the Labour Code), *Dominican Republic* (section 153 of the Labour Code), *Egypt* (section 85 of the Labour Code), *Equatorial Guinea* (section 56 of Act No. 10/2012), *Greece* (section 4 of the Presidential Decree No. 27.6/4.7.32, as amended by section 1 of Legislative Decree No. 515/1970), *India* (section 65(2) of the Factories Act 1948), *Iraq* (section 71(3)(b) of the Labour Code), *Morocco* (section 1 of Decree No. 02-04-570 of 29 December 2004), *Myanmar* (section 72(2) of the Factories Act), *Nicaragua* (section 58 of the Labour Code), *Portugal* (section 227(1) of the Labour Code), *Slovakia* (section 97(5) of the Labour Code), *Syrian Arab Republic* (section 110 of the Labour Code) and *Uruguay* (section 15(b) of the Decree of 29 October 1957).

[168] For example, *Burkina Faso* (section 3 of Order No. 2007-003), *Côte d'Ivoire* (section 24 of Decree No. 96-203 of 7 March 1996), *Gabon* (section 16 of Decree No. 276/PR/MTEPF), *Madagascar* (section 2 of Decree No. 68-172

business conditions or to meet the particular needs of the enterprise or employer. [169] In some cases, the legislation provides for the possibility of overtime to finish work that has already been started and cannot be completed during the normal working hours due to unforeseen technical or production conditions. [170]

106. The legislation in a few countries envisages the specific situation of an exceptional increase in work in the case of loading and unloading operations. This is related in particular to activities necessary to empty the warehouses of transport enterprises, as well as for loading and unloading means of transport in order to avoid the accumulation of freight at dispatch and destination points. [171]

107. The legislation in several countries also envisages exceptions for the provision of public services in cases of urgency to resolve an unforeseen situation. For example, additional work is sometimes justified by the urgent need to restore essential public services, such as water, gas, electricity, transport and communication systems. [172] In some other cases, reference is made in general to urgent work that is essential in the public interest, [173] or is of national importance. [174]

108. Other circumstances that are less frequently envisaged in national legislation to justify exceptions to normal hours of work in the case of abnormal pressure of work include: annual stocktaking and the preparation of annual balance sheets, [175] the need to avoid the loss of perishable goods or to avoid endangering the technical results of the work, [176] and seasonal activities. In these cases, there is liable to be pressure of work in

of 1968, as amended by Decree No. 72-226 of 1972), *Rwanda* (section 5 of Ministerial Order No. 04/19.19 of 27 May 2009) and *Turkey* (section 41 of the Labour Law).

[169] For example, *Bulgaria* (section 144 of the Labour Code), *Chile* (section 31 of the Labour Code), *Czech Republic* (section 93 of the Labour Code), *France* (section D.3121-4 of the Labour Code), *Kuwait* (section 66 of the Labour Act), *Mauritius* (section 16 of the Employment Rights Act), *Philippines* (section 89 of the Labour Code), *Poland* (section 151 of the Labour Code) and *Serbia* (section 53 of the Labour Law).

[170] For example, *Belgium* (section 24(2) of the Labour Act), *Cameroon* (section 9 of Decree No. 95/677/PM), *Italy* (section 5 of Decree No. 66/2003), *Russian Federation* (section 99(1) of the Labour Code), *Tajikistan* (section 80 of the Labour Code) and *Turkmenistan* (section 64 of the Labour Code).

[171] For example, *Czech Republic* (section 91(3) of the Labour Code), *Greece* (section 12 of Legislative Decree No. 1037/1971 in stores and commercial companies) *Lithuania* (section 151 of the Labour Code), and *Tajikistan* (section 79 of the Labour Code).

[172] For example, *Azerbaijan* (section 101(1) of the Labour Code), *Belarus* (section 121 of the Labour Code), *Kazakhstan* (section 77(2) of the Labour Code), *Republic of Moldova* (section 104(2) of the Labour Code), *Russian Federation* (section 99 of the Labour Code) and *Turkmenistan* (section 64 of the Labour Code).

[173] For example, **among countries that have not ratified either Convention**: *China* (section 42 of the Labour Law), *Germany* (section 15(2) of the Working Hours Act), *Japan* (section 33(3) of the Labour Standards Act), *Latvia* (section 136 of the Labour Law) and *Singapore* (section 38(2) of the Employment Act); **among ratifying countries**: *Bulgaria* (section 144 of the Labour Code), *Luxembourg* (section L.211-23 of the Labour Code) and *Nicaragua* (section 59 of the Labour Code).

[174] For example, *India* (section 64 of the Factories Act) and *Morocco* (section 1 of Decree No. 02-04-570 of 29 December 2004).

[175] For example, **among countries that have not ratified either Convention**: *Antigua and Barbuda* (section C24(4) of the Labour Code), *Cambodia* (section 141(4) of the Labour Law), *Madagascar* (as reported by the Government), *Oman* (section 72 of the Labour Code), *Switzerland* (section 12(1) of the Labour Act) and *Zimbabwe* (as reported by the Government); **among countries that have ratified one or both Conventions**: *Belgium* (section 22(3) of the Labour Act), *Czech Republic* (section 91(3) of the Labour Code), *Greece* (section 12 of Legislative Decree No. 1037/1971), *Iraq* (section 71(3)(b) of the Labour Code) and *Bolivarian Republic of Venezuela* (section 179 of the Basic Labour Act).

[176] In *Burundi*, for instance, overtime hours can be carried out to perform urgent work to save crops or perishable goods (section 9 of Ministerial Order No. 630/117 of 9 May 1979). Similarly, in *Morocco*, urgent work can be undertaken to avoid damage to materials and products (section 192 of the Labour Code). Other examples include: *Algeria* (section 31 of the Law on Labour Relations), *Belgium* (section 24(2) of the Labour Act), *Burkina Faso* (in

certain seasons of the year, which is not therefore necessarily unpredictable. For example, in *Germany*, the extension of working hours is permitted for seasonal operations and to accommodate planting and harvesting in agricultural work. [177] In *Honduras*, [178] overtime can be carried out in the case of a shortage of labour during planting or harvesting time. [179] In some cases, the increase in hours of work in relation to seasonal activities is seen as a means of compensating for hours lost during the low season.

(ii) Accident, actual or threatened, force majeure or urgent work

Box 1.11

Article 3 of Convention No. 1 provides that:

> The limit of hours of work prescribed in Article 2 may be exceeded in case of accident, actual or threatened, or in case of urgent work to be done to machinery or plant, or in case of "force majeure", but only so far as may be necessary to avoid serious interference with the ordinary working of the undertaking.

Article 7(2)(a) of Convention No. 30 provides that:

> Regulations made by public authority shall determine –
>
> …
>
> 2. The temporary exceptions which may be granted in the following cases:
>
> (a) in case of accident, actual or threatened, force majeure, or urgent work to machinery or plant, but only so far as may be necessary to avoid serious interference with the ordinary working of the establishment.

109. Legislative provisions on the extension of working hours in the event of accident, actual or threatened, or urgent work to machinery or plant, or force majeure, exist in most reporting countries. [180] ***While, in the vast majority of cases, the legislation uses wording similar to that of the Conventions and the Recommendation, the legislation in a number of countries simply refers to the presence of exceptional circumstances in order to allow an extension in normal hours of work.*** [181] ***In this respect, the Committee has recalled***

agricultural undertakings, section 14 of Order No. 2009-020), *Cambodia* (section 141(4) of the Labour Law), *Cameroon* (section 5 of Decree No. 95/677/PM), *Dominican Republic* (section 153 of the Labour Code), *Germany* (section 14 of the Working Hours Act), *Iraq* (section 71(3)(b) of the Labour Code), *Lithuania* (section 151 of the Labour Code), *Luxembourg* (section L.211-23 of the Labour Code), *Madagascar* (as reported by the Government), *Malawi* (section 38(1) of the Employment Act), *Republic of Moldova* (section 104(3) of the Labour Code), *Oman* (section 72 of the Labour Code), *Philippines* (section 89 of the Labour Code) and *Tajikistan* (section 80 of the Labour Code).

[177] Section 7(2) of the Working Hours Act.

[178] Section 133 of the Labour Code.

[179] Other examples include: *Antigua and Barbuda* (section C24(4) of the Labour Code), *Bulgaria* (section 144 of the Labour Code), *France* (section D.3121-4 of the Labour Code), *India* (section 64 of the Factories Act 1948), *Italy* (section 16 of Decree No. 66 of 2003), *Luxembourg* (section L.211-13 of the Labour Code), *Nicaragua* (section 59 of the Labour Code), *Rwanda* (section 5 of Ministerial Order No. 04/19.19 of 27 May 2009), *Spain* (section 5(2) of Royal Decree No. 1561/1995 of 21 September 1995) and *Suriname* (section 6(1) of the Labour Act).

[180] Such provisions exist in the legislation of 101 of the 124 countries analysed.

[181] For example, *Mexico* (section 66 of the Federal Labour Act), *Rwanda* (section 5 of Ministerial Order No. 04/19.19 of 27 May 2009), *Egypt* (section 85 of the Labour Code), *El Salvador* (section 89 of the Labour Code), *Ghana* (section 38 of the Labour Act) and *Seychelles* (Regulation 6(1) of the Employment (Conditions of Employment) Regulations 1991 (SI 34 of 1991)).

that temporary exceptions to normal hours of work are authorized in the Conventions in very limited and well-circumscribed cases. [182]

110. The legislation in certain countries provides that overtime may be imposed by employers in the case of urgent work or force majeure. [183] For example, in *Estonia*, an employer may require an employee to work overtime due to unforeseen circumstances pertaining to the enterprise or the activity of the employer, and particularly to prevent damage. [184] The Government of *Zimbabwe* reports that employees may be requested to undertake emergency work, provided that they have no reasonable cause to decline the request.

(iii) Suspension in case of war or national danger

Box 1.12

Article 14 of Convention No. 1 provides that:

> The operation of the provisions of this Convention may be suspended in any country by the Government in the event of war or other emergency endangering the national safety.

Article 9 of Convention No. 30 provides that:

> The operation of the provisions of this Convention may be suspended in any country by the Government in the event of war or other emergency endangering national safety.

111. The possibility of the suspension of the legislative provisions on working time in the event of national emergency is also foreseen in Recommendation No. 116 (Paragraph 14(b)(vi)).

112. There are legislative provisions to this effect in certain countries. [185] For example, in *Tunisia*, working-time provisions can be suspended by decree of the competent Secretary of State. In such cases, working time can be extended beyond nine hours a day in establishments performing work in the interest of national security and defence. [186]

113. The conclusions of the London Conference of Labour Ministers of 1926 noted that this provision can also be used in the case of a crisis that affects the national economy to such an extent that it threatens the existence or the life of the people. [187] For example, in

[182] See *Canada* – CEACR, Convention No. 1, direct request, published in 2012; and *Bangladesh* – CEACR, Convention No. 1, direct request, published in 2012.

[183] For example, *Argentina* (section 203 of Act 20744 on labour contracts of 1974), *Belarus* (section 121 of the Labour Code), *Czech Republic* (section 93 of the Labour Code), *Ghana* (section 38 of the Labour Act), *Hungary* (section 108(2) of the Labour Code), *Kazakhstan* (section 77 of the Labour Code), *Philippines* (section 89 of the Labour Code and section 10, Rule I, Book 3, of the Omnibus Rules Implementing the Labour Code), *Romania* (section 120(2) of the Labour Code), *Singapore* (section 38(2) of the Employment Act), *Thailand* (section 24 of the Labour Protection Act) and *Turkey* (section 42 of the Labour Code).

[184] Section 44(5) of the Employment Contracts Act.

[185] *Antigua and Barbuda* (section C24(4) of the Labour Code), *Azerbaijan* (section 101(1) of the Labour Code), *Bulgaria* (section 144 of the Labour Code), *Cuba* (section 120 of the Labour Code), *Germany* (section 15(3) of the Working Hours Act), *Kazakhstan* (section 77(2) of the Labour Code), *Lithuania* (section 151 of the Labour Code), *Luxembourg* (section L.211-23 of the Labour Code), *Republic of Moldova* (section 104(2) of the Labour Code), *Philippines* (section 89 of the Labour Code), *Singapore* (section 38(2) of the Employment Act), *Tajikistan* (section 80 of the Labour Code) and *Turkey* (section 43 of the Labour Law).

[186] Section 84 of the Labour Code.

[187] ILO: *Official Bulletin*, Vol. XI, No. 3, p. 91.

Panama, exceptions to normal hours of work can be made in the case of a serious economic crisis of national scope. [188]

(c) Other circumstances identified

114. The Committee observes that the legislation in some countries allows overtime in circumstances that go beyond those indicated in the Conventions and the Recommendation. For example, in a number of countries, the legislation allows an extension of normal hours of work in order to replace an absent employee assigned to work in a continuous operation. [189] In *Cuba*, [190] a double shift may be necessary to cover the unforeseen absence of a worker in cases where the work cannot be interrupted. Similarly, in *Ethiopia*, [191] overtime may be necessary to replace an absent employee assigned to work in a continuous process. In some countries, the legislation requires the employer to take immediate steps to find a replacement worker. [192]

115. The Committee also observes that in a number of countries the legislation does not clearly specify the circumstances under which exceptions are allowed. The wording used includes "the needs of production", [193] or "when the nature of the activity so requires" [194] (without defining the categories covered by this wording).

116. The legislation in some countries leaves the definition of the circumstances in which overtime can be carried out to agreement between the employer and the employee, [195] or collective bargaining. [196]

[188] Section 159 of the Labour Code.

[189] *Azerbaijan* (section 101(1) of the Labour Code), *Eritrea* (section 52(2) of Labour Proclamation No. 113/2001), *India* (section 64(4) of the Factories Act 1948) and *Republic of Moldova* (section 104(3) of the Labour Code).

[190] Section 120(e) of the Labour Code.

[191] Section 67(1) of the Labour Proclamation.

[192] For example, *Kazakhstan* (section 77(2) of the Labour Code), *Russian Federation* (section 99(1) of the Labour Code), *Tajikistan* (section 80 of the Labour Code) and *Turkmenistan* (section 64 of the Labour Code).

[193] For example, **among countries that have not ratified either Convention**: *China* (section 41 of the Labour Law: employing units may extend working hours as necessitated by production or business operation after consultation with the trade union and labourers) and *Tunisia* (section 91 of the Labour Code).

[194] For example, *Costa Rica* (section 143 of the Labour Code), *Ecuador* (section 47(2) of the Labour Code), *Nicaragua* (section 61(f) of the Labour Code), *Panama* (section 35(2) of the Labour Code: when the nature of the activity so requires), *Peru* (section 4 of Supreme Decree No. 007-2002-TR of 3 July 2002) and *Senegal* (section 4(1) of Decree No. 70-183).

[195] For example, *Belarus* (section 119(2) of the Labour Code), *Cyprus* (section 7(4) of the Organisation of Working Time Law), *Chile* (section 31 of the Labour Code, overtime for up to two hours a day can be agreed between the employer and the employee), *Estonia* (section 44 of the Employment Contracts Act), *Italy* (section 5(3) of Decree No. 66 of 2003), *Islamic Republic of Iran* (section 59 of the Labour Code), *Japan* (section 36 of the Labour Standards Act), *Republic of Korea* (section 53(1) of the Labour Standards Act), *Mauritius* (section 16 of the Employment Rights Act), *Namibia* (section 17 of the Labour Act), *New Zealand* (section 67D of the Employment Relations Act 2000), *Romania* (section 120(2) of the Labour Code), *South Africa* (section 10 of the Basic Conditions of Employment Act) and *Thailand* (section 24 of the Labour Protection Act).

[196] For example, *Italy* (section 5(2) of Decree No. 66 of 2003), *Lithuania* (section 151 of the Labour Code), *Montenegro* (section 50 of the Labour Law) and *the former Yugoslav Republic of Macedonia* (section 117(1) of the Law on Labour Relations).

117. Finally, in a few countries, [197] the legislation only covers compensation for overtime, without defining the respective circumstances (for example, *Eritrea*, [198] *Samoa* [199] and *United States*). [200]

118. The Committee also refers to paragraph 79 of its General Survey of 1984 on working time, in which it emphasized that undue facilitation of overtime, "for example, by not limiting the circumstances in which it may be permitted or by allowing relatively high maximums, could in the most egregious cases tend to defeat the Recommendation's objective of a social standard of a 40-hour week and make irrelevant the provisions as to normal working hours". [201]

119. ***Recalling that the Conventions establish a double cumulative limit, namely eight hours in the day and 48 hours in the week, the Committee emphasizes the importance of national legislation and practice restricting recourse to exemptions from these maximum limits to cases of clear, well-defined and limited circumstances such as accident, actual or threatened, force majeure or urgent work to be done to plant or machinery.***

(d) Making up for lost hours

Box 1.13

Article 5 of Convention 30 provides that:

1. In case of a general interruption of work due to (a) local holidays, or (b) accidents or force majeure (accidents to plant, interruption of power, light, heating or water, or occurrences causing serious material damage to the establishments), hours of work in the day may be increased for the purpose of making up the hours of work which have been lost, provided that the following conditions are complied with:

(a) hours of work which have been lost shall not be allowed to be made up on more than thirty days in the year and shall be made up within a reasonable lapse of time;

(b) the increase in hours of work in the day shall not exceed one hour;

(c) hours of work in the day shall not exceed ten.

2. The competent authority shall be notified of the nature, cause and date of the general interruption of work, of the number of hours of work which have been lost, and of the temporary alterations provided for in the working time-table.

120. Paragraph 14(b)(v) of Recommendation No. 116 adds that the competent authority or body in each country should determine the circumstances and limits in which exceptions to the normal hours of work may be permitted temporarily "to make up time lost through collective stoppages of work due to accidents to materials, interruptions to the power supply, inclement weather, shortages of materials or transport facilities, and calamities".

121. The legislation in a number of countries envisages this type of exception to normal hours of work. In most cases, these exceptions are permitted in case of a collective

[197] This is the case in *Bangladesh*, certain states in *Canada* (Northwest Territories, Nova Scotia, Nunavut, Quebec and Saskatchewan), *Central African Republic, Indonesia, Kenya, Mauritania, Qatar, Sri Lanka, United Kingdom, Uzbekistan* and *Zambia*.

[198] Section 51(1) of Labour Proclamation No. 118/2001.

[199] Section 48 of the Labour and Employment Relations Act.

[200] FLSA, 29 USC, section 207(a)(1).

[201] *New Zealand* – CEACR, Convention No. 47, direct request, published in 2010.

interruption of work due to accident or force majeure. [202] In a few countries, local holidays may be used for making up hours of work. [203] The legislation in some countries specifically refers to working hours lost due to weather conditions. [204] For example, in *Côte d'Ivoire* [205] and *Senegal*, [206] provision is made for making up hours lost during seasonal activities. In both cases, the legislation provides for a variable distribution of working hours over the year.

122. In terms of the time limit within which lost hours have to be made up, Article 5 of Convention No. 30 only indicates that this should be within a reasonable period of time. Recommendation No. 116 does not indicate a time frame. In several of the countries in which the legislation envisages the possibility of making up lost hours, no time limit is established. Among the countries where a time limit is set, the period varies between one or two weeks [207] and two months, [208] and in one case a year. [209]

123. Article 5(1)(a) of Convention No. 30 provides that authorization to make up for lost hours cannot be granted for more than 30 days a year. The legislation in *Iraq* [210] and *Morocco* [211] is in compliance with this provision, while a shorter limit of 20 days is set in the *Bolivarian Republic of Venezuela*. [212] In *Brazil*, the period is fixed at 45 days a year. [213] However, it is not very common for national legislation to specify such a period.

124. With regard to limits on the maximum number of hours that can be made up, Article 5(1)(b) and (c) of Convention No. 30 provides that the increase in hours of work in the day shall not exceed one hour, and that in any case working hours in the day shall

[202] For example, *Antigua and Barbuda* (section C24(4) of the Labour Code), *Benin* (section 3 of Order No. 029/MFPTRA of 21 January 2004), *Burkina Faso* (section 2 of Order No. 2007-004 and section 9 of Order No. 2009-020), *Burundi* (section 9 of Ministerial Order No. 630/117 of 1979), *Cambodia* (section 140 of the Labour Law), *Cameroon* (section 7 of Decree No. 95/677/PM), *Côte d'Ivoire* (section 18 of Decree No. 96-203 of 7 March 1996), *Gabon* (section 3 of Decree No. 276/PR/MTEPF), *Greece* (section 4 of the Presidential Decree of 27 June 1932, as amended by section 1 of Legislative Decree No. 515/1970), *Guinea* (section 221(3) of the Labour Code), *Islamic Republic of Iran* (section 60 of the Labour Code), *Luxembourg* (section L.211-21 of the Labour Code), *Morocco* (section 189 of the Labour Code), *Rwanda* (section 9 of Ministerial Order No. 04/19.19 of 2009), *Senegal* (section 6 of Decree No. 70-183), *Singapore* (section 38(2) of the Employment Act), *Switzerland* (section 11 of the Labour Act), *Tunisia* (section 92 of the Labour Code) and *Bolivarian Republic of Venezuela* (section 181 of the Basic Labour Act).

[203] For instance, *Cambodia* (section 140 of the Labour Law), *Gabon* (section 3 of Decree No. 276/PR/MTEPF) and *Greece* (section 4 of the Presidential Decree of 27 June 1932, as amended by section 1 of Legislative Decree No. 515/1970).

[204] For example, *Antigua and Barbuda* (section C24(4) of the Labour Code), *Benin* (section 3 of Order No. 029/MFPTRA of 21 January 2004), *Gabon* (section 3 of Decree No. 276/PR/MTEPF), *Greece* (section 4 of the Presidential Decree of 27 June 1932, as amended by section 1 of Legislative Decree No. 515/1970), *Rwanda* (section 9 of Ministerial Order No. 04/19.19 of 2009), *Senegal* (section 6 of Decree No. 70-183) and *Bolivarian Republic of Venezuela* (section 181 of the Basic Labour Act).

[205] Section 18 of Decree No. 96-203 of 7 March 1996.

[206] Section 7 of Decree No. 70-183.

[207] For example, *Cambodia* (two weeks following the interruption of the work, section 140 of the Labour Law), *Cameroon* (within the same or the following week, section 7 of Decree No. 95/677/PM) and *Gabon* (within the same or the following week, section 3 of Decree No. 276/PR/MTEPF).

[208] For example, *Luxembourg* (section L.211-21 of the Labour Code) and *Tunisia* (section 92 of the Labour Code).

[209] *Guinea* (section 221(3) of the Labour Code).

[210] Section 72 of the Labour Code.

[211] Section 189 of the Labour Code. Morocco has ratified Convention No. 30.

[212] Section 181 of the Basic Labour Act.

[213] Section 61(3) of the Consolidation of Labour Laws.

not exceed ten. The legislation in *Burundi* [214] and *Cambodia* [215] fully reflects these limits, while the legislation in other countries is in compliance with one of the two daily limits. For example, in *Benin*, the legislation sets a limit of one hour a day and six hours a week. [216] In *Guinea* [217] and *Luxembourg*, [218] the limit is a maximum of ten hours of work in a day and 48 hours in the week.

125. In most cases, the period worked to make up for lost hours is not considered as overtime, with no additional overtime pay being due. [219]

B. Limits to exceptions

Box 1.14

Article 6(2) of Convention No. 1 provides that:

> … These regulations shall fix the maximum of additional hours in each instance …

Article 7(3) of Convention No. 30 provides that:

> Save as regards paragraph 2(a),* the regulations made under this Article shall determine the number of additional hours of work which may be allowed in the day and, in respect of temporary exceptions, in the year.

* In cases of accident, force majeure or urgent work.

126. The extension of the limits on normal hours of work, although possible in certain circumstances, is not unrestricted. Even though neither Conventions Nos 1 nor 30 establish a specific limit on the number of additional hours that may be worked beyond normal hours in the case of permanent and temporary exceptions, they both require the public authority to set those limits. Paragraph 17 of Recommendation No. 116 adds that, except for cases of force majeure, limits should be determined to the total number of hours of overtime which can be worked during a specified period.

127. In its 2005 General Survey, the Committee indicated that, taking into account that the goal of the instruments is to establish the principle of the eight-hour day and 48-hour week to protect workers against undue fatigue and allow them to maintain a work–life balance, and in light of the preparatory work, it could be concluded that such limits must be reasonable. It added that, when deciding what should be considered as a "reasonable" limit on the number of additional hours in case of a certain exception, the public authority should make a thorough evaluation of the intensity of the respective work, its ability to produce physical or mental fatigue, and of possible negative consequences of fatigue for the respective employee and the public at large. The higher the intensity of the work, the higher likelihood of causing fatigue. The more serious the negative consequences of such

[214] Section 9 of Ministerial Order No. 630/117 of 1979.

[215] Section 140 of the Labour Law.

[216] Section 6 of Order No. 029/MFPTRA of 21 January 2004.

[217] Section 221(3) of the Labour Code.

[218] Section L.211-21 of the Labour Code.

[219] For example, *Benin* (section 6 of Order No. 029/MFPTRA of 21 January 2004), *Burkina Faso* (section 2 of Order No. 2007-004 and section 9 of Order No. 2009-020), *Iraq* (section 72 of the Labour Code), *Gabon* (section 3 of Decree No. 276/PR/MTEPF), *Guinea* (section 221(3) of the Labour Code), *Rwanda* (section 9 of Ministerial Order No. 04/19.19 of 2009) and *Bolivarian Republic of Venezuela* (section 181 of the Basic Labour Act). The legislation in certain countries is silent on whether the making up of lost hours is considered or not as overtime, this is for example the case in *Brazil*, *Cambodia* and *Cameroon*.

fatigue, the lower would be a "reasonable" limit that should be allowed in the case of a particular exception. [220]

128. Although the arrangements adopted in national legislation to restrict the number of additional hours vary greatly, three groups can be identified:

- countries where the legislation establishes general limits on overtime;
- countries where different rules are established depending on the type of exception;
- countries where no precise limits are established.

129. In all these cases, the limits take some of the following forms:

- a maximum number of additional hours allowed per day, week, month and/or year;
- a total number of hours (normal hours plus overtime) allowed per day, week, month and/or year;
- an averaged number of additional hours or total hours per day, week, month and/or year.

(a) General limits

130. Some countries establish a general limit for additional hours. [221] For example, the legislation in *Algeria* sets a limit for overtime of 20 per cent of the statutory daily hours of working up to a cumulative maximum of 12 hours of work a day. [222] In *Chile*, the Labour Code provides that, where the nature of the work is not likely to harm workers' health, additional hours can be agreed up to a maximum of two a day. [223] The Labour Code in *Poland* sets a maximum limit of 150 additional hours a calendar year to meet the particular needs of the employer. [224] In *Namibia*, the legislation provides that an employer may, by agreement, require an employee to work up to ten hours overtime a week, but not more than three hours overtime a day. [225] The Government of *Indonesia* reports that workers cannot be required to work overtime for longer than three hours a day or 14 hours a week. [226]

131. The legislation in certain countries sets a daily, weekly or yearly limit to total hours of work, including overtime. [227] For example, in *Honduras*, [228] the sum of normal and additional hours of work cannot exceed 12 hours a day. In the *Islamic Republic of Iran*, [229] total hours of work, intervals and overtime must not exceed 15 hours a day from the beginning until the end of work, and the beginning and end of the workday and breaks

[220] ILO: *Hours of work: From fixed to flexible?*, op. cit., paras 144–145.

[221] For example, *Nicaragua* (three hours a day and nine a week: section 58 of the Labour Code), *Panama* (three hours a day and nine a week: section 36(4) of the Labour Code) and *South Africa* (by agreement, three hours a day or ten hours a week: section 10(1) of the Basic Conditions of Employment Act).

[222] Section 31 of the Act on labour relations.

[223] Section 31 of the Labour Code.

[224] Section 151(3) and (4) of the Labour Code.

[225] Section 17 of the Labour Act.

[226] Section 78(1)(b) of Act No. 13 of 2013.

[227] For example, *Guinea* (ten hours a day and 48 hours a week: section 221(7) of the Labour Code), *Mauritania* (29 hours a week: Decree No. 225 of July 1956, as reported by the Government) and *Romania* (48 hours a week: section 114(1) of the Labour Code).

[228] Section 332 of the Labour Code.

[229] Section 54 of the Labour Code.

must be determined by mutual agreement, with due regard to the type of work and the customs and common practice of the workplace.

132. In other countries, a maximum number of additional hours or of total hours on average is prescribed. For example, in *Cyprus*, [230] *Denmark* [231] and *Iceland*, [232] the limit for total weekly hours of work is 48 hours on average over a period of four months. In *Estonia*, the total weekly limit is 48 hours on average over a period of four months, although this reference period may be extended by collective agreement up to 12 months in the case of health-care professionals, welfare workers, agricultural workers and workers in the tourism sector. [233] In *Malta*, the limit is set at 48 hours a week over a reference period between four months and one year. [234] The Government of *Germany* reports that the working day may be extended, for no particular reason, to up to ten hours, on condition that average hours of work over a period of six calendar months or 24 weeks do not exceed eight hours a day. [235] In *Kenya*, overtime and normal hours of work must not exceed 116 hours for adult workers employed during the day in any period of two consecutive weeks. [236]

(b) Limits on permanent exceptions

133. The legislation in a number of countries sets a total number of daily or weekly hours of work in the case of permanent exceptions. For example, in the *Plurinational State of Bolivia*, [237] employees in positions of direction, surveillance or confidence, or who work discontinuously, or who carry out work that by its nature cannot be undertaken during normal hours, must have an hour of rest during the day, and work a maximum of 12 hours a day. [238] In *Kuwait*, [239] in the oil sector, hours of work, including overtime may not exceed 48 in one week, on condition that overtime does not exceed two hours a day. [240]

134. In other countries, a maximum number of additional hours a day is set. For example, in *Equatorial Guinea*, [241] in the case of preparatory or complementary work, a maximum of two hours a day of overtime is allowed, while in *Greece* the daily limit for overtime is three hours in the same circumstances. [242]

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[230] Section 7(1), (2), and (3) of the Organisation of Working Time Law.

[231] Section 4 of the Working Time Act.

[232] Section 55 of the Act on working environment, health and safety in workplaces.

[233] Section 46 of the Employment Contracts Act.

[234] Section 7(1) and (3) of the Organisation of Working Time Regulations.

[235] Section 3 of the Working Hours Act.

[236] Section 6(3)(b) of the Regulation of Wages (General) Order.

[237] Section 46 of the General Labour Act.

[238] Similar provisions are found in *Costa Rica* (section 143 of the Labour Code), *Guatemala* (section 143 of the Labour Code) and *Nicaragua* (section 61 of the Labour Code).

[239] Section 10 of the Oil Sector Labour Law.

[240] Other examples include: *Egypt* (section 82 of the Labour Code: workers employed in work of an intermittent nature shall not be in attendance for more than 12 hours a day), *Jamaica* (section 5 of the Shops Regulations 1961, as amended in 2014: no person shall be employed in or about the business of any shop for more than 12 hours in any day) and *Qatar* (section 74 of the Labour Code: ten hours a day for workers carrying out preparatory and complementary work, and guarding and cleaning).

[241] Section 56(1) of Act No. 10/2012 of 24 December 2012.

[242] Section 4 of the Presidential Decree of 27 June 1932, as amended by section 1 of Legislative Decree No. 515/1970.

135. In certain countries, several types of limits are established for additional hours in the case of permanent exceptions. The Government of *China* reports that employers may extend working hours according to the needs of production or business operation after consultation with trade union representatives and workers, on condition that the extension does not exceed one hour a day. If a longer extension is needed for special reasons, on condition that the health of workers is guaranteed, the limit of three hours a day must not be exceeded, and the total extension in a month must not exceed 36 hours. [243] In *Iraq*, the following overtime limits are fixed: in industrial activities which are performed in shifts, no more than one hour a day; in preparatory or complementary work in industry, or to handle extraordinary work, no more than four hours a day; in non-industrial activities, no more than four hours a day; in road transport, total hours of work must not exceed nine a day and 48 a week; no worker may work more than 40 hours of overtime over a period of 90 days, or 120 hours of overtime over 12 months. The Minister is required to issue instructions specifying the types of work and the total hours applicable to the drivers concerned. [244]

136. In some cases, the only statutory limit prescribed by national legislation on overtime is the minimum legal daily rest period. For example, in *Cabo Verde,* the Minister of Labour may extend the limits on the normal hours of workers whose activity is largely intermittent or requires their constant physical presence, on condition that the daily rest period of 12 consecutive hours is respected. [245] Another case where the limit is established through the daily rest period is *Denmark*, [246] where the rest period may be reduced to eight hours for: a change of shifts in enterprises with several shifts when it is not possible to maintain the daily or weekly rest period between the end of one shift and the start of another; and in agricultural work for up to 30 days in any calendar year.

137. In a few countries, no precise limits on overtime are set. Among countries that have not ratified either of the Conventions, in *Antigua and Barbuda*, in the case of intermittent work, public interest and for technical reasons, the Minister, after consultation with employer and employee representatives, may issue an order increasing permanently the permitted hours of work in any establishment or industry, on condition that, in the case of a permanent increase, the consultation is with an advisory committee appointed by the Minister. [247] Similarly, in *Cambodia*, an order issued by the Ministry of Labour shall determine permanent exceptions that may be allowed for preparatory or supplementary work that must be undertaken outside the limit for the general work of the establishment, or for certain categories of workers whose work is essentially intermittent. [248] In *Cuba*, which ratified both Conventions, the heads of agencies, national entities and high-level organizations may approve exceptional regimes of working hours for certain positions or activities when so required by the nature of the work, or because it is undertaken in inhospitable, inaccessible or distant regions, while maintaining a balance between hours of work and rest. [249]

[243] Section 41 of the Labour Law.

[244] Section 71(5) of the Labour Code.

[245] Section 152 of the Labour Code.

[246] Section 50(2) of the Working Environment Act.

[247] Section C24(4) of the Labour Code.

[248] Section 141(3) of the Labour Law.

[249] Section 86 of the Labour Code.

(c) Limits on temporary exceptions

138. The legislation in some countries establishes daily limits on the number of additional hours that may be worked in the case of temporary exceptions. For example, in *Cambodia*, [250] one additional hour a day is allowed; in the *Plurinational State of Bolivia*, [251] *Equatorial Guinea* [252] and *Syrian Arab Republic*, [253] the legislation allows two additional hours a day. In *Burundi*, [254] there is no limit on additional hours for the first day, but a maximum of two additional hours are allowed on the following days.

139. In other countries, there is a weekly limit on the number of additional hours in the case of temporary exceptions. For example, in *Montenegro*, [255] the limit on additional hours is ten a week; in *Madagascar* [256] and *Mauritania*, [257] 20 additional hours a week are allowed. Other types of limits are less frequent. For example, in *Singapore*, [258] 72 additional hours are allowed a month, and in the *Dominican Republic* the limit is fixed at 80 hours a quarter. [259]

140. In a number of countries, there is a combination of different limits. For example, in *Bangladesh*, [260] that ratified Convention No. 1, in case of temporary exceptions, the legislation allows a total of ten hours of work a day or 60 a week, with an average of 56 hours a week in any year. [261] Among countries that have not ratified either of the Conventions, in *Cameroon*, [262] the limit established is 20 additional hours a week and two additional hours a day; in *Serbia*, [263] the legislation authorizes eight additional hours a week and a total of 12 hours a day; and in *Sudan*, [264] the limit is four hours a day and 12 a week. Other examples include *Cabo Verde*, [265] where a worker cannot work more than two additional hours a day, or four in the case of shift workers, and no more than 160 hours of overtime a year, although the annual limit may be increased to 300 hours with the written consent of the worker. [266] In *Senegal*, [267] the limit on overtime is 100 hours a year

[250] Section 140 of the Labour Law.

[251] Section 50 of the General Labour Act.

[252] Section 56(1) of the Act No. 10/2012 to reform the Labour Act.

[253] Section 110(b) of the Labour Code.

[254] Section 10(3) of Ministerial Order No. 630/117 of 1979.

[255] Section 49(2) of the Labour Law.

[256] Section 1 of Decree No. 68-172.

[257] As reported by the Government: Decree No. 225 of 2 July 1953.

[258] Section 38(5) of the Employment Act.

[259] Section 155 of the Labour Code.

[260] Sections 100 and 102 of the Labour Act.

[261] Another example is *Belgium*.

[262] Decree No. 95/677/PM.

[263] Section 53(2) and (3) of the Labour Law.

[264] Section 43(1) of the Labour Code of 1997.

[265] Section 161(1) and (2) of the Labour Code.

[266] Other examples include: *Kuwait* (two hours a day up to a maximum of 180 hours a year: section 66 of the Private Sector Labour Act), *Lithuania* (four hours in two consecutive days and 120 hours a year: section 150(1) of the Labour Code) and *Russian Federation* (four hours in a period of two consecutive days and 120 hours a year: section 99(6) of the Labour Code).

[267] Section 1 of Decree No. 2006-1262.

for each worker, unless otherwise provided in a collective agreement. However, the labour inspectorate may, after consultation with staff representatives, authorize work beyond that limit for up to ten hours per week for a maximum period of six months. [268] Another example is *Ethiopia* where, in the case of urgent work, overtime cannot exceed two hours a day, 20 a month or 100 a year. [269]

141. Some countries only establish maximum limits for total hours of work. For example, the legislation in *Bahrain* [270] allows a total of ten hours of work a day; in *Brazil*, [271] a total of 12 hours a day is allowed to cope with situations of force majeure or urgent work, and ten hours a day during 45 days a year to make up for interruptions of work resulting from accidents or force majeure. [272]

142. In a few countries, limits on total hours or additional hours are set as an average. For example, in *Germany*, in the case of temporary exceptions, normal limits can be exceeded, but an average working week of 48 hours over a period of six calendar months or 24 weeks has to be maintained. [273] In *Azerbaijan*, four additional hours are allowed, distributed over two consecutive working days. [274] The legislation in *Latvia* allows eight additional hours a week over a reference period of four months. [275]

143. In many countries, additional hours in the case of temporary exceptions, and particularly accidents and urgent work, are not subject to limits. For example, in *Algeria*, there are no limits on overtime in the case of accidents and urgent work, on condition that the workers are consulted and the labour inspector informed. [276] In *Uruguay* [277] and the *Bolivarian Republic of Venezuela*, [278] the legislation provides that working hours may be increased in the case of accidents or urgent work, but only to the extent necessary to allow the normal functioning of the undertaking. In *South Africa*, limits on overtime do not apply to work which is required without delay owing to circumstances for which the employer could not reasonably have been expected to make provision and which cannot be performed by employees during their ordinary hours of work. [279] In *Honduras*, the Labour Code [280] provides that the sum of normal and additional hours cannot exceed 12 hours a day, except in cases of accident or imminent risk likely to endanger people, facilities, products or the harvest, in which case there are no limits on overtime. [281]

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[268] Other examples include *Belarus*, *Croatia*, *Czech Republic* and *the former Yugoslav Republic of Macedonia*.

[269] Section 67(2) of the Labour Proclamation.

[270] Section 53 of the Labour Act.

[271] Section 61(2) and (3) of the Consolidation of Labour Laws.

[272] Other examples include: *Costa Rica* (a total of 12 hours a day: section 140 of the Labour Code); *Egypt* (ten hours a day: section 85 of the Labour Code), *Guatemala* (12 hours a day: section 122 of the Labour Code) and *Oman* (12 hours a day: section 70 of the Labour Code, as amended by Decree No. 113/2011).

[273] Section 14(3) of the Working Time Act.

[274] Section 100 of the Labour Code.

[275] Section 136 of the Labour Law.

[276] Section 31 of the Act on labour relations.

[277] Section 11 of the Decree of 29 October 1957.

[278] Section 180 of the Basic Labour Act.

[279] Section 6 of the Basic Conditions of Employment Act.

[280] Section 332 of the Labour Code.

[281] Other examples include: *Bulgaria* (sections 144(1), (2) and (3) and 146(3) of the Labour Code), *Costa Rica* (section 140 of the Labour Code), *Ecuador* (section 52 of the Labour Code), *Hungary* (section 108(2) of the Labour Code), *Iceland* (section 53 of the Act on the working environment, health and safety), *Mexico* (section 65 of the

(d) Absence of general or specific limits on overtime

144. In a number of countries, the national legislation set no limits on additional hours in the case of temporary exceptions. [282] However, in some of these cases, while there is no specific rule for temporary exceptions, there is a general rule limit on overtime. This is the case, for example, in *Chile* and *Finland.* [283]

145. In certain countries, specific overtime limits are set only for particular sectors. This is the case, for example, in civil aviation. In the *United States*, the allowed flight duty period varies between nine and a maximum of 14 hours for single crew operations. [284] In addition the total flight time of a crew member cannot exceed 100 hours in any 672 consecutive hours or 1,000 hours in any 365 consecutive calendar day period. [285] In the *United Kingdom*, the Civil Aviation Regulations, 2004, provide for a total annual working time of 2,000 hours for crew members. [286] In a few countries, national legislation does not set limits for temporary or permanent exceptions. [287] For example, the *National Confederation of Trade Unions of Japan* indicates that there are no laws or regulations limiting the total number of hours of overtime. Although the Ministry of Labour Notification No. 154 on criteria limiting overtime work sets a limit of 15 hours a week, 27 hours in two weeks, 43 hours in four weeks, 45 hours a month, 81 hours in two months, 120 hours in three months and 360 hours a year for workers in general, according to the trade union this notification includes a special clause allowing work in excess of these limits and up to 60 hours a month or 420 hours a year on a maximum of six occasions. The Labour Standards Act [288] provides that, in the event that the employer has entered into a written agreement either with a labour union organized by a majority of the workers at the workplace, or with a person representing a majority of the workers, and has notified the relevant government agency of such an agreement, the employer may extend working hours in accordance with the provisions of the agreement, on condition that the extension of working hours for underground work and other work that is particularly harmful to health, as set out by ordinance of the Ministry of Health, Labour and Welfare, does not exceed two hours a day. [289]

146. In other cases, although limits are set, exemptions may be made under certain conditions, such as the consent of the worker. For example, in *Eritrea,* an employer may require an employee to work overtime, although the employee may not be requested to

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Federal Labour Act), *Namibia* (section 139(1) of the Labour Act), *Nicaragua* (section 59 of the Labour Code), *Panama* (section 159 of the Labour Code) and *Romania* (section 121(2) of the Labour Code).

[282] For example, **among countries that have not ratified either Convention**: *Antigua and Barbuda, Chile, Central African Republic, China, El Salvador, Eritrea, Finland, Georgia, Jamaica, Japan, Malawi, Mauritius, New Zealand, Qatar, Samoa, Togo* and *United States*; **among countries that have ratified one or both Conventions**: *Canada, Colombia, Ghana, Myanmar* and *Peru*.

[283] Section 19 of the Working Hours Act.

[284] Section 117.13 of Title 14 of the Code of Federal Regulations.

[285] Section 117.23 of Title 14 of the Code of Federal Regulations. This section also provides that a crew member shall not accept any assignment that will exceed the flight duty period of 60 hours in any 168 consecutive hours or 190 hours in any 672 consecutive hours.

[286] Section 9 of the Civil Aviation (Working Time) Regulations, 2004.

[287] Another example is *Central African Republic*.

[288] In accordance with section 36 of the Labour Standards Act.

[289] An Action Plan for the realization of work style reform, which includes proposals to set an upper limit on overtime (100 hours a month) is currently being discussed by the Government: see section 4 of the Provisional Action Plan, Improvement in Long Working Hours Including the Introduction of a Regulatory Limit on Overtime Work, p. 14.

work more than two hours overtime without the latter's consent. [290] In *Cyprus*, the limit on total hours does not apply if the worker consents to work and is not subject to any adverse consequences in the case of refusal to do so. [291]

147. Finally, in other cases, the legislation uses very vague wording, such as a "reasonable number of hours", but does not establish a precise limit. For instance, in *Australia*, the additional hours worked must be "reasonable". [292]

148. ***In light of the above, the Committee observes that in a number of countries the limits prescribed by national legislation for additional and/or total working hours go beyond the limits set out in the Conventions. This is particularly evident with regard to daily hours, mainly in the case of averaging. The Committee also observes that, in other cases, no precise limits are established, either in relation to specific exceptions, or more generally, on overtime in the country. In this respect, the Committee has recalled that the Conventions call for the imposition of a limit on the additional hours of work that are authorized, not only in the day, but also in the year.*** [293] ***The maximum number of additional hours, while not specifically prescribed in the Conventions, must be kept within reasonable limits in line with the general goal of the instruments to establish the eight-hour day and the 48-hour week as a legal standard for hours of work in order to protect against undue fatigue and ensure reasonable leisure and opportunities for recreation and social life.*** [294]

149. In this connection, the Committee is mindful of the observations of a number of workers' organizations that excessively long hours of work are carried out by workers in their countries to the detriment of their health and well-being. According to the *International Trade Union Confederation (ITUC)*, long daily and weekly working hours involve acute effects of fatigue, including safety risks, such as cardiovascular disease, and limitations on work–life–family balance. Reductions in excessive hours, gradual or accelerated reductions in standard hours and individualized options for reducing working hours all have a positive impact on individual and enterprise productivity. Legal ceilings on working time continue to be extremely important. The *ITUC* also indicates that studies carried out by Eurofound have revealed that one in five workers are forced to work during their free time to meet work demands several times a month. [295] They state that excessively long hours with extensive overtime are also a common feature in global supply chains; a recent study of working hours in Chinese and Thai supply chain factories producing football products found that 48 per cent of workers in these factories were working more than 60 hours a week. [296] The *General Confederation of Labour – Force Ouvrière* notes that the national legislation in *France* is not satisfactory as it allows too many exemptions

[290] Section 52(1) of the Labour Proclamation.

[291] Section 7(4) of the Organisation of Working Time Law.

[292] *Australia* – CEACR, Convention No. 47, direct request, published in 2010.

[293] Article 7(3) of Convention No. 30. See for instance *Chile* – CEACR, Convention No. 30, observation, published in 2014.

[294] See *Egypt* – CEACR, Convention No. 30, direct request, published in 2015; *United Arab Emirates* – CEACR, Convention No. 1, direct request, published in 2015; *Slovakia* – CEACR, Convention No. 1, observation, published in 2013.

[295] Eurofound: *Working time developments in the 21st century: Work duration and its regulation in the EU*, Luxembourg, 2016.

[296] I. Kaempfer, J. Xiaolei Qian and R. Smyth: *Working hours in supply chain Chinese and Thai factories: Evidence from the Fair Labor Association's "Soccer Project"*, Monash University, 2010 (https://business.monash.edu/__data/assets/pdf_file/0004/338782/working_hours_in_supply_chain_chinese_and_thai_factories_evidence_from_the_fair_labor_associations_soccer_project.pdf [last accessed 8 Feb. 2018]).

in respect of overtime. The *Hungarian National Federation of Workers' Councils* indicates that, as the Labour Code allows employers to decide on working-time arrangements, they often unjustifiably resort to these arrangements in practice. The *Trade Union Confederation of Malagasy Revolutionary Workers* indicates that in Madagascar employers impose additional hours on employees under the threat of sanctions or dismissal without the approval of the labour inspectorate and that they regularly resort to unauthorized overtime instead of recruiting more staff. The *New Zealand Council of Trade Unions (NZCTU)* considers that the protection of workers in terms of working time contained in the Minimum Wage Act 1983 is largely illusory [297] and reports that, according to the 2013 Census, 19.8 per cent of people work more than 50 hours a week (11.3 per cent work between 50 and 59 hours and 8.5 per cent work 60 hours or more). The *General Workers' Union* in *Portugal* reports that on average workers carry out 102 more hours of work a year than the average for the countries of the Organisation for Economic Co-operation and Development (OECD) and that, despite the statutory principle of the 40-hour week, the legislation is ineffective as employers frequently resort to undeclared overtime. They consider that the high number of undeclared additional hours is related to the low wages in the country. The *Trade Union Confederation of Workers' Committees (CCOO)* indicates that overtime in *Spain* is often not paid and workers perform long hours of work. The *Trades Union Congress (TUC)* notes that in the *United Kingdom*, according to the spring 2017 figures of the Office of National Statistics Labour Force Survey, the number of employees engaged in excessive working time has increased to 3.3 million, leaving more workers at risk of the health and safety hazards associated with long hours of work. This is of particular concern for the *TUC*, as the Labour Force Survey shows that 455,000 employees work over 60 hours a week, which is generally considered to be the point when the health effects of long hours become acute, while 285,000 exceed the legal limit of 66 hours a week. The *Federal Chamber of Labour* indicates that the sharp increase in the number of stress-related physical and mental illnesses in *Austria* underlines the pressing need for action to reduce overtime.

150. The Committee also takes notes of the observations of employers' organizations. The *International Organisation of Employers (IOE)* considers that the "fixed" working hours system adopted by both Conventions as a cornerstone for the regulation of working time conflicts with today's demands for more flexibility and does not reflect the current reality of diverse forms of work. Severe restrictions on the number of hours by which the standard daily and weekly limits on hours of work may be extended have in many cases created an obstacle to the ratification of the two Conventions. The *IOE* observes that in an increasing number of countries, hours of work are governed, not by laws or regulations, as required by certain of the provisions of the Conventions, but by collective agreements or awards, and in some cases by individual agreements. The *IOE* also indicates that, whether through collective or individual bargaining, national practice has moved well past the approaches and assumptions of the ILO's working-time standards, reflecting the future of work that is happening now. The *IOE* also states that it is fair to say that working time remains a prominent and well-examined issue at the national and regional levels, notwithstanding

[297] According to the NZCTU, while section 11B(3) of the Minimum Wage Act 1983 provides that "Where the maximum number of hours (exclusive of overtime) fixed by an employment agreement to be worked by any worker in any week is not more than 40, the parties to the agreement must endeavour to fix the daily working hours so that those hours are worked on not more than 5 days of the week", sections 11B(1) and (2) prescribe that: "(1) Subject to subsections (2) and (3), every employment agreement under the Employment Relations Act 2000 must fix at not more than 40 the maximum number of hours (exclusive of overtime) to be worked in any week by any worker bound by that employment agreement" and that "The maximum number of hours (exclusive of overtime) fixed by an employment agreement to be worked by any worker in any week may be fixed at a number greater than 40 if the parties to the agreement agree."

the fact that ILO standards may be playing a less direct role. Moreover, *Business New Zealand* recalls that the parties are free to agree to the number of hours to be worked, but that they will always be restricted by the need to comply with health and safety legislation to ensure the provision of adequate time off from paid work.

151. ***Recalling the impact that long hours of work can have on workers' health and work–private life balance, the Committee emphasizes the fundamental importance of prescribing clear statutory limits for the additional hours of work to be undertaken daily, weekly and yearly and of keeping the number of additional hours allowed within reasonable limits that take into account both the health and well-being of workers, and the employers' productivity needs.***

4. Compensation for overtime

Box 1.15

Article 6(2) of Convention No. 1 provides that:

… These regulations shall fix the maximum of additional hours in each instance, and the rate of pay for overtime shall not be less than one and one-quarter times the regular rate.

Article 7(4) of Convention No. 30 provides that:

The rate of pay for the additional hours of work permitted under paragraph 2(b), (c) and (d) of this Article shall not be less than one-and-a-quarter times the regular rate.

152. The legislation in a majority of reporting countries envisages some type of financial compensation for overtime. In many countries, rates of pay for overtime range between a 25 per cent [298] and a 50 per cent [299] increase on the rate for normal hours. In certain countries, pay for overtime is a 75 per cent [300] or up to a 100 per cent [301] increase on the rate for normal hours.

153. In a number of countries, there is no unified overtime rate, and a distinction is drawn between overtime worked during the day and overtime during the night, [302] as well as additional hours during the working week and additional hours during official holidays and weekends. [303] For example, in *Bahrain*, [304] overtime is paid with a minimum premium of 25 per cent if the work is carried out in the daytime and 50 per cent if it is at night. In *Argentina*, [305] employers have to pay a 50 per cent premium on the regular wage rate for

[298] For example: there is a 25 per cent increase in the normal hourly rate in *Bosnia and Herzegovina, Cuba, Czech Republic, Japan, Philippines, Qatar, Slovakia, Switzerland* and *Syrian Arab Republic*; a 26 per cent increase in *Serbia*; and a 35 per cent increase in *Cabo Verde* and *the former Yugoslav Republic of Macedonia*; and a 40 per cent increase in *Islamic Republic of Iran, Luxembourg, Montenegro* and *Norway*.

[299] For example, *Algeria, Antigua and Barbuda, Austria, Belgium, Brazil, Bulgaria, Cambodia, Canada, Chile, Costa Rica, Estonia, Finland, Guatemala, Hungary, Indonesia, Iraq, Kazakhstan, Kenya, Republic of Korea, Lithuania, Malta, Mauritius, Namibia, Russian Federation, Samoa, Singapore, South Africa, Thailand* and *Turkey*.

[300] For example, *Romania*.

[301] For example, *Plurinational State of Bolivia, India, Latvia, Myanmar, Nicaragua, Tajikistan, Turkmenistan, Ukraine* and *Uzbekistan*.

[302] Examples include *Benin* (section 147 of the Labour Code) and *Colombia* (section 168 of the Substantive Labour Code).

[303] For example, *China* (section 44 of the Labour Law).

[304] Section 54 of the Labour Act.

[305] Section 201 of Act No. 20744 on labour contracts.

additional hours, and a 100 per cent premium for work on Saturdays after 1 p.m., Sundays and public holidays.

154. In a number of countries, there is a scale with an increasing rate of pay according to the number of hours worked. For example, the Government of *Burkina Faso* [306] reports that in non-agricultural enterprises overtime during the day is paid according to the following scale: an increase in the normal hourly pay of 15 per cent for the first eight additional hours and 35 per cent beyond eight hours; in the case of overtime during weekly rest and holidays, the increase in wage rate is 60 per cent; for overtime during the night, the increase in the normal rate is 50 per cent on normal working days and 120 per cent on weekly rest days and public holidays. In *Burundi*, [307] additional hours are paid with an increase of 35 per cent in the normal wage rate for the first two additional hours in the week and 60 per cent for the following hours; overtime during weekly rest days and holidays is paid with a 100 per cent increase on the normal wage rate. [308]

155. The legislation in certain countries provides that overtime gives rise to an increase in wages, but does not determine the specific rates, [309] and/or they are left to collective agreements. [310] For example, in *Ghana*, a worker may not be required to work overtime unless the undertaking has fixed rates of pay for overtime work. In *New Zealand*, [311] pay for overtime and the levels of overtime rates are expected to be set out in the employment agreement between the employee and employer. Employees are entitled to refuse to perform work beyond their agreed guaranteed hours of work if the employment agreement does not include an availability clause providing for the payment of reasonable compensation. In *France*, [312] hours of work beyond the limit of the 35-hour week give rise to a wage premium or compensatory rest. The provisions on the scope of collective bargaining specify that an enterprise agreement, or failing that, a branch agreement, can set the wage premium for overtime, although the legislation specifies a minimum premium of 10 per cent. If no agreement is applicable, the premium is set at 25 per cent for the first eight additional hours, and 50 per cent for the following hours.

156. The *Greek General Confederation of Labour* reports that Act No. 3863/2010 has led to a considerable reduction in the cost of overtime work and to unauthorized illegal overtime, while it allows employers to use overtime without the prior approval of the labour inspectorate. The *Trade Union Confederation of Malagasy Revolutionary Workers* notes that section 75 of the Labour Code of Madagascar does not specify that the limit of 173.33 hours a month applies to 40 hour-weeks, as a result of which workers may work more than 40 hours in a week without being paid at an increased rate for the overtime performed this week. The *Democratic Confederation of Labour* indicates that in *Morocco* the provisions on compensation for overtime are not applied by many companies and that workers are not compensated for the additional hours that they work on a daily basis. The *Federal Chamber of Labour* reports that, according to the Austrian Statistical Office, about 253 million additional hours of work were recorded in 2015, of which 52 million (about one fifth) were not remunerated. The *German Confederation of Trade Unions*

[306] Section 5 of Order No. 2007-003.

[307] Sections 1 and 3 of Ministerial Ordinance No. 630/116 of 1979.

[308] Similar provisions are contained in the legislation in *Cameroon* (section 12 of Decree No. 95/677/PM).

[309] For example, *Croatia* (section 94 of the Labour Act).

[310] For example, *Central African Republic* (section 227 of the Labour Code) and *Slovenia* (section 128(1) and (2) of the Employment Relationship Act).

[311] Sections 67E and 67D(3)(b) of the Employment Relations Act.

[312] Sections L.3121-27, L.3121-28 and L.3121-33 of the Labour Code.

indicates that in *Germany* there are no statutory provisions on the performance, remuneration and compensation of overtime. It is possible for an employment contract to consider overtime to be covered by monthly earnings, which may effectively reduce income to an hourly rate that is as low as the minimum wage. In 2016, workers carried out an average of 20.9 hours of paid overtime, while the figure for unpaid overtime was 24 hours per person. The amount of unpaid overtime is higher in some areas of the services sector than in industry. [313] The *Confederation of Public and Private Sector Workers* reports that in *Haiti* many workers work very long hours in several sectors without being paid overtime; for example, security guards work up to 13 hours a day and around 70 hours a week. It adds that, in certain commercial enterprises and in mines, workers work at least 12 hours a day and 72 hours a week without the authorization of the Labour Direction and without consulting the enterprise trade union, in violation of the provisions of the Labour Code.

157. The Committee observes with concern that in a number of countries, in case of overtime, the respective financial compensation may be substituted by proportionate time off, often at the request of the employee. For example, the Government of *Austria* reports that section 10(1) of the Working Hours Act provides, with regard to overtime, for: either a rate of pay that is 50 per cent higher than the regular rate; or time off in lieu based on a 1:1.5 ratio. The overtime rate should be taken into account when calculating the amount of time off in lieu, or should be paid separately. In the *United States*, the Fair Labor Standards Act provides that public employees may receive, in lieu of overtime compensation, compensatory time off at a rate of not less than one-and-a-half hours for each hour of employment for which overtime compensation is required. [314] The legislation further provides for caps on how much time may be accrued, and requires full payout of accrued compensatory time off upon termination of employment. [315] In *Cuba*, overtime hours may be compensated either financially or with extra time off. [316] According to the Government of *Cyprus*, if so agreed or requested by the workers concerned in collective agreements, overtime pay may be substituted by time off. [317]

158. In this respect, the Committee has recalled the need to provide for the payment of overtime hours in all circumstances at no less than 125 per cent of the ordinary wage rate, irrespective of any compensatory rest granted to the workers concerned. [318] ***The Committee emphasizes the importance of additional hours being in all cases***

[313] Institute for Employment Research (IAB): *Verbreitung von Überstunden in Deutschland* (The prevalence of overtime in Germany), 2014.

[314] Section 207(o) of the Fair Labor Standards Act.

[315] idem.

[316] Section 78 of the Labour Code.

[317] For example, *Belgium* (section 29(4) of the Labour Act), *Czech Republic* (section 114 of the Labour Code), *Estonia* (section 44(6) of the Employment Contracts Act), *France* (sections L.3121-28 and L.3121-30 of the Labour Code), *Georgia* (section 17(5) of the Labour Code), *Hungary* (section 143(2) of the Labour Code), *Italy* (section 5(6) of Decree No. 66 of 2003), *Republic of Korea* (section 57 of the Labour Standards Act), *Luxembourg* (section L.211-27 of the Labour Code), *Namibia* (as reported by the Government), *Netherlands* (as reported by the Government), *Norway* (section 10-6(12) of the Working Environment Act), *Oman* (section 73 of the Labour Code, as amended by Decree No. 133/2011), *Peru* (section 10 of Supreme Decree No. 007-2002-TR of 3 July 2002), *Poland* (section 151-2 of the Labour Code), *Romania* (section 123(2) of the Labour Code), *Russian Federation* (section 152 of the Labour Code), *Slovakia* (section 121 of the Labour Code), *South Africa* (section 10(2), (3), (4) and (5) of the Basic Conditions of Employment Act), *Spain* (section 35(1) of the Workers' Charter), *Switzerland* (section 13 of the Labour Act), *Turkey* (section 41 of the Labour Law), *Turkmenistan* (section 120 of the Labour Code) and *Uzbekistan* (section 157 of the Labour Code).

[318] See, for instance, *Czech Republic* – CEACR, Convention No. 1, direct request, published in 2013; *Romania* – CEACR, Convention No. 1, direct request, published in 2014.

remunerated and paid at a higher rate than normal hours, even in the cases where compensatory time off is granted.

5. Periods of rest

A. Minimum daily rest period

159. Conventions Nos 1 and 30 do not explicitly provide for minimum daily rest periods, understood as a period of continuous non-working hours between one period of work and another. However, by limiting the daily number of hours allowed to be worked, both Conventions implicitly recognize a minimum period of daily rest.

160. The legislation in over half of reporting countries provides for minimum periods of daily rest of between 11 [319] and 12 hours. [320] The legislation in a number of countries, in addition to regulating daily rest periods in general, establishes specific daily rest periods in certain sectors, such as agriculture and seasonal work, [321] catering, bars and hotels, transport and maritime work, [322] or for specific categories of workers, such as shift workers [323] and young workers. [324]

[319] For example, *Austria* (section 12(1) of the Working Hours Act and section 48c of the Civil Service Act 1979), *Belgium* (section 38ter(1) of the Labour Act), *Brazil* (section 66 of the Consolidation of Labour Laws), *Cyprus* (section 4(1) of the Organisation of Working Time Act), *Czech Republic* (section 90(1) of the Labour Code), *Denmark* (section 3 of Order No. 324 of 2002 and section 50(1) of the Working Environment Act), *Estonia* (section 51(1) of the Employment Contracts Act and section 41 of the Civil Service Act), *Finland* (section 29(1) of the Working Hours Act), *France* (section L.3121-1 of the Labour Code), *Germany* (section 5(1) of the Hours of Work Act), *Hungary* (section 104(1) of the Labour Code), *Iceland* (section 53 of the Act on the Working Environment, Health and Safety in the Workplace No. 46/1980), *Iraq* (section 68(2) of the Labour Code), *Italy* (section 7 of Legislative Decree No. 66 of 2003), *Lithuania* (section 160 of the Labour Code), *Luxembourg* (section L.211-16(3) of the Labour Code), *Malta* (section 4 of the Organisation of Working Time Regulations), *Mauritius* (section 14(7) of the Employment Rights Act), *Netherlands* (section 5(3)(2) of the Working Hours Act), *Norway* (section 10-8(1) of the Working Environment Act), *Poland* (section 132(1) of the Labour Code), *Portugal* (section 214 of the Labour Code and section 123 of Act No. 35/2014), *Sweden* (section 13 of the Working Hours Act), *Switzerland* (section 15(a) of the Labour Act) and *United Kingdom* (section 10(1) of the Working Time Regulations).

[320] For example, *Azerbaijan* (section 103 of the Labour Code), *Bosnia and Herzegovina* (section 45(1) of the Labour Law of the Federation of Bosnia and Herzegovina and section 77(1) of the Labour Law of Republika Srpska), *Bulgaria* (section 152 of the Labour Code), *Cabo Verde* (section 149(2) of the Labour Code), *Croatia* (section 74 of the Labour Act), *Equatorial Guinea* (section 57(b) of Act No. 10/2012), *Georgia* (section 14(2) of the Labour Code), *Ghana* (section 41 of the Labour Act of 2003), *Greece* (section 3 of Presidential Decree No. 88/1999), *Kazakhstan* (section 83 of the Labour Code), *Latvia* (section 142 of the Labour Law), *Montenegro* (section 61 of the Labour Law), *Romania* (section 135 of the Labour Code), *Serbia* (section 66(1) of the Labour Law), *Slovakia* (section 92 of the Labour Code), *Slovenia* (section 155 of the Employment Relationship Act), *South Africa* (section 15(1)(a) of the Basic Conditions of Employment Act), *Spain* (section 34(3) of the Workers' Charter), *Tajikistan* (section 85 of the Labour Code), *the former Yugoslav Republic of Macedonia* (section 133 of the Law on Labour Relations) and *Uzbekistan* (section 128 of the Labour Code).

[321] Daily rest periods are generally shorter in these sectors, for example in *Bosnia and Herzegovina* (section 45(2) of the Labour Law of the Federation of Bosnia and Herzegovina and section 77(1) of the Labour Law of Republika Srpska).

[322] For example, *Austria* (sections 15(d) and 18(a), (b), (c), (d) and (g) of the Working Hours Act), *Belgium* (section 38ter(3) of the Labour Act), *Finland* (section 30 of the Working Hours Act), *Mauritius* (Public Transport (Buses) Workers and the Road Haulage Industry Remuneration Regulations) and *United Kingdom* (section 9 of the Road Transport Regulations).

[323] For example, *Austria* (section 12(2)(c) of the Working Hours Act).

[324] For example, *Bosnia and Herzegovina* (sections 45(2) of the Labour Law of the Federation of Bosnia and Herzegovina and 77(2) of the Labour Law of Republika Srpska), *Czech Republic* (sections 90–92 of the Labour Code), *Estonia* (section 51(2) of the Employment Contracts Act), *France* (section L.3164-1 of the Labour Code),

161. However, the legislation in other countries provides for exceptions to the minimum period of daily rest, which may be limited for specific categories of workers or economic sectors, such as agricultural work, [325] seasonal work, [326] transport, [327] work in continuous operations or successive shifts, [328] work in certain establishments responsible for the provision of services to the population (such as hospitals and similar institutions), [329] work in restaurants and other entertainment and accommodation institutions, [330] urgent work, [331] and work in emergency situations and cases of force majeure, including when it is necessary to protect human health or life, property or the environment. [332] The legislation in a number of countries provides that the duration of the daily rest period may be limited or divided by collective agreement, [333] or by the employment contract. [334] In *Finland*, the Working Hours Act allows the shortening of the minimum daily rest period (11 hours) "if work so requires and with the employee's consent", as well as when working hours are flexible and employees decide on the time that their work begins and ends. [335] Similarly, the legislation in the *Netherlands* provides for 11 hours of daily rest in any 24 hours, which may be shortened to eight hours over a period of seven days "if the nature of work so requires", [336] and in *Switzerland*, where the Labour Act provides for a possible reduction of the minimum daily rest period from 11 to eight hours once a week, on

Latvia (section 142 of the Labour Law), *Luxembourg* (section L.344-12(1) of the Labour Code), *Slovakia* (section 92(2) of the Labour Code) and *United Kingdom* (section 10(2) of the Working Time Regulations).

[325] See for example, *Czech Republic* (section 90(2) of the Labour Code: exceptions are only applicable to workers over 18 years of age), *Denmark* (section 50(2) of the Working Environment Act) and *Germany* (section 5(2) of the Hours of Work Act).

[326] For example, *Croatia* (section 74(2) of the Labour Act: exceptions are only applicable to workers over 18 years of age), *Czech Republic* (section 90(2)(b) of the Labour Code: exceptions are only applicable to workers over 18 years of age) and *Ghana* (section 41 of the Labour Act).

[327] For example, *Germany* (section 5(2) of the Hours of Work Act).

[328] For example, *Belgium* (section 38ter(3) of the Labour Act), *Czech Republic* (section 90(2)(a) of the Labour Code), *Denmark* (section 50(2) of the Working Environment Act), *Finland* (section 29(2) of the Working Hours Act), *Malta* (section 16(4) of the Organisation of Working Time Regulations) and *Slovakia* (section 92(2) of the Labour Code).

[329] For example, *Estonia* (section 51(4) of the Employment Contract Act respecting health-care professionals and welfare workers). The Government of *Estonia* reports that, under the relevant legislation, the daily rest period may be divided by the employment contract or collective agreement in the cases specified in Articles 17(3) and (4) of Council Directive 2003/88/EC. See also *Czech Republic* (section 90(2) of the Labour Code) and *Germany* (section 5(2) of the Hours of Work Act).

[330] For example, *Germany* (section 5(2) of the Hours of Work Act).

[331] For example, *Czech Republic* (section 90(2) of the Labour Code), *Finland* (section 29(2) of the Working Hours Act) and *Slovakia* (section 92(2) of the Labour Code).

[332] For example, *Belgium* (section 38ter(3) of the Labour Act), *Czech Republic* (section 90(2) of the Labour Code), *France* (section L.3121-1 of the Labour Code), *Iceland* (section 53(3) of the Act on the Working Environment, Health and Safety in the Workplace), *Poland* (section 132(2) and (3) of the Labour Code) and *Slovakia* (section 92(2) of the Labour Code).

[333] For example, *Austria* (section 12(2) of the Working Hours Act), *Belgium* (section 38ter(2) of the Labour Act), *Croatia* (section 89(3) of the Labour Act), *Estonia* (section 51(3) of the Employment Contracts Act), *France* (section L.3131-3 of the Labour Code), *Iceland* (section 53(2) of the Act on the Working Environment, Health and Safety in the Workplace), *Norway* (section 10-8(3) of the Working Environment Act) and *Spain* (section 34(3) of the Workers' Charter).

[334] For example, *Estonia* (section 51(6) of the Employment Contracts Act).

[335] Sections 29 and 30.

[336] For example, section 5(3)(2) of the Working Hours Act, as amended.

condition that the average over two weeks is 11 hours. [337] The legislation in *South Africa* [338] provides that the daily rest period of 12 consecutive hours may be reduced to ten hours by written agreement for an employee: (a) who lives in the premises where the workplace is situated; and (b) whose meal break lasts at least three hours. [339] In cases of exceptions to the minimum daily rest period, workers are frequently entitled to compensatory rest. [340]

162. The legislation in *Belarus*, [341] *Republic of Moldova* [342] and *Ukraine* [343] provides that the minimum daily rest period between shifts should be at least twice as long as the time worked during the shift preceding the rest period. The Government of *Ecuador* indicates that the minimum daily rest period is eight hours for all workers, and that domestic workers are entitled to 12 hours of daily rest, of which ten must be during night and continuous. [344]

163. Many countries report that their national legislation does not regulate the minimum daily rest period. [345] However, in some of these countries, the minimum daily rest period is regulated for specific categories of workers, including young workers, [346] women, [347] domestic workers, [348] professional or commercial drivers, [349] shift workers, [350]

[337] For example, section 15 of the Labour Law. See also *Croatia* (section 89(2) of the Labour Act).

[338] Section 15(1)(a) of the Basic Conditions of Employment Act.

[339] See also *Ghana* (section 41 of Labour Act), *Norway* (section 10-8(3) of the Working Environment Act) and *Romania* (section 135 of the Labour Code).

[340] For example, *Austria* (section 12(2) of the Working Hours Act), *Belgium* (section 38ter(3) of the Labour Act), *Croatia* (section 89(4) of the Labour Act), *Czech Republic* (section 90(a) of the Labour Code), *Finland* (section 29(3) of the Working Hours Act), *Iceland* (section 53(4) of the Act on the Working Environment, Health and Safety in the Workplace) and *Slovakia* (section 92(2) of the Labour Code).

[341] Section 125 of the Labour Code.

[342] Section 107(4) of the Labour Code.

[343] Section 59 of the Labour Code.

[344] Sections 80 and 167 of the Labour Code.

[345] For example, *Algeria, Antigua and Barbuda, Bangladesh, Benin, Plurinational State of Bolivia, Burkina Faso, Burundi, Cambodia, Cameroon, Central African Republic, Chile, China, Colombia, Costa Rica, Cuba, Côte d'Ivoire, Dominican Republic, Ecuador, Egypt, Eritrea, Ethiopia, Gabon, Guatemala, Guinea, India, Indonesia, Islamic Republic of Iran, Jamaica, Japan, Kenya, Republic of Korea, Kuwait, Malawi, Morocco, Myanmar, Namibia, New Zealand, Nicaragua, Oman, Panama, Peru, Philippines, Qatar, Russian Federation, Rwanda, Singapore, Sri Lanka, Sudan, Syrian Arab Republic, Thailand, Togo, Turkey, Turkmenistan, United States, Uruguay, Bolivarian Republic of Venezuela* and *Zimbabwe.*

[346] For example, *Benin* (section 155 of the Labour Code), *Plurinational State of Bolivia* (section 53 of the General Labour Act), *Burundi* (section 120 of the Labour Code), *Côte d'Ivoire* (section 22(3) of the Labour Code), *Dominican Republic* (section 1(b) of Ministry of Labour Resolution No. 09-93), *Gabon* (section 169 of the Labour Code) and *Senegal* (section L.141 of the Labour Code).

[347] For example, *Plurinational State of Bolivia* (section 53 of Supreme Decree No. 224 of 23 August 1943), *Gabon* (section 169 of the Labour Code) and *Senegal* (section L.141 of the Labour Code).

[348] For example, *Plurinational State of Bolivia* (section 39 of the General Labour Act), *Burkina Faso* (section 5 of Decree No. 2010-807), *Chile* (section 149(e) of the Labour Code), *Dominican Republic* (section 261 of the Labour Code), *Guatemala* (section 164(a) of the Labour Code), *Nicaragua* (section 147 of the Labour Code), *Panama* (section 231 of the Labour Code) and *Uruguay* (section 5 of Act No. 18065 of 2006 and section 8 of Decree No. 224/007).

[349] For example, *Burkina Faso* (clause 33(2) of the collective agreement for the sector), *Cuba* (section 105(c) of the Labour Code), *India* (transport sector: section 15(2) of the Motor Transport Workers Act, 1961) and *New Zealand* (commercial drivers: section 30ZC of the Land Transport Act 1998).

[350] For example, *Panama* (section 39(1) of the Labour Code) and *Turkey* (section 69 of the Labour Code).

seafarers, [351] flight crew members and pilots. [352] A number of countries only report legislative provisions on maximum hours of work, which would implicitly set the calculation of daily hours of rest. [353]

164. In this regard, the Committee notes the indication by the *Greek General Confederation of Labour* that Act No. 4093/2012 reduced the minimum daily rest period from 12 to 11 hours which, in its view, reduces the leisure time of workers and increases the intensity of work, resulting in adverse effects on health and safety.

B. Rest breaks during the working day

165. Rest breaks are the intervals that workers are allowed to take in order to rest, eat, drink, pray or satisfy other important needs during the working day. The issue of rest breaks is not covered by Conventions Nos 1, 30 and 47. However, sectoral instruments, such as the Hours of Work and Rest Periods (Road Transport) Convention, 1979 (No. 153), [354] and the Nursing Personnel Recommendation, 1977 (No. 157), provide for mandatory breaks. [355]

166. Rest breaks at regular intervals during the working day are essential to minimize the build-up of fatigue, [356] and it has been recognized that frequent short breaks can help to reduce work-related stress. [357] The European Working Time Directive provides that where the working day is longer than six hours, every worker is entitled to a rest break. [358]

167. The legislation in the vast majority of countries acknowledges the importance of breaks during the working day and contains specific provisions calling for at least one rest break. In some countries, the legislation provides for the possibility of more than one daily break. [359] For example, in the *Syrian Arab Republic*, hours of work must include one or several meal and rest breaks totalling no less than one hour. [360] In other cases, the national legislation provides for the total amount of rest time that can be taken at once or divided

[351] For example, *Bolivarian Republic of Venezuela* (section 250 of the Basic Labour Act).

[352] The Government of the *United States* reports that the Federal Aviation Administration issued regulations requiring rest periods before and after many flight operations for pilots, other flight crew members and flight attendants.

[353] The Government of *Senegal* indicates that in general its legislation provides for a minimum daily rest period by limiting the "extent of work", which corresponds to the number of hours necessarily included between the beginning and end of the same working day, including time for breaks. The Government of *Suriname* indicates that, in accordance with section 8(2) and (3) of the Labour Act, employees shall not work between 7 p.m. and 6 a.m., which in practice means that they are entitled to 11 hours of rest. However, at the employee's request, he or she may be allowed to work during those hours.

[354] Article 5 provides that drivers should have a break after four hours driving. The length of these breaks shall be determined by the competent authorities in each country.

[355] Paragraph 34 indicates that there should be meal breaks as well as rest breaks of reasonable duration. Rest breaks shall be included in the normal hours of work.

[356] ILO: *Working Time in the twenty-first century*, Report for discussion at the Tripartite Meeting of Experts on Working-time Arrangements (October 2011), para. 151.

[357] P. Tucker and S. Folkard: *Working time, health and safety: A research synthesis paper*, Conditions of Work and Employment, Series No. 31, ILO, Geneva, 2011, p. 27.

[358] Article 4 of the Directive 2003/88/EC of the European Parliament and of the Council concerning certain aspects of the organization of work.

[359] See, for example, *Bulgaria* (section 151 of the Labour Code), *Cuba* (section 91 of the Labour Code), *Iraq* (section 68(1) of the Labour Code), *Oman* (section 68 of the Labour Code) and *Romania* (section 134 of the Labour Code).

[360] Section 108 of the Labour Law.

into several breaks. [361] For example, in *Germany* the Hours of Work Act provides that hours of work shall be interrupted by rest periods, fixed in advance, of at least 30 minutes if working hours last between six and nine hours, and of 45 minutes, if hours of work are more than nine hours in total. These rest periods can be divided into breaks of at least 15 minutes each. [362]

168. Additional breaks are envisaged by the legislation in certain countries due to the specific nature of the work or particular working conditions, such as very hot or cold weather. [363] For example, in the *Russian Federation*, employees working in cold seasons in the open air or in closed unheated buildings, as well as loaders engaged in loading and unloading, are entitled to special breaks to warm up and rest, which are included in working time. [364] In *Brazil*, workers engaged in stenographic work must have a ten minute break in every 90 minutes of continuous work, which is included in their hours of work. [365]

169. The main longer breaks envisaged in national legislation are meal breaks. [366] However, in some cases, the legislation also provides for additional, normally shorter, breaks for tea, coffee or resting. [367]

170. National law and practice vary greatly in terms of the length of rest breaks, which range between ten minutes and three hours. For example, in *Qatar*, working hours must include one or more breaks for prayer, rest and meals, which must not be less than one hour or more than three hours. [368] In *Italy*, in the absence of a collective agreement providing for breaks, workers must be granted a break of no less than ten minutes between the beginning and the end of every daily period of work. [369]

171. In the majority of countries, however, the required breaks last between 15 minutes and one hour. [370] For example, the *Confederation of Industrial Chambers of the United States of Mexico* indicates that, in practice, workers have a break of half an hour for eating and resting during the statutory daily hours of work. The *National*

[361] For example, *Austria* (section 11 of the Working Hours Act), *Czech Republic* (section 88 of the Labour Code), *Côte d'Ivoire* (section 10 of Decree No. 96-203) and *Netherlands* (section 5:4(2) of the Working Hours Act).

[362] Section 4 of the Hours of Work Act.

[363] See, for example, *Belarus* (section 135 of the Labour Code), *Kazakhstan* (section 82 of the Labour Code), *Latvia* (section 145(6) of the Labour Law), *Lithuania* (section 159 of the Labour Code) and *Tajikistan* (section 84(2) of the Labour Code).

[364] Section 109 of the Labour Code.

[365] Section 72 of the Consolidation of Labour Laws.

[366] See, for example, *Bulgaria* (section 151 of the Labour Code), *China* (as reported by the Government), *El Salvador* (section 166 of the Labour Code), *Equatorial Guinea* (section 57(a) of Act No. 10/2012), *Eritrea* (section 51 of the Labour Proclamation), *Republic of Moldova* (section 107 of the Labour Code), *Namibia* (section 18(1) of the Labour Act) and *Russian Federation* (section 108 of the Labour Code).

[367] For example, *Mauritius* (section 18 of the Employment Rights Act) and *Philippines* (section 7, Rule III (Weekly rest period) of Book Three (Conditions of employment) of the Omnibus Rules Implementing the Labour Code).

[368] Section 73 of the Labour Code.

[369] Section 8 of Decree No. 66/2003.

[370] See, for example, *Gabon* (section 5 of Decree No. 0933/PR/MTEPS of 2009), *Iraq* (section 68(1) of the Labour Code), *Malta* (section 31 of the Wage Regulations Order), *Montenegro* (section 59(1) of the Labour Law), *Myanmar* (section 63 of the Factories Act 1951), *Namibia* (section 18(1) of the Labour Act), *Nicaragua* (section 55 of the Labour Code), *Portugal* (section 213(1) of the Labour Code), *Seychelles* (section 3(2) of the Employment (Conditions of Employment) Regulations 1991 (SI 34 of 1991)), *South Africa* (section 14 of the Basic Conditions of Employment Act), *Spain* (section 34 of the Workers' Charter), *Sudan* (section 42(1) of the Labour Act) and *Suriname* (section 9(1) of the Labour Act).

Confederation of Trade Unions of Moldova indicates that employees are allowed a minimum 30-minute break for lunch.

172. In many countries, the duration of the break depends on the length of the working day. [371] For example, in the *Dominican Republic*, the working day must include a break of no less than one hour after four consecutive hours of work, or one-and-a-half hours after five consecutive hours of work. [372]

173. A break is often granted after a maximum period of continuous work, normally of five or six hours. [373] For example, in *India*, no worker shall work for more than five hours before having a break of at least half an hour. [374] Similarly, in the *Czech Republic*, after continuous work of a maximum of six hours, an employee must be given a break for a meal and rest lasting at least 30 minutes. [375]

174. The national law and practice in a few countries provides for additional rest breaks at the start of or during overtime. [376] For example, in *Indonesia*, companies that call on workers to undertake overtime are required to provide the opportunity for adequate rest. [377] In *Finland*, if daily working hours exceed ten, employees are entitled to a rest period of up to half an hour following eight hours of work. [378]

175. The Committee notes the indication by the Federal Chamber of Labour that in *Austria* two conditions have been developed in practice for a break to be recognized as a rest break in accordance with the legislation: (1) it must occur at a time that is predictable for employees, or be chosen freely by them within a specific time period; and (2) the rest break must be genuine free time, meaning that employees may spend this time as they wish. However, the *Federal Chamber of Labour* notes that a half-hour break is often automatically deducted by the employer when the duration of work is six hours or more, irrespective of whether or not the break was or could actually be taken (particularly in the retail sector, tobacconists, bakeries, transport and the hospitality industry).

[371] For example, *Bangladesh* (section 101 of the Labour Act 2006), *Hungary* (section 103 of the Labour Code), *Republic of Korea* (section 54(1) of the Labor Standards Act), *Japan* (section 34 of the Labour Standards Act), *Republic of Moldova* (section 12 of the national collective agreement No. 2 of 9 July 2004), *Switzerland* (section 15 of the Labour Act), *the former Yugoslav Republic of Macedonia* (section 132 of the Law on Labour Relations) and *Turkey* (section 68 of the Labour Law).

[372] Section 157 of the Labour Code.

[373] For example, *Egypt* (section 81 of the Labour Code), *Finland* (section 28 of the Working Hours Act), *France* (section L.3121-16 of the Labour Code), *Greece* (section 4(1) and (2) of Presidential Decree No. 88/1999), *Indonesia* (section 79(2)(a) of Law No. 13 of 2003), *Republic of Korea* (section 54(1) of the Labor Standards Act), *Kuwait* (section 65 of the Labour Law), *Latvia* (section 145 of the Labour Law), *Namibia* (section 18(1) of the Labour Act) and *Norway* (section 10-9 of the Working Environment Act).

[374] Section 55 of the Factories Act.

[375] Section 88 of the Labour Code.

[376] For example, *Ethiopia* (as reported by the Government), *Hungary* (section 103 of the Labour Code), *Republic of Moldova* (as reported by the Government), *Serbia* (section 64 of the Labour Law) and *Sweden* (as reported by the Government).

[377] Section 7(1)(b) of Decree No. 102 of 2004 of the Ministry of Manpower.

[378] Section 28 of the Working Hours Act.

Conclusions

176. ***The Committee welcomes the fact that in a majority of reporting countries the legislation establishes limits on normal weekly hours of work which are in compliance with the Conventions. The Committee underlines the need for the effective implementation of these limits. However, the Committee observes that in certain countries only weekly limits are established, but not daily limits, and that in a few cases no limits at all are set. In this connection, the Committee wishes to recall that the Conventions set out a double limit, daily and weekly, and that this limit is cumulative and not alternative.***

177. With regard to derogations from the dual limit of eight hours a day and 48 hours a week, examination of the national law and practice in certain countries reveals a number of issues.

178. First, the Committee observes that, with regard to the variable distribution of normal hours of work, the daily limit of nine and ten hours per day allowed by Conventions Nos 1 and 30, respectively, are not given effect in a number of countries. Moreover, the Committee observes that the averaging of hours of work over periods longer than a week has become a frequent practice in many countries, and that the reference period used to calculate hours of work may be as long as one year. ***In this regard, the Committee recognizes that flexible modern working-time arrangements, such as the averaging of hours of work, may call into question the relevance of certain restrictions imposed by the Conventions on the maximum duration of daily and weekly hours of work. However, the Committee wishes to emphasize the importance of reasonable limits and protective safeguards in devising such flexible arrangements so as to ensure that modern working-time arrangements are not prejudicial to the health of workers or to the necessary work–life balance.*** While recognizing that flexibility may, in some instances, enhance work–life balance, the Committee is mindful that considerations of predictability are often of considerable importance in achieving this balance. Furthermore, the Committee recognizes that flexible hours for one worker may introduce constraints on the labour market participation of other members of the family.

179. ***Second, the Committee observes that the circumstances justifying recourse to exceptions to the normal statutory hours of work are not always clearly defined, or go beyond those recognized in the Conventions. In this respect, the Committee wishes to emphasize the fundamental importance of limiting recourse to overtime to clear and well-defined circumstances.***

180. The Committee notes, in light of the above, that although most ILO member States regulate hours of work by establishing limits to normal hours of work and setting rules for temporary and permanent exceptions, in many cases the detailed provisions of Conventions Nos 1 and 30 are not fully respected. It notes in this regard that the ratification rates of these Conventions remain relatively low. Although it is still undoubtedly necessary to regulate the various aspects of working time, certain provisions of these instruments give grounds for questioning their full applicability in responding to the current needs of employers and workers in relation to the increased flexible arrangements of working time in some settings. The Committee will return to this in its general conclusions to the present General Survey.

181. Third, the Committee also observes that the limits on the number of additional hours allowed by law and practice go beyond the reasonable limits required by the Conventions. The Committee further observes that, in a number of countries, additional hours are not compensated. ***In this respect, the Committee is bound to emphasize the impact that long***

hours of work may have on the health and well-being of workers and the need to maintain the number of additional hours performed by workers within a framework that takes into account both the need for productivity and enterprise performance, and the health and well-being of workers. The Committee also highlights the importance of remunerating all additional hours worked with an increase in the rate of pay at least equivalent to the level set out in the Conventions.

182. ***Finally, the Committee welcomes the fact that the legislation in many countries regulates both daily rest and rest breaks.***

Chapter II. Weekly rest

183. This chapter focuses on the application by national legislation of two Conventions, the Weekly Rest (Industry) Convention, 1921 (No. 14), and the Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106), and one Recommendation, the Weekly Rest (Commerce and Offices) Recommendation, 1957 (No. 103). The first section contains illustrative statistical data on weekly rest throughout the world, and the second reviews the main legal trends in the application of the Conventions and the Recommendation under examination.

1. Work during weekly rest: Some illustrative cases

184. As indicated in Chapter I, the issues of overtime during the week and work during weekly rest are closely related. Many of the conclusions of the previous chapter concerning long working hours therefore also apply to the issue of weekly rest. Work during the weekly rest [1] is part of the current global trend towards non-standard working-time schedules, or arrangements.

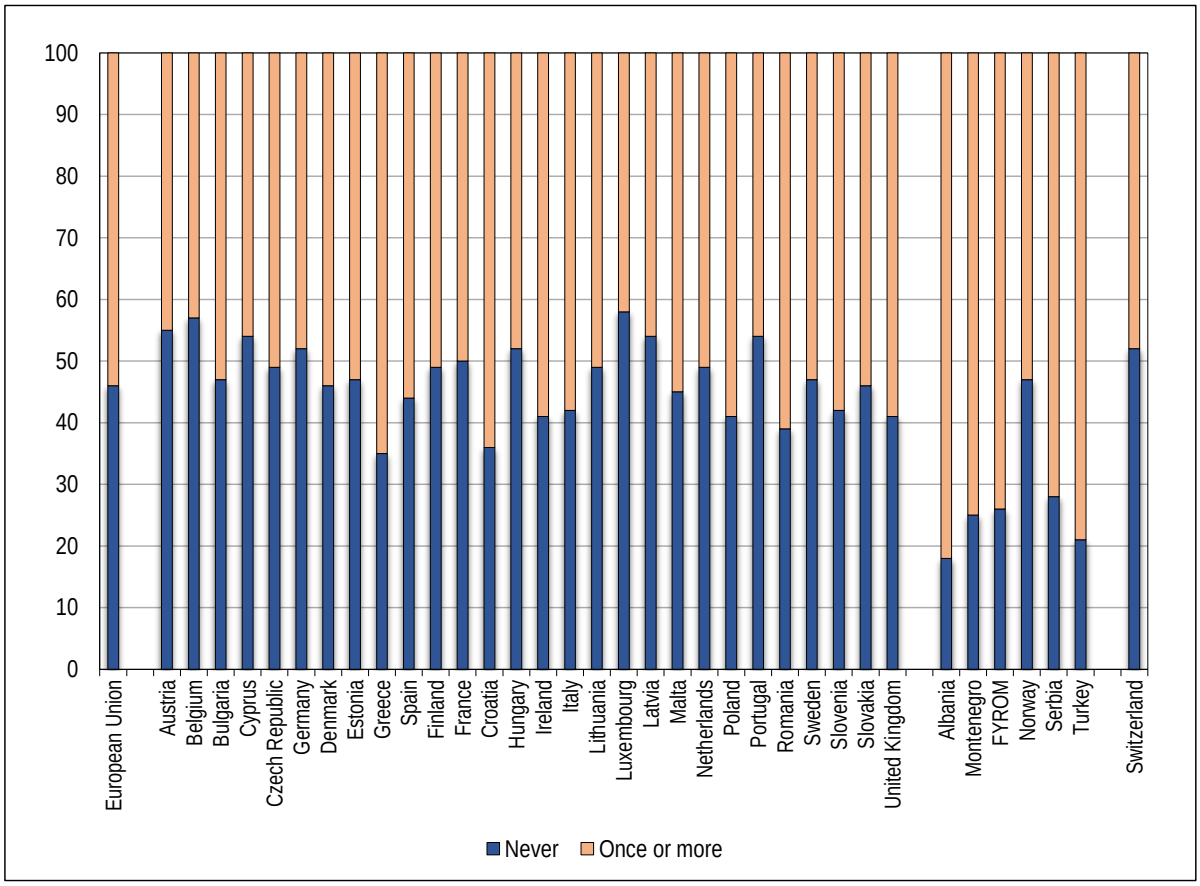
185. However, it is difficult to obtain comparable international data by region outside Europe on work during weekly rest. The figures below therefore only attempt to illustrate trends in work during weekly rest (in this case, during weekends) in a small selection of countries based on the information available.

186. According to the Sixth European Working Conditions Survey conducted by Eurofound, over half of all workers (52 per cent) in Europe in 2015 reported working on Saturday, with 23 per cent working at least three Saturdays a month. Although the incidence of Sunday work has been falling in many European member States since 1995, the share of workers reporting work on at least one Sunday a month reached 30 per cent in 2015, up from 27.5 per cent in 2005 and 28 per cent in 2010. In 2015, over 10 per cent of workers worked at least three Sundays a month. [2]

[1] Work during weekly rest is any work on normal days of rest. ILO: *Working time in the twenty-first century*, Report for discussion at the Tripartite Meeting of Experts on Working-time Arrangements (17–21 October 2011), p. 46.

[2] Eurofound: "What's happening with Sunday work in Europe?", 23 Sep. 2016.

Figure 2.1. Percentage of workers working during weekends in Europe



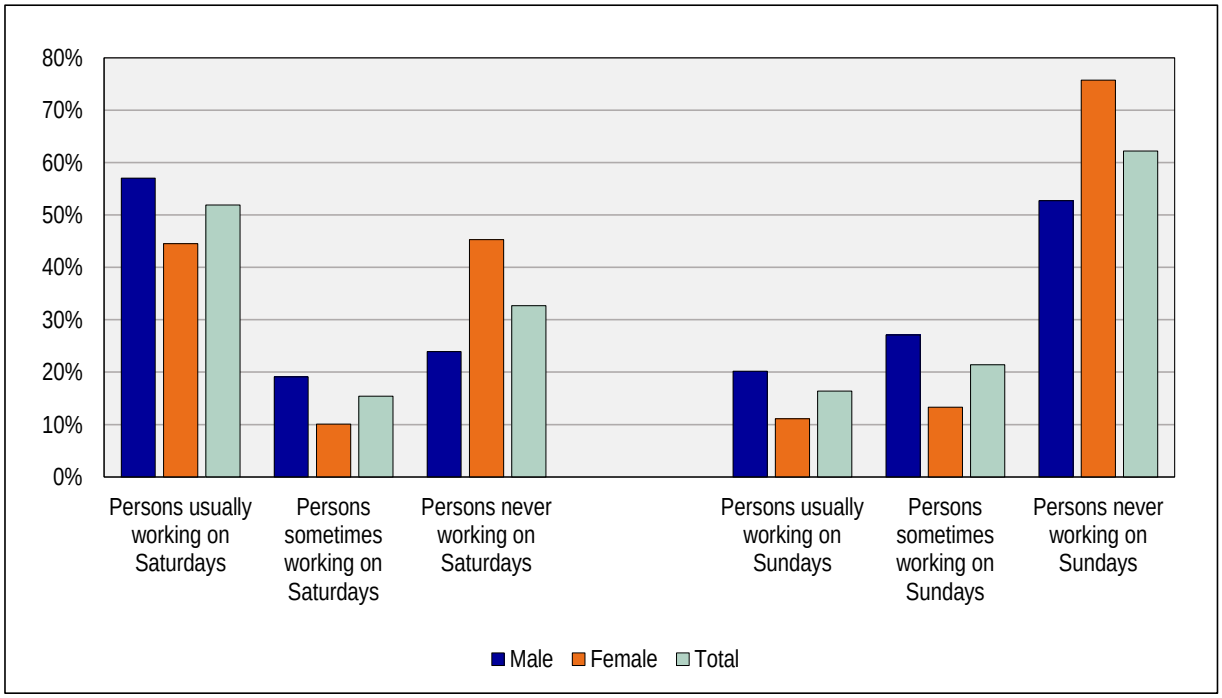
Data for this index (0–100) are based on question 37 on work on Sundays (37b) and Saturdays (37c).
Source: Sixth European Working Conditions Survey (2015).

Figure 2.2. Percentage of the population working on weekdays and weekend days in the United States

(Data include all persons aged 15 and over. Weekdays are defined as non-holiday weekdays. Holidays are included with weekend days. Data are annual averages for 2015.)

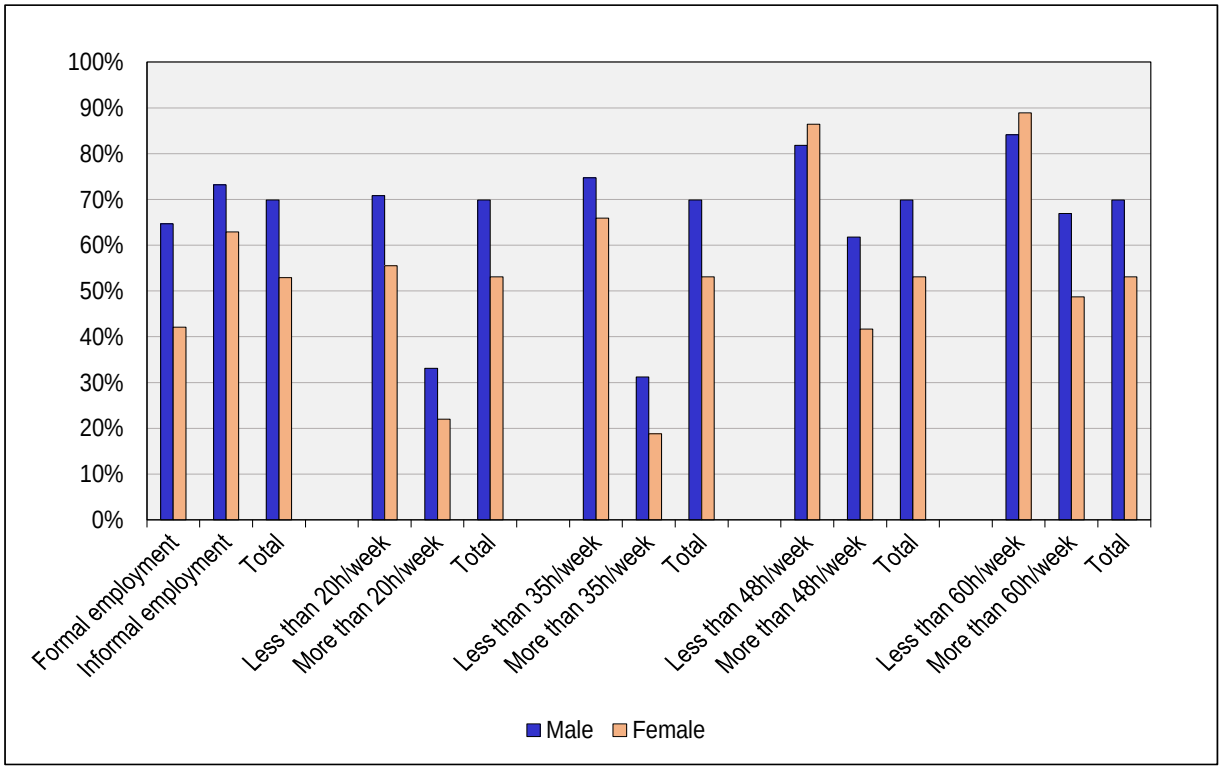
Source: American Time Use Survey, Bureau of Labor Statistics, United States.

Figure 2.3. Share of persons in paid employment working on Saturday/Sunday in Albania



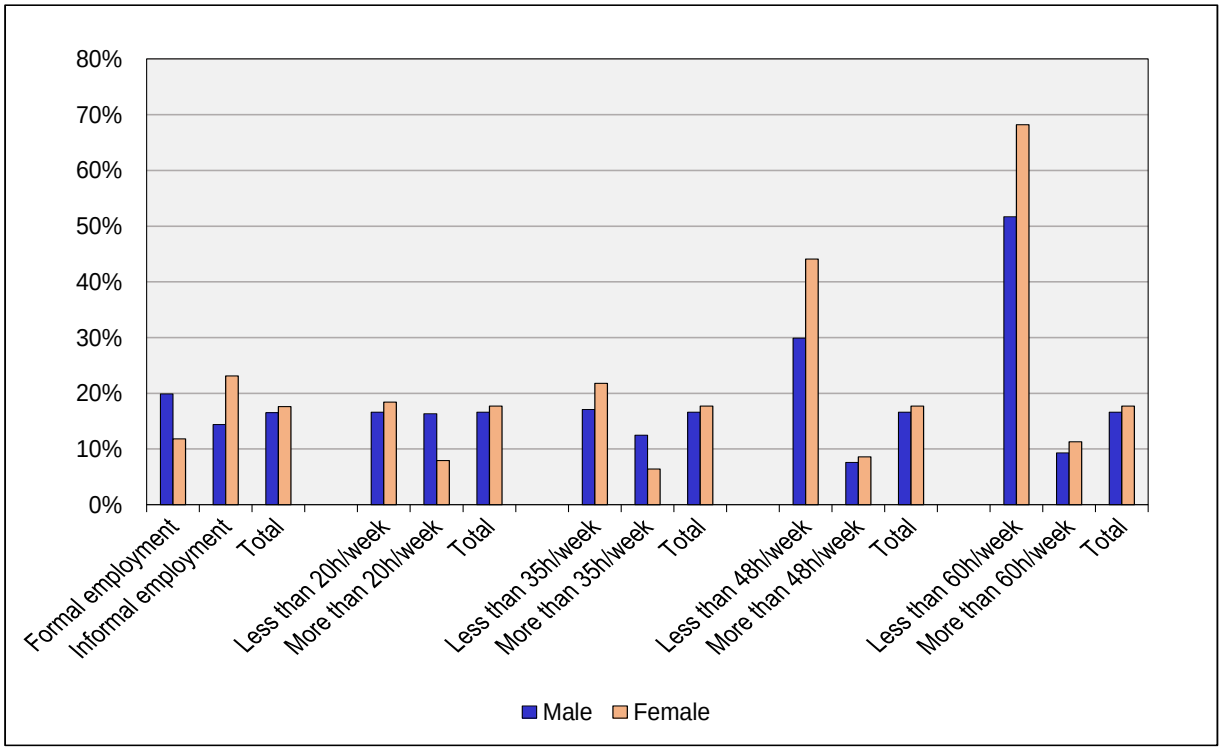
Source: Labour Force Survey, 2013.

Figure 2.4(a). Percentage of workers working at least one hour a week (by average weekly hours of work) on Saturday in Guatemala (in paid employment)



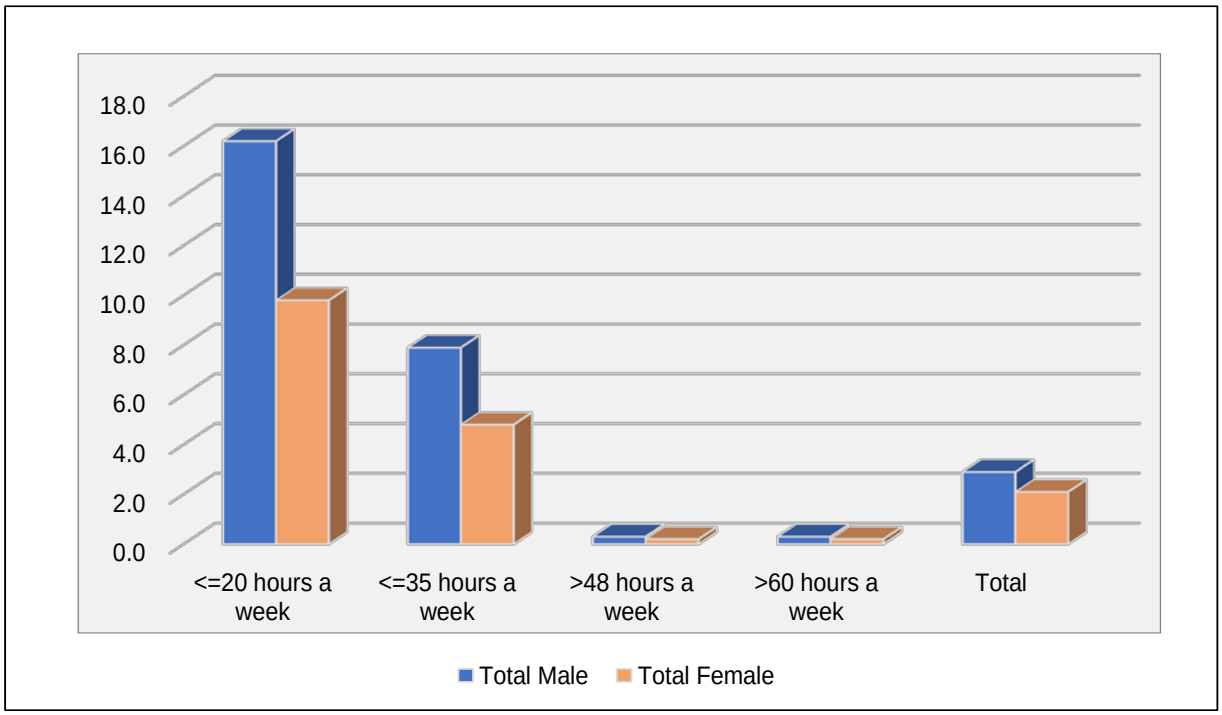
(Data disaggregated by workers working less or more than a certain number of hours a week.)
Source: National Employment and Income Survey (ENEI), 2014.

Figure 2.4(b). Percentage of workers working at least one hour a week on Sunday (by average weekly hours of work) in Guatemala (in paid employment)



(Data disaggregated by workers working less or more than a certain number of hours a week.)
Source: National Employment and Income Survey (ENEI), 2014.

Figure 2.5. Percentage of workers working at the weekend in Ghana (by average weekly hours of work)



(Data disaggregated by workers working less or more than a certain number of hours a week.)
Source: Ghana Living Standards Survey (GLSS), 2013.

2. Content of the instruments and their application at the national level

187. The adoption of the Hours of Work (Industry) Convention, 1919 (No. 1), establishing the 48-hour week and eight-hour day, signified the implicit endorsement of the principle of weekly rest. As emphasized in the preparatory work for Convention No. 14, the weekly rest day is the immediate complement of Convention No. 1, or in other words the natural corollary of the definite restriction of the number of hours worked a week. [3]

188. When Convention No. 14 was under discussion, almost all countries had laws fixing a weekly rest period and, in some cases, such laws had been in force for as much as a century. [4] Although two draft Conventions (one regulating weekly rest in industry and another in commerce) were submitted to the Third Session of the International Labour Conference in 1921, only Convention No. 14 on weekly rest in industry was adopted. The idea behind Convention No. 14 was to develop a fairly broad instrument that took into account the different conditions at the national level. [5] However, given the inadequacy of national legislation on weekly rest in commerce, only a Recommendation was adopted for this sector. [6] It was not until 1957 that a Convention and a Recommendation on weekly rest in commerce and offices were adopted.

A. Scope of application, and exclusions

Box 2.1
Scope of application *

Article 1 of Convention No. 14 provides that:

1. For the purpose of this Convention, the term industrial undertaking includes –

(a) mines, quarries, and other works for the extraction of minerals from the earth;

(b) industries in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed; including shipbuilding and the generation, transformation and transmission of electricity or motive power of any kind;

(c) construction, reconstruction, maintenance, repair, alteration, or demolition of any building, railway, tramway, harbour, dock, pier, canal, inland waterway, road, tunnel, bridge, viaduct, sewer, drain, well, telegraphic or telephonic installation, electrical undertaking, gas work, water work, or other work of construction, as well as the preparation for or laying the foundations of any such work or structure;

(d) transport of passengers or goods by road, rail, or inland waterway, including the handling of goods at docks, quays, wharves or warehouses, but excluding transport by hand.

…

[3] ILO: "The weekly rest-day in industrial and commercial establishments", *Questionnaire*, item IV of the agenda, ILC, Third Session, Geneva, 1921, p. 5. In this regard, it should be noted that Article 4 of Convention No. 1 provides, in its last sentence, that "Such regulation of the hours of work shall in no case affect any rest days which may be secured by the national law to the workers in such processes in compensation for the weekly rest day."

[4] League of Nations: *Record of Proceedings*, ILC, 3rd Session, Geneva, 1921, p. 808. In its 1984 General Survey, which also covered Conventions Nos 14 and 106 and Recommendation No. 103, the Committee concluded that weekly rest was certainly one of the best observed of workers' rights and a principle which had often been accepted since time immemorial. ILO: *Working time: Reduction of hours of work, weekly rest and holidays with pay*, General Survey by the Committee of Experts on the Application of Conventions and Recommendations, ILC, 70th Session, 1984, para. 183.

[5] League of Nations: *Record of Proceedings*, 1921, op. cit., p. 340.

[6] Weekly Rest (Commerce) Recommendation, 1921 (No. 18).

3. Where necessary, in addition to the above enumeration, each Member may define the line of division which separates industry from commerce and agriculture.

Article 2 of Convention No. 106 provides that:

This Convention applies to all persons, including apprentices, employed in the following establishments, institutions or administrative services, whether public or private:

(a) trading establishments;

(b) establishments, institutions and administrative services in which the persons employed are mainly engaged in office work, including offices of persons engaged in the liberal professions;

(c) in so far as the persons concerned are not employed in establishments referred to in Article 3 and are not subject to national regulations or other arrangements concerning weekly rest in industry, mines, transport or agriculture –

(i) the trading branches of any other establishments;

(ii) the branches of any other establishments in which the persons employed are mainly engaged in office work;

(iii) mixed commercial and industrial establishments.

Article 3(1) of Convention No. 106 provides that:

1. This Convention shall also apply to persons employed in such of the following establishments as the Member ratifying the Convention may specify in a declaration accompanying its ratification:

(a) establishments, institutions and administrative services providing personal services;

(b) post and telecommunications services;

(c) newspaper undertakings; and

(d) theatres and places of public entertainment.

* It should be noted that the scope of application of both Conventions largely corresponds to that of Convention No. 1 and the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30).

189. Conventions Nos 14 and 106 supplemented by Recommendation No. 103, together cover nearly all economic sectors, with the exception of agriculture. [7] The enumeration of industrial undertakings in Article 1 of Convention No. 14 is exclusive [8] and covers four main types of industrial activity: (a) mines, quarries and other extractive industries; (b) processing industries; (c) construction and demolition; and (d) transport by road, railway or inland waterway, including the handling of goods at docks, quays, wharves or warehouses, but excluding transport by hand.

190. Convention No. 106, under the terms of Articles 2 and 3, applies to employees in the following classes of establishments: (a) *automatically* (trading establishments, and establishments, institutions and administrative services in which the persons employed are mainly engaged in office work, including the offices of persons engaged in the liberal professions); (b) *under certain conditions* (the trading branches of any other establishments, the branches of any other establishments in which the persons employed are mainly engaged in office work, and mixed commercial and industrial establishments, on condition that they are not subject to national regulations or other arrangements concerning weekly rest in industry, mines, transport and agriculture, and that the persons concerned are not employed in the establishments referred to in Article 3); (c) *in consequence of a formal declaration made by a Member at the time of ratification* (establishments, institutions and administrative services providing personal services, post

[7] ILO: *Working time: Reduction of hours of work, weekly rest and holidays with pay*, op. cit., para. 118.

[8] This enumeration corresponds to that in Article 1 of Convention No. 1. However, in Convention No. 14, the word "particularly" was inserted to make it clear that the enumeration is not exclusive. See League of Nations: *Record of Proceedings*, 1921, op. cit., p. 747.

and telecommunications services, newspaper undertakings and theatres and places of public entertainment).

Box 2.2
Applicability of Conventions Nos 14 and 106

Article 1(3) of Convention No. 14 provides that:

3. Where necessary, in addition to the above enumeration, each Member may define the line of division which separates industry from commerce and agriculture.

Article 4 of Convention No. 106 provides that:

1. Where necessary, appropriate arrangements shall be made to define the line which separates the establishments to which this Convention applies from other establishments.

2. In any case in which it is doubtful whether an establishment, institution or administrative service is one to which this Convention applies, the question shall be settled either by the competent authority after consultation with the representative organisations of employers and workers concerned, where such exist, or in any other manner which is consistent with national law and practice.

191. With regard to the applicability of Conventions Nos 14 and 106, it was clarified during the preparatory work for Convention No. 14 that the enumeration in Article 1(1) is in itself a definition of industry, as distinct from commerce and agriculture. Article 1(3) was therefore added to indicate clearly that the power of a Member to define the line of division separating industry from commerce and agriculture is confined to cases that are not included in the enumeration. [9] Similarly, Article 4(1) of Convention No. 106 provides that, where necessary, appropriate arrangements shall be made to define the line which separates the establishments to which the Convention applies from other establishments. Article 4(2) of Convention No. 106 also establishes a precise procedure to resolve doubts regarding the applicability of the Convention.

Box 2.3
Exclusions

Article 3 of Convention No. 14 provides that:

Each Member may except from the application of the provisions of Article 2 persons employed in industrial undertakings in which only the members of one single family are employed.

Article 5 of Convention No. 106 provides that:

Measures may be taken by the competent authority or through the appropriate machinery in each country to exclude from the provisions of this Convention:

(a) establishments in which only members of the employer's family who are not or cannot be considered to be wage earners are employed;

(b) persons holding high managerial positions.

192. Both Article 3 of Convention No. 14 and Article 5(a) of Convention No. 106 allow the exclusion from weekly rest legislation of establishments in which only the members of a single family are employed. With a view to limiting exemptions from the principle of weekly rest and protecting against abuse in the use of this exemption, Article 5(a) of Convention No. 106 adds to the phrase "members of the employer's family" the condition that they "are not or cannot be considered to be wage earners". [10] Article 5(b) of

[9] See League of Nations: *Record of Proceedings*, 1921, op. cit., p. 748.

[10] See ILO: *Weekly rest in commerce and offices*, Report VII(2), ILC, 39th Session, Geneva, 1956, p. 89.

Convention No. 106 also allows Members to exclude from the scope of application of the Convention persons holding high managerial positions. As emphasized in the preparatory work for Convention No. 106, this exclusion should be limited to persons who in fact act in the capacity of an employer, and should not be so loosely drawn up that subordinate personnel could be excluded from the provisions of the Convention. [11]

193. The categories of workers most frequently excluded from standard legislation on weekly rest include: domestic workers, [12] public service workers, [13] the military and the police, [14] executive managers, [15] members of the judiciary, [16] transport workers, [17] seafarers and fishers, [18] agricultural workers [19] and teachers and educators. [20] In many cases, special weekly rest schemes are established by the national legislation for these categories of workers. [21]

B. Normal weekly rest schemes: Main features

Box 2.4
Duration, regularity and continuity

Article 2(1) of Convention No. 14 provides that:

> 1. The whole of the staff employed in any industrial undertaking, public or private, or in any branch thereof shall, except as otherwise provided for by the following Articles, enjoy in every period of seven days a period of rest comprising at least twenty-four consecutive hours.

Article 6(1) of Convention No. 106 provides that:

> 1. All persons to whom this Convention applies shall, except as otherwise provided by the following Articles, be entitled to an uninterrupted weekly rest period comprising not less than 24 hours in the course of each period of seven days.

194. Article 2(1) of Convention No. 14 and 6(1) of Convention No. 106 set out the general principle of weekly rest: the right of workers to 24 consecutive hours of rest every seven

[11] ILO: *Record of Proceedings*, ILC, 40th Session, Geneva, 1957, p. 715.

[12] For example, *Argentina, Austria, Bahrain, Burundi, Cambodia, Cameroon, Cabo Verde, Central African Republic, Chile, Colombia, France, Guatemala, Islamic Republic of Iran, Kuwait, Luxembourg, Myanmar, Philippines, Singapore, Sudan, Turkey* and *Bolivarian Republic of Venezuela.*

[13] For example, *Argentina, Benin, Plurinational State of Bolivia, Burkina Faso, Burundi, Cameroon, Ecuador, El Salvador, Eritrea, France, Gabon, Guinea, Iraq, Italy, Mexico, Panama, Poland, Portugal, Qatar, Rwanda* and *Spain.*

[14] For example, *Azerbaijan, Plurinational State of Bolivia, Burundi, Eritrea, Ghana, Guinea, Iraq, Kenya, Malawi, Mauritania, Nicaragua, Oman* and *Russian Federation.*

[15] For example, *France, Greece, Iceland, India, Iraq, Japan, Malta, Peru, Singapore, Sri Lanka* and *the former Yugoslav Republic of Macedonia,.*

[16] For example, *Azerbaijan, Cambodia, Central African Republic, Chile, Eritrea* and *Sudan.*

[17] For example, *Honduras, Iceland, Luxembourg* and *United Kingdom.*

[18] For example, *Norway, Portugal, Seychelles* and *Singapore.*

[19] For example, *Austria, Plurinational State of Bolivia, Iraq* and *Japan.*

[20] For example, *Austria* and *Bangladesh.*

[21] For example, special weekly rest schemes are established for domestic workers in *Cabo Verde* (section 291 of the Labour Code), *Honduras* (section 338 of the Labour Code), *Madagascar* (section 9 of Decree No. 62-150); for agricultural workers in *Honduras* (section 338 of the Labour Code) and for transport workers in *Senegal* (section 2 of Decree No. 73-085).

days. [22] Three main aspects arise out of this general principle: duration (at least 24 hours), regularity (in every period of seven days) and continuity (consecutive hours). With regard to duration, it should be noted that the Third Session of the Conference also adopted a resolution inviting the competent authority of each country to encourage collective agreements between employers' and workers' organizations in order to fix, wherever the working conditions of the industry, trade or profession concerned permit, a re-arrangement of the hours of labour to allow an extension of the weekly rest to at least 36 hours. [23] Similarly, Recommendation No. 103 calls for a duration of weekly rest of not less than 36 hours which, whenever practicable, should be an uninterrupted period.

195. While the principle concerning the duration of weekly rest would at first sight seem straightforward, the respective methods of calculation are less clear. Two systems may be distinguished: *the calendar day system*, which covers a period from midnight to midnight; and *the system of the number of consecutive hours*, which consists of a period between the time when work finishes on the last working day of the week and the time when it is resumed on the first working day of the following week. [24] Conventions Nos 14 and 106 are both silent on this issue. [25] However, Recommendation No. 103 suggests that weekly rest should, whenever practicable, be so calculated as to include the period from midnight to midnight, and should not include other rest periods immediately preceding or following the period from midnight to midnight. [26]

196. The legislation in almost all ratifying and non-ratifying reporting countries grants at least 24 hours of weekly rest during a period of seven days. [27] In a number of countries, the minimum legal duration of weekly rest is determined in calendar days. In some countries, there is one calendar day, [28] and in some others two calendar days of weekly rest. [29]

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[22] The Weekly Rest (Commerce) Recommendation, 1921 (No. 18), adopted at the same time as Convention No. 14, contained an identical provision.

[23] League of Nations: *Record of Proceedings*, 1921, op. cit., pp. 867–868.

[24] See ILO: *Weekly rest in commerce and offices*, Report VII(1), ILC, 39th Session, Geneva, 1956, p. 23.

[25] During the preparatory work for Convention No. 106, constituents were asked whether they considered that the new instrument should provide that in each country the duration of this rest shall be fixed by specifying that it is calculated either: (a) from the moment of cessation of work on the last working day of the week up to the moment of resumption of work on the first working day of the following week, thus linking the weekly rest to the daily and nightly rests immediately preceding or following the said weekly rest; or (b) from the moment when rest is granted as actual weekly rest until the moment when it ends, not taking into account the other rest periods immediately preceding or following it. However, neither of the two proposed methods received sufficient support to be included in the Convention, and the matter was therefore left to the Recommendation. ILO: *Weekly rest in commerce and offices*, Report VII(2), 1956, op. cit., pp. 34 and 92.

[26] It should be noted that this wording was included in the original version of Convention No. 106 proposed by the Office.

[27] The findings of the two previous General Surveys on the subject were similar. See ILO: *Weekly rest in industry, commerce and offices*, General conclusions on the reports relating to the Weekly Rest (Industry) Convention, 1921 (No. 14), the Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106), and the Weekly Rest (Commerce and Offices) Recommendation, 1957 (No. 103), ILC, 48th Session, 1964, para. 84; and ILO: *Working time: Reduction of hours of work, weekly rest and holidays with pay*, ILC, 70th Session, Geneva, 1984, op. cit., para. 143.

[28] For example, **among non-ratifying countries**, *El Salvador, Germany, Iceland, Jamaica, Japan, Republic of Korea, Panama* and *Singapore*. **Among countries that have ratified one of the two Conventions**, examples include *Algeria, Belgium, Plurinational State of Bolivia, Canada, Chile, China, Costa Rica, Guatemala, Equatorial Guinea, Islamic Republic of Iran, Mexico, Portugal, India, Kenya, Nicaragua* and *Thailand*.

[29] For example, *Azerbaijan, Bulgaria, Ecuador, Lithuania, Republic of Moldova, Oman, Romania, Slovakia, Sudan* and *Bolivarian Republic of Venezuela*.

197. In many countries, the duration of weekly rest is defined as a number of hours. In a number of countries, the period is at least 24 hours of weekly rest, in which case the question of the calculation method is important:

– the legislation in some countries explicitly indicates that these hours do not include the daily rest period, which is generally 11 hours, and are therefore added to the 24 hours of weekly rest; [30]

– the legislation in some other countries does not exclude daily rest from weekly rest, but explicitly provides for a daily rest period; [31]

– the legislation in a group of countries provides that the 24-hour rest period should be taken on a specific day, namely Sunday; [32] and

– finally, in a small number of countries, there are no specifications on the manner in which the 24-hour weekly rest granted to workers is to be calculated. [33]

198. In a smaller group of countries, the weekly rest period is at least 35 or 36 hours. [34] For example, in *Argentina*, Act No. 20744 on employment contracts prohibits that a worker be requested to work between Saturday at 1 p.m. and Sunday at midnight. [35] In the *Dominican Republic*, weekly rest can start on any day of the week, as agreed by the parties, although in the absence of explicit agreement, it shall start on Saturday at noon and last for 36 consecutive hours. [36]

199. The legislation in a few countries provides for weekly rest of 42, [37] 44 [38] and 48 [39] hours, and in some specifies that the weekly rest period is calculated from the time that work finishes until the commencement of work on the day after the rest. [40] In other cases, governments report that, even though the legislation provides for 24 consecutive hours of weekly rest, the weekly rest granted to most workers in practice lasts 48 hours, coinciding with Saturday and Sunday. [41]

200. ***With regard to the requirement for regularity and continuity set out in Articles 2(1) and 6(1) of Conventions Nos 14 and 106, respectively, the preparatory work for Convention No. 106 emphasized that it is implicit in the definition of weekly rest that it***

[30] For example, *Bosnia and Herzegovina, Croatia, Cyprus, Denmark, Ethiopia, France, Italy, Malta, Morocco, Serbia, the former Yugoslav Republic of Macedonia* and *United Kingdom.*

[31] For example, *Brazil, Iraq, Madagascar, Mauritania, Mauritius, Montenegro, Tunisia* and *Turkey*.

[32] For example, *Benin, Burkina Faso, Cambodia, Colombia, Cameroon, Central African Republic, Gabon, Guinea, Peru* and *Togo*.

[33] For example, *Antigua and Barbuda, Côte d'Ivoire, Cuba, Eritrea* and *Rwanda.*

[34] For example, *Austria, Czech Republic, Namibia, Netherlands, South Africa* and *Sweden.*

[35] Section 204.

[36] Section 163 of the Labour Code.

[37] For example, *Belarus, Latvia, Russian Federation, Turkmenistan* and *Ukraine.*

[38] For example, *Luxembourg.*

[39] For example, *Estonia, Ghana* and *Hungary.*

[40] For example, in *Belarus*, section 138(2) of the Labour Code provides that the duration of uninterrupted weekly rest is calculated according to the rules of the internal labour schedule or the schedule of work (shifts) from the end of the working day (shift) on the eve of the day off (days off) until it begins on the first working day after the weekend. In the *Russian Federation*, section 110 of the Labour Code provides that weekly rest shall be calculated from the time that the worker finishes work on the eve of the day off to the beginning of work (the shift) on the day after the day off.

[41] For example, *Burundi*.

is regular and continuous. Time off must be given at certain prescribed intervals, and must be uninterrupted in order to achieve its purpose of enabling workers to restore their physical and mental energy after working several days consecutively and of ensuring an adequate family and social life. [42]

201. In relation to continuity, non-fragmented weekly rest is provided for in the great majority of countries. [43]

Box 2.5
Uniformity and respect of traditions, customs

Article 2(2) and (3) of Convention No. 14 provides that:

2. This period of rest shall, wherever possible, be granted simultaneously to the whole of the staff of each undertaking.

3. It shall, wherever possible, be fixed so as to coincide with the days already established by the traditions or customs of the country or district.

Article 6(2), (3) and (4) of Convention No. 106 provides that:

2. The weekly rest period shall, wherever possible, be granted simultaneously to all the persons concerned in each establishment.

3. The weekly rest period shall, wherever possible, coincide with the day of the week established as a day of rest by the traditions or customs of the country or district.

4. The traditions and customs of religious minorities shall, as far as possible, be respected.

202. ***The principle of uniformity enshrined in Article 2(2) of Convention No. 14 and 6(2) of Convention No. 106 refers to the collective character of weekly rest with a view to ensuring, wherever possible, that it is taken at the same time by all workers on the day established by tradition or custom. The social purpose of this principle is to enable workers to take part in community life and in the special forms of recreation available on certain days.*** [44]

203. As emphasized in the preparatory work for Convention No. 14, it appears to be a universal rule, and is undoubtedly desirable from a social viewpoint, that in any given area the same rest day should be established for the whole community, and should coincide with the day established by tradition or custom. In the preparatory work, it is also noted that the principle of Sunday rest is not universal as it has been established by Christian tradition and is only observed in areas where social customs have been influenced by this tradition. In other countries, the rest day may be established on a different day. [45]

204. As the Committee has recalled, weekly rest is a social necessity and, if taken simultaneously, enables workers to enjoy their leisure hours together. [46] It has recalled that

[42] ILO: *Working time in commerce and offices*, Report VII(1), 1956, op. cit., pp. 17–18.

[43] Of 119 reporting countries, the Governments of only three indicate that the national legislation contains no provision on the need for weekly rest to be continuous: *New Zealand*, *Sudan* and *United States*.

[44] ILO: *Weekly rest in commerce and offices*, Report VII(1), 1956, op. cit., p. 24.

[45] League of Nations: *Report on the weekly rest day in industrial and commercial employment*, Report VII, ILC, Third Session, 1921, Geneva, p. 127.

[46] ILO: *Weekly rest in industry, commerce and offices*, op. cit., para. 97, 1964. See also *Bahamas* – CEACR, Convention No. 14, direct request, published in 2011.

a day of weekly rest provided simultaneously to all workers is necessary to enable them to draw full benefit from the weekly break in terms of family and social life. [47]

205. While most countries report that their legislation provides, as a general principle, for a uniform day for the granting of weekly rest for workers, some countries indicate that their legislation does not do so. [48] A few countries report that the rest day is determined at the enterprise level, [49] or that it can be agreed between the employer and the employee taking into account traditions. [50]

206. Many governments report that the weekly rest period in their countries is on Sunday, which is the day traditionally devoted to rest in their societies. [51] In a number of countries of Muslim tradition, Friday is the rest day. [52] The legislation in a few countries takes explicitly into account the customs of religious minorities. For example, in *Italy*, Act No. 1010 of 1989 provides that workers of Jewish faith may, upon request, take their weekly rest on Saturday rather than Sunday. [53] Moreover, the Government of *Kenya* reports that, by tradition and custom, Sunday is the rest day, although that does not preclude the right to rest on any other day, such as Saturday for Seventh Day Adventists, or Friday for Muslims. In *Norway*, the Working Environment Act provides that the employer and the employee may enter into a written agreement to allow the employee to take corresponding time off on days that are not Sundays and public holidays to take into account the customs of his or her religion. [54] The Government of the *Philippines* reports that the Labour Code makes the employer responsible for determining and scheduling the weekly rest day for employees, subject to collective agreement and to such rules and regulations as the Secretary of Labor and Employment may issue. [55] However, the employer has to respect the preference of employees as to their weekly rest day when that preference is based on religious grounds. In *Costa Rica*, the Labour Code provides that practitioners of religions other than Catholicism may, at their request, be granted by the employer the days of religious celebration proper to their belief. [56]

[47] See *China – Macau Special Administrative Region* – CEACR, Convention No. 106, direct request, published in 2015.

[48] For example, *Azerbaijan, Costa Rica, Egypt, Finland, Georgia, Guatemala, Iceland, Jamaica, Japan, Kenya, Oman* and *United Kingdom.*

[49] For example, *Republic of Korea*.

[50] For example, *Kuwait*.

[51] *Argentina, Austria, Belarus, Belgium, Plurinational State of Bolivia, Brazil, Bulgaria, Burundi, Cambodia, Cameroon, Canada, Cabo Verde, Central African Republic, Chile, Colombia, Côte d'Ivoire, Cuba, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Finland, France, Gabon, Germany, Ghana, Greece, Guinea, Honduras, Hungary, Indonesia, Italy, Kenya, Latvia, Lithuania, Luxembourg, Madagascar, Malawi, Malta, Mauritius, Mexico, Republic of Moldova, Montenegro, Namibia, Netherlands, Nicaragua, Norway, Panama, Peru, Poland, Portugal, Romania, Russian Federation, Rwanda, Serbia, Slovakia, Spain, Sweden, Switzerland, Tajikistan, the former Yugoslav Republic of Macedonia, Uruguay, Bolivarian Republic of Venezuela* and *Zimbabwe.*

[52] Examples include *Algeria, Bahrain, Islamic Republic of Iran, Iraq* and *Qatar*.

[53] Section 4 of Act No. 1010 of 1989.

[54] Section 10-10(5) of the Working Environment Act.

[55] Section 91(b) of the Labour Code.

[56] Section 148 of the Labour Code.

C. Exceptions to the principle of weekly rest

207. The issue of exceptions to the principle of general weekly rest is addressed differently in the Conventions. While Convention No. 14 contains a single provision governing exceptions in very general terms, Convention No. 106 describes precisely the circumstances justifying permanent and temporary exceptions. [57]

Box 2.6

Article 4(1) of Convention No. 14 provides that:

1. Each Member may authorise total or partial exceptions (including suspensions or diminutions) from the provisions of Article 2, special regard being had to all proper humanitarian and economic considerations ….

Article 7(1) and (3) of Convention No. 106 provides that:

1. Where the nature of the work, the nature of the service performed by the establishment, the size of the population to be served, or the number of persons employed is such that the provisions of Article 6 cannot be applied, measures may be taken by the competent authority or through the appropriate machinery in each country to apply special weekly rest schemes, where appropriate, to specified categories of persons or specified types of establishments covered by this Convention, regard being paid to all proper social and economic considerations.

…

3. Persons working in branches of establishments subject to special schemes, which branches would, if independent, be subject to the provisions of Article 6, shall be subject to the provisions of that Article.

(a) Permanent exceptions

208. These provisions both recognize the existence of an inherent need for certain categories of workers and establishments to remain in operation in the day of rest, and that the application of special weekly rest schemes instead of normal schemes is therefore justified. When analysing these special schemes, the main aspects to be considered include: (i) the types of establishments and categories of workers most frequently subject to special weekly rest schemes, and the procedures for their authorization; and (ii) the features of the special weekly rest schemes, including the type of compensation to which they give rise.

(i) Types of establishments and categories of workers subject to special weekly rest schemes

209. During the preparatory work for Convention No. 14, an attempt was made to draw up a list of exceptions to the normal weekly rest scheme. However, in view of the many different opinions on the issue, this proved impossible. It was therefore decided to place on each ratifying State the responsibility for compiling a list of necessary exceptions, after consultation with the relevant organizations. [58] Convention No. 14 leaves considerable latitude to ratifying governments, as Article 4 allows them, at their discretion, to authorize total or partial exceptions. A government is therefore free under the Convention to apply

[57] The rationale for this different treatment is twofold. First, the circumstances justifying exceptions in industry and in commerce and offices differ; and, second, Convention No. 106 was adopted 36 years after Convention No. 14 and aimed at achieving greater precision.

[58] League of Nations: *Record of Proceedings*, 1921, op. cit., p. 746.

any system that meets with its approval, on condition that the exceptions are justified, special regard being had to all proper humanitarian and economic considerations. [59]

210. Article 7(1) of Convention No. 106 recognizes that, in certain circumstances, it is technically impossible to grant weekly rest simultaneously to workers in certain well-defined classes of establishments or activities, and that exemptions from the strict rule of weekly rest are therefore necessary. Figure 2.6 summarizes the categories of circumstances envisaged by both Conventions in which recourse to special weekly rest schemes is justified.

Figure 2.6. Circumstances justifying recourse to special weekly rest schemes

211. Both Conventions contain a safeguard clause, namely of special regard being paid to all proper social/humanitarian and economic considerations. Indeed, exceptions to normal weekly rest schemes are sometimes based on economic considerations, including the better utilization of capital-intensive means of production, or employment creation. [60] In this regard, the Committee has emphasized the importance of reconciling the need to protect workers with operational requirements, [61] and has called for both social and economic considerations to be taken into account.

212. In this regard, the Committee set up to examine the representation alleging non-observance by *France* of Convention No. 106 considered that the categories of persons or establishments covered by the Convention to whom special weekly rest schemes can be applied, as provided for by Article 7 of the Convention, must be determined in the context of the country concerned, on the basis of the criteria established

[59] ILO: Interpretation of Decisions of the International Labour Conference, *Official Bulletin*, Vol. LVII, 1974, p. 192.

[60] ILO: *Working time: Reduction of hours of work, weekly rest and holidays with pay*, 1984, op. cit., para. 159.

[61] See, for example, *Mauritania* – CEACR, Convention No. 14, direct request, published in 2016.

by the Convention, regard being paid in particular to all proper social and economic considerations. [62]

213. As in previous General Surveys on this subject, [63] analysis of national legislation shows that provisions envisaging special weekly rest schemes exist in the majority of countries. A few countries report that there are no provisions on this subject, but that such schemes exist in practice. For example, the Government of *Sweden* reports that, as framework legislation, the Working Hours Act does not contain specific provisions on weekly rest schemes. However, the Swedish Work Environment Authority or the social parties, through collective agreements, may determine provisions on weekly rest schemes for specific categories of employees and specific workplaces. [64] Moreover, the Government of *Equatorial Guinea* reports that, even though the legislation does not envisage special schemes, in practice supermarket workers work a half day on Sunday, with prior authorization from the Ministry of Labour, and that the same happens with port enterprises (servicing oil enterprises) responsible for unloading.

214. The factors which are most commonly taken into account are the public interest, continuous process, commerce, seasonal or local conditions, geographical distance and shift work.

Establishments which, due to the nature of the needs they serve,
cannot interrupt work without harming the public interest

215. A number of countries report that their legislation applies special weekly rest schemes to establishments and workers providing the following services: [65]

- health (hospitals and similar establishments, pharmacies);
- security (police, firefighters, security guards);

[62] ILO: Report of the Committee set up to examine the representation alleging non-observance by France of the Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106), made under article 24 of the ILO Constitution by the Federation of Salaried Employees and Managerial Staff of the General Confederation of Labour – *Force Ouvrière*, Governing Body, 326th Session, 2016, GB.326/INS/15/8, para. 51.

[63] See ILO: *Weekly rest in industry, commerce and offices*, 1964, op. cit.; and ILO: *Working time: Reduction of hours of work, weekly rest and holidays with pay*, 1984, op. cit.

[64] Section 3 of the Swedish Working Hours Act provides that exemptions from the Act in its entirety, or derogations from section 14 (on normal weekly rest schemes) may be made through collective agreements concluded or approved by a central employee organization. Moreover, section 19 of the Act provides that, if a collective agreement as referred to in section 3 cannot be concluded, the Swedish Work Environment Authority may grant derogations from section 14 if there are special grounds for doing so.

[65] For example, **among countries not having ratified either of the Conventions**: *Austria* (section 10 of the Rest Periods Act), *Cambodia* (section 149 of the Labour Law), *El Salvador* (section 193 of the Labour Code), *Germany* (section 10 of the Hours of Work Act), *Namibia* (section 21 of the Labour Act), *Panama* (section 2 of the Labour Code), *Seychelles* (Regulation 2(1) of the Employment (Conditions of Employment) Regulation, 1991 (SI 34 of 1991)) and *United Kingdom* (section 21 of the Working Time Regulations). **Among countries having ratified both or one of the Conventions**: *Azerbaijan* (section 101 of the Labour Code), *Bangladesh* (section 114(5) of the Labour Code), *Belgium* (section 66 of the Labour Act of 1971), *Plurinational State of Bolivia* (sections 4 and 6 of the Regulatory Decree of 30 August 1927), *Burkina Faso* (section 2 of Order No. 1244/FPT/DGTLS), *Burundi* (section 4 of Ministerial Ordinance No. 650/22), *Cameroon* (section 3 of Ministerial Decree No. 22 of 1969), *Croatia* (section 89(3) to (5) of the Labour Act), *Czech Republic* (section 90(2)(c) of the Labour Code), *Denmark* (Annex 1 to Order No. 324 of 2002), *Dominican Republic* (section 169 of the Labour Code), *Gabon* (section 3 of Decree No. 0933/PR/MTEPS of 2009), *Guinea* (section 222(2) of the Labour Code), *Honduras* (section 344 of the Labour Code), *Luxembourg* (section L.231-6(1) of the Labour Code), *Malta* (section 15 of the Organisation of Working Time Regulations), *Switzerland* (section 7 of the Ordinance on the Labour Law No. 2), *Togo* (section 4 of Order No. 278-54IITL), *Tunisia* (section 96 of the Labour Code), *Turkey* (section 4 of the Act on Weekly Rest No. 394), *Bolivarian Republic of Venezuela* (sections 185 of the Basic Act concerning labour and men and women workers (LOTTT) and 17 of the LOTTT regulations).

- transport;
- public utilities (water, gas and electricity);
- services mainly in demand when most of the community is not working (hotels, restaurants and similar establishments, theatres and entertainment);
- services that can only be provided when other workers are absent (maintenance, cleaning, surveillance);
- essential consumption needs (food, newspapers, information, broadcasting, travel agencies, and so forth).

216. A number of countries refer to very general provisions which do not a priori specify a precise category of workers or establishments to which special weekly rest schemes are applicable. For example, among non-ratifying countries, *Iceland* reports that, in accordance with the Working Environment, Health and Safety in Workplaces Act No. 46/1980, in the event of special necessity due to the nature of the work involved, the weekly rest day may be postponed by agreement between the social partners. [66] In *Panama*, the Labour Code provides that the general rule on Sunday weekly rest is not applied in establishments where, on account of their nature, any interruption of work on such days would seriously affect the public interest and jeopardize public health or the national economy. [67] In *Cabo Verde*, the Labour Code provides that the weekly rest period may be granted on a day other than Sunday in the case of workers who are necessary to ensure the continuity of services that cannot be interrupted. [68] Among ratifying countries, the Government of *Algeria* indicates that, by virtue of the Labour Relations Act, where economic requirements or those of the organization of production so require, the weekly rest may be deferred or taken on another day. [69] Weekly rest may therefore be granted by rotation in establishments where an interruption of work on the weekly rest day is either incompatible with the nature of the activity of the establishment or detrimental to the public. In *Chile*, the Labour Code [70] provides that establishments, activities and services which, due to the nature of the process, technical reasons, the need they satisfy or in order to avoid damage to public and industrial interests, require continuity, are exempt from the rules on weekly rest. [71]

[66] Section 54(2) of the Working Environment, Health and Safety in Workplaces Act No. 46/1980.

[67] Section 2(7) of the Labour Code.

[68] Section 64(3) of the Labour Code.

[69] Section 37 of the Labour Relations Act.

[70] Section 38(2) of the Labour Code.

[71] Other examples include: *Costa Rica* (section 152(4) of the Labour Code: "public and social interest activities"); *Colombia* (section 175(1)(b) of the Labour Code: "activities to satisfy needs that cannot be postponed, such as public services, the selling and preparation of medicines and food"); *Cuba* (section 93 of the Labour Code: "daily and permanent service to the population or other entities"); *Hungary* (section 101(1)(g) of the Labour Code: "provision of basic public services"); *Lithuania* (section 161(2) of the Labour Code: "where work cannot be interrupted because it involves the need for continuity of services to be provided to the population"); *Serbia* (section 57 of the Labour Law "where so required by the nature of the activity, the organization of work, better utilization of the means of work, the more rationalized use of working hours and the execution of a specific activity within set time limits"); *Montenegro* (section 54(1) of the Labour Law: "whenever required by the nature of the activity, the organization of work, the need for better usage of assets, the more rational distribution of working hours and the performance of certain activities within defined time limits"); *Romania* (section 137(2) of the Labour Code: "in detriment to the public interest or the normal course of the activity"); *Slovakia* (section 93(2) of the Labour Code: "where the nature of the work and conditions of operation so require"); *Slovenia* (section 158(4) of the Employment Relationship Act (ZDR-1): "where the nature of the work requires a permanent presence, where the nature of the activity requires the continuous provision of work or services"); *Ukraine* (sections 68 and 69 of the Labour Code: "where the work may not be interrupted on common rest days due to the need to provide services

Continuous process establishments

217. In the case of industrial establishments which for technical reasons have to operate continuously if they are to maintain their efficiency, different approaches are adopted to regulate the application of special weekly rest schemes. Some countries report provisions listing the types of establishments subject to exceptions relating to continuous industrial processes. For example, in the *Plurinational State of Bolivia*, the Regulatory Decree of 1927 [72] provides that where, due to technical reasons or the serious damage caused to the industry by the interruption of operations, work is permitted on Sundays:

> (s) where the raw material may deteriorate if it is not processed or its preparation, processing and finishing require a period of over 24 hours that includes a Sunday; (t) in the exploitation of mines, of any kind, but not cableways, mills or profit-making establishments, or in arsenals or their dependences; (u) in the work requiring the stoking and operation of ovens and furnaces in which a constant temperature must be maintained for a period of over 24 hours covering all or part of a Sunday, such as metal foundries, brick and tile factories, chemicals, soap, paper and cardboard; (v) rapid mechanical tanning in tanneries; (x) in breweries, the fermentation of must and the maintenance of the cold chain, as well as in distilleries. [73]

218. In other cases, the legislation is drawn up in general terms, but establishes a procedure for the authorization of special weekly rest schemes. In these cases, the lack of precision concerning the type of establishments in which special weekly rest schemes are permitted is balanced by an authorization procedure. For example, among non-ratifying countries, the Labour Code in *El Salvador* provides that employers in undertakings where work is performed continuously, which provide public services or which, due to the nature of their activities, normally work on Sundays, may schedule another day of weekly rest. Apart from these cases, when so required by the needs of the enterprise, the employer may specify another day of weekly rest, subject to prior authorization by the General Director of Labour. [74] In *Namibia*, in the case of work on a Sunday, including work in a continuous shift, the Labour Act provides that an employer may apply in writing to the Permanent Secretary to approve work on Sundays if the employees concerned agree. If the application is granted, a written notice must be issued specifying the nature of the work to which the notice applies, and any applicable conditions. [75] In *Panama*, exceptions to weekly rest are conditional on prior authorization being obtained from the General Directorate of Labour

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to the population", "where work cannot be interrupted for technical reasons or due to the need to ensure an uninterrupted service to the public, and in jobs involving loading and unloading in the goods transport sector").

[72] Section 5(s) to (x) of the Regulatory Decree of 1927.

[73] Other examples include: *Belarus* (section 140 of the Labour Code: "In establishments with a continuous production and technological cycle (metallurgical, chemical production, agriculture, etc.), as well as in establishments providing continuous services to the population (power plants, telegraph, mail, ambulance, transport, main production services, etc.)"); and *Bolivarian Republic of Venezuela* (section 185 of the LOTTT and 18 of the LOTTT Regulations: "(a) In the extractive industries, all those activities that are not susceptible to interruption or whose interruption would cause serious prejudice to the regular functioning of the work organization; (b) in all industrial processes in which ovens and boilers that reach high temperatures are used, activities involved in their fuelling and operation; … (d) scientific or technical activities that require intervention or periodic control; (e) activities that require continuous processes, that is which cannot be interrupted without jeopardizing their results, such as: (1) industrial activities for the processing of food; (2) work required for the maintenance of the cold chain in those industries that require it; (3) farms and livestock; (4) in the steel industry, the preparation of materials, casting and rolling; (5) the operation of production equipment and compression pumps in industrial gas establishments; (6) in the paper industry, drying and heating works; (7) in tanneries, operations involving rapid and mechanical tanning; (8) monitoring and grading of heaters for the drying of wet cigarettes; (9) germination of grains, fermentation of must and distillation of alcohol; (10) refining; (11) delivery of fuel by means of pipes or pipelines.").

[74] Section 173 of the Labour Code.

[75] Section 21(3) and (4) of the Labour Code.

or a regional directorate of labour. [76] Among ratifying countries, the Labour Code [77] in *Cuba* provides that, in entities and activities where work cannot be interrupted due to the technical and organizational conditions of production, the day of rest may be granted on any day of the week, in accordance with a schedule developed by the employer to that effect, in consultation with the workers. [78]

219. Among countries that have ratified one of the Conventions, *Tajikistan* reports that, in accordance with the Labour Code, in organizations where work cannot be interrupted for operational reasons arising out of the need to provide continuous service to the public, and in organizations which operate around the clock, various groups of workers may be granted rest days on different days of the week under a shift schedule established by the employer, with the prior agreement of the workers' representatives. [79] In *China*, the Labour Law [80] provides that, where an enterprise cannot follow the legislative provisions on weekly rest due to the special nature of production, it may, with the approval of the administrative department of labour, adopt other rules on working hours and rest.

220. The legislation in a number of countries does not establish any specific procedure for the authorization of exceptions to the normal weekly rest scheme. This is the case, for example, among non-ratifying countries, in *Kazakhstan* [81] and *Samoa*. [82] In some cases, the only legal requirement for exemptions from the weekly rest scheme is the consent of the employees. For example, among non-ratifying countries, the Labour Code in *Turkmenistan* allows workers to be called into work on rest days with their consent. [83] Without their consent, workers can be called into work on rest days under the terms of a collective agreement (or contractual agreement) or employment contract concluded between an employer or natural person and a worker. In *Oman*, the Labour Code provides that the employer shall grant the worker a weekly rest of not less than two consecutive days after five consecutive days of work. In locations and jobs determined by ministerial decision, a worker's entitlement to a maximum of eight weekly rest periods may be accumulated, if so agreed by the employer and the worker in writing. [84]

Commercial establishments

221. The legislation in many countries exempts retail trade establishments from normal weekly rest schemes. [85] The legislation in some countries exempts establishments from the rules on weekly rest, particularly when they mainly handle products that are inherently

[76] Section 2(7) of the Labour Code.

[77] Section 82 of the Labour Code.

[78] Other examples include *Nicaragua* (sections 69 and 71 of the Labour Code), *Mauritania* (section 175 of the Labour Code) and *Philippines* (section 92(e) and (f) of the Labour Code).

[79] Section 86(4) of the Labour Code.

[80] Section 39 of the Labour Code.

[81] Section 84(4) of the Labour Code provides that workers or groups of workers who are employed in facilities that operate continuously or where work cannot be halted on rest days for operational or technical reasons, or due to the need to ensure an uninterrupted service to the public, and workers who work for alternating periods on and off duty, may be allocated rest days on different days of the week in turn, in accordance with the shift or duty schedule.

[82] Section 38(1) of the Labour and Employment Relations Act of 2013 (LERA) provides that an employer may not compel an employee to work on a Sunday, unless the employee is engaged "in work which has to be carried on continuously as a succession of shifts".

[83] Section 80 of the Labour Code.

[84] Section 71 of the Labour Code.

[85] See ILO: *Weekly rest in industry, commerce and offices*, 1964, op. cit., para. 113.

perishable. For example, in *Turkey*, Act No. 394 on weekly rest provides that butchers, bakers, vendors of vegetables, fresh fruit and tobacco can open until 1 p.m. on the rest day if a municipal authorization has been obtained. [86] In *Dominican Republic*, retail establishments selling meat, poultry, vegetables or fruit may remain open on Sundays and non-working days until 1 p.m. [87] The Labour Code in *Tunisia* provides that food retail establishments have the right to grant weekly rest only on the afternoon of the rest day, with half a day of compensatory rest on a rotating basis during the week. [88] In *Togo*, the Labour Code [89] provides that a decree will determine the retail food shops where weekly rest may be granted on Sunday from 12 p.m., with compensatory rest on a rotating basis.

222. In some countries, the legislation leaves the regulation of weekly rest in the retail sector to collective agreements. For example, in *Austria*, the Act on rest periods provides that, for workers in retail units and certain service enterprises, weekly rest shall be regulated by collective agreement or through an averaging of weekly rest over a period of time. [90] Also, in *Spain*, in commerce and hotels, collective agreements or agreement between the firm and the workers' legal representatives may authorize workers to accumulate a half-day of the normal weekly rest for periods of up to four weeks to be granted in another day of the week. [91]

223. In other countries, the legislation allows commercial establishments in general to be subject to special schemes without restrictions based on the type of product traded. For example, in South America: the Labour Code in *Chile* exempts from the normal weekly rest scheme workers in commercial and services establishments which directly serve the public, in accordance with the rules of the establishment; [92] the legislation in *Brazil* allows work on Sunday in commercial activities in general, subject to municipal regulations; under this arrangement, weekly rest must be on Sunday at least once in every three-week period; [93] the legislation in *Uruguay* provides that, in special cases and duly justified, the Executive may authorize the opening of commercial establishments, by branch, zone or locality, on Saturday afternoon until 9 p.m. and on Sunday morning until 1 p.m.; in this country, in special cases, when duly justified and taking into account the nature of the services, the Executive may authorize, by branch, zone or locality, weekly rest of 36 consecutive hours on a rotating or continuous basis on other days of the week, and may exceptionally authorize the continuous opening of commercial establishments, including on Saturdays and Sundays until 9 p.m. [94] In Europe: the competent occupational safety and health (OSH) authority in *Germany* may permit the employment of workers in commerce on up to ten Sundays and public holidays a year when special circumstances necessitate longer opening hours; [95] in the *Netherlands*, the legislation provides that workers in commerce and offices may be granted weekly rest of 72 hours every 14 days, when the nature of the work or business circumstances so require, subject to a collective

[86] Sections 5 and 8 of the Act on Weekly Rest No. 394.

[87] Section 168 of the Labour Code.

[88] Section 100 of the Labour Code.

[89] Section 5 of the Labour Code.

[90] Section 22 of the Act on rest periods.

[91] Section 6 of Royal Decree No. 1561/1995.

[92] Section 38(7) of the Labour Code.

[93] Section 6 of Act No. 10101 of 2000, as amended.

[94] Section 4 of Legislative Decree No. 14320 of 1974.

[95] Section 13(3) of the Act.

agreement or an agreement between the employer and the workers concerned; [96] in *France*, an amendment of the Labour Code in 2008 [97] extended the exemption from normal weekly rest schemes to retail furniture stores; in the *United Kingdom*, in England and Wales, shops with a floor area of over 280 square metres can open on Sundays for six consecutive hours between 10 a.m. and 6 p.m.; in Scotland, there are no restrictions, and in Northern Ireland shops larger than 280 square metres may open on Sundays for a maximum of five hours between 1 p.m. and 6 p.m. [98]

224. In other regions of the world, there are also examples of general provisions authorizing exemptions from normal weekly rest schemes in commerce. The Government of *Equatorial Guinea* reports that, in practice, supermarket workers who work half a day on Sunday, with prior authorization from the Ministry of Labour, can then opt for another day for rest. In *Gabon*, retail shops are also exempt from normal weekly rest schemes. [99] In *Sri Lanka*, the Shop and Office Employees' Act provides that the weekly rest periods due in any four consecutive weeks may be accumulated and taken all at once when deemed necessary due to the nature of the business or unforeseen circumstances, provided that written authorization is given by the Commissioner of Labour. [100]

225. Comments from certain European workers' organizations emphasize the importance of Sunday rest and warn against the trend, mainly in Europe, towards Sunday work which, in their view, is liable to harm family life. In particular, the *General Confederation of Labour – Force Ouvrière* indicates that the Act of 6 August 2015, which increases the number of "mayor's Sundays", modifies existing geographical exemptions and establishes "international tourist areas", is allowing Sunday work to become widespread, thereby lowering working conditions and jeopardizing workers' mental and physical health. [101] The *Confederation of Unions of Professional and Managerial Staff in Finland (AKAVA)* draws attention to the fact that shopping hours are no longer regulated in *Finland*, which implies more Sunday work. The *Greek General Confederation of Labour* indicates that the adoption of Act No. 4177/2013 and section 49 of Act No. 4472/2017 allows shops to open on Sundays, [102] which has resulted in a series of reactions and strikes calling for the

[96] Section 2(1)(4) of the Working Hours Decree.

[97] Section L.3132.12 of the Labour Code as amended by Act No. 2008-3 of 2008.

[98] It is interesting to note that, in July 2015, the Chancellor of the Exchequer in the United Kingdom presented, as part of the emergency budget, proposals to allow larger stores to open longer on Sundays in England and Wales in order to promote jobs and growth in the economy. However, there were fears that longer Sunday opening hours could harm smaller independent retailers and the plan was defeated in Parliament in March 2016. Eurofound: "What's happening with Sunday work in Europe", Sep. 2016, p. 3.

[99] Section 3 of Decree No. 0933/PR/MTEPS of 2009.

[100] Section 5(2) of the Shop and Office Employees Act.

[101] The Committee recalls in this regard that the report of the committee set up to examine the representation alleging non-observance by France of Convention No. 106 considered that the categories of persons or establishments covered by Convention No. 106 to whom a special scheme of weekly rest applies, as provided for by Article 7 of the Convention, must be determined within the context of the country concerned on the basis of the criteria established by the Convention. Emphasizing the importance of effective consultation with the social partners, the committee invited the Government of France, as well as the social partners, to examine the scope of the definition of exemptions from the principle of weekly rest, regard being paid to all proper social and economic considerations. ILO: op. cit., GB.326/INS/15/8, para. 47.

[102] Section 16 of Act No. 4177/2013 allows the operation of commercial stores, regardless of size, for seven specific Sundays of the year. It also provides for the possible additional optional operation of shops beyond these seven Sundays, under the following conditions: (1) the shop must have a total floor area of up to 250 square meters; (2) with the exception of franchises, it must not be part of a chain shop; (3) it cannot operate as a shop within a shop, and cannot be located in outlet stores, shopping malls or discount villages. This possibility covers each region and municipality in the country, by annual decision of the regional Vice-Governor, after consultation with the social partners in each region. Under the Act, a ministerial decision was issued in July 2014 specifying the ten regions of

repeal of this measure. The *General Workers' Union (UGT)* of *Portugal* expresses concern regarding weekly rest in commercial establishments that are open every day of the week, where violations of the principle of weekly rest are regularly reported. According to the Federation of Citizens Services of the *Trade Union Confederation of Workers' Commissions* in *Spain*, weekly rest is not applied in commerce and hotels, as workers rest only one day of the week; in call centres, weekly rest is irregular, as it does not always coincide with the traditional rest day, but may be accumulated, with no rest for several weeks. The National Commission of the *Independent and Self-Governing Trade Union "Solidarnosc"* reports that in *Poland* the introduction of work on Sunday is extremely easy because section 151(10) of the Labour Code determines relatively broadly the cases in which, by way of exception, work is allowed on Sundays and public holidays.

226. In its 1984 General Survey, the Committee noted that although, in general, special schemes met the criteria laid down in the Conventions, in certain sectors, such as commerce, the trend could lead to the establishment of special schemes that might not necessarily correspond to the terms of these international standards. [103] Such derogations in the commercial sector would only appear to be justified where they really respond to requirements relating to the basic needs of the population. In this respect, the Committee has indicated that the granting of the weekly rest period by rotation is likely to have a considerable impact on the social and family life of the workers concerned. [104] ***The Committee has emphasized the importance of all authorized exceptions to the normal 24-hour weekly rest period remaining limited to the cases enumerated in Article 7(1)*** [105] ***and has drawn the attention of governments to the importance of providing in law that exceptions to the provisions normally applicable in respect of weekly rest can only be established having special regard to all proper humanitarian and economic considerations and after consultation with employers' and workers' organizations.*** [106]

227. In this respect, it should be noted that the Committee set up to examine the representation alleging non-observance by *France* of Convention No. 106 found that it is important that all exemptions from the principle of weekly rest meet the criteria of the Convention. [107] It recalled that the permanent exemptions provided for under Article 7 of Convention No. 106 must be justified by "the nature of the work, the nature of the service performed by the establishment, the size of the population to be served, or the number of persons employed" and that they must apply to "specified categories of persons or specified types of establishments", "regard being paid to all proper social and economic considerations". It considered that the categories of persons or establishments covered by Convention No. 106 to whom special weekly rest schemes can be applied, as provided for by Article 7 of the Convention, must be determined in the context of the country concerned on the basis of the criteria established by the Convention, regard being paid in particular to all proper social and economic considerations. [108]

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the country where the free operation of shops is permitted on 52 Sundays of the year. See Eurofound: "Greece: Changes to shop opening hours and working time", 1 May 2015.

[103] ILO: *Working time: Reduction of hours of work, weekly rest and holidays with pay*, 1984, op. cit., para. 166.

[104] See *Morocco* – CEACR, Convention No. 106, direct request, published in 2009.

[105] See *Afghanistan* – CEACR, Convention No. 106, direct request, published in 2014.

[106] See *Bahamas* – CEACR, Convention No. 14, direct request, published in 2011; *Bahrain* – CEACR, Convention No. 14, direct request, published in 2010.

[107] ILO: GB.326/INS/15/8, op. cit., paras 47 and 55.

[108] ibid., para. 47.

Seasonal establishments or establishments in particular towns or areas

228. The legislation in some countries contains special provisions allowing exceptions to normal weekly rest schemes in establishments which operate for part of the year due to seasonal fluctuations or which depend on natural energy or other variable circumstances (such as establishments using water or wind as their sole motive power, occupations carried on in the open air and in which work may be held up by bad weather, or on grounds of geographical location or the size of the towns in which establishments are situated). [109] For example, among non-ratifying countries, the Labour Law in *Cambodia* provides that, in enterprises where bad weather results in days off, these forced days off may be deducted from weekly rests up to a maximum of two days a month. [110] Moreover, in the same country, in seasonal industries or industries that process perishable goods or food that are sensitive to bad weather, the weekly rest may be suspended as an exception with the authorization of the labour inspector. An order of the ministry responsible for labour shall list these industries, as well as the provisions governing compensatory time off.

229. Among ratifying countries, [111] the Labour Code in *France* provides that, in certain industries which only operate for part of the year, and in certain seasonal establishments partly or wholly operating for a period of the year, weekly rest may be partly deferred, on condition that each worker receives at least two days of rest a month, as far as possible on Sundays. [112] The relevant list of industries and establishments shall be determined by decree. Moreover, the Labour Code provides that retail establishments selling goods and services situated in "international tourist areas" are authorized to grant weekly rest to all or part of their staff on a rotating basis. [113]

Distant geographical locations

230. The national legislation [114] in some countries excludes workers from weekly rest on the grounds of geographical location. A very common example is offshore work. For example, in *Cyprus*, the Organisation of Working Time Act provides that derogations from the provisions on weekly rest are allowed by means of collective agreements or agreements between employers and representatives of workers, in activities involving the

[109] ILO: *Weekly rest in industry, commerce and offices*, 1964, op. cit., paras 122–123.

[110] Sections 155, 156 and 157 of the Labour Law.

[111] Other examples include: *Luxembourg* (section L.231-5 of the Labour Code: "A Grand-Ducal regulation, adopted in consultation with the Council of State, may derogate the prohibition of work on Sunday for activities that: use water as their main or exclusive source; need to be carried out on Sunday to satisfy public needs; are seasonal or are carried out only during one part of the year; are carried out in the public interest"); *Belgium* (section 14(2) of the Labour Act of 1971: "In seaside or health resorts or in touristic centres, workers may be employed on Sunday in retail shops and hair salons. The King shall determine: (1) what is meant by seaside resort, health resort and tourist centres; and (2) under what conditions and limits workers may be employed on Sunday." Section 15 of the Labour Act: "The King can allow the workers to be employed during 12 Sundays a year, but not for more than four consecutive weeks, in the following cases: (1) in industries which operate only during part of the year or whose activity is more intense in certain seasons; (2) in industries which operate in open air and when the work can be interrupted by bad weather. An employer who undertakes work on Sunday on the basis of the first line of this section shall notify within 24 hours the official designated by the King."); and *Tunisia* (section 103 of the Labour Code: "Outdoor industries which work only at certain times of the year, may suspend weekly rest fifteen times a year").

[112] Section L.3132-7 of the Labour Code.

[113] Section L.3132-24 of the Labour Code.

[114] For example, *Egypt* (section 84 of the Labour Code); *Greece* (section 14(2)(1)(a) of Presidential Decree No. 88/1999); *Latvia* (section 140(2)(1) of the Labour Law); *Norway* (section 10–12(6)); and *Tunisia* (section 101 of the Labour Code).

element of distance between the place of work and place of residence of workers, such as offshore work, or where different places of work are distant from one another. [115] The Government of *Croatia* reports that, under the Labour Act, the employer may provide for derogations from the provisions on weekly rest, on condition that the worker is afforded equivalent periods of compensatory rest when the worker's place of work and place of residence are distant, or where the worker's different places of work are distant from one another. [116] In *Malta*, the Organisation of Working Time Regulations [117] provide that the regulation of weekly rest does not apply in relation to activities where the worker's place of work and place of residence are distant from one another, including offshore work, or where different places of work with the same employer are distant from one another. The Government of *Uzbekistan* reports that, when it is not possible for workers to return to their place of permanent residence each day, the workers are employed under a special work and rest scheme consisting of them staying in specially constructed camps for no more than a month and benefiting from their weekly rest days on a cumulative basis. In *Argentina*, Collective Agreement No. 545 of 2008 for construction workers in oil and gas fields provides in clause 16 that, when the employer operates a continuous and uninterrupted working regime and workers stay in the camp or offshore, they shall be granted compensatory rest of nine days for every 21 days effectively worked.

Shiftworkers and other categories of workers

231. As indicated in the previous General Surveys on this subject, guards and caretakers, workers performing preparatory and supplementary functions of maintenance and cleaning, which must be carried out on the collective rest day, and shiftworkers, are among the categories most frequently subject to exceptions from normal weekly rest schemes.

232. In particular, there are provisions in many countries exempting shiftworkers from normal weekly rest schemes. In some cases, no criteria are set to identify when shift work is exempt from the normal weekly rest scheme. For example, among non-ratifying countries, the Labour Code in *Qatar* [118] provides that, with the exception of shiftworkers, a worker shall not be required to work more than two consecutive Fridays. The Government of *Seychelles* [119] reports that, except in an essential service, an employer shall not require a worker other than a shiftworker or guard to work on public holidays. [120]

233. In other cases, the legislation includes either a brief description of the reasons justifying shift work or a procedure to determine when shift work is required. For example, among non-ratifying countries, in *Singapore*, under the Employment Act, no employee shall be compelled to work on a rest day unless engaged in work which by reason of its nature requires to be carried on continuously by a succession of shifts. In the event of any dispute, the Commissioner has the power to decide whether or not an employee is engaged

[115] Section 16(2)(a) of the Organisation of Working Time Act.

[116] Section 89(1) of the Labour Act.

[117] Section 15 of the Organisation of Working-time Regulations.

[118] Section 75 of the Labour Code.

[119] The Employment (Conditions of Employment) Regulations 1991 (SI 34 of 1991), Regulation 5.

[120] Other examples include: *South Africa* (section 6(5) of the Code of Good Practice on the Arrangement of Working Time which gives effect to section 87(2) of the Basic Conditions of Employment Act: "Rest periods for shiftworkers should be scheduled to fall on weekends a certain minimum number of times during a given period"); and *United Kingdom* (section 22 of the Working Time Regulations: "Paragraphs (1) and (2) of section 11 do not apply in relation to a shiftworker when he changes shift and cannot take a weekly rest period between the end of one shift and the start of the next one").

in such work. [121] Among ratifying countries, Act No. 20744 in *Argentina* provides that, in the event of shift work, adopted either in order to ensure the continuity of operation, economic needs or convenience of the establishment, or for technical reasons inherent to the nature of the establishment, the weekly rest of shiftworkers shall be granted at the end of each rotation cycle in the framework of the system. [122]

234. ***After examining the measures regulating establishments and categories of workers subject to special weekly rest schemes, in accordance with national law and practice, the Committee emphasizes the fundamental importance of taking into account both social and economic considerations in determining the circumstances under which such special schemes may be introduced, in the context of the country concerned, on the basis of the criteria set out in the Conventions.***

(ii) Compensation for special weekly rest schemes: Main features

Box 2.7

Article 5 of Convention No. 14 provides that:

Each Member shall make, *as far as possible*, provision for compensatory periods of rest for the suspensions or diminutions made in virtue of Article 4, except in cases where agreements or customs already provide for such periods.

Article 7(2) of Convention No. 106 provides that:

2. All persons to whom such special schemes apply shall be entitled, in respect of each period of seven days, to rest of a total duration at least equivalent to the period provided for in Article 6 (comprising not less than 24 hours in the course of each period of seven days).

235. With regard to compensation in the case of special weekly rest schemes, Convention No. 106 is once again more rigorous than Convention No. 14. The inclusion of the wording "as far as possible" in Article 5 of Convention No. 14 was intended to affirm the principle of compensatory rest, while taking into account the technical or other difficulties which might prevent the granting of compensatory rest in some cases. [123] In contrast, the intention behind Article 7(2) is to ensure that a period of rest comparable with that provided under the general scheme is always granted to workers to whom the general rules are not applicable. In these cases, one or more of the features of weekly rest, such as regularity, continuity, simultaneity, choice of day and respect for traditions and customs, have to be modified. The rest is taken on a day other than that prescribed by the normal scheme; it is not always taken at seven-day intervals and it may be fragmented. Nevertheless, as recalled in the preparatory work for Convention No. 106, even when rest is subject to periodicity of an unusual kind, or is broken down in several periods, its overall duration corresponds to that of the weekly rest provided under the normal scheme. [124] In other words, only the duration is equivalent.

236. The objective of Article 7(2) is to provide a basis for special arrangements (subject to the limiting or safeguarding provisions of paragraphs (1), (3) and (4)), without attempting to go into detail concerning the distribution of the rest. The Article does not

[121] Section 37(1) of the Employment Act.

[122] Section 202 of Act No. 20744.

[123] See ILO: *Weekly rest in industry, commerce and offices*, 1964, op. cit., para. 133.

[124] ILO: *Weekly rest in commerce and offices*, Report VII(1), 1956, op. cit., p. 50; and ILO: *Weekly rest in commerce and offices*, Report V(2), ILC, 40th Session, Geneva, 1957, p. 18.

provide for an uninterrupted rest period granted each week, [125] as clearly emerges from the preparatory work for Convention No. 106. The intention is to ensure that the persons to whom special schemes apply are entitled to rest periods of an aggregate duration at least equal to that provided under normal arrangements, while at the same time leaving it open as to when or how such rest is actually taken. [126]

Methods for fixing of compensatory rest

237. Various methods are adopted by national legislation to organize the granting of compensatory rest to workers. Those most frequently used include: (a) the rotation system; and (b) the transfer of the rest period simultaneously for all staff to a day other than the normal rest day, or the granting of half of the rest period on the rest day, with the other half being postponed until the next day or some other time.

- Rotation system

238. In establishments where production cannot be interrupted, this system consists of granting weekly rest to the whole or part of the staff on the basis of an internal weekly rota. Examples of countries where the legislation provides for this system include *Benin*, [127] *Mauritius* [128] and *Morocco*. [129]

- Transfer of the rest day to another day of the week

239. Examples of countries that adapt this approach are *Germany* and *Norway*. [130] In both cases, the legislation requires the rest day to fall on a Sunday a minimum number of times each year. [131]

240. In some countries, different methods of compensatory rest are used depending on the category of the establishment or the choice of the workers. For example, in *Cambodia*, where the Labour Law provides that, when granting all staff Sunday off would be detrimental to the public or jeopardize the normal operation of the enterprise, the rest must be arranged as follows: (a) giving all staff rest on a day other than Sunday; (b) rest from Sunday noon to Monday noon; or (c) rest by rotating all staff, [132] the necessary authorizations have to be requested from the ministry responsible for labour. Similarly, in the *Central African Republic*, the Labour Code [133] provides that, when granting weekly rest simultaneously to all the staff of an undertaking on Sunday would be harmful to the public or would compromise the normal functioning of the establishment, the weekly rest may exceptionally and for clearly established reasons, be granted either by rotation or simultaneously to all the staff on a day other than Sunday. [134] In *Nicaragua*, the Labour

[125] If this were the case, the whole of Article 7 would serve little purpose, for the position would already have been covered in Article 6 and the object of including provisions for special schemes would have been lost. ILO: *Weekly rest in commerce and offices*, 1957, op. cit., p. 19.

[126] In the preparatory work, it was clarified that Article 7 establishes a measure of rest to which a worker is entitled but, as distinct from Article 6, it does not establish the time at which the rest must be granted. ibid., p. 19.

[127] Section 3 of Order No. 035.

[128] Section 14(5) of the Employment Rights Act (Sundays at least twice a month).

[129] Section 207 of the Labour Code.

[130] *Germany* (section 11(1) of the Hours of Work Act); *Norway* (section 10-8(4)).

[131] In *Germany* at least 15 Sundays in the year must be free and in *Norway* at least one Sunday every four weeks.

[132] Section 148. Section 149 lists the establishments which use this system.

[133] Section 277(1) of the Labour Code.

[134] Another example is *Uruguay* (section 2 of Act No. 7318 of 1920).

Code [135] provides that, in case of permanent exceptions, weekly rest may be taken: (a) on a day of the week (other than Sunday) simultaneously for the whole staff, or by rotation; (b) between noon on Sunday and noon the following day; (c) on a rotating basis, replacing the rest day with two half days.

- Absence of specific technical details

241. The Committee observes that, in general, the national legislation regulating special weekly rest schemes provides for compensation in time. However, in some cases this is not clearly stated. [136] In this respect, the Committee has indicated that, as the employment relationship is characterized by the subordination of workers to their employer, there is a risk of abuse arising out of the difficulty of ensuring, in the absence of any legal or regulatory framework, that the interests of employees are duly taken into account when compensatory rest periods are fixed. [137] In this respect, the Committee has recalled that, in the case of exceptions, compensatory rest is compulsory, not optional. [138]

242. ***The Committee emphasizes the importance of ensuring in so far as possible that provision is made for the compensatory rest due to persons called upon to work on a weekly rest day, as such weekly rest is justified by the need to protect the health and well-being of workers.***

Deferral and splitting

243. It should be noted that, during the first discussion of Convention No. 106, two issues related to the use of special schemes were raised: that the grant of weekly rest could be unduly deferred, and that it could be split up into excessively short periods. However, the proposals designed to place some limitation on such issues, so as to prevent them being applied in such a way as to effectively deprive workers of their weekly rest, were rejected by large majority with the clear intention of maintaining the flexibility of the Article. [139] In this respect, and in line with the decision of the 1956 Conference Committee to deal with the general aspects of weekly rest in the Convention, supplemented by the detailed provisions in the Recommendation, it was decided to include provisions in Recommendation No. 103 to provide guidance on the limits that should be placed on the application of special schemes. [140] The Recommendation calls for special rest schemes to ensure that: (a) persons to whom such special schemes apply do not work for more than three weeks without receiving the rest periods to which they are entitled; and (b) that, where it is not possible to grant rest periods of 24 consecutive hours, rest periods comprise not less than 12 hours of uninterrupted rest.

244. For example, among non-ratifying countries, the Labour Code [141] in *Cabo Verde* provides that, when work is carried out during the compulsory weekly rest period, the worker is entitled to a compensatory rest day, which shall be granted within the following three days. In *Iceland*, the worker receives the corresponding rest time later, and in all

[135] Section 70 of the Labour Code.

[136] For instance, *Gabon* and *New Zealand*.

[137] See *Côte d'Ivoire* – CEACR, Convention No. 14, direct request, published in 2014; and *Bangladesh* – CEACR, Convention No. 106, direct request, published in 2009.

[138] See *Gabon* – CEACR, Convention No. 106, direct request, published in 2014; and *Afghanistan* – CEACR, Convention No. 106, direct request, published in 2009.

[139] ILO: *Weekly rest in commerce and offices*, Report V(2), 1957, op. cit., p. 19.

[140] ibid.

[141] Section 65(2) of the Labour Code.

cases within 14 days. Where special circumstances render such a modification necessary, it may however be decided by agreement in the workplace to postpone the weekly rest period so that, instead of a weekly rest day, two consecutive rest days are granted every two weeks. [142] The Government of *Germany* reports that, in accordance with the Hours of Work Act, [143] if workers are employed on Sunday, they must have a day of rest in compensation, which shall be granted within a period of two weeks.

245. In some cases, weekly rest is accumulated and added to annual leave. For example, in *Kenya*, in accordance with General Order 1990, [144] an employer and the employee may, by mutual consent, agree to the deferral of the employee's rest day and the rest day so deferred may be taken by the employee on a subsequent day or may, subject to a maximum accumulation of 14 such rest days at any one time, be accumulated and taken as leave with full pay in addition to the employee's entitlement to annual leave with full pay. The Committee has noted that this practice is not consistent with Article 7(2) of the Convention, the objective of which is to protect the health and welfare of workers by ensuring that they are granted a regular minimum period of rest. [145]

246. The legislation in other countries defers the granting of the weekly rest beyond the limit suggested in Recommendation No. 103, or does not specify a limit. In *Burkina Faso*, under the terms of Order No. 1244 FPT/DGTLS, [146] specialists engaged in continuous production or in factories which operate continuously may have their weekly rest period deferred, on condition that they are subsequently granted a number of rest periods of 24 consecutive hours at least equal to the number of weeks in the period giving rise to the exception. Other examples include: *Finland*, [147] *Syrian Arab Republic*, [148] *Thailand* [149] and *the former Yugoslav Republic of Macedonia*. [150] In some cases, deferral beyond the limits suggested in Recommendation No. 103 is possible by agreement, as is the case in *Slovenia*, where collective agreements allow weekly rest to be deferred for up to six months. [151]

247. In this respect, the Committee has recalled that, although the Convention does not establish a time limit for granting compensatory time off, respect for the spirit of the Convention requires that it should be granted within a reasonably short period of time. The Committee recalls, on the basis of Paragraph 3(a) of Recommendation No. 103, that persons to whom special schemes apply should not work for more than three weeks without receiving the rest periods to which they are entitled. [152]

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[142] Section 54(2) of the Working Environment, Health and Safety in Workplaces Act No. 46/1980.

[143] Section 11(3) and (4) of the Hours of Work Act.

[144] Section 7 of General Order 1990.

[145] See *Cameroon* – CEACR, Convention No. 106, direct request, published in 2009.

[146] Section 12 of Order No. 1244 FPT/DGTLS.

[147] Section 31(1) or (2) of the Working Hours Act (three months).

[148] Section 109(d) of the Labour Code (eight weeks).

[149] Section 28(2) of the Labour Protection Act (four weeks).

[150] Section 136(3) of the Law on Labour Relations (six months).

[151] Section 158(2) and (3) of the Employment Relationship Act (ZDR-1).

[152] See *Bangladesh* – CEACR, Convention No. 106, direct request, published in 2014; *Belgium* – CEACR, Convention No. 14, direct request, published in 2014; and *Bosnia and Herzegovina* – CEACR, Convention No. 106, direct request, published in 2014.

248. It is important to note that all categories of workers to whom special schemes apply, due to the nature of their work, should be accorded compensatory rest without delay. The Committee set up to examine the representation alleging non-observance by *Spain* of Convention No. 106 requested that in practice judges benefit from the equivalent of a minimum of 24 hours of rest every seven days worked, in accordance with the Convention. [153]

249. ***Recalling that, in accordance with the spirit of the Convention, workers who may be subject to special weekly rest schemes should not be deprived of the weekly rest periods to which they are entitled for unreasonably long periods, the Committee emphasizes the importance of ensuring that workers are not required to work excessively long periods*** [154] ***without enjoying the weekly rest to which they are entitled.***

Financial compensation in addition to time off

250. The Committee is pleased to observe that, in some countries, workers who work on their rest day are entitled not only to a time-off in compensation, but also to financial compensation. For example, in *Equatorial Guinea*, Act No. 10/2012 [155] provides that, when undertakings due to public interest or technical reasons are exempted from closing on Sundays, workers who work on their rest day shall have the right to compensatory rest the next week, as well as a premium of at least 50 per cent of the normal wage for an ordinary workday. In *Honduras*, the Labour Code [156] envisages for special weekly rest schemes a day off on another day, and double the wage for an ordinary workday. Other examples include *Romania* where, in the event of work on rest days due to public interest or for other reasons, the Labour Code envisages a day off on another day, as well as additional pay, as laid down in the collective agreement or the individual employment contract, [157] and *Mauritius*, where the Employment Rights' Act provides for a day off and the payment of remuneration at twice the rate for the normal working hour. [158]

[153] In this representation, the Independent Judicial Forum of Spain alleged, among other things, that sections 60(3)(c), 61(1), 61(2) and 61(4) of Regulation No. 1/2005 affect the right of judges to weekly rest, as they provide that in judicial districts with only one court of first instance and preliminary investigation, the tenured judge of the court must remain on call and constantly available for a period of 12 consecutive days, with no opportunity to rest after completing duty work and that, as a consequence of excess hours worked outside duty times, the tenured judge may be granted compensatory time off within one month, provided that there are no proceedings pending or hearings scheduled. In this respect, the Committee considered that the fact that the compensatory weekly rest is contingent on there being no proceedings pending or hearings scheduled and that the system of absences may be suspended in cases where its application would seriously disrupt the normal functioning of the court in question may give rise in practice to a situation of non-compliance with Article 7(2) of the Convention, under which ordinary judges in these courts are entitled to an equivalent of 24 hours' rest for every seven days worked. ILO: Report of the Committee set up to examine the representation alleging non-observance by Spain of the Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106), made under article 24 of the ILO Constitution by the Independent Judicial Forum Professional Association, Governing Body, 328th Session, November 2016, GB.328/INS/17/9, paras 32 and 38.

[154] Recommendation No. 103 calls for three weeks as the maximum time without receiving rest periods.

[155] Section 58(1) to (3) of Act No. 10/2012.

[156] Section 340 of the Labour Code.

[157] Section 137(3) and (4) of the Labour Code.

[158] Section 14(1)(b) of the Employment Rights' Act.

Financial compensation as an option instead of time off

251. In some countries, [159] in the case of special weekly rest schemes, the legislation provides for financial compensation as an option instead of time off. For example, in *Namibia*, the Labour Act provides that an employer must pay an employee who works on Sunday double the corresponding basic hourly wage, or one-and-a-half times the corresponding basic hourly wage if the employer grants the employee an equal period of time off work during the following working week, with the agreement of the employee. [160] In *Bahrain*, the Labour Act provides that an employer may require a worker to work on the weekly rest day if so required by the circumstances of the work, in which case the worker shall have the choice between receiving an additional wage equivalent to 150 per cent of the normal wage, or another day of rest. [161] In *Lithuania*, the Labour Code [162] provides that work on a rest day or a public holiday, which has not been provided for in the work schedule, shall be paid at least at double the rate of the employee's wage or, at the request of the employee, compensated for by granting the employee another rest day during the month or by adding that day to the annual leave and paying the average wage for those days. In *Ecuador*, [163] the Basic Act reforming the Basic Act on the Public Service and the Labour Code provides that, in private sector industries which, due to the nature of their activities, cannot be interrupted during compulsory rest days, a compensatory period of rest must be granted by agreement between the employer and the workers, or the workers must be paid their remuneration with the corresponding premium for overtime.

252. ***In this respect, the Committee has recalled that the Convention requires workers who are deprived of their weekly rest to be granted compensatory rest in all cases, irrespective of any monetary compensation.*** [164] ***The Committee has also recalled that the entitlement to weekly rest may not be deferred at the worker's or employer's unlimited discretion, or replaced by monetary compensation, as it is commonly accepted that a minimum of rest and leisure every week is essential for workers' health and well-being and is an absolute requirement under Articles 7(2) and 8(3) of the Convention.*** [165]

253. ***The Committee emphasizes the importance for workers' health and well-being of granting compensatory rest of at least 24 hours in cases where a worker is required for whatever reason to perform work on the weekly rest day.***

[159] Other examples include: *Peru* (section 3 of Legislative Decree No. 713 of 1997); *Samoa* (section 38(2) of the Labour and Employment Relations Act, 2013); and *Spain* (section 47 of Royal Decree No. 2001/1983).

[160] Section 21(5) and (6) of the Labour Act.

[161] Section 57(b) of the Labour Act.

[162] Section 194(1) of the Labour Code.

[163] Third provision of the Basic Act reforming the LOSEP.

[164] See *Azerbaijan* – CEACR, Convention No. 14, direct request, published in 2014; and *Jordan* – CEACR, Convention No. 106, observation, published in 2014.

[165] ibid.

(b) Temporary exemptions

Box 2.8
Circumstances and compensation

Article 4(1) of Convention No. 14 provides that:

1. Each Member may authorise total or partial exceptions (including suspensions or diminutions) from the provisions of Article 2, special regard being had to all proper humanitarian and economic considerations and after consultation with responsible associations of employers and workers, wherever such exist.

Article 8(1) of Convention No. 106 provides that:

1. Temporary exemptions, total or partial (including the suspension or reduction of the rest period), from the provisions of Articles 6 and 7 may be granted in each country by the competent authority or in any other manner approved by the competent authority which is consistent with national law and practice –

(a) in case of accident, actual or threatened, force majeure or urgent work to premises and equipment, but only so far as may be necessary to avoid serious interference with the ordinary working of the establishment;

(b) in the event of abnormal pressure of work due to special circumstances, in so far as the employer cannot ordinarily be expected to resort to other measures;

(c) in order to prevent the loss of perishable goods.

254. While in Convention No. 14, Article 4 applies to both temporary and permanent *exceptions*, Article 8 of Convention No. 106 provides for temporary *exemptions* from both normal and special schemes in very precise circumstances. [166] These exemptions may take the form of a reduction of the normal weekly rest period, or a change in the time at which the rest is granted.

255. The intention behind the opening words of Article 8(1) of Convention No. 106, that temporary exceptions may be granted either by the competent authority or, after authorization of the competent authority, in a manner consistent with national law and practice, is to provide the flexibility needed to allow temporary exemptions to be dealt with in the manner most appropriate to national circumstances and practices, and which are also in conformity with the methods of application of the Convention envisaged in Article 1. [167]

256. The legislation in most reporting countries contains provisions envisaging temporary exemptions from normal weekly rest schemes in very diverse circumstances. The circumstances found most frequently in the legislation of countries that have ratified one

[166] The terms “exceptions” and “exemptions” will be used interchangeably throughout this chapter.

[167] ILO: *Weekly rest in commerce and offices*, Report V(2), op. cit., p. 23.

of the Conventions, [168] or neither of them, [169] are accidents, force majeure and urgencies. Other circumstances envisaged in national legislation, although far less frequently, include abnormal pressure of work [170] and prevention of the loss of perishable goods. [171]

257. The legislation in some countries uses wording that attempts to limit recourse to such exemptions, as in Article 8 of Convention No. 106. Examples include: *Austria* ("in the event of unforeseen and unavoidable reasons and if other reasonable measures are not possible for this purpose"); [172] *Chile* ("on condition that repairs cannot be delayed"); [173] and *Malawi* ("but only in so far as may be necessary to avoid serious interference with the ordinary working of the undertaking"). [174]

[168] **Among ratifying countries**: *Antigua and Barbuda* (section 24(4)(d) to (f) of the Labour Code); *Argentina* (sections 3 and 5 of Act No. 18204 of 1969, read in conjunction with sections 203 and 204 of Act No. 20744 of 1976); *Azerbaijan* (section 101(1)(a) of the Labour Code); *Belarus* (section 143(1) to (4) of the Labour Code); *Belgium* (section 12 of the Labour Act of 1971); *Benin* (section 3 of Order No. 035/MFPTRA/DC/SGM/DT/SRT of 1998); *Bosnia and Herzegovina* (section 46(2) of the Labour Law); *Brazil* (section 8 of Decree No. 27048 of 1949); *Bulgaria* (section 144 of the Labour Code); *Burundi* (section 9 of Ministerial Ordinance No. 650/22 of 1984); *Cameroon* (section 10-12 of Ministerial Decree No. 22 of 1969); *Chile* (section 38(1) of the Labour Code); *Cuba* (section 120 of the Labour Code); *Cyprus* (section 16(2)(f) and (g) of the Organisation of Working Time Act); *Czech Republic* (section 91(3)(e) of the Labour Code); *Denmark* (section 52 of the Working Environment Act); *Dominican Republic* (section 153 of the Labour Code); *Ecuador* (section 45(c) and 52(1) of the Labour Code); *Ethiopia* (section 71(1) and (2) of Labour Proclamation No. 377/03); *France* (section L.3132-4 of the Labour Code); *Gabon* (section 3 of Decree No. 726/PR/MTEFP); *Hungary* (section 108(2) of the Labour Code); *Iraq* (section 71(1)(a) of the Labour Code); *Kuwait* (section 66 of the Law on Labour in the Private Sector No. 6 of 2010); *Latvia* (section 143(4) of the Labour Law); *Luxembourg* (section L.231-3 of the Labour Code); *Madagascar* (section 13 of Decree No. 62-150 of 1962); *Malta* (section 15(f) of the Organisation of Working Time Regulations); *Morocco* (section 2 of Decree No. 2-04-513 of 2004); *Nicaragua* (section 59 of the Labour Code); *Norway* (section 70 of the Labour Code, as amended by Royal Decree No. 113/2011); *Poland* (section 133(2) of the Labour Code); *Portugal* (section 227(2) of the Labour Code); *Romania* (section 138(1) of the Labour Code); *Russian Federation* (section 113 of the Labour Code); *Senegal* (section 10 of Decree No. 73-085 of 1973); *Slovakia* (section 94(3)(a) and (e) of the Labour Code); *Switzerland* (section 12(1) of the Labour Law); *Syrian Arab Republic* (section 110(a)(2) of Labour Act No. 17 of 2010); *Tajikistan* (section 87(2) of the Labour Code of 2016); *Thailand* (section 25 of the Labour Protection Act); *Tunisia* (section 98 of the Labour Code); *Ukraine* (section 71 of the Labour Code); and *Uruguay* (section 2(3) of Act No. 7318 of 1920).

[169] **Among countries not having ratified either of the Conventions**: *Austria* (section 11(a) and (2) of the Act on rest days); *Cambodia* (section 11 of the Labour Law); *Germany* (section 14 of the Hours of Work Act); *Iceland* (section 54(3) of the Working Environment, Health and Safety in Workplaces Act No. 46/1980; *Japan* (section 33 of the Labour Standards Act); *Kazakhstan* (section 86(1) of the Labour Code); *Malawi* (section 38(1)(a) of Employment Act No. 6 of 2000); *Republic of Moldova* (section 104(2) and (3) of the Labour Code); *Namibia* (section 21(a) of the Labour Act); *Philippines* (section 92(a) and (b) of the Labour Code); *Singapore* (section 38(2) of the Employment Act); *Sudan* (section 43(1) of the Labour Act); *Turkmenistan* (section 80 of the Labour Code); and *United Kingdom* (section 21(e) of the Working Time Regulations).

[170] **Among ratifying countries**: *Bosnia and Herzegovina* (section 46(2) of the Labour Law); *Bulgaria* (section 144 of the Labour Code); *Iraq* (section 71(3) of the Labour Code); *Madagascar* (section 13 of Decree No. 62-150 of 1962); *Morocco* (section 2 of Decree No. 2-04-513 of 2004); *Portugal* (section 227(1) of the Labour Code); *Switzerland* (sections 19 and 20 of the Labour Law); *Syrian Arab Republic* (section 110(a)(1) of Labour Act No. 17 of 2010); *Tajikistan* (section 87(2) of the Labour Code of 2016). **Among non-ratifying countries**: *Malawi* (section 38(1)(b) of Employment Act No. 6 of 2000); and *Philippines* (section 92(c) of the Labour Code).

[171] **Among ratifying countries**: *Belgium* (section 12 of the Labour Act of 1971); *Bosnia and Herzegovina* (section 46(2) of the Labour Law); *Cambodia* (section 156 of the Labour Law); *Madagascar* (section 13 of Decree No. 62-150 of 1962); *Senegal* (section 11 of Decree No. 73-085 of 1973); *Tunisia* (section 104 of the Labour Code). **Among non-ratifying countries**: *Malawi* (section 38(1)(c) of Employment Act No. 6 of 2000); and *Philippines* (section 92(d) of the Labour Code).

[172] Section 11(a) and (2) of the Act on rest days.

[173] Section 38(1) of the Labour Code.

[174] Section 38(1)(a) of Employment Act No. 6 of 2000.

258. The legislation in other countries uses very broad wording. Examples include *Bahrain* ("if so required by the circumstances of the work"), [175] *Sri Lanka* ("unforeseen circumstances") [176] and *Sweden* ("special circumstances"). [177] In this respect, the Committee has consistently recalled that recourse to exemptions from the general 24-hour weekly rest rule should be kept to what is strictly necessary and has emphasized the need to specify conditions under which total or partial exemptions to the normal weekly rest scheme may be authorized, while avoiding provisions that are too broad. [178]

259. Finally, some countries do not regulate temporary exceptions. [179]

260. ***The Committee emphasizes the importance of keeping recourse to exemptions from the general 24-hour weekly rest rule to what is strictly necessary, and for such exemptions to be authorized under clearly specified conditions.***

Box 2.9
Compensation in case of temporary exemptions to normal weekly rest

Article 8(3) of Convention No. 106 provides that:

> Where temporary exemptions are made in accordance with the provisions of this Article, the persons concerned shall be granted compensatory rest of a total duration at least equivalent to the period provided for under Article 6.

261. The Committee is pleased to note that most countries grant some kind of compensation for temporary exceptional work during weekly rest days. It is also pleased to note that the legislation in some countries provides for both financial compensation and compensatory time off for workers who work on the normal weekly rest day. [180]

262. However, the Committee notes that the national legislation in a number of countries provides for time off in the case of work during weekly rest periods, but includes such wording along the lines of "as soon as circumstances permit" or "in case compensatory rest is not possible, appropriate protection will be granted by the employer". For example, among non-ratifying countries, the Working Time Regulations [181] in the *United Kingdom* provide that, when a worker is required by the employer to work during a period which would otherwise be a rest period or rest break: (a) the employer shall wherever possible allow the worker to take an equivalent period of compensatory rest; and (b) in exceptional cases in which it is not possible, for objective reasons, to grant such a period of rest, the employer shall afford the worker such protection as may be appropriate in order to safeguard the

[175] Section 57(b) of the Labour Act.

[176] Section 5(2) of the Shop and Office Employees Act.

[177] Section 14(3) of the Working Hours Act.

[178] See *Islamic Republic of Iran* – CEACR, Convention No. 14, direct request, published in 2014; *Belize* – CEACR, Convention No. 14, direct request, published in 2014; and *Luxembourg* – CEACR, Convention No. 14, direct request, published in 2014.

[179] For instance, **among ratifying countries**, *Zimbabwe*, and **among non-ratifying countries**, *South Africa* and *United States*.

[180] **Among non-ratifying countries**: *El Salvador* (section 175 of the Labour Code); *Malawi* (section 38(2) of Employment Act No. 6 of 2000). **Among ratifying countries**: *Egypt* (section 85 of the Labour Code); *Equatorial Guinea* (section 58(2) and (3) of Act No. 10/2012); *Kuwait* (section 67 of the Law on Labour in the Private Sector No. 6 of 2010); *Switzerland* (section 20 of the Labour Law); *Suriname* (section 13(1) of the Labour Act); and *Slovenia* (sections 156(2) and 128 of the Employment Relationship Act (ZDR-1)).

[181] Section 24 of the Working Time Regulations.

worker's health and safety. Among ratifying countries, the Labour Code [182] in *Bangladesh* provides that, where a worker is deprived of any weekly rest, the worker shall be allowed, as soon as circumstances permit, compensatory rest, of equal number to the rests so deprived of. [183]

263. In this respect, the Committee has recalled that such wording, which provides that compensatory rest may in exceptional circumstances be replaced by "appropriate protection", is not fully consistent with Articles 7(2) and 8(3) of Convention No. 106, since granting compensatory rest of a total duration equivalent to the period provided for under Article 6 is an absolute requirement and must be granted in all cases of authorized exemptions from the basic 24-hour weekly rest rule. [184]

264. ***The Committee emphasizes the importance of ensuring that compensatory rest is granted without exception whenever deviations from the ordinary weekly rest schemes are authorized.***

265. Moreover, the Committee observes that the national legislation in a number of countries only provides for financial compensation in the case of temporary exceptions. [185] It also observes that, in other cases, the national legislation provides for the possibility for workers to choose between time off and financial compensation, in which case they may forgo their weekly rest entitlement, if they so wish, in exchange for overtime pay. [186] Finally, in a few cases, no compensation for exceptional work during the weekend is provided for in the legislation. [187]

266. In this respect, it should be recalled that, during the first discussion of Convention No. 106, wording was included allowing monetary compensation in lieu of compensatory rest, on condition that special wage rates could be prescribed through the appropriate machinery in each country. However, it was argued that such a provision would negate the principle of weekly rest, [188] and that the provision could be so applied in practice as to result in the complete elimination of weekly rest. [189] As the Committee has noted, if cash compensation were allowed to become the rule, it would have the effect in practice of

[182] Section 104 of the Labour Code.

[183] Similar provisions are contained in the legislation of the following countries: *Cyprus* (section 16(2) of the Organisation of Working Time Act); *Norway* (section 10-12(3), (6) and (7) of the Working Environment Act); *Denmark* (section 12 of Order No. 324 of 2002), and *Italy* (section 17(4) of Decree No. 66/2003).

[184] See *Denmark* – CEACR, Convention No. 106, direct request, published in 2014.

[185] **Among non-ratifying countries**: *Singapore* (section 37(2) and (3) of the Employment Act); *Philippines* (section 93 of the Labour Code). **Among ratifying countries**: *Benin* (section 3 of Order No. 035/MFPTRA/DC/SGM/DT/SRT of 1998); *Indonesia* (section 11(b) of Ministerial Decree No. KEP 102/MEN/VI/2004); *Islamic Republic of Iran* (section 62, note 1, paragraph 2, of the Labour Code); and *Thailand* (section 19 of the Notification of the State Enterprise Labour Relations Committee regarding the Minimum Standards of Conditions of Employment in State Enterprises (B.E. 2549 (2006) of 31 May 2006).

[186] **Among non-ratifying countries**: *Samoa* (sections 38(2) and 39(2) and (3) of the LERA); *Turkmenistan* (section 121 of the Labour Code); *Uzbekistan* (section 157(1) and (2) of the Labour Code). **Among ratifying countries**: *Azerbaijan* (section 164(2) of the Labour Code); *Bahrain* (section 57(b) of the Labour Act); *Belarus* (article 69(4) of the Labour Code); *Plurinational State of Bolivia* (section 31 of the GLA); *Brazil* (section 8 of Decree No. 27048 and section 9 of Act No. 605); *Colombia* (section 180 of the Substantive Labour Code); *Peru* (section 2 of Legislative Decree No. 713 of 1997); *Slovakia* (section 121 of the Labour Code); *Tajikistan* (section 88 of the Labour Code of 2016); *Ukraine* (section 72 of the Labour Code); and *Uruguay* (section 8 of Act No. 7318 of 1920).

[187] For instance, *Cameroon* (section 10-12 of Decree No. 22 of 1969); and *Madagascar* (sections 13, 14 and 15 of Decree No. 62-150 of 1962).

[188] ILO: *Weekly rest in commerce and offices*, Report V(2), 1957, op. cit., p. 22.

[189] ILO: *Record of Proceedings*, ILC, 40th Session, 1957, p. 717.

depriving workers of the rest to which they are entitled on a continuous basis. [190] ***It has also recalled, in this connection, that certain provisions of international labour Conventions seek occasionally to protect workers against what might initially appear to be their own "preferences", for instance in case they are tempted (for reasons of securing an additional financial gain) to renounce elementary protection rights, especially in terms of hours of work, weekly rest and annual holidays.*** [191] ***Accordingly, the Committee has consistently called for workers who are deprived of their weekly rest to be granted compensatory rest in all cases, irrespective of any monetary compensation.*** [192]

267. ***Recalling that the rationale for compensatory rest is the need to protect the workers' health and well-being, the Committee emphasizes the importance that any financial compensation is in addition to, and not in lieu of, the requisite compensatory rest.***

(c) Consultations

Box 2.10
Consultations in case of exceptions

Article 4 of Convention No. 14 provides that:

1. Each Member may authorise total or partial exceptions … after consultation with responsible associations of employers and workers, wherever such exist.

2. Such consultation shall not be necessary in the case of exceptions which have already been made under existing legislation.

Article 7(4) of Convention No. 106 provides that:

4. Any measures regarding the application of the provisions of paragraphs 1, 2 and 3 of this Article shall be taken in consultation with the representative employers' and workers' organisations concerned, where such exist.

Article 8(2) of Convention No. 106 provides that:

2. In determining the circumstances in which temporary exemptions may be granted in accordance with the provisions of subparagraphs (b) and (c) of the preceding paragraph, the representative employers' and workers' organisations concerned, where such exist, shall be consulted.

268. ***The Committee is pleased to observe that many governments report that the social partners are consulted regarding the application of exemptions.*** [193] ***However, the Committee also notes that a number of reporting countries either did not send any***

[190] See ILO: *Weekly rest in industry, commerce and offices*, 1964, op. cit., para 159.

[191] See *Bahrain* – CEACR, Convention No. 14, direct request, published in 2010.

[192] See *Azerbaijan* – CEACR, Convention No. 106, direct request, published in 2014; *Belarus* – CEACR, Convention No. 106, direct request, published in 2015.

[193] *Austria, Bangladesh, Belarus, Belgium, Benin, Bosnia and Herzegovina, Brazil, Burundi, Cambodia, Cabo Verde, Chile, China, Côte d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Egypt, Equatorial Guinea, Eritrea, Finland, France, Germany, Ghana, Honduras, Hungary, Iceland, India, Indonesia, Islamic Republic of Iran, Iraq, Italy, Japan, Kuwait, Latvia, Lithuania, Luxembourg, Madagascar, Malta, Mauritius, Republic of Moldova, Morocco, Netherlands, New Zealand, Norway, Oman, Peru, Poland, Portugal, Qatar, Romania, Samoa, Senegal, Serbia, Seychelles, Slovakia, Slovenia, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, the former Yugoslav Republic of Macedonia, Tunisia, Turkey, Turkmenistan, Ukraine, United Kingdom* and *Uzbekistan.*

information on this issue or report that no consultations have been held on the subject. [194]

269. In this respect, the Committee has consistently requested governments to hold consultations with the representative organizations of employers and workers concerned with regard to special weekly rest schemes and temporary exemptions from weekly rest. [195] It should also be noted that the committee set up to examine the representation alleging non-observance by *France* of Convention No. 106 emphasized the importance of effective consultation with the social partners regarding the determination of the categories of persons or establishments to whom a special scheme of weekly rest applies. [196]

270. ***The Committee emphasizes the importance of holding consultations with the social partners before introducing both permanent and temporary exceptions to weekly rest.***

Conclusions

271. In overall terms, the Committee welcomes the fact that the main aspects of the principle of weekly rest, namely duration, regularity, continuity and uniformity, are reflected in the legislation of the majority of reporting countries.

272. However, the Committee also observes that in a number of countries the permanent and temporary exceptions to the normal weekly rest scheme go beyond the exceptions allowed by the Conventions, mainly in the commerce and offices sector. The Committee also observes that, in a number of countries, financial compensation instead of compensatory time off is granted to workers called upon to work during rest days.

273. ***In this respect, the Committee highlights the fundamental importance of:***

- ***both social and economic considerations being taken into account when introducing special weekly rest schemes, in the context of the country concerned;***
- ***the social partners always being consulted before introducing such special schemes; and***
- ***both permanent and temporary exceptions being duly compensated with time off of a duration equivalent to the normal weekly rest provided for in national law and practice; moreover, this compensation should be granted to workers within an appropriate lapse of time in order to protect their health and safety, which is the purpose of the instruments.***

[194] For example, *Cameroon, El Salvador, Jamaica, Malawi, Namibia, Nicaragua, Philippines, Russian Federation, Singapore* and *Suriname.* See also Chapter VIII on this subject.

[195] See *Guinea-Bissau* – CEACR, Convention No. 106, direct request, published in 2015; *Dominican Republic* – CEACR, Convention No. 106, direct request, published in 2014; *Lesotho* – CEACR, Convention No. 106 direct request, published in 2014; *Syrian Arab Republic* – CEACR, Convention No. 106, published in 2014.

[196] ILO: GB.326/INS/15/8, para. 47, op. cit.

Chapter III. Annual holidays with pay

1. Introduction

274. Paid annual leave [1] is the period during which workers are given time away from their work while continuing to receive an income and to be entitled to social protection. [2] Paid annual leave is very important in the regulation of working time as it protects the health and well-being of workers; allows them to be with their families and helps them to be more productive; and limits working time over the course of the year. [3]

275. The first instrument on holidays with pay adopted by the ILO was the Holidays with Pay Convention, 1936 (No. 52), which applies to workers in industry, commerce and offices and fixes the minimum duration of annual leave at six working days after one year of continuous service. [4] The subsequent Holidays with Pay (Agriculture) Convention, 1952 (No. 101), leaves the determination of the length of paid annual leave to national legislation.

276. Finally, the Holidays with Pay Convention (Revised), 1970 (No. 132), revises Conventions Nos 52 and 101. During the preparatory work for Convention No. 132, it was emphasized that the standards set out in Convention No. 52 were out of date and needed re-examination in light of the technological change and economic progress that had taken place over the years. [5] Particular importance was placed on broadening the scope of application of the instrument to include agricultural workers and on extending the length of the minimum holiday to at least three weeks. [6]

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[1] The practice of granting annual holidays existed in a small number of countries in the nineteenth century and was reserved to state officials and public employees. At the turn of the century, certain private employers began to follow this practice on a very limited scale and these early measures were soon reflected in the legislation for a certain number of categories of workers such as apprentices, women workers, salaried employees, or persons employed in shops. The first texts entitling workers in general to an annual holiday with pay appeared after the First World War. By 1934, only 12 countries had adopted a legislation on annual holiday applying to wage and salary earners in general. See ILO: *Annual Holidays with Pay*, General Conclusions of the reports relating to Holidays with Pay Convention, 1936 (No. 52), the Holidays with Pay Recommendation, 1936 (No. 47), the Holidays with Pay Recommendation, 1954 (No. 98), and the Holidays with Pay (Agriculture) Convention, 1952 (No. 101). Part three of the report of the Committee, Geneva, 1964, para. 1.

[2] ILO: *Paid annual leave*, Conditions of Work and Employment Programme, Information Sheet No. WT-6, July 2004.

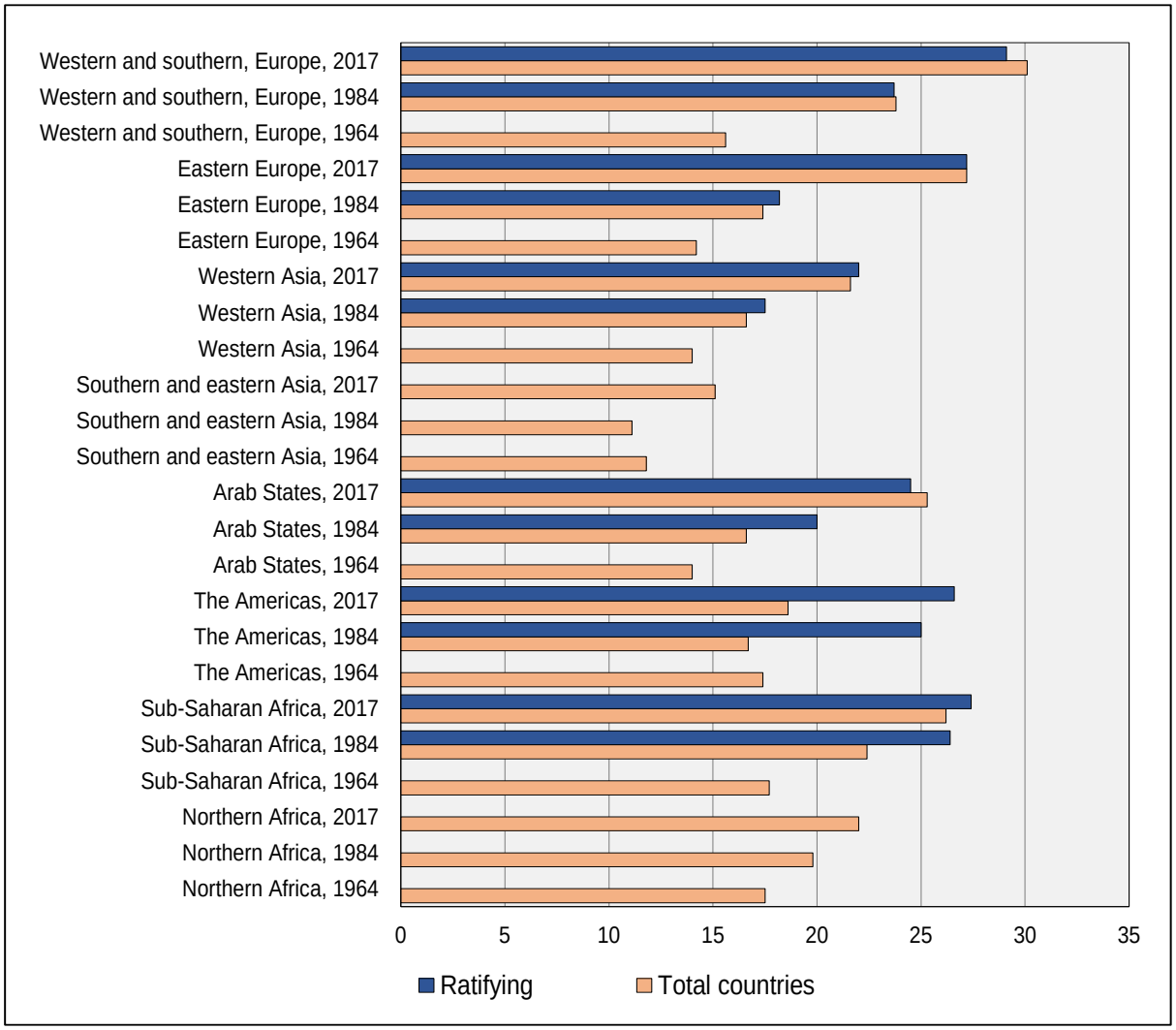
[3] ILO: *Working time in the twenty-first century*, Report for discussion at the Tripartite Meeting of Experts on Working-time Arrangements, Geneva, Oct. 2011, para. 49.

[4] ILO: *Working time: Reduction of hours of work, weekly rest and holidays with pay*, General Survey of the reports relating to the Reduction of Hours of Work Recommendation, 1962 (No. 116), the Weekly Rest (Industry) Convention, 1921 (No. 14), the Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106), and Recommendation (No. 103), and the Holidays with Pay Convention (Revised), 1970 (No. 132), ILC, Report III (Part 4B), 70th Session, 1984, para. 193.

[5] See ILO: *Record of proceedings*, ILC, 53rd Session, Geneva, 1969, p. 663.

[6] ibid., p. 664.

Figure 3.1. Evolution in the duration of paid annual leave (calendar days) [1] 1964–2017 (by region)



Sources: General Survey of 1964, General Survey of 1984 and data from reporting countries (2017).

[1] All time units used in national legislation to determine the length of annual leave are converted into calendar days using the following formulae: in the case of working days: CD = WD ÷ WWS (7); in the case of (working) weeks: CD = WW (7); in the case of months: CD = M (~30); in the case of working hours: CD = WH ÷ DWS ÷ WWS (7) (CD = calendar days, DWS = daily working scheme, M = month, WD = working days, WH = working hours, WW = working week, WWS = weekly working scheme).

277. From a historical perspective, as shown in figure 3.1, the statutory duration of paid annual leave has increased over recent decades in practically all regions, and in many cases goes beyond the minimum standards set not only by Convention No. 52, but also by Convention No. 132.

278. This chapter focuses on the two most recent instruments, Convention No. 132 [7] and Recommendation No. 98. [8]

[7] Convention No. 132 entered into force on 30 June 1973 and was ratified by 37 member States.

[8] Convention No. 132 is included in the group of 12 instruments on working time to be examined by the SRM TWG at a later date yet to be determined.

2. Content of the instruments and trends in national legislation

A. Scope and methods of application

(a) Scope of application and exclusions

Box 3.1

Article 2 of Convention No. 132 provides that:

1. This Convention applies to all employed persons, with the exception of seafarers.

2. In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organisations of employers and workers concerned, where such exist, to exclude from the application of this Convention limited categories of employed persons in respect of whose employment special problems of a substantial nature, relating to enforcement or to legislative or constitutional matters, arise.

3. Each Member which ratifies this Convention shall list in the first report on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organisation any categories which may have been excluded in pursuance of paragraph 2 of this Article, giving the reasons for such exclusion, and shall state in subsequent reports the position of its law and practice in respect of the categories excluded, and the extent to which effect has been given or is proposed to be given to the Convention in respect of such categories.

279. Paragraph 3 of Recommendation No. 98 excludes seafarers, agricultural workers and persons employed in undertakings or establishments in which only members of the employer's family are engaged, while Article 2(1) of Convention No. 132 only excludes seafarers from its scope of application. [9]

280. In most cases, provisions on annual leave apply to workers and employers who are bound by a contract of employment or an employment relationship [10] in the private and/or public sectors. [11]

281. In the national legislation civil servants or public sector employees and [12] military and police personnel, [13] are most frequently subject to special provisions on annual leave.

[9] Article 15(1) of Convention No. 132 provides that: "Each Member may accept the obligations of this Convention separately – (a) in respect of employed persons in economic sectors other than agriculture; (b) in respect of employed persons in agriculture." The purpose of this provision is to circumvent possible obstacles to ratification relating to the application of the Convention in agriculture. ILO: *Record of Proceedings*, ILC, 54th Session, Geneva, 1970, pp. 479–480. None of the countries that have ratified the Convention currently make use of this provision.

[10] For example, *Belarus* (section 3 of the Labour Code), *Croatia* (section 1 of the Labour Act), *Cuba* (section 4 of the Labour Code), *Ecuador* (section 1 of the Labour Code), *Estonia* (section 1 of the Employment Contracts Act), *Finland* (section 1 of the Working Hours Act), *Gabon* (section 1 of the Labour Code), *Ghana* (section 1 of the Labour Act), *Islamic Republic of Iran* (section 5 of the Labour Code), *Latvia* (section 2(1) of the Labour Law), *Mauritania* (section 1 of the Labour Code), *Nicaragua* (section 2 of the Labour Code), *Panama* (section 2 of the Labour Code), *Slovenia* (section 3 of the Employment Relationship Act) and *Togo* (section 1 of the Labour Code).

[11] For example, *Azerbaijan* (section 4 of the Labour Code), *Burundi* (section 14 of the Labour Code), *Equatorial Guinea* (section 3 of Act No. 10/2012) and *Syrian Arab Republic* (section 4 of the Labour Code).

[12] For example, *Algeria* (section 3 of the Law on labour relations), *Argentina* (section 2 of Act No 20744 on labour contracts), *Austria* (section 1(1) of the Paid Annual Leave Act), *Bahrain* (section 2 of the Labour Act), *Bangladesh* (section 1(4) of the Labour Act), *Benin* (sections 2(2) and 142 of the Labour Code), *Cambodia* (section 1 of the Labour Law) *Cameroon* (section 3 of the Labour Code), *Greece* (section 1(2) and (3) of Act No. 539/45), *Guinea* (section 1(5) of the Labour Code), *Honduras* (section 2 of the Labour Code), *Myanmar* (section 2(4) of the Leave and Holiday Act, 1951), *Sudan* (section 3 of the Labour Act) and *Thailand* (section 4 of the Labour Protection Act).

[13] For example, *Antigua and Barbuda* (section A6(2) of the Labour Code), *Burundi* (section 14(3) of the Labour Code), *Eritrea* (section 3(1) of the Labour Proclamation), *Ghana* (section 1 of the Labour Act), *Iraq* (section 3(2)

For example, in the *Islamic Republic of Iran*, the Civil Service Act regulates annual leave in the public sector. The legislation in some countries excludes family workers, [14] domestic workers [15] and agricultural workers [16] from their scope of application. Certain governments report that separate regulations on paid annual holidays apply to the excluded categories of workers. For example, in *Luxembourg*, the Grand Ducal Regulation of 28 January 1976 regulates paid annual leave for workers in agriculture and viticulture. In many countries, workers in so-called "non-standard forms of employment", such as casual workers, are also excluded from access to leave entitlements. [17]

282. The Committee has noted that recent legislative reforms have broadened the scope of application of provisions on annual holidays with pay. For example, in *Belgium*, the repeal in 2014 of section 18 of the Royal Order of 28 November 1969, which excluded certain categories of domestic workers from the social security scheme, had the effect of extending the right to annual holidays with pay to those workers. [18] In *Malta*, the amendment of the Part-Time Employees Regulations in 2008 provides that all part-time employees, who were previously excluded from the right to annual holidays with pay if they worked fewer than 20 hours a week, are now entitled to a minimum pro rata period of annual leave. [19]

(b) Methods of application

Box 3.2

Article 1 of Convention No. 132 provides that:

> The provisions of this Convention, in so far as they are not otherwise made effective by means of collective agreements, arbitration awards, court decisions, statutory wage fixing machinery, or in such other manner consistent with national practice as may be appropriate under national conditions, shall be given effect by national laws or regulations.

283. Paragraph 1(1) of Recommendation No. 98 also indicates that, having regard to the variety of national practices, the provisions of the Recommendation "may be given effect by means of public or voluntary action, through legislation, statutory wage fixing machinery, collective agreements or arbitration awards, or in any other manner consistent with national practice, as may be appropriate under national conditions".

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of the Labour Code), *Oman* (section 2 of the Labour Code) and *Samoa* (section 3 of the Labour and Employment Relations Act).

[14] For example, *Bahrain* (section 2 of the Labour Act), *Finland* (section 2 of the Annual Holidays Act), *Islamic Republic of Iran* (section 188 of the Labour Code), *Qatar* (section 3 of the Labour Code) and *Turkey* (section 4 of the Labour Law).

[15] For example, *Argentina* (section 2 of Act No. 20744 on labour contracts), *Kuwait* (section 5 of the Private Sector Labour Act), *Syrian Arab Republic* (section 5 of the Labour Code) and *Thailand* (section 4 of the Labour Protection Act).

[16] For example, **among non-ratifying countries**: *Argentina* (section 2 of Act No. 20744 on labour contracts), *Austria* (section 1(2) of the Paid Annual Leave Act), *Plurinational State of Bolivia* (section 1 of the General Labour Act), *Honduras* (section 2 of the Labour Code, if the agricultural establishment has more than ten employees), *Republic of Korea* (section 63 of the Labour Standards Act), *Qatar* (section 3 of the Labour Code), *Sudan* (section 3 of the Labour Act), *Thailand* (Ministerial Regulation No. 9 of 1998) and *Turkey* (section 4 of the Labour Law, if the agricultural establishment employs fewer than 50 people).

[17] See further in Chapter 5, para. 552. See also ILO: *Non-standard employment around the world: Understanding challenges, shaping prospects* (Geneva, 2016), p. 64.

[18] See *Belgium* – CEACR, Convention No. 132, direct request, published in 2015.

[19] See *Malta* – CEACR, Convention No. 132, direct request, published in 2014.

284. In the majority of reporting countries, provisions on annual holidays with pay are included in general legislation, such as labour codes, ministerial decisions or regulations. In some countries, specific legislation has been adopted on annual holidays with pay. For example, in *Austria*, the subject is regulated by the Paid Annual Leave Act, and in *Sweden* by the Annual Leave Act. Moreover, in Latin American countries, the right to annual holidays with pay is set out in their political constitutions. [20]

285. Collective agreements also contain provisions on paid annual leave and frequently establish more favourable conditions than the national legislation, [21] or regulate specific aspects of annual holidays with pay. [22] For example, in *Côte d'Ivoire*, [23] collective agreements determine the period of the year that is most appropriate for annual leave, taking into account seasonal variations of activity. [24]

B. Qualifying period of service

286. The minimum qualifying period of service is the time (continuous or not) that a worker has to be employed before becoming entitled to paid annual leave.

Box 3.3

Article 5 of Convention No. 132 provides that:

1. A minimum period of service may be required for entitlement to any annual holiday with pay.

2. The length of any such qualifying period shall be determined by the competent authority or through the appropriate machinery in the country concerned but shall not exceed six months.

3. The manner in which length of service is calculated for the purpose of holiday entitlement shall be determined by the competent authority or through the appropriate machinery in each country.

4. Under conditions to be determined by the competent authority or through the appropriate machinery in each country, absence from work for such reasons beyond the control of the employed person concerned as illness, injury or maternity shall be counted as part of the period of service.

287. In this respect, Paragraph 4(2) of Recommendation No. 98 indicates that the appropriate machinery in each country may, where appropriate, determine "(a) the number of days which a worker should have worked to become eligible for the annual holiday with pay or for a proportion thereof; and (b) the method of calculating the period of service of

[20] For example, *Argentina*, *Plurinational State of Bolivia*, *Brazil*, *Costa Rica*, *Cuba*, *Dominican Republic*, *El Salvador*, *Guatemala*, *Nicaragua* and *Bolivarian Republic of Venezuela.*

[21] For example, **among ratifying countries**: *Azerbaijan* (section 145 of the Labour Code), *Cameroon* (section 92(2) of the Labour Code), *Montenegro* (section 65(1) of the Labour Law), *Russian Federation* (sections 116 and 119 of the Labour Code) and *Spain* (section 38(1) of the Workers' Charter); **among non-ratifying countries**: *France* (section L.3141-10 of the Labour Code), *Gabon* (section 186(3) of the Labour Code) and *Iceland* (section 10.1 of the Labour Law).

[22] For example: in *Belarus*, collective agreements regulate changes in the period giving entitlement to annual holidays with pay (section 166(8) of the Labour Code); in *Greece*, the Government reports that increased days of annual leave can be granted to certain categories of workers through collective agreements; and, in the *Islamic Republic of Iran*, the date of utilization of vacation shall be determined with the mutual agreement of the worker and the employer (section 69 of the Labour Code).

[23] Section 25(5) of the Labour Code.

[24] Other examples of national provisions that allow collective agreements to regulate different aspects of annual lave include *Germany* (section 13(1) of the Federal Leave Act) and *Syrian Arab Republic* (section 6 of the Labour Act).

a worker in a particular year for the purpose of determining the annual holiday with pay" to be taken in respect of that year.

288. Article 5(1) of Convention No. 132 is an optional clause. If it is used, Article 5(2) and (4) establishes two restrictions: (a) the qualifying period must not exceed six months; and (b) periods of absence beyond the control of the employee must not be deducted from the period of service. In this respect, the Committee has recalled that Article 5(4) of the Convention provides that any absence from work for reasons beyond the control of the employed person, such as illness, injury or maternity (and not only occupational accidents and diseases), shall be counted as part of the period of service. [25]

289. With regard to the manner of calculating the period of service, in accordance with Article 5(3), the determination of the method of calculation of the qualifying period is left to the national competent authority. More specifically, in relation to the manner in which interruptions of work are dealt with, Paragraph 7 of Recommendation No. 98 indicates that:

> (1) Interruptions of work during which the worker receives wages should not affect entitlement to or the duration of the annual holiday with pay.
>
> (2) Interruptions of work which do not give rise to a termination of the employment relationship or contract should not affect any entitlement to a holiday with pay which has been accumulated prior to the interruption.
>
> (3) The appropriate machinery in each country should determine the manner in which the principles set out in subparagraphs (1) and (2) above should be applied to interruptions of work occasioned by –
>
> (a) sickness, accident and periods of rest occasioned by pre- and post-natal care;
>
> (b) absences on account of family events;
>
> (c) military obligations;
>
> (d) the exercise of civic rights and duties;
>
> (e) the performance of duties arising from trade union responsibilities;
>
> (f) changes in the management of the undertaking;
>
> (g) intermittent involuntary unemployment.

(a) Duration of the qualifying period

290. The legislation in most reporting countries establishes a minimum period of service for entitlement to annual holidays with pay. In a number of countries, the qualifying period for entitlement to annual leave is six months. For example, among non-ratifying countries, the legislation in *Cabo Verde*, [26] *Estonia*, [27] *Japan*, [28] *Lithuania*, [29] *Morocco*, [30] *Oman*, [31] *Uzbekistan* [32] and *Zambia* [33] provides for a minimum qualifying period of six months for

[25] *Czech Republic* – CEACR, Convention No. 132, direct request, published in 2003.

[26] Section 53 of the Labour Code.

[27] Section 68(4) of the Employment Contracts Act.

[28] Section 39(1) of the Labour Standards Act.

[29] Section 169(2) of the Labour Code.

[30] Section 231 of the Labour Code.

[31] Section 61 of the Labour Code, as amended by Royal Decree No. 113/2011.

[32] Section 143 of the Labour Code.

[33] Section 15 of the Employment Act.

entitlement to annual holidays with pay; among ratifying countries, the legislation in *Azerbaijan*, [34] *Germany*, [35] *Latvia*, [36] *Republic of Moldova*, [37] *Portugal*, [38] *Russian Federation*, [39] *Serbia*, [40] *the former Yugoslav Republic of Macedonia* [41] and *Ukraine* [42] also envisages a period of service of six months. The legislation in other countries envisages a minimum period of service of less than six months. For example, the Government of *Algeria* reports that a minimum period of 24 working days or four weeks is required to be entitled to paid annual leave. [43] The Government of *Antigua and Barbuda* [44] indicates that each employee who has successfully passed the probationary period of three months is entitled to vacation leave without loss of at least the basic wage. [45]

291. The Committee observes that in many countries the minimum qualifying period for access to holidays with pay is longer than six months. In some, the qualifying period is longer than six months, but shorter than a year. For example, among non-ratifying countries, workers in *Bulgaria* may take paid annual leave after eight months of employment. [46] The Government of *Costa Rica* reports that the minimum qualifying period is 50 weeks. [47] In *Ghana*, the minimum period of service is 200 days. [48] Other examples include *Kuwait* [49] (nine months) and *Turkmenistan* [50] (11 months). Moreover, the Committee notes that in many mainly non-ratifying countries, [51] the qualifying period is one year or more. For example, employees in *China* who have worked continuously for more than one year in organizations, enterprises, institutions, private non-enterprise units and worker-hiring individually owned commercial and industrial entities are entitled to

[34] Section 131(1) of the Labour Code.

[35] Section 4 of the Federal Leave Act.

[36] Section 150(3) of the Labour Act.

[37] Section 115 of the Labour Code.

[38] Section 239(1) and (2) of the Labour Code.

[39] Section 122(2) of the Labour Code.

[40] Section 68(2) of the Labour Act.

[41] Section 139 of the Law on labour relations.

[42] Section 10 of the Act on leave.

[43] Section 43 of the Law on labour relations.

[44] Section 18(1) of the Labour Code

[45] Other examples include: **among non-ratifying countries**: *Jamaica* (110 days – section 3(1) of the Holidays with Pay Act), *Singapore* (three months – section 43 of the Employment Act) and *Tunisia* (one month – section 113 of the Labour Code); **among ratifying countries**: *Czech Republic* (60 days – section 212(1) of the Labour Code), *Guinea* (one month – section 222(12) of the Labour Code) and *Luxembourg* (three months – section L.233-6 of the Labour Code).

[46] Section 155(2) of the Labour Code.

[47] Section 153 of the Labour Code.

[48] Section 21 of the Labour Act.

[49] Section 70 of the New Private Sector Labour Act.

[50] Section 87 of the Labour Code.

[51] Examples include, **among non-ratifying countries**: *Bahrain, Bangladesh, Benin, Plurinational State of Bolivia, Burundi, Cambodia, Canada, Central African Republic, Colombia, Côte d'Ivoire, Denmark, Dominican Republic, Egypt, El Salvador, Eritrea, Ethiopia, Gabon, Greece, Indonesia, Republic of Korea, Malawi, Mali, Mauritania, Mauritius, Mexico, Myanmar, Netherlands, Peru, Philippines, Poland, Qatar, Samoa, Senegal, South Africa, Sri Lanka, Sudan, Suriname, Thailand, Turkey, Bolivarian Republic of Venezuela* and *Zimbabwe*; **among ratifying countries**: *Brazil, Burkina Faso, Cameroon, Kenya, Madagascar* and *Rwanda*.

paid annual leave. [52] The Government of *Chile* reports that workers who have served for more than one year are entitled to 15 working days of paid annual leave. [53] In the *Syrian Arab Republic*, workers are entitled to annual leave of 14 working days with full pay after between one full year and not more than five years of service. [54]

292. In this respect, the Committee has recalled that Article 5(2) of the Convention, on the minimum period of service which may be required for entitlement to annual holiday with pay, is an optional clause and not a requirement and that, if use is made of this clause, the minimum period of service for entitlement to an annual holiday must in no case exceed six months. [55]

293. In a few countries, no period of service is required for entitlement to annual holidays with pay. The Government of *Hungary* reports that neither the Labour Code nor sectoral legislation define a minimum period of service for entitlement to paid annual leave. The Government of *Spain* indicates that the right to paid annual leave accrues with each working day, irrespective of the duration of the contract, and is not conditional on the existence of a minimum period of effective work. Other examples include *Islamic Republic of Iran, Kazakhstan, Malta, Slovenia, Switzerland* and *United Kingdom*.

294. ***The Committee considers that the length of qualifying periods of service, where such periods are established, should allow workers to benefit from the right to paid annual leave after periods of work that are not excessively long, not exceeding six months (according to the Convention).***

(b) Absences included in the qualifying period

295. As the Committee emphasized in its 1984 General Survey on working time, since the period of service is the basis for calculating the length of the holiday, it is extremely important for legislation to state clearly that interruptions of work are to be assimilated to effective working time for purposes of entitlement to holidays and the calculation of their length, as well as the extent to which such assimilation is authorized. [56]

296. The legislation in many countries explicitly provides that absences from work due to illness, injury and/or maternity shall be considered as periods of effective work. [57] For example, in *Argentina*, [58] the days on which workers do not work because they are taking their statutory leave or leave set out in a collective agreement, or because they are affected by an illness for which they are not responsible, or an occupational accident, or any other causes not attributable to them, shall be counted as effective work. In certain countries, the period of absence from work due to illness or accident is limited. For example, in *Hungary*, any period of incapacity for work of up to 30 days per calendar year is

[52] Section 45 of the Labour Act.

[53] Section 67 of the Labour Code.

[54] Section 155(a) of the Labour Code.

[55] See *Burkina Faso* – CEACR, Convention No. 132, direct request, published in 2008; and *Cameroon* – CEACR, Convention No. 132, direct request, published in 2014, and observation, published in 2009.

[56] ILO: *Working time: Reduction of hours of work, weekly rest and holidays with pay*, op. cit., para. 250.

[57] For example, *Algeria, Azerbaijan, Bangladesh, Benin, Cambodia, Côte d'Ivoire, Cyprus, Czech Republic, Estonia, Gabon, Honduras, Iceland, Iraq, Kazakhstan, Latvia, Lithuania, Luxembourg, Morocco, Netherlands, New Zealand, Panama, Peru, Portugal, Turkey, Ukraine* and *Uruguay*.

[58] Section 152 of Act No. 20744.

assimilated to effective work. [59] In *Madagascar*, [60] absences from work due to illness are considered as effective work up to the limit of six months. [61]

297. The Committee observes that, among countries where the legislation explicitly provides that illness and injuries shall be considered as effective work, one group only includes occupational accidents and diseases in this respect. For example, in *Brazil*, [62] *Burkina Faso* [63] and *Central African Republic*, [64] only absences due to occupational accidents and diseases are assimilated to effective periods of work. In *Guinea*, [65] for the calculation of annual leave, absences due to occupational accidents and diseases are assimilated to effective periods of work, while absences due to non-occupational accidents and diseases are assimilated to effective periods of work under the conditions established by collective agreement. [66]

298. The Committee observes that the legislation in many countries does not appear to contain provisions clearly establishing that periods of sickness, accident or maternity are to be counted as periods of effective work for the calculation of annual leave. In this respect, the Committee has recalled that absences from work for reasons beyond the control of the worker, such as illness or injury, should in principle be counted as part of the period of service, and that holiday entitlements should therefore accrue during such absences, although the Convention gives the competent authority in each country a certain discretion to determine the specific conditions under which these absences are to be considered periods of service for the purposes of holiday entitlement. [67] The Committee has also drawn attention to the case law of the Court of Justice of the European Union (Schultz-Hoff Case C-350/06), which has confirmed that employees on long-term sick leave should be entitled to the same number of annual holidays as employees who are not ill. [68]

299. ***The Committee emphasizes the importance of counting as part of the period of service any absence from work for reasons beyond the control of the employed person, such as illness, injury or maternity, and not only absence due to occupational accidents and diseases.***

[59] Section 115(2)(e) of the Labour Code.

[60] Section 87 of the Labour Code.

[61] Other examples include *Mali* (section L.149 of the Labour Code), *Myanmar* (section 4(2)(2) of the Leave and Holiday Act, 1951) and *Togo* (section 158 of the Labour Code).

[62] Section 131 of the Consolidation of Labour Laws.

[63] Section 156(4) of the Labour Code.

[64] Section 283 of the Labour Code.

[65] Section 222(9) of the Labour Code.

[66] Another example is the *Republic of Korea* (section 60(6) of the Labour Standards Act).

[67] See *Hungary* – CEACR, Convention No. 132, direct request, published in 2014.

[68] ibid.

(c) Proportionate holidays in the event that the qualifying period is not completed

Box 3.4

Article 4 of Convention No. 132 provides that:

1. A person whose length of service in any year is less than that required for the full entitlement prescribed in the preceding Article shall be entitled in respect of that year to a holiday with pay proportionate to his length of service during that year.

2. The expression ***year*** in paragraph 1 of this Article shall mean the calendar year or any other period of the same length determined by the competent authority or through the appropriate machinery in the country concerned.

300. Paragraph 4(3) of Recommendation No. 98 indicates in this regard that it should be left to the appropriate machinery in each country "to provide that, where employment ceases before the worker has completed the service necessary to become eligible for an annual holiday with pay", that the worker "should be entitled to a holiday with pay proportionate to the period of service performed or to compensation in lieu thereof or to the equivalent holiday credit, whichever is more practicable".

301. These provisions are intended to protect those workers who, due to the seasonal or occasional nature of their work, are not employed for the length of the minimum period of service for entitlement to annual leave. This is even more important in cases where national legislation establishes qualifying periods of service longer than six months.

302. The Committee observes that the legislation in only certain countries contains explicit provisions requiring the granting of proportionate leave to workers who do not complete the statutory minimum period of service for entitlement to annual leave. For example, among countries with statutory qualifying periods longer than six months, workers in *Argentina* are entitled to annual leave after a qualifying period of at least half the working days of one year, and if workers do not complete the minimum qualifying period, they are entitled to a period of annual leave equivalent to one day every 20 days of effective work. [69] In *Bahrain*, [70] if a worker's period of service is less than one year, the worker is entitled to leave in proportion to the period worked in that year. [71] Among countries in which the legislation establishes a qualifying period of six months or less, employees in the *Czech Republic* [72] who work for the same employer for at least 60 days in one calendar year are entitled to proportional annual leave if they do not work continuously for the entire calendar year. [73]

303. In this respect, the Committee has requested governments to take the necessary legislative or other measures to ensure that holiday with pay proportionate to the length of service is granted to all employees whose length of service in any year is less than that required for entitlement to the full annual holiday with pay. [74] ***The Committee emphasizes***

[69] Sections 151 and 153 of Act No. 20744.

[70] Section 58 of the Labour Code.

[71] Other examples include *Cuba* (section 101 of the Labour Code), *Dominican Republic* (section 179 of the Labour Code), *Honduras* (article 128(8) of the Constitution), *Malawi* (section 44 of the Employment Act) and *Uruguay* (section 1 of Act No. 12590).

[72] Section 212(1) of the Labour Code.

[73] Other examples include *Bosnia and Herzegovina* (section 26 of the Labour Law), *Luxembourg* (section L.233-12 of the Labour Code) and *Republic of Moldova* (section 115 of the Labour Code).

[74] See *Latvia* – CEACR, Convention No. 132, direct request, published in 2014.

the importance of ensuring that workers whose employment ceases before the end of the period required for entitlement to full annual leave, benefit from a holiday with pay proportionate to the length of their service.

C. Calculation of the paid annual leave's length

304. Several factors have to be taken into account when calculating the duration of annual holidays, namely: (a) the minimum length of holidays provided for by national legislation; (b) the terms in which holidays are defined; (c) the types of absence from work that are not counted as annual leave; and (d) possible extensions of holidays, based on certain factors.

(a) Minimum length of holidays

Box 3.5

Article 3(1) and (3) of Convention No. 132 provides that:

1. Every person to whom this Convention applies shall be entitled to an annual paid holiday of a specified minimum length.

…

3. The holiday shall in no case be less than three working weeks for one year of service.

305. Paragraph 4(1) of Recommendation No. 98 calls for the duration of the annual holiday with pay to be proportionate to the length of service performed with one or more employers during the year concerned, and that it should be not less than two working weeks for 12 months of service.

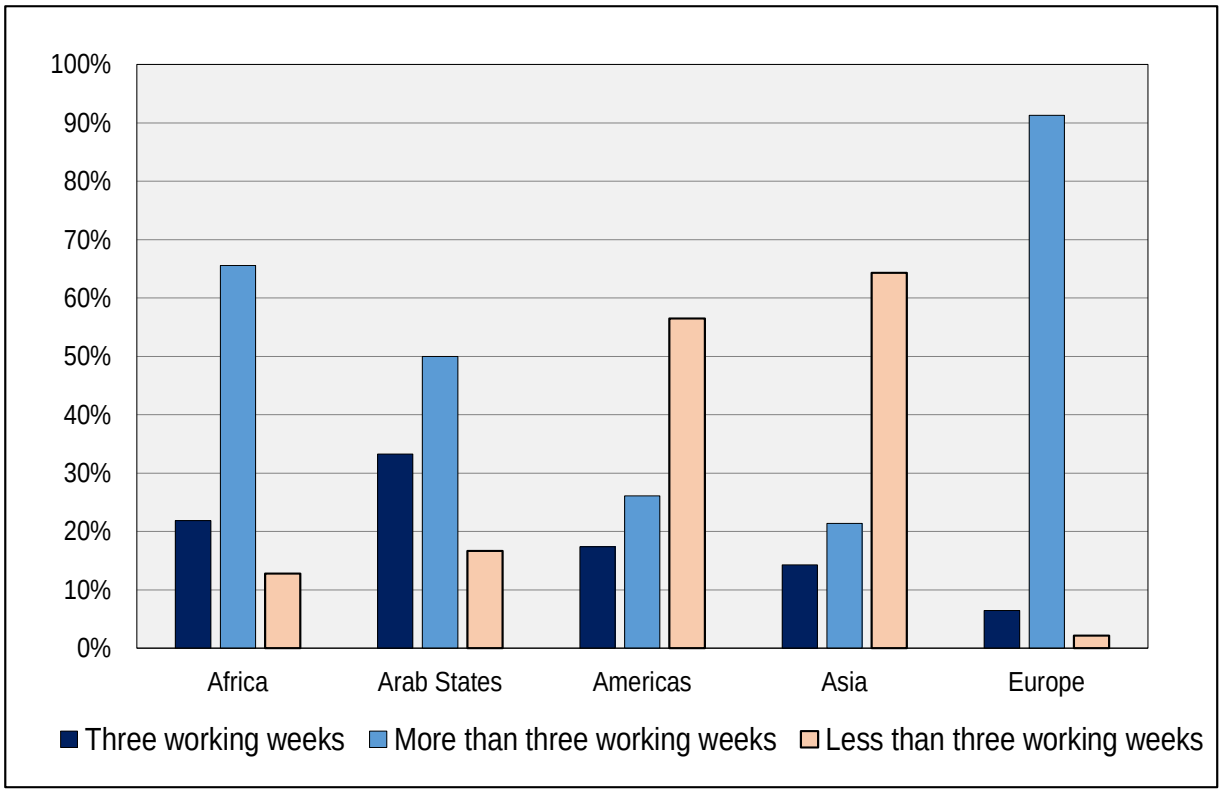
306. The Committee is pleased to note that the majority of reporting countries set out the right to a minimum period of paid annual leave in national legislation. [75] It is also pleased to note that the legislation in most reporting countries grants either the minimum basic annual leave period required by the Convention, [76] or a longer period. [77]

[75] An exception is the *United States*, where the Government reports that, in general, paid vacation leave has not been the subject of federal legislation, except for provisions respecting employees of the federal Government.

[76] For example, **among ratifying countries**: *Azerbaijan* (section 114(2) of the Labour Code), *Burundi* (section 130(b) of the Labour Code), *Iraq* (section 75 of the Labour Code), *Kenya* (section 28(1)(a) of the Employment Act) and *Ukraine* (section 75 of the Labour Code); **among non-ratifying countries**: *Cameroon* (section 89(1) and (2) of the Labour Code), *Chile* (section 67 of the Labour Code), *Ecuador* (section 69 of the Labour Code), *Egypt* (section 47(1) of the Labour Code), *Ghana* (section 20 of the Labour Act), *Guatemala* (Article 102 of the Political Constitution and section 130 of the Labour Code), *Republic of Korea* (section 60(1) of the Labour Standards Act), *Qatar* (section 79 of the Labour Code), *South Africa* (section 20(2) of the Basic Conditions of Employment Act), *Uzbekistan* (section 134 of the Labour Code) and *Bolivarian Republic of Venezuela* (section 190 of the Basic Labour Act).

[77] For example, **among ratifying countries**: *Belgium* (section 3 of the consolidated Acts of 1971), *Bosnia and Herzegovina* (section 25 of the Labour Law of Bosnia and Herzegovina, section 47(1) of the Labour Law of Bosnia and Herzegovina and section 80(1) of the Labour Law of Republika Srpska), *Brazil* (section 130 of the Consolidation of Labour Laws), *Burkina Faso* (section 156(1) of the Labour Code and section 8(1) of Order No. 2009-014), *Croatia* (section 77(1) and (2) of the Labour Act), *Czech Republic* (section 213(1) of the Labour Code), *Finland* (section 5(1) of the Annual Holidays Act), *Germany* (section 3(1) of the Federal Leave Act), *Hungary* (section 116 of the Labour Code), *Italy* (section 10 of Legislative Decree No. 66 of 8 April 2003), *Latvia* (section 149(1) of the Labour Law), *Luxembourg* (section L.233-4 of the Labour Code), *Madagascar* (section 86 of the Labour Code), *Malta* (section 8(1)(1) of the Organisation of Working Time Regulations), *Republic of Moldova* (section 113 of the Labour Code), *Montenegro* (section 65(1) of the Labour Law), *Norway* (section 5(1) of the Annual Holidays Act), *Portugal* (section 154(1) of the Labour Code), *Russian Federation* (section 115 of the Labour Code), *Rwanda* (section 53(1) of the Law regulating Labour), *Serbia* (section 69(1) of the Labour Law), *Slovenia* (section 160(1) of the Employment Relationship Act), *Spain* (section 38(1) of the Workers' Charter),

Figure 3.2. Minimum length of paid annual leave by region (in percentage of countries)



Source: Based on data from 124 reporting countries.

307. In some cases, collective agreements provide for longer periods of annual leave than those envisaged in national legislation. For example, in *France*, [78] a collective agreement or an employment contract may provide for paid annual leave of a duration longer than

Sweden (section 4 of the Annual Leave Act), *Switzerland* (section 329 of the Code of Obligations), *the former Yugoslav Republic of Macedonia* (section 137(1) and (2) of the Law on Labour Relations) and *Uruguay* (section 1 of Act No. 12.590 of 1958, section 14 of Act No. 19.121 of 2013 and section 18 of Decree No. 216/012 of 2012); **among non-ratifying countries**: *Algeria* (section 41 of the Law on labour relations), *Austria* (section 2 of the Paid Annual Leave Act), *Bahrain* (section 58 of the Labour Code), *Bangladesh* (section 117(1) of the Labour Act), *Belarus* (section 151 of the Labour Code), *Benin* (section 158(1) of the Labour Code), *Bulgaria* (section 155(4) and (5) of the Labour Code), *Cabo Verde* (section 52 of the Labour Code), *Central African Republic* (section 286 of the Labour Code), *Côte d'Ivoire* (section 25(1) of the Labour Code), *Cyprus* (section 5(1) of the Annual Holiday with Pay Law), *Denmark* (section 7(1) of the Holiday Act), *Equatorial Guinea* (section 61(1) of Act No. 10/2012), *Estonia* (section 55 of the Employment Contracts Act), *France* (section L.3141-3 of the Labour Code), *Gabon* (section 185 of the Labour Code), *Georgia* (section 21 of the Labour Law), *Greece* (section 1 of Act No. 3302/2004), *Guinea* (section 222(8) of the Labour Code), *Iceland* (section 3 of Act No. 30/1987), *Islamic Republic of Iran* (section 64 of the Labour Code), *Japan* (section 39 of the Labour Standards Act), *Kazakhstan* (section 88 of the Labour Law), *Kuwait* (section 70 of the New Private Sector Labour Law), *Lithuania* (section 166(1) of the Labour Law), *Malawi* (section 44 of the Employment Act), *Mauritania* (section 180 of the Labour Code), *Mauritius* (section 27(2A) of the Employment Rights Act), *Morocco* (section 231 of the Labour Code), *Namibia* (section 23(2) and (3) of the Labour Act), *Netherlands* (section 634 of the Civil Code), *New Zealand* (section 16(1) of the Holidays Act of 2003), *Nicaragua* (section 76 of the Labour Code), *Oman* (section 61 of the Labour Code, as amended by Royal Decree No. 113/2011), *Panama* (section 54(1) of the Labour Code), *Peru* (section 10 of Legislative Decree No. 713), *Poland* (section 154(1) of the Labour Code), *Romania* (section 145(1) of the Labour Code), *Senegal* (section 148(1) of the Labour Code), *Seychelles* (section 141(b) of the Public Service Order of 1996), *Slovakia* (section 103 of the Labour Code), *Tajikistan* (section 85 of the Labour Code), *Togo* (section 158(1) of the Labour Code), *Turkmenistan* (section 86 of the Labour Code), *United Kingdom* (Regulation 13(A)(1) and (2) of the Working Time Regulations) and *Zimbabwe* (section 14(A)(2) of the Labour Act).

[78] Section L.3141-9 of the Labour Code.

that set out in the Labour Code. [79] Similar provisions are found in the legislation of a number of countries. [80]

308. The Committee observes that in a number of non-ratifying countries the minimum basic annual leave granted is shorter than the minimum period provided for by the Convention. [81] For example, the minimum statutory annual leave period in the *Philippines* is five days a year, [82] in *China*, five working days a year, [83] in *Thailand* [84] and *Mexico*, [85] six working days a year, in *Singapore*, seven days a year, [86] in *Antigua and Barbuda*, one day per month of employment, [87] in *Honduras*, ten consecutive days a year, [88] and in *Canada*, two weeks a year. [89] In this regard, the *Canadian Labour Congress* considers that paid holidays are essential to improving work–life balance and providing workers with time for rest, as well as contributing to a more productive workforce with higher morale. The *Canadian Labour Congress* adds that provincial and federal employment standards should be revised to increase the entitlement to three weeks of paid vacation a year for all workers.

309. ***In this respect, the Committee would emphasize the vital importance that all workers be entitled to a period of paid annual leave sufficiently long, ordinarily at least three weeks, to ensure that they benefit along the year from adequate rest and recovery.***

[79] Another example is *Guinea* (section 222(8) of the Labour Code).

[80] *Azerbaijan* (section 145 of the Labour Code), *Bulgaria* (section 156(a) of the Labour Code), *Cameroon* (section 92(2) of the Labour Code), *Guinea* (section 222(8) of the Labour Code), *Kazakhstan* (section 157 of the Labour Code), *Tajikistan* (section 94 of the Labour Code) and *Turkey* (section 53(6) of the Labour Law).

[81] For example: *Argentina* (section 150 of Act No. 20744 on labour contracts), *Plurinational State of Bolivia* (section 44 of the General Labour Act, as amended by section 1 of Supreme Decree No. 3150 of 19 August 1952), *China* (section 3 of the Regulations on Paid Annual Leave for Employees), *Colombia* (section 186 of the Labour Code), *Costa Rica* (Article 59 of the Political Constitution and section 153 of the Labour Code), *Dominican Republic* (section 177 of the Labour Code), *El Salvador* (section 177 of the Labour Code), *Eritrea* (section 56(2) and (3) of Labour Proclamation No. 118/2001), *Ethiopia* (section 77 of the Labour Proclamation), *India* (section 79(1) of the Factories Act), *Indonesia* (section 79(2)(c) of Law No. 13 of 2003), *Jamaica* (section 3(2) of the Holidays with Pay Act), *Myanmar* (section 4(1) of the Leave and Holiday Act), *Samoa* (section 40(1) of the Labour and Employment Relations Act), *Sri Lanka* (section 6(1)(a) and (b) of the Shop and Office Employees Act), *Suriname* (section 7(1) and (4) of the Holiday Act), *Syrian Arab Republic* (section 155(a) of the Labour Code), *Tunisia* (section 113 of the Labour Code) and *Turkey* (section 53(4) of the Labour Law).

[82] Section 95 of the Labour Code.

[83] Section 3 of the Regulations on Paid Annual Leave for Employees.

[84] Section 30 of the Labour Protection Act.

[85] Sections 78, 80 and 81 of the Federal Labour Act.

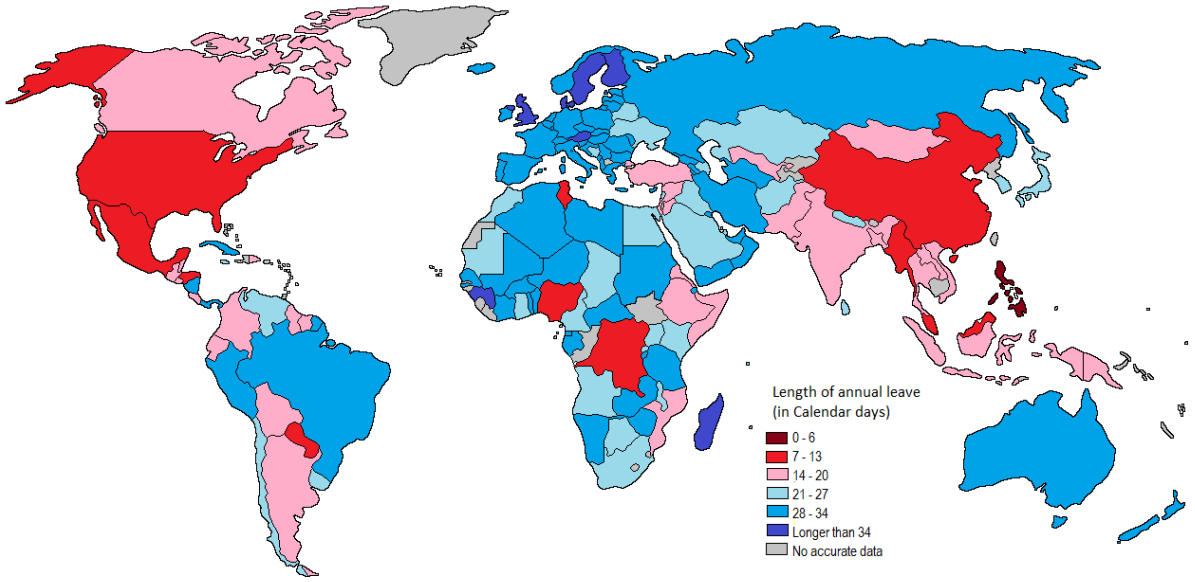
[86] Section 43(1) of the Employment Act.

[87] Section 18(1) of the Labour Code.

[88] Section 346(a) of the Labour Code.

[89] Section 184 of the Labour Code.

Figure 3.3. Length of annual leave around the world



(b) Terms used to define the length of holidays

310. While Convention No. 52 uses the term "working days" to define the duration of holidays, both Article 3(3) of Convention No. 132 and Paragraph 4(1) of Recommendation No. 98 define holidays in terms of working weeks. The rationale for this change of approach was that the number of working days in the working week varies from one country to another, or even within countries, and it is therefore desirable at the international level to establish a uniform minimum period of rest, even if it represents a different number of working days in the various countries. [90]

311. National legislation in the majority of countries defines the length of paid annual leave in terms of days, both working days [91] and calendar days. [92] In a number of countries, [93] the national legislation refers simply to days, without specifying whether they are working days or calendar days. In certain countries, annual leave is defined as a number of weeks, [94] and paid annual leave is defined in terms of months in one reporting country. [95] The legislation in a few countries uses hours as a measure to define annual

[90] ILO: *Working time: Reduction of hours of work, weekly rest and holidays with pay*, op. cit., para. 216.

[91] *Belgium, Benin, Plurinational State of Bolivia, Bosnia and Herzegovina, Bulgaria, Burundi, Cabo Verde, Cameroon, Central African Republic, Chile, China, Colombia, Côte d'Ivoire, Cyprus, Dominican Republic, Eritrea, Ethiopia, Finland, France, Gabon, Georgia, Germany, Ghana, Greece, Guatemala, Guinea, Honduras, Hungary, Iceland, India, Indonesia, Japan, Kenya, Luxembourg, Madagascar, Malawi, Mauritania, Mauritius, Mexico, Mongolia, Montenegro, Morocco, Namibia, Norway, Poland, Portugal, Romania, Rwanda, Senegal, Serbia, Sri Lanka, Suriname, Sweden, Syrian Arabic Republic, Thailand, the former Yugoslav Republic of Macedonia, Turkey, United States, Uruguay, Uzbekistan, Bolivarian Republic of Venezuela* and *Zambia.*

[92] *Algeria, Argentina, Azerbaijan, Belarus, Brazil, Burkina Faso, Cuba, Ecuador, Estonia, Kazakhstan, Lithuania, Malaysia, Maldives, Mali, Republic of Moldova, Russian Federation, Spain, Tajikistan, Turkmenistan* and *Ukraine.*

[93] *Antigua and Barbuda, Bahrain, Bangladesh, Cambodia, Egypt, El Salvador, Equatorial Guinea, Iraq, Republic of Korea, Kuwait, Myanmar, Nicaragua, Oman, Panama, Peru, Philippines, Samoa, Seychelles, Singapore, South Africa, Sudan, Togo, Tunisia* and *Zimbabwe.*

[94] *Austria, Canada, Costa Rica, Croatia, Czech Republic, Denmark, Italy, Jamaica, Latvia, Malta, Netherlands, New Zealand, Qatar, Slovakia, Slovenia, Switzerland* and *United Kingdom.*

[95] *Islamic Republic of Iran* (section 64 of the Labour Code).

leave for some categories of workers. For example, the legislation in *Austria* grants civil servants 200 hours of holidays a calendar year. [96]

(c) Days not counted as annual leave

Box 3.6

Article 6 of Convention No. 132 provides that:

1. Public and customary holidays, whether or not they fall during the annual holiday, shall not be counted as part of the minimum annual holiday with pay prescribed in Article 3, paragraph 3, of this Convention.

2. Under conditions to be determined by the competent authority or through the appropriate machinery in each country, periods of incapacity for work resulting from sickness or injury may not be counted as part of the minimum annual holiday with pay prescribed in Article 3, paragraph 3, of this Convention.

312. While Article 6(1) clearly establishes an absolute prohibition on counting public or customary holidays as annual leave, Article 6(2) leaves it to the competent authority of each country to determine the conditions for applying the same rule to other interruptions of work due to illness or injury. Recommendation No. 98 adds that the "appropriate machinery in each country should determine the days such as public and customary holidays, days of weekly rest, days of absence from work on account of accident at work or sickness, and periods of rest occasioned by pre- and post-natal care which are not to be counted as days of holiday with pay for the purpose of these provisions". In this regard, the Committee has recalled that, while recognizing the flexibility in determining the conditions for the application of Article 6(2) (for example, the requirement for a medical certificate), it does not consider that this would allow the public authority to prevent its application in certain situations. [97] It should also be noted that the prohibition of counting certain types of leave as a part of paid annual leave only applies to the minimum holiday period prescribed by the Convention.

313. Two situations should be distinguished in national legislation: (a) countries in which annual holidays are defined in working days, in which case public and customary holidays are automatically excluded from the calculation of annual leave; [98] and (b) countries in which annual leave is defined either in calendar days, days, weeks or some other period, in which case weekends and public holidays are not automatically excluded from the annual leave period and explicit provisions are required to ensure that they are not included in annual leave.

314. The Committee notes that, in a number of countries in which the national legislation defines annual leave in terms of calendar days, days or weeks, public and customary holidays are explicitly excluded from the calculation of paid annual leave. [99] For example,

[96] Section 65(1) of the Civil Service Act (BDG 1979).

[97] *Belgium* – CEACR, Convention No. 132, direct request, published in 2014.

[98] For examples of these countries, see footnote 91.

[99] For example, *Azerbaijan* (section 114(6) of the Labour Code), *Antigua and Barbuda* (section 18(2) of the Labour Code), *Bangladesh* (section 117(8) of the Labour Act), *Cambodia* (section 166 of the Labour Law), *Croatia* (section 79 of the Labour Act), *Czech Republic* (section 219(1) and (2) of the Labour Code), *Egypt* (section 47(1) of the Labour Code), *Singapore* (section 43(1) of the Employment Act), *Slovakia* (section 112(3) of the Labour Code), *Slovenia* (section 160(3), (4) and (5) of the Employment Relationship Act), *Tajikistan* (section 90 of the Labour Code), *Tunisia* (section 118 of the Labour Code), *Ukraine* (section 73 of the Labour Code) and *United Kingdom* (Regulation 13(A)(1) and (2) of the Working Time Regulations).

the national legislation in *Egypt* provides that religious festivals, official holidays and weekly rest days shall not be counted as leave. [100]

315. However, the Committee observes that in some countries, in which annual leave is defined in calendar days, days or weeks, the legislation does not explicitly provide that public holidays shall not be included in the period of annual leave. [101] The Committee further observes that, in a few countries, public holidays are counted as a part of annual leave when they fall within the leave period. For example, in the *Seychelles*, the legislation explicitly provides that public holidays falling between the beginning and the end of the leave period are counted as part of the leave. [102] In *El Salvador*, [103] public holidays and weekly rest days which fall within the annual leave period do not extend the length of holiday entitlement. However, annual leave must not begin on a public holiday, and compensatory weekly rest must not be included in the annual leave period. [104]

316. In this respect, the Committee has drawn the attention of governments to the absence of provisions requiring that public and customary holidays are not counted as part of the annual holiday with pay [105] and has requested them to adopt legislative measures to ensure that public and customary holidays are not counted as part of the annual holiday with pay. [106]

317. With regard to the exclusion of weekly rest from the calculation of the annual leave period, three situations are also found in national legislation: (a) annual leave is defined in terms of working days or working weeks, which implies that weekends are excluded from the calculation of annual holidays; (b) the holiday period is defined in calendar days or in days; and (c) annual leave is defined in consecutive days.

318. When the legislation defines annual leave in calendar days or simply in days, the exclusion of the weekly rest period from the annual leave period is not implicit, and explicit provisions are required to ensure their exclusion. In some countries, the legislation explicitly prescribes the inclusion of non-working days in the leave period. For example, in *Mali*, [107] the length of annual leave is 30 days, including non-working days. In the *Islamic Republic of Iran*, [108] the annual paid leave entitlement is a total of one month, including four Fridays.

319. In cases where the national legislation defines annual leave in terms of consecutive days, the inclusion of weekly rest in the period of annual leave is implicit. This situation is only found in a few countries. For example, in *Myanmar*, [109] after a period of 12 months of continuous service, employees are entitled to a minimum period of ten consecutive days

[100] Section 47(1) of the Labour Code.

[101] For example, *Algeria, Ecuador, Equatorial Guinea, Philippines, Turkmenistan, Togo* and *Zimbabwe*.

[102] Section 142(b) of the Public Service Orders, 1996.

[103] Section 178 of the Labour Code.

[104] Another example is *Ecuador* (section 69 of the Labour Code).

[105] See *Iraq* – CEACR, Convention No. 132, observation, published in 2010.

[106] See, for example, *Uruguay* – CEACR, Convention No. 132, direct request, published in 2015.

[107] Section L.151 of the Labour Code.

[108] Section 64 of the Labour Code.

[109] Section 4(1) of the Leave and Holiday Act, 1951.

of annual leave. In *South Africa*, [110] after a year of service, employers must grant employees 21 consecutive days of annual leave.

320. With regard to periods of incapacity due to sickness or injury, and the maternity leave, in a majority of countries these periods are excluded from the calculation of the period of annual leave. [111] In certain other cases, the legislation does not refer to periods of maternity leave. [112]

321. In some countries, limits are placed on the exclusion of sick leave and maternity leave from annual leave. For example, in *Cameroon*, [113] *Côte d'Ivoire* [114] and *Madagascar*, [115] sick leave is excluded from annual leave up to a limit of six months. Beyond this limit, sick leave is presumed to be included in annual leave. In *India*, maternity leave is included in the period of service for up to 12 weeks, after which it is included in annual leave. In this connection, the Committee has drawn the attention of governments to the fact that, in accordance with the Convention, under conditions to be determined by the competent national authority, periods of incapacity for work resulting from sickness or injury may not be counted as part of the minimum annual holiday prescribed by the Convention. This provision applies without distinction to cases in which incapacity for work occurs before or during the holiday with pay. [116]

[110] Section 20(2) of the Basic Conditions of Employment Act, 1997.

[111] *Algeria* (section 50 of the Law on labour relations), *Antigua and Barbuda* (section 18(2) of the Labour Code), *Argentina* (section 152 of Act No. 20744), *Austria* (section 5 of the Paid Annual Leave Act), *Azerbaijan* (section 134(3) of the Labour Code), *Plurinational State of Bolivia* (as reported by the Government), *Bosnia and Herzegovina* (section 27 of the Labour Law), *Brazil* (section 476 of the Consolidation of Labour Laws), *Burkina Faso* (section 156(4) of the Labour Code), *Cambodia* (section 166 of the Labour Law), *Cameroon* (section 89(3) of the Labour Code), *Chile* (as reported by the Government), *Colombia* (section 188 of the Labour Code), *Croatia* (section 79(2) of the Labour Act), *Cuba* (section 103 of the Labour Code), *Cyprus* (section 6(1) of the Annual Holidays with Pay Law), *Côte d'Ivoire* (section 25(3) of the Labour Code), *Dominican Republic* (section 185 of the Labour Code), *Estonia* (section 69 of the Employment Contracts Act), *Finland* (section 25 of the Annual Holidays Act), *Georgia* (section 22(4) of the Labour Code), *Ghana* (section 22 of the Labour Act), *Guinea* (section 222(13) of the Labour Code), *Hungary* (section 115 of the Labour Code), *Iceland* (section 3 of Act No. 30/1987), *Republic of Korea* (section 60(6) of the Labour Standards Act), *Lithuania* (section 174(1) of the Labour Code), *Madagascar* (section 87 of the Labour Code), *Mexico* (as reported by the Government), *Republic of Moldova* (section 118(6) of the Labour Code), *Montenegro* (section 66 of the Labour Law), *Morocco* (section 239 of the Labour Code), *Norway* (section 9(1) and (2) of the Annual Holidays Act), *Oman* (as reported by the Government), *Peru* (section 13 of Legislative Decree No. 713 of 1991), *Portugal* (section 244 of the Labour Code), *Rwanda* (as reported by the Government), *Serbia* (section 70 of the Labour Law), *Switzerland* (section 329(a) of the Code of Obligations), *Syrian Arab Republic* (section 176 of the Labour Code), *Tajikistan* (section 85 of the Labour Code), *the former Yugoslav Republic of Macedonia* (section 138 of the Law on labour relations), *Togo* (section 158 of the Labour Code), *Tunisia* (sections 114 and 118 of the Labour Code), *Turkey* (section 56 of the Labour Act), *Ukraine* (section 78 of the Labour Code), *Uruguay* (section 8 of Act No. 12590 of 1958), *Uzbekistan* (section 145 of the Labour Code), *Bolivarian Republic of Venezuela* (section 201 of the Basic Labour Act), *Zambia* (sections 6 and 7 of the Minimum Wages and Conditions of Employment Act) and *Zimbabwe* (section 14A(4) of the Labour Act).

[112] Other examples include: *Germany* (section 9 of the Federal Leave Act), *Greece* (section 2(3) of Act No. 539/1945), *Kuwait* (section 70 of the New Private Sector Labour Law), *Poland* (sections 165 and 166 of the Labour Code), *Slovenia* (section 160(3), (4) and (5) of the Employment Relationship Act) and *Sweden* (section 15(1) of the Annual Leave Act).

[113] Section 89(3) of the Labour Code.

[114] Section 25(3) of the Labour Code.

[115] Section 87 of the Labour Code.

[116] See *Brazil* – CEACR, Convention No. 132, direct request, published in 2006; *Croatia* – CEACR, Convention No. 132, direct request, published in 2015; and *Malta* – CEACR, Convention No. 132, direct request, published in 1996.

322. ***Recalling that the purpose of annual leave is to enable workers to rest and enjoy some leisure after a long period of work, the Committee emphasizes the importance of public and customary holidays not being included in the annual holiday with pay and that any period of annual paid leave which cannot be taken because of sickness or injury is deferred but not lost, or compensated.***

(d) Increased entitlements to leave

323. Paragraph 6 of Recommendation No. 98 indicates that it should be left to the appropriate machinery in each country to determine whether the duration of the annual holiday with pay should increase with length of service or by reason of other factors. Paragraph 10 of Recommendation No. 98 adds that young workers under 18 years of age should receive a longer period of annual holiday with pay than the minimum provided for in Paragraph 4. [117]

(i) Increased entitlement with length of service

324. The legislation in a number of countries [118] provides for the period of annual leave to increase with seniority. For example, among non-ratifying countries, the legislation in *Austria* provides that employees are entitled to five weeks leave for each working year and that, upon completion of 25 years of service, the leave entitlement increases to six weeks. [119] In the *United States*, the legislation provides that federal employees have the right to half a day annual leave for each pay period if they have less than three years of experience, three-quarters of a day for employees with more than three but less than 15 years of seniority and one day of annual leave for each pay period for employees with more than 15 years of service. [120] In the *Plurinational State of Bolivia*, the annual leave period increases from 15 working days for one to five years of service to 20 working days for five to ten years of service, and to 30 working days for ten or more years of service. [121] The legislation in *Egypt* [122] provides for 20 days of annual leave with full pay for workers who have completed a full year of service, rising to 30 days after ten years of service with one or more employers. Among ratifying countries, in *Iraq* [123] the annual leave period is increased by two days after the first five years of continuous service with the same employer, by two days after the second five years of continuous service with the same employer, and by three days after every additional five years of service with the same employer.

[117] There is no provision to this effect in Convention No. 132.

[118] For example, **among non-ratifying countries**: *Argentina, Austria, Belarus, Benin, Plurinational State of Bolivia, Cambodia, Canada, Central African Republic, Chile, China, Côte d'Ivoire, Cyprus, Ecuador, Egypt, Equatorial Guinea, Eritrea, Ethiopia, France, Gabon, Greece, Guatemala, Honduras, Jamaica, Japan, Republic of Korea, Mali, Mauritania, Mexico, Mongolia, Morocco, Poland, Qatar, Romania, Senegal, Singapore, Sudan, Suriname, Syrian Arab Republic, Tajikistan, Tunisia, Turkey, United States, Uzbekistan, Bolivarian Republic of Venezuela* and *Zimbabwe*; **among ratifying countries**: *Azerbaijan, Bosnia and Herzegovina, Burkina Faso, Cameroon, Finland, Iraq, Republic of Moldova, Rwanda, Serbia, Spain, Ukraine* and *Uruguay*.

[119] Section 2 of the Paid Annual Leave Act.

[120] Section 6303 of Title 5 of the US Code.

[121] Section 1 of Decree No. 03150 of 1952.

[122] Section 47(1) of the Labour Code.

[123] Section 75(3) of the Labour Code.

(ii) Increased entitlement on grounds of age [124]

325. The legislation in certain countries contains provisions requiring an increase in annual leave on grounds of age. [125] For example, among non-ratifying countries, the Government of *Bangladesh* reports that young persons are entitled to increased leave, as follows: (a) one day for every 15 days of work in a factory; (b) one day for every 18 days of work in a tea plantation; and (c) one day for every 14 days of work in a shop or commercial or industrial establishment. [126] The Government of *Morocco* indicates that workers under 18 years of age are entitled to two days of paid annual leave for every month of work, in comparison with a minimum period of annual leave of one-and-a-half days for other workers for each month of work. [127] The Government of *Mongolia* reports that the basic annual leave for employees under 18 years of age is 20 working days, compared with 15 for adult workers. [128] Among ratifying countries, workers in *Hungary* are entitled to an increase in the minimum period of annual leave, as follows: (a) one working day over the age of 25 years; (b) two working days over the age of 28; (c) three working days over the age of 31; (d) four working days over the age of 33; (e) five working days over the age of 35; (f) six working days over the age of 37; (g) seven working days over the age of 39; (h) eight working days over the age of 41; (i) nine working days over the age of 43; and (j) ten working days over the age of 45. [129] Moreover, in the same country, young workers are entitled to five additional days of leave each year until they reach the age of 18. [130] The legislation in *Switzerland* provides that employees under the age of 20 are entitled to five weeks of holiday a year and employees from the age of 20 are entitled to four weeks. [131]

(iii) Increased leave entitlement by reason of other factors

326. Other factors may also be set out in national legislation to justify the granting of longer periods of annual leave to workers. For example, in certain countries, a longer period of annual leave is granted to workers engaged in harmful and hazardous work, work under abnormal conditions or work in certain climatic conditions. In *Azerbaijan*, workers engaged in underground work, in hazardous and arduous occupations, and those performing distressing, upsetting or mentally or physically stressful duties, are granted additional leave of not less than six calendar days. [132] In *Egypt*, [133] annual leave is increased by seven days for persons engaged in difficult, hazardous or harmful work or

[124] Paragraph 13(1)(d) of the Minimum Age Recommendation, 1973 (No. 146), calls for "the granting of an annual holiday with pay of at least four weeks and, in any case, not shorter than that granted to adults" for young persons under the age of 18 years. Paragraph 14(c) of the Older Workers Recommendation, 1980 (No. 162), suggests increasing annual holidays with pay on the basis of length of service or of age.

[125] For example, **among non-ratifying countries**: *Austria, Bangladesh, Benin, Egypt, France, India, Mali, Morocco, Poland, Senegal, Slovakia* and *Tajikistan*; **among ratifying countries**: *Azerbaijan, Bosnia and Herzegovina, Burkina Faso, Croatia, Germany, Hungary, Latvia, Montenegro, Norway, Slovenia, Switzerland* and *the former Yugoslav Republic of Macedonia*.

[126] Section 117(2) of the Labour Act. For adult workers, the proportion of annual leave is as follows: one day every 18 days of work for shops or commercial or industrial establishment or factory or road transport service; one day every 22 days of work in tea plantations; one day every 11 days of work for newspaper worker.

[127] Section 231 of the Labour Code.

[128] Section 79(3) of the Labour Code.

[129] Section 117 of the Labour Code.

[130] Section 119(1) of the Labour Code.

[131] Section 329a of the Obligation Code.

[132] Section 115(1) of the Labour Code.

[133] Section 47(3) of the Labour Code.

those who work in remote areas, as determined by a decision of the minister responsible following consultation with the competent authorities. [134]

327. In other countries, additional leave is granted to workers with disabilities. For example, in *Poland*, [135] a person with considerable or moderate disability is entitled to an additional ten working days of leave each calendar year. [136]

328. Other factors envisaged in national legislation to justify longer periods of leave include family responsibilities, mainly for women. For example, in *Benin*, women workers under 21 years of age are entitled to two additional days of holiday per child under their responsibility, while women who are over 21 with four or more children under their responsibility have the same entitlement. [137] In *Senegal*, [138] women workers are entitled to one additional day of leave for each child under 14 years of age, two additional days per child if the mother is under 21 and two additional days per child from the fourth child if the mother is over 21 years of age. [139]

D. Holiday remuneration

Box 3.7

Article 7 of Convention No. 132 provides that:

1. Every person taking the holiday envisaged in this Convention shall receive in respect of the full period of that holiday at least his normal or average remuneration (including the cash equivalent of any part of that remuneration which is paid in kind and which is not a permanent benefit continuing whether or not the person concerned is on holiday), calculated in a manner to be determined by the competent authority or through the appropriate machinery in each country.

2. The amounts due in pursuance of paragraph 1 of this Article shall be paid to the person concerned in advance of the holiday, unless otherwise provided in an agreement applicable to him and the employer.

329. Paragraph 11 of Recommendation No. 98 provides that every person "taking an annual holiday with pay should receive in respect of the full period of the holiday, at the minimum, either – (a) the remuneration determined for such holiday period by collective agreements, arbitration awards or national laws and regulations; or (b) their normal remuneration, as prescribed by national laws or regulations or by any other means established by national practice, including the cash equivalent of their remuneration in kind, if any."

[134] Other examples include: *Algeria, Belarus, Bulgaria, Croatia, Georgia, Islamic Republic of Iran, Iraq, Kazakhstan, Lithuania, Mongolia, Romania, Tajikistan, Turkmenistan, Ukraine* and *Uzbekistan*.

[135] Section 19(1) of the Act on vocational and social rehabilitation.

[136] Other examples include: *Austria, Azerbaijan, Bosnia and Herzegovina, France, Hungary, Kazakhstan, Lithuania, Luxembourg, Mongolia, Poland, Romania, Slovenia, the former Yugoslav Republic of Macedonia* and *Ukraine.*

[137] Section 158(4) of the Labour Code.

[138] Section 148(3) of the Labour Code and section 55 of the National Interoccupational Agreement (CCNI).

[139] Similar examples are found in *Azerbaijan, Bosnia and Herzegovina, Burkina Faso, Cameroon, Central African Republic, Côte d'Ivoire, France, Gabon, Hungary, Lithuania, Mali, Mauritania, Republic of Moldova, Senegal* and *Slovenia*.

330. Article 7 of Convention No. 132 identifies two possible bases for the calculation of holiday pay: normal remuneration or average remuneration. Moreover, while both the Convention and the Recommendation call for the inclusion in holiday pay of the cash equivalent of any benefit in kind, the Convention specifically requires holiday pay to be paid in advance, unless otherwise provided in an agreement applicable to the worker and the employer.

(a) Basis for the calculation of holiday remuneration

331. The legislation in a majority of countries recognizes that holidays are to be paid at not less than the normal or average remuneration, as envisaged in Article 7 of the Convention. [140] With reference to the methods for the calculation of holiday pay, many countries report that annual holiday pay is calculated as an average of the worker's earnings over a certain period of time. [141] The reference period for the calculation of the average wage varies between countries, and ranges from three months [142] to one year. [143] In certain cases, the reference period changes according to the sector of the economy. For example, in *Costa Rica*, [144] in the agriculture and livestock sector, holiday pay is calculated on the basis of the average wage received the week before the holiday, while the reference period is 50 weeks in the commercial and industrial sectors.

332. Other common methods of calculation take into account the normal remuneration received by the worker at the time that leave is taken, [145] or the wage that employees would have received if they had worked during the leave period. [146] For example, in *Sri Lanka*,

[140] Exceptions include *Turkmenistan* and *Zimbabwe*.

[141] For example, **among non-ratifying countries**: *Algeria* (section 52 of the Law on labour relations), *Bangladesh* (section 119(1) of the Labour Act), *Belarus* (section 153 of the Labour Code), *Benin* (section 165 of the Labour Code), *Plurinational State of Bolivia* (Decree No. 12059 of 1974), *Bulgaria* (section 177(1) of the Labour Code), *Burundi* (section 133 of the Labour Code), *Cambodia* (section 168 of the Labour Code), *Central African Republic* (section 288 of the Labour Code), *Costa Rica* (section 157 of the Labour Code), *Ecuador* (section 71 of the Labour Code), *Estonia* (section 10(1) of the Employment Contracts Act), *Gabon* (section 188 of the Labour Code), *Guatemala* (section 134 of the Labour Code), *Honduras* (section 352 of the Labour Code), *Iceland* (section 7 of Act No. 30/1987), *India* (section 81 of the Factories Act), *Japan* (section 39(6) of the Labour Standards Act), *Mali* (section 157(L) of the Labour Code), *Mauritania* (section 188 of the Labour Code), *Romania* (section 150 of the Labour Code), *Tajikistan* (section 97 of the Labour Code) and *Togo* (section 160 of the Labour Code); **among ratifying countries**: *Azerbaijan* (section 140 of the Labour Code), *Burkina Faso* (section 16 of Decree No. 2009-014/MTSS/SG/DGT/DER), *Cameroon* (section 4 of Decree No. 75/28), *Croatia* (section 81 of the Labour Act), *Czech Republic* (section 222(1) of the Labour Code), *Germany* (section 11(1) of the Federal Leave Act), *Latvia* (section 75(8) of the Labour Law), *Luxembourg* (section 233(14) of the Labour Code), *Madagascar* (section 89 of the Labour Code), *Norway* (section 10 of the Annual Holidays Act), *Russian Federation* (section 139 of the Labour Code), *Rwanda* (section 55 of the Labour Act) and *Serbia* (section 114 of the Labour Law).

[142] For example, *Croatia*, *Georgia*, *Guatemala* (in agriculture), *Lithuania*, *Luxembourg*, *Romania* and *Serbia*.

[143] For example, *Algeria*, *Benin*, *Burkina Faso*, *Cambodia*, *Côte d'Ivoire*, *Ecuador*, *Gabon*, *Kazakhstan*, *Madagascar*, *Mali* and *Rwanda*.

[144] Section 157 of the Labour Code.

[145] For example, **among ratifying countries**: *Brazil* (section 142 of the Consolidation of Labour Laws) and *Sweden* (section 16a of the Annual Leave Act); **among non-ratifying countries**: *China* (section 2 of the Regulations on Paid Annual Leave for Employees), *Colombia* (section 192 of the Labour Code), *Equatorial Guinea* (section 77 of Act No. 10/2012), *Ghana* (section 20 of the Labour Act), *Malawi* (section 45(3) of the Employment Act), *Nicaragua* (section 78 of the Labour Code), *Syrian Arab Republic* (as reported by the Government), *Tunisia* (section 119 of the Labour Code), *United Kingdom* (section 16(1) of the Working Time Regulations) and *Bolivarian Republic of Venezuela* (section 192 of the Basic Labour Act).

[146] For example, **among ratifying countries**: *Guinea* (section 222(15) of the Labour Code) and *Portugal* (section 264 of the Labour Code); **among non-ratifying countries**: *Cabo Verde* (section 55(1) of the Labour Code), *Ethiopia* (section 77(3) of the Labour Proclamation), *Greece* (section 3 of Act No. 539/1945), *Peru* (section 15 of Legislative Decree No. 713) and *Poland* (section 172 of the Labour Code).

employees receive full remuneration during annual leave at a rate equivalent to that applicable for a normal period of employment on the day immediately prior to the commencement of the holiday. [147] In *Austria*, [148] during the period of leave, workers continue to receive the remuneration they would otherwise have been paid had they not taken a holiday. In a few countries, the national legislation refers to "normal remuneration", defined as the daily, weekly or monthly salary, [149] or the basic wage. [150]

333. In other countries, the legislation contains more detailed indications of the elements to be taken into account as the basis for calculation. For example, in *Hungary*, the Labour Code provides that the amount of holiday pay shall be based on the wage in effect at the time the holiday is due, and on the performance-based wage and supplements paid over the past six calendar months. [151] In *Kenya*, [152] full pay includes wages and salary at the basic minimum rate, excluding any deductions from wages made by virtue of the Employment Act. In other cases, the legislation simply refers to the payment of the "wage" or "full pay", without specifying the meaning of the terms. [153]

334. When earnings are variable, for example in the case of piecework, commission-based or seasonal jobs, the legislation often provides for the average method to apply. [154] For example, in *Uruguay*, workers with variable remuneration are paid an average resulting from the division of the total amount of the wages received in the previous calendar year by the number of days worked over the same period. [155] Similarly, in *Qatar*, [156] the Labour Code provides that, if the worker is employed on a piecework basis, holiday pay is calculated as an average of the wages received over the three months preceding the date of the entitlement.

335. In *New Zealand*, [157] the amount of pay is based on either ordinary weekly pay at the beginning of the holiday or average weekly pay over the 12 months before the annual holiday, whichever is highest. In this respect, *Business New Zealand* considers that the current payment provisions of the Holidays Act are complex and that, due to an increasingly wide variety of working arrangements and the wish of many employees to take small amounts of leave, difficulties have been encountered in calculating precisely the amount of holiday pay.

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[147] Section 68(1) of the Shop and Office Employees Act.

[148] Section 6 of the Paid Annual Holiday Act.

[149] See, for example, *Malta* (section 8 of the Organisation of Working Time Regulations), *Panama* (section 54 of the Labour Code), *Philippines* (section 94 of the Labour Code), *Sri Lanka* (section 68(1) of the Shop and Office Employees Act) and *Sweden* (section 16a of the Annual Leave Act).

[150] See, for example, *Antigua and Barbuda* (section C18(1) of the Labour Code), *Mauritius* (as reported by the Government), *Qatar* (section 72 of the Labour Code) and *Slovenia* (section 131 of the Employment Relationship Act).

[151] Section 148(1) of the Labour Code.

[152] Section 9(3) of the Regulation of Wages (General) Order, 1982.

[153] For example, *Eritrea* (section 56(1) of the Labour Proclamation), *Kuwait* (section 71 of the Private Sector Labour Law), *Oman* (section 61 of the Labour Code) and *Sudan* (section 44(1) of the Labour Act).

[154] For example, *Argentina* (section 155 of Act No. 20744), *Australia* (Queensland, sections 13(3) and 71EE(3) of the Industrial Relations Act 1999), *Brazil* (section 143 of the Consolidation of Labour Laws), *Chile* (section 71 of the Labour Code), *Equatorial Guinea* (section 77 of Act No. 10/2012), *Jamaica* (section 5 of the Holidays with Pay Act) and *Turkey* (section 57 of the Labour Law).

[155] Section 10 of Act No. 12590 of 1958.

[156] Section 72 of the Labour Code.

[157] Section 21 of the Holidays Act.

336. In a few countries, holiday pay is determined as a percentage of the wages received during the entitlement year. [158] For example, in *Canada*, holiday pay consists of 4 per cent or, after six consecutive years of seniority, 6 per cent of the wages received during the year that gives rise to the vacation. [159] The Government of *Cuba* reports that holiday pay is composed of 9.09 per cent of the wages received during the period giving rise to the holiday entitlement.

337. Finally, in certain countries, collective agreements can establish more favourable conditions, [160] or can entirely determine the basis for the calculation. [161]

338. In this respect, the Committee has requested governments to ensure in law and practice that workers receive no less than their normal or average remuneration for the entire period of their annual leave. [162]

(b) Additional elements taken into consideration

339. In addition to the basis for calculation, the legislation in a number of countries provides for the payment in cash of benefits in kind. [163]

340. In contrast, in a few countries the legislation excludes the payment in cash of benefits in kind. [164] For example, in *Chad*, the Labour Code provides that, with the exception of food allowances, benefits in kind are not to be considered in the calculation of holiday pay. In this regard, the Committee has noted that any person taking annual holiday with pay must receive at least the normal or average remuneration in respect of the full period of the annual holiday, including the cash equivalent of any part of wages paid in kind, except for permanent benefits that are received separately from the paid holiday. [165]

341. Other elements considered by national legislation for the calculation of holiday pay include performance-related bonuses, commissions and incentive payments, [166]

[158] For example, *Norway* (section 10 of the Annual Holidays Act).

[159] Section 183 of the Labour Code.

[160] For example, *Burkina Faso* (section 16 of Decree No. 2009-014/MTSS/SG/DGT/DER), *Canada* (section 168(1)(1) of the Labour Code), *Croatia* (section 81 of the Labour Act) and *Togo* (section 160 of the Labour Code).

[161] For example, *Mongolia* (section 80 of the Labour Code) and *Montenegro* (section 82(1) of the Labour Law).

[162] See, for example, *Slovenia* – CEACR, Convention No. 132, direct request, published in 2014: and *Hungary* – CEACR, Convention No. 132, direct request, published in 2010.

[163] For example, *Antigua and Barbuda* (section C18(1) of the Labour Code), *Bangladesh* (section 119(1) of the Labour Act) *Cambodia* (section 168 of the Labour Law), *Dominican Republic* (section 181 of the Labour Code), *Equatorial Guinea* (section 77 of Act No. 10/2012), *Ghana* (section 20 of the Labour Act), *Honduras* (section 352 of the Labour Code), *India* (section 80 of the Factories Act), *Mali* (section L.157 of the Labour Code), *New Zealand* (section 10(1) of the Holidays Act), *Panama* (section 54(A) of the Labour Code) and *Bolivarian Republic of Venezuela* (section 193 of the Basic Labour Act).

[164] For example, *Central African Republic* (section 288 of the Labour Code) and *Senegal* (section 153 of the Labour Code).

[165] *Chad* – CEACR, Convention No. 132, direct request, published in 2014.

[166] For example, *Côte d'Ivoire* (section 25(7) of the Labour Code), *Gabon* (section 188(1) of the Labour Code), *Germany* (as reported by the Government), *Poland* (section 6 of the 1997 Ordinance of the Minister of Labour and Social Policy) and *United Kingdom* (Employment Appeal Tribunal, *British Gas Trading Ltd* v. *Lock & Anor*, 2016, 0189/15/BA).

compensation for night work or hazardous work, [167] benefits arising out of continuous employment and seniority, [168] and cost of living (dearness) allowances. [169]

342. Some countries report that overtime pay also has to be included in the calculation of holiday pay. [170] For example, in *Lithuania*, employees receive the average wage, which is calculated taking into account the basic remuneration for the work performed and overtime payments. [171] In contrast, in some other cases, the legislation explicitly excludes overtime payments from the calculation. [172] In *Madagascar*, the Labour Code requires the employer to pay the worker an allowance which is not less than one twelfth of the wages and of the various elements of remuneration received by the worker during the 12 months preceding the date of the holidays, except for the reimbursement of expenses. However, the *Trade Union Confederation of Malagasy Revolutionary Workers* reports that in practice employees often receive only their wage, without the other elements of remuneration.

343. In addition to these elements, a supplementary allowance is paid in some countries in addition to regular remuneration. [173] For example, in *Sweden*, the holiday supplement for each day of annual leave with pay is 1.82 per cent of weekly pay for employees paid weekly and 0.43 per cent of monthly pay for employees paid on a monthly basis. [174] In the *Bolivarian Republic of Venezuela*, [175] holiday pay includes, in addition to the corresponding wage, a special bonus equivalent to a minimum of 15 days of normal wages, plus one day for each year of service up to a total of 30 days of normal wages.

(c) Date of payment

344. The legislation in many countries provides remuneration for annual holidays to be paid in advance. [176] In these cases, the legislation frequently provides that the payment

[167] See, for example, *Brazil* (section 142 of the Consolidation of Labour Laws) and *Lithuania* (section 3(2) of Resolution No. 650 of 27 May 2003).

[168] See, for example, *Argentina* (section 155 of Act No. 20744 of 1974).

[169] See, for example, *Bangladesh* (section 119(1) of the Labour Act) and *India* (section 80 of the Factories Act).

[170] For example, *Argentina* (section 155 of Act No. 20744 of 1974), *Brazil* (section 142(5) of the Consolidation of Labour Laws), *Costa Rica* (section 157 of the Labour Code), *New Zealand* (section 21 of the Holidays Act) and *United Kingdom* (Employment Appeal Tribunal, *Bear Scotland Ltd* v. *Fulton and others*, 2015, IRLR 15 EAT).

[171] Section 3(2) of Resolution No. 650 of 27 May 2003.

[172] For example, *Australia* (as reported by the Government), *Bangladesh* (section 119(1) of the Labour Act), *Colombia* (section 192 of the Labour Code), *Germany* (section 11(1) of the Federal Paid Leave Act), *Ghana* (section 20 of the Labour Act) and *India* (section 80 of the Factories Act).

[173] For example, *Belgium* (sections 14 and 38bis of the Royal Decree of 30 March 1967), *Greece* (section 3(16) of Act No. 4504/1966), *Mexico* (section 80 of the Federal Labour Act) and *Portugal* (section 264 of the Labour Code).

[174] Section 16(a) of the Annual Leave Act.

[175] Section 192 of the Basic Labour Act.

[176] For example, **among ratifying countries**: *Azerbaijan* (section 140(5) of the Labour Code), *Belgium* (sections 23 and 45 of the Royal Decree of 30 March 1967), *Brazil* (section 145 of the Consolidation of Labour Laws), *Burkina Faso* (section 15 of Order No. 2009-014), *Cameroon* (section 93 of the Labour Code), *Czech Republic* (section 141(4) of the Labour Code), *Finland* (section 15 of the Annual Holiday Act), *Germany* (section 11(2) of the Federal Leave Act), *Hungary* (section 149(4) of the Labour Code), *Iraq* (section 76(3) of the Labour Code), *Latvia* (section 69(4) of the Labour Law), *Madagascar* (section 89 of the Labour Code), *Republic of Moldova* (section 117 of the Labour Code), *Norway* (section 11(1) of the Annual Holidays Act), *Portugal* (section 264 of the Labour Code), *Ukraine* (section 21 of the Act on leave) and *Uruguay* (section 25 of Act No. 12590); **among non-ratifying countries**: *Argentina* (section 155 of Act No. 20744), *Austria* (section 6(6) of the Paid Annual Leave Act), *Burundi* (section 133 of the Labour Code), *Cambodia* (section 168 of the Labour Law), *Côte d'Ivoire* (section 25(7) of the Labour Code), *Cuba* (section 106 of the Labour Code), *Ecuador* (section 69 of the Labour Code), *El Salvador* (section 184 of the Labour Code), *Estonia* (section 70(2) of the Employment Contracts Act), *Gabon* (section 188(3) of the Labour Code), *Guatemala* (section 134 of the Labour Code), *Iceland* (section 149(4) of the

shall be made between one and three days before the beginning of the holiday, [177] while in some countries holiday pay can be paid on the first day of the holiday. [178] In a few countries, employers and employees can agree on a different date for the payment of holiday pay. [179]

345. However, the legislation in many other countries does not contain provisions on the date of payment of holiday pay. [180] In this regard, the Committee has recalled the importance of ensuring in law and practice that holiday remuneration is paid in advance of the holiday period. [181]

346. ***The Committee encourages all governments to take the necessary measures to ensure that every person taking holidays receives at least the normal or average remuneration, including the cash equivalent of any remuneration in kind, and that the amounts due are paid in advance of the holiday unless otherwise provided in an agreement applicable to that person and the employee.***

E. Other aspects

(a) Restrictions on the division and postponement of the annual holiday

Box 3.8

Article 8 of Convention No. 132 provides that:

1. The division of the annual holiday with pay into parts may be authorised by the competent authority or through the appropriate machinery in each country.

Labour Code), *Kazakhstan* (section 92(4) of the Labour Code), *Kuwait* (section 71 of the Private Sector Labour Law), *Mali* (section L.161 of the Labour Code), *Mauritania* (section 188 of the Labour Code), *Morocco* (section 259 of the Labour Code), *New Zealand* (section 27 of the Holidays Act), *Romania* (section 68 of the Labour Code), *South Africa* (section 21(2) of the Basic Conditions of Employment Act) and *Uzbekistan* (section 148(2) of the Labour Code).

[177] Up to one day before the holiday, for example, *Burundi* (section 133 of the Labour Code), *Cameroon* (section 93 of the Labour Code), *Dominican Republic* (section 181 of the Labour Code), *Hungary* (section 149(4) of the Labour Code), *Iceland* (section 7 of Act No. 30/1987), *Latvia* (section 69(4) of the Labour Code), *Mali* (section L.161 of the Labour Code), *Morocco* (section 259 of the Labour Code) and *Uzbekistan* (section 148(2) of the Labour Code). Up to two days before the holiday, for example, *Brazil* (section 145 of the Consolidation of Labour Laws), *Cuba* (section 106 of the Labour Code) and *Estonia* (section 70(2) of the Employment Contracts Act). Up to three days before the holiday, for example, *Azerbaijan* (section 140(5) of the Labour Code), *Honduras* (section 348 of the Labour Code), *Kazakhstan* (section 92(4) of the Labour Code), *Lithuania* (section 176(2) of the Labour Code), *Republic of Moldova* (section 117 of the Labour Code), *Panama* (section 54(5) of the Labour Code) and *Ukraine* (section 21 of the Act on leave).

[178] For example, *Colombia* (section 192 of the Labour Code), *Côte d'Ivoire* (section 25(7) of the Labour Code), *Mauritania* (section 188 of the Labour Code) and *Bolivarian Republic of Venezuela* (section 194 of the Basic Labour Act).

[179] For example, *Czech Republic* (section 141(4) of the Labour Code), *Madagascar* (section 89 of the Labour Code), *Namibia* (section 23(6) of the Labour Act), *New Zealand* (section 27 of the Holiday Act), *Portugal* (section 264 of the Labour Code) and *South Africa* (section 21(2) of the Basic Conditions of Employment Act).

[180] For example, **among ratifying countries**: in *Bosnia and Herzegovina, Croatia, Guinea, Luxembourg, Malta, Montenegro, Serbia* and *the former Yugoslav Republic of Macedonia*; **among non-ratifying countries**: *Algeria, Belarus, Cabo Verde, Chile, Eritrea, Georgia, Greece, Japan, Republic of Korea, Mauritius, Myanmar, Oman, Philippines, Slovakia, Spain, Tunisia, United Kingdom, United States* and *Zambia*.

[181] See, for example, *Guinea* – CEACR, Convention No. 132, direct request, published in 2016; *Luxembourg* – CEACR, Convention No. 132, direct request, published in 2010; *Montenegro* – CEACR, Convention No. 132, direct request, published in 2014; *Serbia* – CEACR, Convention No. 132, direct request, published in 2014.

2. Unless otherwise provided in an agreement applicable to the employer and the employed person concerned, and on condition that the length of service of the person concerned entitles him to such a period, one of the parts shall consist of at least two uninterrupted working weeks.

Article 9 of Convention No. 132 provides that:

1. The uninterrupted part of the annual holiday with pay referred to in Article 8, paragraph 2, of this Convention shall be granted and taken no later than one year, and the remainder of the annual holiday with pay no later than eighteen months, from the end of the year in respect of which the holiday entitlement has arisen.

2. Any part of the annual holiday which exceeds a stated minimum may be postponed, with the consent of the employed person concerned, beyond the period specified in paragraph 1 of this Article and up to a further specified time limit.

3. The minimum and the time limit referred to in paragraph 2 of this Article shall be determined by the competent authority after consultation with the organisations of employers and workers concerned, or through collective bargaining, or in such other manner consistent with national practice as may be appropriate under national conditions.

347. While Article 8 of the Convention is intended to place some restrictions on the possibility of dividing holidays into parts, Article 9 seeks to ensure that any part of annual leave that is not taken by workers in the year in which entitlement arises is not postponed indefinitely. The rationale behind these provisions is to ensure that workers benefit in practice from an adequate period of free time to guarantee their mental and physical rest after periods of work. [182]

348. The legislation in a vast majority of countries provides for the possibility of dividing leave into parts with the consent of the worker. [183] Among countries in which the legislation provides for the possibility of the fragmentation of annual leave, there are many legal provisions ensuring a certain continuity of annual holidays and providing that, if holidays are divided into parts, the minimum period of uninterrupted annual leave is at least two weeks or 14 calendar days. [184] In certain countries, the legislation provides for an uninterrupted period of leave of 12 working days. [185].

[182] See ILO: *Working time: Reduction of hours of work, weekly rest and holidays with pay*, op. cit., para. 279.

[183] The legislation in all ratifying countries provides for the possibility of dividing annual holidays into parts. In *Rwanda*, although the law does not envisage this possibility, the Government reports that it is possible in practice.

[184] For example, **among non-ratifying countries**: *Belarus* (section 174 of the Labour Code), *Benin* (section 162(1) of the Labour Code), *Côte d'Ivoire* (section 25(6) of the Labour Code), *Estonia* (section 68(5) of the Employment Contracts Act), *Kazakhstan* (section 92 of the Labour Code), *Kuwait* (section 72 of the Private Sector Labour Law), *Lithuania* (section 172 of the Labour Code), *Mali* (section L.156 of the Labour Code), *Netherlands* (as reported by the Government), *New Zealand* (section 18(2) of the Holidays Act), *Poland* (section 162 of the Labour Code), *Russian Federation* (section 125 of the Labour Code), *Seychelles* (section 9(2) of the Employment (Conditions of Employment) Regulations 1991) and *Slovakia* (section 111(5) of the Labour Code); **among ratifying countries**: *Brazil* (section 134 of the Consolidation of Labour Laws), *Burkina Faso* (section 56 of Act No. 081/CNT of 2015 and section 14 of Decree No. 2009-014/MTSS/SG/DGT/DER), *Croatia* (section 83 of the Labour Act), *Czech Republic* (section 217(1) of the Labour Code), *Hungary* (section 122(3) of the Labour Code), *Iraq* (section 77 of the Labour Code), *Italy* (section 10 of Legislative Decree No. 66/2003), *Kenya* (section 28(2) of the Employment Act), *Latvia* (section 149(2) of the Labour Law), *Madagascar* (section 88 of the Labour Code), *Republic of Moldova* (section 115(5) of the Labour Code), *Slovenia* (section 162(1) of the Employment Relationship Act), *Switzerland* (section 329(c) of the Code of Obligations), *the former Yugoslav Republic of Macedonia* (section 141 of the Law on labour relations) and *Ukraine* (section 12 of the Act on Leave).

[185] For example, **among ratifying countries**: *Bosnia and Herzegovina* (section 50 of the Labour Law of the Federation of Bosnia and Herzegovina), *Cameroon* (section 90(4) of the Labour Code) and *Luxembourg* (section L.233-8 of the Labour Code); **among non-ratifying countries**: *France* (section L.3141-17 and L.3141-18 of the Labour Code), *Mauritania* (section 186 of the Labour Code), *Morocco* (section 240 of the Labour Code), *Senegal* (section 11 of Decree No. 10844 IGTLS-AOF of 1956) and *Uzbekistan* (section 146 of the Labour Code).

349. However, the Committee observes that, in other countries, national legislation provides for a minimum uninterrupted period of leave of ten days. [186] Moreover, a shorter period of uninterrupted leave of six days, [187] or one week, [188] is envisaged in a number of countries. For example, in *Yemen*, the Labour Code provides that the holidays granted to a worker shall consist of at least two days at a time. The Committee also observes that in some countries the legislation envisages the possibility of dividing annual leave, but does not require a minimum uninterrupted period of annual leave. [189] ***In this regard, the Committee has recalled that, unless otherwise provided in an agreement applicable to the employer and the employed person, in the event of the division of the holiday, one of the parts shall consist of at least two uninterrupted working weeks,*** [190] ***or 12 working days, based on a six-day working week.*** [191]

350. The Committee has noted that legislative changes introduced in recent years in some ratifying countries give effect to Article 8(2) of the Convention. For example, in *Italy*, Legislative Decrees Nos 66/2003 and 213/2004 introduced the rule of an uninterrupted period of annual holiday of two weeks. [192] Other examples include *Guinea*, where a new Labour Code was adopted in 2014, and *Hungary*, where a new Labour Code was adopted in 2012.

351. In some countries the division of annual holidays into parts is only allowed in exceptional circumstances. [193] For example, in *Guatemala*, [194] workers have the right to take an uninterrupted period of annual holiday, and they are only obliged to divide the holiday period into two parts, at most, in the case of special work in which prolonged absences are not possible.

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[186] For example, **among ratifying countries**: *Montenegro* (section 69(2) of the Labour Code), *Portugal* (section 241(8) of the Labour Code) and *Uruguay* (section 1 of Act No. 12590 of 1958); **among non-ratifying countries**: *Chile* (section 70 of the Labour Code), *El Salvador* (if the holiday is divided in two parts, section 189 of the Labour Code), *Romania* (section 148(5) of the Labour Code) and *Turkey* (section 56 of the Labour Law).

[187] For example, *Austria* (section 4(3) of the Annual Leave Act), *Bahrain* (section 59(a) of the Labour Code), *Burundi* (section 130 of the Labour Code), *Colombia* (section 190 of the Labour Code), *Egypt* (section 48(3) of the Labour Code), *Mexico* (section 76 of the Federal Labour Act), *Suriname* (section 92(2) of the Holiday Act) and *Syrian Arab Republic* (section 160 of the Labour Code).

[188] For example, *Dominican Republic* (section 177 of the Labour Code), *Peru* (section 17 of Legislative Decree No. 713), *Samoa* (section 40(3) of the Labour and Employment Relations Act) and *Sri Lanka* (section 6(1)(b) of the Shop and Office Employees Act).

[189] For example, **among non-ratifying countries**: *Australia, Bangladesh, Plurinational State of Bolivia, Bulgaria, Cambodia, Cuba, Ecuador, Eritrea, Georgia, Honduras, India, Jamaica, Republic of Korea, Namibia, South Africa, Sudan, Turkmenistan, United Kingdom* and *Bolivarian Republic of Venezuela*; **among ratifying countries**: *Rwanda*.

[190] See *Yemen* – CEACR, Convention No. 132, direct request, published in 2010. See also *Spain* – CEACR, Convention No. 132, direct request, published in 2015, with regard to the minimum uninterrupted period of annual holiday for public employees.

[191] For example, *Malta* – CEACR, Convention No. 132, direct request, published in 2015. See also *Portugal* – CEACR, Convention No. 132, direct request, published in 2009. In the case of *Portugal*, the Government indicated in its article 22 report in 2013 that, in accordance with section 238(2) of the Labour Code, for the purposes of holidays, the days of the week from Monday to Friday, with the exception of public holidays, are considered as working days.

[192] Section 10 of Legislative Decree No. 66/2003, as amended by section 1(d) of Legislative Decree No. 213/2004.

[193] For example, *Costa Rica* (section 158 of the Labour Code), *Honduras* (section 351 of the Labour Code), *Germany* (section 7(2) of the Federal Leave Act) and *Luxembourg* (section L.233-8 of the Labour Code).

[194] Section 136 of the Labour Code.

352. In certain countries [195] the minimum period of continuous annual holiday is determined in collective agreements or agreements between the employer and the employee, and in a few cases the minimum period of continuous holiday established in law can be derogated by such agreements. [196] For example, in *Burundi*, [197] the annual holiday may be divided by the employer with the approval of the worker, and the terms of such division may be determined by collective or individual labour agreement, collective agreement at the establishment level, arbitration award or establishment regulations. In *Spain*, the period or periods of the annual holiday must be established by agreement between the employer and the employee, in accordance with collective agreements. [198]

353. Finally, in certain European countries, when length of service so permits, the uninterrupted period of annual leave must be taken during a specific period of the year, normally coinciding with the summer season. [199] For example, in *Norway*, under the Annual Holidays Act, the employer may require employees to take 18 days of holidays during the period between 1 June and 30 September, and the rest during the course of the year. [200]

354. ***Recalling that the aim of the Convention is to ensure that workers are able to enjoy a period of leave sufficiently long to allow them to rest and recover, the Committee emphasizes the importance that, in the event of the annual holiday with pay being divided into parts, any person who has accumulated a holiday period which exceeds two working weeks shall be entitled to an annual break from work of at least two uninterrupted working weeks, unless otherwise provided for in an agreement applicable to the employer and the employee.***

355. National legislation in a majority of countries provides for the possibility of postponing annual leave for a certain period of time. In a number of countries, limits are established on the carry-over of unused leave through the establishment of a minimum period of annual holiday that has to be taken during the year of entitlement, so that only the remainder may be postponed. [201] The time limit for carry-over varies between

[195] For example, **among non-ratifying countries**: *El Salvador* (section 189 of the Labour Code), *Panama* (section 56 of the Labour Code) and *Uruguay* (section 1 of Act No. 12590 of 1958); **among ratifying countries**: *Malta* (as indicated by the Government in its article 22 report in 2014).

[196] For example, *Hungary* (section 135(2) of the Labour Code) and *Kenya* (section 28 of the Employment Act).

[197] Section 130 of the Labour Code.

[198] Section 38(2) of the Workers' Charter.

[199] For example, *Denmark* (section 14 of the Holidays Act), *Iceland* (section 4 of Act No. 30/1987), *Finland* (section 20(2) of the Annual Holidays Act) and *Sweden* (section 12 of the Annual Leave Act).

[200] Section 7(1) of the Annual Holidays Act.

[201] For example, **among ratifying countries**: *Azerbaijan* (section 137(1) of the Labour Code), *Bosnia and Herzegovina* (section 50 of the Labour Law of the Federation of Bosnia and Herzegovina and section 84 of the Labour Law of Republika Srpska), *Croatia* (section 83 of the Labour Act), *Czech Republic* (section 218 of the Labour Code), *Germany* (section 7(2) of the Federal Leave Act), *Hungary* (section 123 of the Labour Code), *Iraq* (section 77 of the Labour Code), *Italy* (section 10 of Legislative Decree No. 66/2003), *Kenya* (section 28(4) of the Employment Act), *Latvia* (section 149(3) of the Labour Law), *Malta* (section 3 of the Organisation of Working Time Regulations), *Montenegro* (section 69(1) of the Labour Law) and *Russian Federation* (section 124 of the Labour Code); **among non-ratifying countries**: *Bahrain* (as reported by the Government), *Burundi* (section 130 of the Labour Code), *Colombia* (section 190 of the Labour Code), *Estonia* (section 68(5) of the Employment Contracts Act), *Islamic Republic of Iran* (section 66 of the Labour Code), *Mauritania* (section 185 of the Labour Code), *Peru* (section 18 of Legislative Decree No. 713), *Romania* (section 148(5) of the Labour Code), *Senegal* (section 150(2) of the Labour Code) and *Seychelles* (section 9(2) of the Employment (Conditions of Employment) Regulations, 1991).

countries, and ranges from one year or a shorter period [202] to two years. [203] While the limit in some ratifying countries is 18 months, [204] in a few countries it is as long as three years. [205] In this regard, the Committee has recalled that, in accordance with the Convention, the unused part of the annual holiday may not be postponed for longer than 18 months from the end of the year in which entitlement arose. [206]

356. However, national legislation in some countries does not specify a minimum period of uninterrupted leave and allows the postponement of the entire period of paid annual leave to the next entitlement period. [207] For example, in *Madagascar*, the Labour Code permits workers to accumulate all their holiday entitlements from the three years preceding retirement. [208] The Committee has indicated that this provision is not in compliance with Article 9 of the Convention. In this respect, the Committee has recalled that the Convention requires an uninterrupted part of the annual leave of at least two weeks to be granted no later than one year after the end of the year in respect of which the holiday entitlement has arisen.[209]

357. In certain countries, the postponement of annual holidays with pay is only possible in exceptional cases, [210] or because the worker is already on a different type of leave, such as sick leave or maternity leave. [211] For example, in the *Russian Federation*, the postponement of annual leave is only possible when the taking of leave in the current working year could have a negative impact on the normal operation of the organization or enterprise. [212] The Government of the *United Kingdom* reports that, if workers cannot take all of their leave entitlement because they are already on a different type of leave (for example, sick, maternity or parental leave), case law has established that they can carry over some or all of the untaken leave into the next leave year.

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[202] For example, **among non-ratifying countries**: *Bahrain, Bangladesh, Belarus, Bulgaria, Cabo Verde, Estonia, Georgia, India, Islamic Republic of Iran, Japan, Kazakhstan, Lithuania, Netherlands, Poland, Qatar, Romania, Singapore, Sudan, Tajikistan, United States* and *Uzbekistan*; **among ratifying countries**: Azerbaijan, *Croatia, Czech Republic, Germany, Luxembourg, Malta, Montenegro, Slovenia, the former Yugoslav Republic of Macedonia, Ukraine* and *Uruguay*.

[203] For example, **among non-ratifying countries**: *Burundi, Central African Republic, Chile, Colombia, Cyprus, Ethiopia, Gabon, Kuwait, Morocco, Panama, Peru, Togo* and *Bolivarian Republic of Venezuela*; **among ratifying countries**: *Rwanda*.

[204] For example, *Czech Republic, Iraq, Italy* and *Kenya*.

[205] For example, **among non-ratifying countries**: *Benin, Cambodia, Ecuador, Jamaica, Mauritania, Myanmar* and *Senegal*; **among ratifying countries**: *Madagascar*.

[206] See *Cameroon* – CEACR, Convention No. 132, direct request, published in 2014.

[207] For example, **among ratifying countries**: *Cameroon* (section 1(3) of Decree No. 75-28 of 1975) and *Republic of Moldova* (in exceptional cases, section 118(3) of the Labour Code); **among non-ratifying countries**: *Bangladesh* (section 117 of the Labour Code), *Central African Republic* (section 282 of the Labour Code), *Cyprus* (section 7(2) of the Annual Holidays with Pay Law), *Ethiopia* (section 79 of the Labour Proclamation), *Georgia* (section 25 of the Labour Code), *Jamaica* (section 4(1)(c) of the Holidays with Pay Act), *Morocco* (section 240 of the Labour Code) and *Myanmar* (section 4(3) of the Leave and Holiday Act).

[208] Section 88 of the Labour Code

[209] See *Madagascar* – CEACR, Convention No. 132, direct request, published in 2009 and *Republic of Moldova* – CEACR, Convention No. 132, direct request, published in 2009.

[210] For example, *Eritrea* (section 56 of the Labour Proclamation), *Germany* (section 7(3) of the Federal Leave Act), *Hungary* (section 123 of the Labour Code), *Republic of Korea* (section 60(7) of the Labour Standards Act), *Latvia* (section 149(3) of the Labour Law) and *Norway* (section 6(3) of the Annual Holidays Act).

[211] For example, *Kazakhstan* (section 94 of the Labour Code), *Turkmenistan* (section 89 of the Labour Code), *United Kingdom* (as reported by the Government) and *Uzbekistan* (section 145 of the Labour Code).

[212] Section 124(3) of the Labour Code.

358. Finally, in a number of countries, the possibility to postpone annual holidays with pay is not provided for in the legislation. [213]

359. ***Recalling that an important aim of annual leave is to allow workers to rest and recover from physical and mental fatigue, the Committee emphasizes the importance of limiting the postponement of annual leave to a small portion of the leave entitlement and of ensuring that the postponement of leave may not exceed a reasonable period of time, which the Convention sets at 18 months.***

360. With regard to consultations on the establishment of a minimum part of annual holidays which may not be postponed and the limit on the postponement of the remaining part of the leave, only a few countries report that such consultations were held. [214] A number of governments indicate that consultations with the social partners have been held when adopting new laws, or amendments to existing legislation, such as new labour codes or labour regulations. [215] Some countries report that there have been no consultations on this issue. [216]

(b) Annual leave rights upon termination of employment

Box 3.9

Article 11 of Convention No. 132 provides that:

> An employed person who has completed a minimum period of service corresponding to that which may be required under Article 5, paragraph 1, of this Convention shall receive, upon termination of employment, a holiday with pay proportionate to the length of service for which he has not received such a holiday, or compensation in lieu thereof, or the equivalent holiday credit.

361. Paragraph 4(3) of Recommendation No. 98 provides that it "should be left to the appropriate machinery in each country to provide that, where employment ceases before the worker has completed the service necessary to become eligible for an annual holiday with pay", the worker "should be entitled to a holiday with pay proportionate to the period of service performed or to compensation in lieu thereof or to the equivalent holiday credit, whichever is the more practicable."

362. Both instruments envisage three possibilities for the compensation of workers for holidays with pay to which they are entitled in the case of termination of employment: (a) the granting of annual leave in proportion to the period of service; (b) compensation in

[213] For example, *Plurinational State of Bolivia* (section 33 of the General Labour Act), *China* (as reported by the Government), *Costa Rica* (section 159 of the Labour Code), *Dominican Republic* (as reported by the Government), *El Salvador* (section 188 of the Labour Code), *Equatorial Guinea* (as reported by the Government), *Eritrea* (section 56 of the Labour Proclamation), *Ghana* (as reported by the Government), *Guatemala* (section 136 of the Labour Code), *Honduras* (section 350 of the Labour Code), *Iceland* (section 13 of Act No. 37/1987), *Malawi* (as reported by the Government), *Mauritius* (as reported by the Government), *Samoa* (section 40 of the Labour and Employment Relations Act) and *Suriname* (as reported by the Government).

[214] For example, *Algeria, Estonia, Netherlands, United Kingdom* and *Uzbekistan.*

[215] For example, *Azerbaijan, Austria, Bangladesh, Benin, Bosnia and Herzegovina, Cabo Verde, Canada, China, Côte d'Ivoire, Croatia, Cuba, Czech Republic, Denmark, Egypt, Eritrea, Finland, France, Gabon, Ghana, Germany, Guinea, Honduras, Hungary, Iceland, Italy, Japan, Kazakhstan, Kenya, Republic of Korea, Kuwait, Latvia, Lithuania, Luxembourg, Madagascar, Mali, Malta, Mauritania, Mauritius, Republic of Moldova, Mongolia, Montenegro, Morocco, New Zealand, Norway, Poland, Portugal, Qatar, Rwanda, Samoa, Senegal, Serbia, Seychelles, Slovakia, Slovenia, Sri Lanka, Spain, Switzerland, Syrian Arab Republic, Thailand, the former Yugoslav Republic of Macedonia, Tunisia, Turkey, Turkmenistan, United States, Uruguay* and *Zimbabwe*.

[216] For example, **among non-ratifying countries**: *Chile, Colombia, Costa Rica, El Salvador, Equatorial Guinea, Ethiopia, India, Malawi, Mexico, Nicaragua* and *Suriname*; **among ratifying countries**: *Belgium* and *Cameroon*.

lieu; or (c) the equivalent holiday credit (for the transfer of accumulated holiday rights when a worker changes employment). [217]

363. The legislation in the vast majority of countries contains provisions regulating this aspect of paid annual leave, and compensation in lieu is the method most commonly adopted. [218] In some countries, in the event of termination of employment, the legislation allows workers the two possibilities of either taking their holidays with pay or being compensated. [219] The choice between these possibilities depends on the agreement between the parties, the wishes of the employee, or the impossibility of taking the holiday

[217] Holiday credit was intended to cover systems such as centrally administered holiday funds, under which workers do not receive cash payments until they actually take the holidays, even if employment has been terminated. See ILO: *Holidays with pay*, Report VI(2), ILC, 53rd Session, Geneva, 1969, p. 110.

[218] For example, **among non-ratifying countries**: *Antigua and Barbuda* (section C18(7) of the Labour Code), *Argentina* (section 156 of Act No. 20744), *Austria* (section 10 of the Paid Annual Leave Act), *Bahrain* (section 59(c) of the Labour Code), *Bangladesh* (section 11 of the Labour Act), *Benin* (section 163(1) of the Labour Code), *Plurinational State of Bolivia* (section 1 of Supreme Decree No. 12058 of 1974), *Bulgaria* (section 155(3) of the Labour Code), *Cambodia* (section 167 of the Labour Law), *Cabo Verde* (section 62 of the Labour Code), *Canada* (section 188 of the Labour Code), *Central African Republic* (section 286(2) of the Labour Code), *Chile* (section 73 of the Labour Code), *China* (as reported by the Government), *Colombia* (section 1 of Act No. 995 of 2005), *Costa Rica* (section 153 of the Labour Code), *Côte d'Ivoire* (section 25(8) of the Labour Code), *Cuba* (section 52 of the Labour Code), *Cyprus* (as reported by the Government), *Dominican Republic* (section 182 of the Labour Code), *Ecuador* (section 71 of the Labour Code), *Egypt* (section 48(3) of the Labour Code), *El Salvador* (section 187 of the Labour Code), *Equatorial Guinea* (section 61(5) of Act No. 12/2012), *Eritrea* (section 56(9) of the Labour Proclamation), *Estonia* (section 71 of the Employment Contracts Act), *France* (section L.3121-28 of the Labour Code), *Gabon* (section 187(2) of the Labour Code), *Georgia* (section 21 of the Labour Code), *Greece* (section 5 of Act No. 349/45, as amended by section 1(3) of Act No. 1346/83), *Guatemala* (section 133 of the Labour Code), *Honduras* (section 349 of the Labour Code), *Iceland* (section 8 of Act No. 30/1987), *India* (section 79(3) of the Factories Act), *Indonesia* (section 156(6)(a) of Law No. 13 of 2003), *Islamic Republic of Iran* (section 71 of the Labour Code), *Jamaica* (section 7 of the Holiday with Pay Act), *Kazakhstan* (section 96 of the Labour Code), *Republic of Korea* (as reported by the Government), *Kuwait* (section 73 of the Private Sector Labour Law), *Malawi* (section 45(2) of the Employment Act), *Mali* (section L.162 of the Labour Code), *Mauritania* (section 189 of the Labour Code), *Mauritius* (section 25(5) of the Employment Rights Act), *Mexico* (section 79 of the Federal Labour Act), *Morocco* (sections 251 and 252 of the Labour Code), *Myanmar* (section 4(5) of the Leave and Holiday Act, 1951), *Namibia* (section 37 of the Labour Act), *Netherlands* (section 641 of the Civil Code), *New Zealand* (sections 23, 24 and 25 of the Holidays Act), *Nicaragua* (section 42 of the Labour Code), *Oman* (section 64 of the Labour Code), *Panama* (section 54(6) of the Labour Code), *Qatar* (section 81 of the Labour Code), *Romania* (section 146(4) of the Labour Code), *Senegal* (section 151 of the Labour Code), *Seychelles* (section 9(5) of the Employment (Conditions of Employment) Regulations, 1991), *Singapore* (section 43(7) of the Employment Act), *Slovakia* (section 116(2) of the Labour Code), *South Africa* (section 21 of the Basic Conditions of Employment Act), *Syrian Arab Republic* (section 163 of the Labour Code), *Thailand* (section 67 of the Labour Protection Act), *Togo* (section 159(3) of the Labour Code), *Turkey* (section 59 of the Labour Law), *United Kingdom* (Regulation 14 of the Working Time Regulations), *Uzbekistan* (section 151 of the Labour Code), *Bolivarian Republic of Venezuela* (section 196 of the Basic Labour Act) and *Zimbabwe* (section 13 of the Labour Act); **among ratifying countries**: *Belgium* (section 46(1) of the Royal Decree of 30 March 1967), *Brazil* (section 146 of the Consolidation of Labour Laws), *Burkina Faso* (section 166 of the Labour Code), *Cameroon* (section 92(4) of the Labour Code), *Croatia* (section 82 of the Labour Act), *Czech Republic* (section 222 of the Labour Code), *Germany* (section 7(4) of the Federal Leave Act), *Guinea* (section 222(16) of the Labour Code), *Hungary* (section 125 of the Labour Code), *Iraq* (section 78(3) of the Labour Code), *Italy* (section 10 of Legislative Decree No. 66/2003), *Latvia* (section 149(5) of the Labour Law), *Luxembourg* (section 233(13) of the Labour Code), *Madagascar* (section 90 of the Labour Code), *Malta* (section 8(1) of the Organisation of Working Time Regulations), *Republic of Moldova* (section 119 of the Labour Code), *Portugal* (section 245 of the Labour Code), *Russian Federation* (section 127 of the Labour Code), *Rwanda* (section 57(2) of the Labour Code), *Serbia* (section 76 of the Labour Law), *Sweden* (section 28 of the Annual Leave Act), *the former Yugoslav Republic of Macedonia* (section 141(1) of the Law on labour relations) and *Uruguay* (section 9 of Act No. 12.590).

[219] For example, *Bosnia and Herzegovina* (section 88 of the Labour Law of the Republika Srpska), *Finland* (sections 17 and 21 of the Annual Holidays Act), *Republic of Moldova* (section 119 of the Labour Code), *Montenegro* (section 70 of the Labour Law), *Poland* (section 155(1) of the Labour Code), *Russian Federation* (section 127 of the Labour Code), *Samoa* (section 55(4) of the Labour and Employment Relations Act) and *Slovenia* (section 161 of the Employment Relationship Act).

due to notice of termination. For example, in *Sri Lanka*, [220] when the employment relationship is terminated, workers must be granted holidays with pay to which they are entitled in light of their length of service. However, if the holiday cannot be taken because the period of notice of termination is insufficient, or employment is terminated without notice, the employer has to pay compensation. [221]

364. In a few cases, national legislation provides that, in the event of termination of employment, employees must be granted holiday with pay in proportion to their length of service, [222] or holiday credits. [223] In certain countries, holiday rights are conditional on the reasons for termination. [224] For example, the Government of *Mauritius* reports that compensation in lieu is due to workers only when employment is terminated for reasons other than misconduct. [225]

365. In *Montenegro*, the Labour Law provides for the right to annual holiday for employees whose contract of employment is terminated due to transfer to another employer or retirement. [226] Employees who have not taken the annual holiday to which they are entitled, or have taken it only in part, due to the fault of the employer, are entitled to compensation for damages. [227] ***In this respect, the Committee has recalled that Article 11 of Convention No. 132 seeks to guarantee that holiday rights are acquired and retained irrespective of the grounds on which the employment relationship is terminated.*** [228]

(c) Relinquishment and substitution of the right to holidays with pay

Box 3.10

Article 12 of Convention No. 132 provides that:

Agreements to relinquish the right to the minimum annual holiday with pay prescribed in Article 3, paragraph 3, of this Convention or to forgo such a holiday, for compensation or otherwise, shall, as appropriate to national conditions, be null and void or be prohibited.

366. Article 12 of Convention No. 132 seeks to ensure that workers benefit in practice from their acquired holiday rights.

[220] Section 6(6) of the Shop and Office Employment Act.

[221] It should be recalled that the Committee has emphasized on several occasions that compensation in lieu granted in case of termination of employment is the only case in which Convention No. 132 permits untaken leave to be replaced by cash compensation. See *Norway* – CEACR, Convention No. 132, direct request, published in 2014; and *Portugal* – CEACR, Convention No. 132, direct request, published in 2014.

[222] For example, *Ghana* (section 30 of the Labour Act) and *Turkmenistan* (section 106 of the Labour Code).

[223] For example, *Finland* (if agreed between the parties, section 18 of the Annual Holidays Act) and the *Netherlands* (section 641 of the Civil Code).

[224] For example, *El Salvador* (section 187 of the Labour Code), *Lithuania* (section 175 of the Labour Code), *Singapore* (section 43(7) of the Employment Act) and *Tunisia* (section 120 of the Labour Code).

[225] Section 25(5) of the Employment Rights Act.

[226] Section 70 of the Labour Law.

[227] Section 71 of the Labour Law.

[228] See *Montenegro* – CEACR, Convention No. 132, direct request, published in 2014.

367. In many countries, the legislation contains provisions prescribing that agreements to relinquish or forgo the right to annual holiday shall be null and void. [229] In certain other countries, annual leave rights are considered inalienable and are set out in the national Constitution. [230] Also the Charter of Fundamental Rights of the European Union states that every worker has the right to an annual period of paid leave. [231]

368. In a number of countries, the payment of financial compensation in lieu of holidays is prohibited. For example, in *Cameroon*, the Labour Code provides that, as annual leave is granted to workers to allow them to rest, the payment of monetary compensation in lieu is prohibited. [232] In *Cabo Verde*, [233] the right to annual leave is inalienable and it cannot be replaced by additional remuneration or any other benefit, even with the consent of the employee. [234]

369. The Committee observes that the legislation in some countries does not appear to contain provisions either allowing or prohibiting the relinquishment of the right to annual leave. [235]

370. In a few cases, national legislation allows annual leave entitlements to be foregone totally or in part. For example, the Government of *Mongolia* [236] reports that when, owing to the needs of the service, employees are unable to take annual leave, they may claim monetary compensation. In *Lithuania*, when employees do not wish to go on leave, they are paid compensation in lieu. [237] The Government of *Myanmar* reports that public servants may receive a cash payment in exchange for leave, although this is not applicable

[229] For example, *Algeria* (section 39 of the Law on labour relations), *Austria* (section 12 of the Paid Annual Leave Act), *Bahrain* (section 58(3) of the Labour Code), *Belgium* (section 2(3), of the Consolidated Acts of 1971), *Bosnia and Herzegovina* (section 29 of the Labour Act), *Cambodia* (section 167 of the Labour Law), *Croatia* (section 80 of the Labour Act), *Czech Republic* (section 19(1) of the Labour Code), *Equatorial Guinea* (section 61(4) of Act No. 10/2012), *Estonia* (section 70 of the Employment Contracts Act), *Ethiopia* (section 76(1) of the Labour Proclamation), *Finland* (section 3 of the Annual Holidays Act), *Ghana* (section 31 of the Labour Act), *Greece* (section 5(a)(1) of Act No. 539/45), *Hungary* (section 135(1) of the Labour Code), *Iceland* (section 2 of Act No. 20/1987), *Iraq* (section 79(2) of the Labour Code), *Italy* (article 36(3) of the Constitution), *Kuwait* (section 74 of the New Private Sector Labour Law), *Luxembourg* (section L.233-18 of the Labour Code), *Madagascar* (section 90 of the Labour Code), *Malta* (section 8(1) of the Organisation of Working Time Regulations), *Mauritius* (section 27(6) of the Employment Rights Act), *Republic of Moldova* (section 112(2) of the Labour Code), *Montenegro* (section 63(5) of the Labour Law), *Morocco* (section 242 of the Labour Code), *Oman* (section 61 of the Labour Code), *Poland* (section 152(2) of the Labour Code), *Qatar* (section 81 of the Labour Code), *Romania* (section 144 of the Labour Code), *Slovenia* (section 164 of the Employment Relationship Act), *Suriname* (section 3(1) of the Holiday Act), *Sweden* (section 2 of the Annual Leave Act), *Switzerland* (section 329(d) of the Code of Obligations), *Syrian Arab Republic* (section 158 of the Labour Code), *the former Yugoslav Republic of Macedonia* (section 141(2) of the Law on labour relations), *Tunisia* (section 131 of the Labour Code), *Turkey* (section 53 of the Labour Law) and *Uruguay* (section 15 of Act No. 12590, 1958).

[230] For example, *Benin, Brazil, Colombia, Costa Roca, Dominican Republic, Guatemala, Honduras* and *Mexico*.

[231] Article 31(2) of the Charter.

[232] Section 92(5) of the Labour Code.

[233] Section 54(1) of the Labour Code.

[234] Other examples include: *Central African Republic* (section 286(3) of the Labour Code), *Côte d'Ivoire* (section 25(3) of the Labour Code), *Gabon* (section 187(3) of the Labour Code), *Guinea* (section 222(12) of the Labour Code), *Latvia* (section 149(5) of the Labour Act), *Mali* (section L.162 of the Labour Code), *Mauritania* (section 189(3) of the Labour Code), *Panama* (section 59 of the Labour Code), *Rwanda* (section 57(1) of the Law regulating labour), *Senegal* (section 151(3) of the Labour Code), *Tajikistan* (section 84 of the Labour Code), *Togo* (section 159(4) of the Labour Code), *Turkmenistan* (section 109 of the Labour Code) and *United Kingdom* (Regulation 13(9) of the Working Time Regulations).

[235] For example, *Cyprus, Malawi, Philippines, Uzbekistan, Bolivarian Republic of Venezuela* and *Zambia*.

[236] Section 79(1) of the Labour Code.

[237] Section 177(1) of the Labour Code.

in practice because of budgetary constraints, and measures are being taken to amend the rule. [238] The Government of *New Zealand* reports that employees may request cash payments for up to one week of their annual holiday entitlement in each entitlement year. In *Portugal*, employees may waive days of leave that are in excess of the 20-day holiday period. [239] Similarly, in the *Russian Federation*, the part of paid annual leave that exceeds 28 calendar days may be exchanged for monetary compensation at the written request of the worker. [240]

371. The Committee notes the observations made by certain workers' organizations concerning the relinquishment in practice of entitlements to holiday with pay. The *Federation of Services of the Trade Union Confederation of Workers' Commissions* indicates that in *Spain*, even though the legislation does not allow the relinquishment of holiday rights, in practice, rotation and short-term employment contracts prevent workers in certain sectors from benefitting from their annual leave rights. The *Trades Union Congress* considers that, based on unpublished data from the Labour Force Survey of the Office of National Statistics, around 2 million employees in the *United Kingdom* do not receive the minimum statutory holiday entitlement of 5.6 weeks a year, including public holidays.

372. The Committee also notes that an employer organization, the *Confederation of Industrial Chambers of the United States of Mexico* indicates that, in practice, it is possible for workers not to take leave and to receive monetary compensation in lieu.

373. In this connection, the Committee has recalled that, in several judgments (for example, Case C-350/06 Schultz Hoff and Case C-78/11 Anged), the Court of Justice of the European Union has reaffirmed the inalienable character of the right of workers to annual holidays with pay and has clearly established that the leave entitlement of an employee who has not had the opportunity to take the leave cannot be extinguished, even if any carry-over period has expired. [241] It has also recalled that the Convention prohibits the replacement of the annual holiday by the payment of cash compensation (except in the case of the termination of the employment relationship) in order to ensure that workers effectively enjoy their acquired holiday rights in the form of a sufficient period of rest and leisure necessary for their health and well-being. [242]

374. ***Emphasizing the importance of workers effectively benefiting from their right to a period of relaxation and leisure every year, the Committee encourages all governments to take the necessary measures to ensure that paid annual leave rights are effectively enjoyed and that monetary compensation is offered in lieu of annual leave only in the case of any unused leave upon termination of employment.***

[238] Rule 80 of the Civil Servant Regulations.

[239] Section 238(5) of the Labour Code.

[240] Section 126 of the Labour Code.

[241] See *Finland* – CEACR, Convention No. 132, direct request, published in 2014.

[242] See *Iraq* – CEACR, Convention No. 132, direct request, published in 2014.

Conclusions

375. In conclusion, the Committee notes that, from the perspective of national legislation, many of the provisions of the instruments examined in this chapter enjoy broad acceptance and are fully applied.

376. Specifically concerning the minimum length of holidays, the Committee welcomes the fact that a large majority of countries either grant the minimum basic period of annual leave required by the Convention, or a longer period. However, there are important exceptions, mainly in South Asia and the Americas.

377. With regard to the qualifying period of service, the Committee observes that its duration in many countries appears to far exceed the limits required by the Convention. ***In this respect, the Committee wishes to emphasize the need to restrict the qualifying period to a reasonable length in order to allow workers to benefit from the right to paid annual leave regularly after periods of work that are not excessively long, not more than six months (according to the Convention).*** Another matter regarding the qualifying period in national legislation is the assimilation to effective working time of justified absences from work related to sickness, injury and maternity. The Committee observes that the legislation in many countries does not appear to contain provisions clearly requiring such periods to be counted as periods of effective work for the calculation of annual leave. This is particularly important in cases of long-term sick leave. ***In this regard, the Committee emphasizes the importance of workers who are on leave due to illness or accident, or on maternity leave, being able to enjoy the same number of days of annual leave as other workers.*** Finally, in the case of workers who are not able to complete the statutory minimum period of service required for entitlement to leave due to the nature of their work, such as seasonal workers, national legislation in many countries does not contain provisions to prevent them from losing their annual leave entitlement.

378. With reference to the division of annual leave into parts, and the possibility to postpone the uninterrupted part of annual leave, the Committee observes that national legislation in a number of countries does not appear to establish the restrictions on the division and postponement of annual leave required by the Convention. ***In this respect, the Committee wishes to recall that the aim of the Convention is to ensure that workers are able to enjoy a sufficiently long period of leave to allow them to rest and recover as a basic right, contributing productively to the world of work with due respect to the health and well-being of workers.***

379. Finally, the Committee observes that, while the legislation in most countries considers that agreements to forgo annual leave are null and void, situations may arise in practice in which workers are not able to effectively enjoy their annual leave entitlements and receive monetary compensation in lieu. ***In this regard, the Committee wishes to emphasize the importance of ensuring that workers benefit in practice from a period of rest and recovery every year in order to protect their physical and mental health.***

Chapter IV. Night work

380. This chapter examines two Conventions, the Night Work (Women) Convention (Revised), 1948 (No. 89), and the Night Work Convention, 1990 (No. 171), one Protocol, the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948, and two Recommendations, the Night Work of Women (Agriculture) Recommendation, 1921 (No. 13), and the Night Work Recommendation, 1990 (No. 178). While the subject of night work of women employed in industry has been covered by a General Survey in 2001, this is the first time that the protection of night workers is examined in a General Survey. [1]

1. Night work adaptation to social and economic transformations

A. From the industrial revolution to the technological era: Main features of a modern practice

(a) Concepts: Understanding the night work – shift work nexus

381. Broadly speaking, night work is performed at a time when people would normally sleep. While shift work often involves night work, the concepts should not be confused. As emphasized during the preparatory work leading up to the adoption of Convention No. 171, and Recommendation No. 178, while shift workers performing night work make up the majority of night workers, they by no means account for all of them. [2] On the one hand, night work includes work which, by its nature, has to be performed solely at night ("non-shift" night work), as in the case of night guardians. For these workers, working at night is part of their regular schedule. On the other hand, shift work is a method of organizing working time in which workers succeed one another at the workplace so that the establishment can operate longer than the hours of work of individual workers at different times of the day. It is common for continuous and semi-continuous shift systems to include a night shift, as in the case of three-shift systems, which involve rotation from a day shift to an afternoon/evening shift to a night shift. [3] Moreover, for either of these categories, workers may perform night work regularly, periodically or on a temporary short-term basis. [4]

[1] Regarding night work Conventions covering young persons, see paras 401, and 432–434 as well as box 4.3 below.

[2] ILO: *Night work*, Report V(1), 1989, op. cit., p. 5.

[3] ILO: *Working time in the twenty-first century*, Tripartite Meeting of Experts on Working-Time Arrangements (17–21 October 2011), p. 45. As explained later, there are two main categories of shift work: fixed shifts and rotating shifts, but almost an infinite variety of shift work systems.

[4] For a discussion of one country's approach to compensation for temporary night workers, see the case of Switzerland at para. 492 of this Survey.

(b) Origins

382. Although night work also existed in ancient civilizations, before effective artificial lighting, the working day followed more closely the hours of natural light, which varied depending on the season. With the development of improved artificial lighting, the performance of work after dark became widespread. In the early days of industrialization, factories, such as spinning mills, glass factories or sugar refineries, started to use night work, largely due to the introduction of regulations limiting the number of hours that could be worked in a day, as a means of stepping up production to offset the cost of expensive equipment. [5] Later, in the industrialized countries, after the Second World War and until the end of the 1970s, the number of night workers rose considerably as national economies expanded and increased use was made of shift work. [6] In developing countries over the same period, there were fewer night workers than in the industrialized countries, mainly because continuous and semi-continuous shift work was less common in industry. [7]

383. More recently, technological and economic change has led to evolving working practices and has contributed to an increase in the round-the-clock provision of certain services. This has been reflected in the rise in the use of shift work, including evening and night shifts, as a means of enabling round-the-clock operation imposed by technological needs (for example, in power plants, oil refineries and steel industries), the need to ensure the functioning of social services/utilities (hospitals, transport, police and security forces, firefighting, hotels and telecommunications), productive and economic demands (including the textiles, paper, food, mechanical and chemical industries) and the needs of the leisure sector. [8]

384. Moreover, the dramatic expansion in recent decades of business process outsourcing (BPO) [9] providing information technology-enabled services (ITES) from locations throughout the world has involved the emergence of a multitude of remote work arrangements. The best known are call centres, which operate around the clock throughout the year, and therefore rely heavily on night shifts for the provision of services to overseas markets. [10] Over the past 30 years, the call centre industry has emerged as a distinctive organizational form and has become increasingly prevalent in developing countries. Women account for the majority of workers in contact centres; however, they tend to have lower participation rates than men in higher value contact centres, in night shift work. Moreover, call centre work may begin late at night, and call centres may be in remote locations, which may have a negative impact on workers, particularly women. [11]

[5] ILO: *Night work*, Report V(1), ILC, 76th Session, Geneva, 1989, p. 21.

[6] ILO: *Night work*, Report V(1), 1989, op. cit., p. 6.

[7] ibid.

[8] WHO (World Health Organization)/IARC (International Agency for Research on Cancer): *Painting, firefighting, and shiftwork*, Monographs on the evaluation of carcinogenic risks to humans, Vol. 98, Lyon, 2010, p. 567.

[9] The BPO provides information technology-enabled services (ITES) and processes, together with the associated operational activities and tasks. In practice, it consists of the ITES segments of other industries, such as finance and telecommunications. J.C. Messenger and N. Ghosheh (eds): *Offshoring and working conditions in remote work* (ILO, 2010), p. 2.

[10] P. Cruz and E. Noronha: "Employee dilemmas in the Indian ITES-BPO sector", in Messenger and Ghosheh, op. cit., p. 89.

[11] See also ILO: *Employment relationships in telecommunications services and the call centre industry*, Issues paper for discussion at the Global Dialogue Forum on the Employment Relationships in Telecommunications Services and in the Call Centre Industry (Geneva, 27–28 October 2015), GDFERTI/2015, paras 57, 60 and 63.

(c) Overview of night work trends

385. The Committee notes the indication by many governments that they have not carried out surveys on night work and do not therefore have statistics on this subject. Accurate statistical data on numbers of night workers are not easy to obtain outside Europe (see figure 4.3), and the heterogeneity of the criteria used by countries for the compilation of the respective statistics make comparisons between countries very complex.

386. A number of countries report an upward trend in the proportion of the workforce engaged in night work. For instance, the Government of *Switzerland* reports that the number of night workers has increased in recent years (from 325,000 in 2010 to 376,000 in 2015). [12] In *Belgium*, the Labour Forces Survey shows that there were 526,592 night workers in the country in 2015, accounting for 11.6 per cent of the total number of workers, which is a slight increase from 11.4 per cent in 2013 and 2014. The trend is also upwards in *France*, where there are now 1 million more night workers than in 1991. Night work is widespread in the service sector, and the occupational categories most affected include drivers, the police and military, nurses, care workers and skilled workers in assembly and processing industries. Temporary workers, men in their 30s and women under 30 years of age are the groups that work most frequently at night. [13] The Government of *Honduras* reports a growing trend for night work in the country, mainly in private security enterprises, the manufacturing industry *(maquila)*, the sector of communications, newspapers and radio and television. The Government of *New Zealand* reports an upward trend in night work between 2008 and 2012, with the highest proportion of night workers in the transport, postal and warehousing industries, although the overall numbers of night workers are highest in the health care and social assistance sectors. Other countries reporting a rising trend in night work include *Burkina Faso* (extractive industries, hotels, restaurants and the delivery of drinks), *Namibia* (mining), *Panama* (mining, construction mega projects, hotels, and tourism) and *South Africa* (24-hour services).

387. Some of the countries reporting an upward trend in night work observe that the increase is due to an expansion of outsourcing. For example, the Government of *Bulgaria* indicates that, together with emergency aid and hotels and restaurants, the increase in night work in the country is largely accounted for by outsourcing, and particularly call centres. Similarly, the Government of the *Dominican Republic* indicates that there has been a growing trend for increased night work, mainly due to the development of call centres in the country. The Government of *Sri Lanka* reports demand for night work in the BPO and KPO (knowledge process outsourcing) sectors. According to the Government of *Mauritius*, the BPO sector, which operates round-the-clock as a service provider, is expected to grow at an average of 5.9 per cent a year in 2017, which would lead to a growth in night work. [14] Moreover, the *General Confederation of Portuguese Workers – National Trade Unions* indicates that the number of night workers in the country is rising.

388. Other countries report that the number of night workers has remained stable in recent years. For instance, the Government of *Finland* reports that the number of night workers has not changed over time in the country and that only 2 per cent of employees work regularly at night. Similarly, in *Sweden*, data for 2007–15 do not show an increase in night

[12] Swiss Labour Force Survey (SPFS), carried out by the Federal Statistical Office.

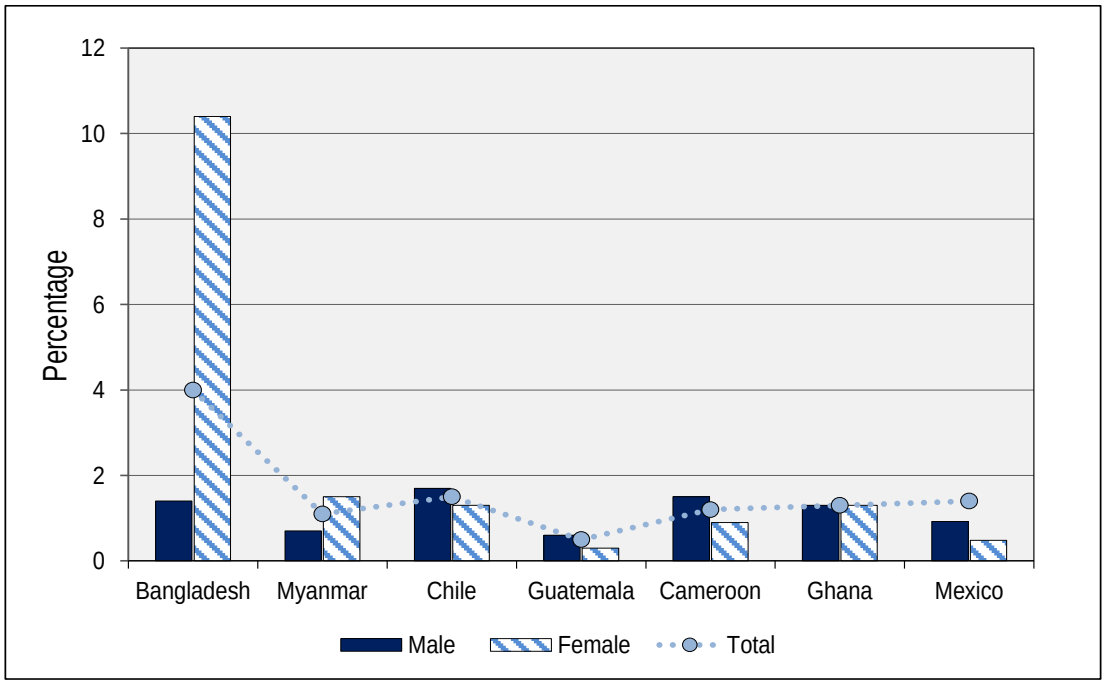
[13] French Agency for Food, Environmental and Occupational Health and Safety (ANSES): *Evaluation des risques sanitaires liés au travail de nuit*, Avis de l'Anses No. 2011-SA-0088, Rapport d'expertise collective, 2016, p. 17.

[14] According to a survey carried out in the information, communication and telecommunication (ICT) sector.

work over that period. [15] The Government of the *United States* reports that, during the period 2011–15, fewer than 50 per cent of employed persons worked between 5 p.m. to 7 a.m. at any given time, and that this share changed little between 2003–07 and 2011–15. [16] The Government of the *United Kingdom* also indicates that the total number of employees working at night (around 3.1 million night workers, or about 11.8 per cent of the workforce) seems quite steady. While the proportion of night workers in the manufacturing sector has fallen by 11.2 percentage points (nearly a 50 per cent decrease), accompanied by falls in the transport and communications sector, the proportion of night workers in the public administration, education and health sectors has increased by 5.4 percentage points. There has also been an increase in the proportion of night work in the banking, finance and insurance (2.5 percentage points) and the distribution, hotels and restaurants (4.2 percentage points) sectors.

389. Finally, a few countries report a downward trend in night work. For example, the Government of *Poland* reports that the number of workers working at night fell from 2.8 per cent of total employed persons in 2011 to 2.3 per cent in 2015. [17] The Government of *Estonia* reports that there has not been any considerable growing or declining trend in night work in the country in recent years, with the percentage of employees sometimes or often working at night remaining around 12–14 per cent in 2009–15. Of these, 6.4 per cent of employees often worked at night and 5.5 per cent sometimes did so. [18] Finally, the Government of *Equatorial Guinea* reports a downward trend in night work in every sector of the economy, except services (surveillance, health and aviation).

Figure 4.1. Share of workers performing only night work, by sex



Source: ILO calculations based on the latest available national labour force survey data.

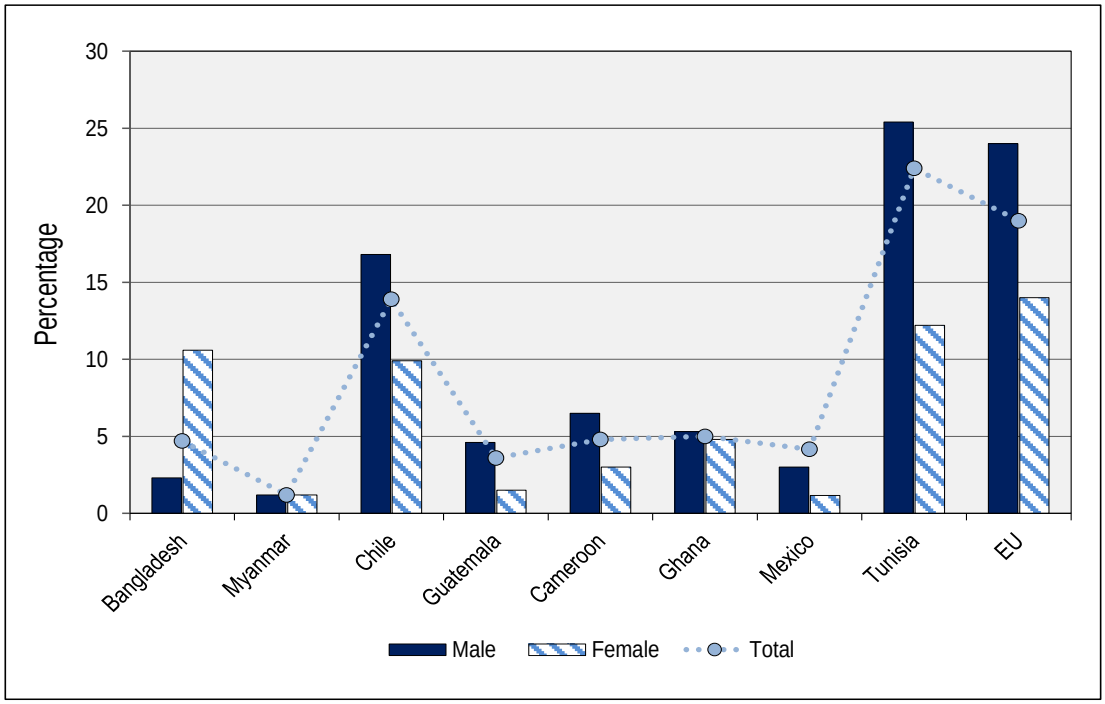
[15] Bi-annual surveys on working conditions conducted by the administrative agency Statistic Sweden, annexed to Statistics Sweden Labour Force Survey.

[16] Bureau of Labour Statistics, American Time Use Survey, table A-5.

[17] Labour force survey.

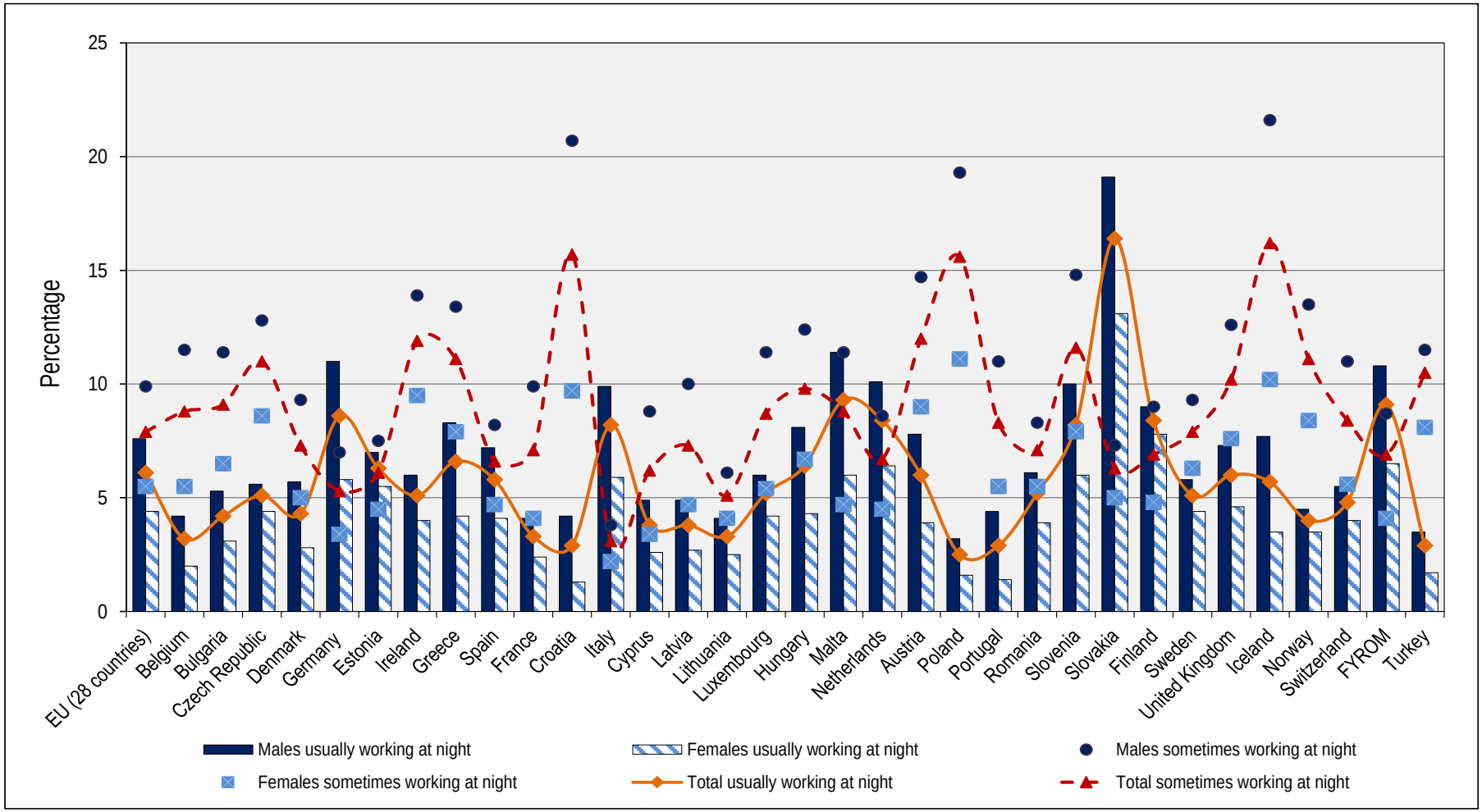
[18] Statistics Estonia, labour force survey.

Figure 4.2. **Share of workers occasionally performing night work** (day and night work, shifts/rotary, sometimes working in the evening)



Source: ILO calculations based on the latest available national labour force survey data.

Figure 4.3. Employed persons working at night as a percentage of total employment by sex in Europe



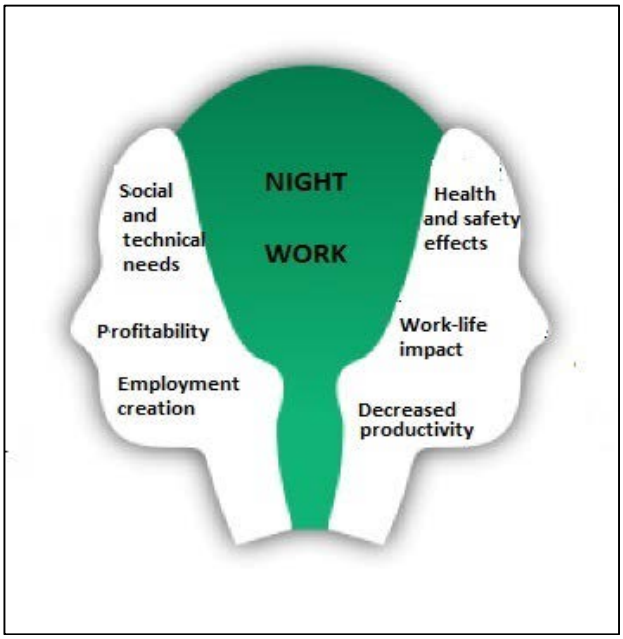
Source: ILO elaboration based on Eurostat, 2015–16.

Note: According to the EU Labour Force Survey – Explanatory notes, the following variables in this context should be interpreted to mean: "usually": working during the nights at least half of the days worked in a reference period of four weeks preceding the end of the reference week; and "sometimes": working during the nights less than half of the days worked, but a least one hour in a reference period of four weeks preceding the end of the reference week

(d) Implications, research and debates

390. Night work raises several issues. On the one hand, the use of night work responds to a variety of social, technical and economic reasons. However, it may have an impact on workers' health, safety and work–life balance, as it is incompatible with biological rhythms and the normal scheduling of social, family and community activities. As analysed below and represented in figure 4.4, the negative and positive aspects of night work have given rise to debate between advocates of night work and those who propose restricting its use.

Figure 4.4. Alleged advantages and disadvantages: The duality of night work



(i) Advantages

Social and technical needs

391. Night work plays a role in the continuity of services, and responds to the technical needs related to the continuous nature of specific processes. In the case of certain services, such as the protection of persons and property and the provision of public health care, the justification for night work is fairly clear. In other cases, it is less clear cut, such as in the information and leisure sectors. On the other hand, some physical, chemical and operational processes involve the need to keeping certain installations in continuous operation, [19] as the machinery cannot be stopped, for example in certain branches or operations in the chemical industry.

Increased profitability

392. It is argued that night work has associated benefits for employers in terms of productivity and efficiency. Night work responds to a logic of profitability based on the more intense use of equipment and infrastructure. Moreover, the optimal use of energy or

[19] J. Carpentier and P. Cazamian: *Night work: Its effects on the health and welfare of the worker* (Geneva, ILO, 1997), p. 4.

other resources during the night makes recourse to night work cost-effective for some enterprises.

Employment creation and growth

393. It is also generally considered that the improved utilization of production resulting from semi-continuous and continuous shift work has a favourable effect on employment, [20] by allowing the creation of more employment opportunities with the available equipment. [21] At the same time, due to the premium wage rates often paid, night work, through the improvement of employment and production, may lead to a rise in the economic level of the community. [22]

(ii) Disadvantages

Effects on health and safety

394. Night work requires workers to act in opposition to their biological clocks by remaining awake, alert and productive at a time when the human biological drive for sleep is at its strongest. [23] In recent decades, a large number of studies have examined the impact of night work on workers' health. More specifically, correlations have been investigated between night work and such conditions as cardiovascular disease, breast cancer, chronic insomnia, obesity and diabetes. For example, research published in 2010 by the World Health Organization (WHO) International Agency for Research on Cancer suggests that women who work through the night on a regular basis could be more likely to develop breast cancer. [24] However, these results have been challenged by a recent prospective study, which conclude that the totality of the prospective evidence shows that night shift work, including long-term shift work, has little or no effect on the incidence of breast cancer. [25]

395. Many other studies based on growing empirical evidence have focused on this issue. [26] They include a large cohort study based on a 22-year follow-up of 74,862 women participating in the Nurses' Health Study (NHS). The study concluded that women working rotating night shifts for more than five years show a modest increase in all-cause and cardiovascular mortality, and that those involved in rotating night shift work for 15 years show a modest increase in lung cancer mortality. [27] Some scientific literature also suggests that there is an association between shift work involving night work and weight

[20] ILO: *Night work*, Report V(1), 1989, op. cit., p. 8.

[21] Carpentier and Cazamian, op. cit., p. 7.

[22] ibid., p. 8.

[23] ILO: *Working time in the twenty-first century*, op. cit., p. 65.

[24] The study concludes that "shiftwork that involves circadian disruption is probably carcinogenic to humans (Group 24)". The conclusions were reached on the following rationale: Cancer in humans: There is limited evidence in humans for the carcinogenicity of shift work that involves night work; Cancer in experimental animals: there is sufficient evidence in experimental animals for the carcinogenicity of light during the daily dark period (biological night). WHO–IARC: *Painting, firefighting, and shiftwork*, op. cit., p. 764.

[25] R.C. Travis et al: "Night shift work and breast cancer incidence: Three prospective studies and meta-analysis of published studies", in *Journal of the National Cancer Institute*, 108(12), 2016.

[26] For a comprehensive review of literature on the subject, see: S. Merkus et al.: "Non-standard working schedules and health: The systematic search for a comprehensive model", in *BMC Public Health* 15, p. 1084, 2015.

[27] F. Gu et al: "Total and cause-specific mortality of U.S. nurses working rotating night shifts", *American Journal of Preventive Medicine*, 48(3), 2015, pp. 241–252.

gain, [28] as sleep deprivation concomitant (inter alia) with circadian desynchrony has been attributed a causal role in obesity, metabolic syndrome and glucose intolerance/diabetes. [29]

Impact on work–life balance

396. It has also been claimed that night work allows employees the flexibility to choose when they work. However, research suggests that many of those who regularly work atypical schedules do so because it is a job requirement, rather than a deliberate choice made to coordinate employment and domestic schedules. [30] Working at night means that non-work time is often asynchronous with that of family members, [31] and has been associated with increased work–family conflict, stress and relationship breakdown. [32]

Decreased productivity and performance due to fatigue

397. The economic argument for night work depends on productivity being maintained at an acceptable level. However, it has been argued that productivity may be compromised at night. This may reflect a number of underlying factors, including impaired health, a disturbed social life, shortened and disturbed sleep, and disrupted circadian rhythms. [33] An increased risk of fatigue and sleepiness is associated with more accidents and errors, which in turn have an impact on productivity.

398. It should be noted that various factors can affect tolerance of night work, including individual characteristics (such as age, gender, state of health), family and living conditions (number and age of children), the work environment and social conditions. Moreover, the characteristics of the shift system (whether shifts are continuous or discontinuous, shift lengths are short, intermediate or long, rotation is high or low speed, night work is combined with day work, and so forth), [34] the number of successive night shifts and breaks provided in shifts all need to be taken into consideration in combination when assessing the overall impact of night work on health and safety. For example, a 12-hour night shift that includes frequent rest breaks may be safer than a shorter eight-hour night shift with a single mid-shift break. [35]

399. ***The Committee observes that a number of governments indicated in their reports that in recent years there seems to have been a trend for night work to increase. It also observes that a growing number of research projects on the effects of night work have been carried out in recent years, some of which suggest that night work has an impact on workers' health and safety, work–life balance and productivity, depending on the manner in which night work is organized.***

[28] See, for instance, Suwazono et al.: "A longitudinal study on the effect of shift work on weight gain in male Japanese workers", in *Obesity* (Silver Spring), Vol. 16(8), Aug. 2008, pp. 1887–1893.

[29] J. Arendt: "Shift work: Coping with the biological clock", in *Occupational Medicine*, Vol. 60, Jan. 2010, p. 14.

[30] C. Fagan, C. Lyonette, M. Smith and A. Saldaña Tejeda: "The influence of working-time arrangements on work–life integration or 'balance': A review of the international evidence", in *Conditions of work and employment*, Series No. 32, ILO, 2012, p. 39.

[31] D.S. Hamermesh, and E. Stancanelli: "Long workweeks and strange hours", in *ILR Review*, Vol. 68(5), Oct. 2015, p. 1008.

[32] Fagan et al., 2012, op. cit. p. 39.

[33] P. Tucker and S. Folkard: "Shift work, safety and productivity", in *Occupational Medicine*, Vol. 53, 2003, p. 99.

[34] WHO–IARC: *Painting, firefighting, and shiftwork*, op. cit., pp. 573–574.

[35] Tucker and Folkard, op. cit., p. 99.

B. International regulation of night work: An evolving rationale

400. When it became evident that industrialization in its first stages was drawing heavily on women and child shift workers, often under arduous working conditions, attempts began to be made to regulate night work. [36] For example, dating back to the middle of the nineteenth century, night work of women was prohibited in the *United Kingdom* in 1844. However, it was not until the beginning of the twentieth century that international efforts on this issue began to produce results.

(a) The first instruments

(i) Prohibiting night work of women and children in industry

401. Immediately upon its creation, the ILO adopted international standards on night work aimed at protecting vulnerable categories of workers, such as young persons and women in industry. The Night Work (Women) Convention, 1919 (No. 4), and the Night Work of Young Persons (Industry) Convention, 1919 (No. 6), were adopted at the first Session of the International Labour Conference. [37] The rationale behind these instruments was the need to protect categories which were assumed to be physically weaker, more exposed to the hazards of night work and more susceptible to exploitation. [38] More specifically, medical studies at that time argued that industrial work by women was detrimental to their health and linked to various pathologies, such as chronic anaemia and tuberculosis due to sunlight deprivation. [39] It was also argued that night work of women was immoral and disruptive of family values. [40]

402. Convention No. 4 therefore prohibits the employment of women (without distinction of age) during the night in any public or private industrial undertaking. [41] Later, the quest for more flexibility in the period defined as night and the need to exempt from the prohibition women working in managerial positions led to the adoption of the Night Work (Women) Convention (Revised), 1934 (No. 41). [42] Finally, Convention No. 89 was adopted in 1948 with the purposes of: (a) revising the definition of the term "night", in order to allow more flexibility in the interval of prohibited employment, and in particular to facilitate the development of double day-shift systems; (b) excluding from the prohibition of night work a new category of women, that is women employed in health and welfare services who are not ordinarily engaged in manual work; (c) introducing the

[36] ILO: *Night work of women in industry*, General Survey of the reports concerning the Night Work (Women) Convention, 1919 (No. 4), the Night Work (Women) Convention (Revised), 1934 (No. 41), the Night Work (Women) Convention (Revised), 1948 (No. 89), and the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948, Report III (Part 1B), ILC, 89th Session, 2001.

[37] Other instruments followed on children and young persons: the Night Work of Children and Young Persons (Agriculture) Recommendation, 1921 (No. 14), the Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90), the Night Work of Young Persons (Non-Industrial Occupations) Convention, (No. 79), and Recommendation (No. 80), 1946. Other sectoral instruments on night work were also adopted during the early days of the Organization, namely the Night Work (Bakeries) Convention, 1925 (No. 20), and the Night Work (Road Transport) Recommendation, 1939 (No. 64).

[38] This idea is also taken up in the Preamble of the ILO Constitution.

[39] ILO: *Night work of women in industry*, 2001, op. cit., para. 36.

[40] ibid.

[41] The prohibition of industrial work for women at night was first established in the Bern Convention of 1906 through the efforts of the International Association for Labour Legislation.

[42] ILO: *Night work of women in industry*, 2001, op. cit., paras 44–52.

possibility to suspend the prohibition in the event of serious emergencies; and (d) safeguarding consultations with the representative organizations of workers and employers before introducing exceptions. [43]

403. Following the entry into force on 8 October 2015 of the 1997 Instrument for the Amendment of the Constitution of the International Labour Organisation, [44] Conventions Nos 4 and 41 have been abrogated by the International Labour Conference at its 106th Session (June 2017). As a consequence, all legal effects arising out of these Conventions between the Organization and its Members are eliminated: they have been removed from the ILO's body of standards and, as a result, Members having ratified them will no longer be obliged to submit reports under article 22 of the Constitution, and may no longer be subject to representations (article 24) or complaints (article 26) for non-observance. For their part, the ILO supervisory bodies will not be required to examine the implementation of these Conventions while the Office will cease all relevant activities, including the publication of the text of the Conventions and the official information regarding the ratification status. [45] Convention No. 89 is included in the group of 12 instruments on working time to be examined by the SRM TWG at a later date yet to be determined. [46]

(ii) Dealing with protection versus equality

404. The question of a revision of Convention No. 89 arose during the 1970s when doubts were raised concerning the appropriateness of maintaining special protective measures for women in light of the principle of equal treatment and non-discrimination between men and women in employment. The debate revolved around two main positions. On the one hand, those who advocated the maintenance of restrictions considered that women still need to be protected for a variety of reasons, or that the restrictions should be extended to men, rather than repealed. In their view, night work was abnormal and inherently detrimental to the health and welfare of all workers, and special protection for women from night work was still justified, as women still bore the main responsibility for family and household work. In contrast, those advocating the lifting of night work restrictions argued that the prohibition contravened the principle of equality because different treatment for men and women in this respect had no objective basis. It was argued that the prohibition of night work prevented women from obtaining certain jobs, and often hindered their access to higher wages and premium payments. Moreover, the ban on night work of women was not in line with contemporary conditions and impeded industrialization. Repealing the restrictions on night work would therefore have a positive impact on job creation, production, economic growth and standards of living. [47]

405. After many years of blockage in standard-setting in this field, and mounting criticism at the international level of the ILO's standards on night work of women, a dual approach was adopted by the ILO with the adoption of both a Protocol partially revising Convention

[43] See ILO: *Partial Revision of the Convention (No. 4) concerning Employment of Women during the Night (1919) and of the Convention, (No. 41) concerning Employment of Women during the Night (revised 1934)*, Report IX, ILC, 31st Session, San Francisco, 1948, pp. 23–33.

[44] As a consequence of the entry into force of this amendment (paragraph 9 of article 19 of the ILO Constitution), the Conference is now empowered, by two-thirds majority and upon recommendation by the Governing Body, to abrogate a Convention in force if it appears that it has lost its purpose or that it no longer makes a useful contribution to attaining the objectives of the Organization.

[45] ILO: *Abrogation of four and withdrawal of two international labour Conventions*, Report VII(2), ILC, 106th Session, 2017.

[46] See para. 15 of this Survey.

[47] See ILO: *Night work*, 2001, op. cit., pp. 20–32.

No. 89 and new night work instruments applicable to all night workers and nearly all occupations.

(iii) National trends in law and practice on the prohibition of night work of women in industry

406. In its 2001 General Survey, the Committee concluded that the gender-specific prohibition of industrial work during the night should progressively become irrelevant, and that it should be replaced by laws and practices that offer adequate protection to all workers. This is, however, subject to the understanding that national, regional and sectoral conditions and progress in achieving the elimination of discrimination vary considerably, and therefore that some women workers will still need protection, along with the pursuit of genuine conditions of equality and non-discrimination. [48]

407. The Committee observes that many countries have since moved towards the removal of the prohibition of night work of women in industry in light of the principles of non-discrimination and equality of treatment in employment and occupation. This is the case, for example, in *Austria, Bangladesh, Bosnia and Herzegovina, Burkina Faso, Democratic Republic of the Congo, Djibouti, Ghana, Kenya, Libya, Malawi, Philippines, Romania, Rwanda, Serbia, Slovenia* and *Togo*.

408. Some countries where the restriction on night work of women in industry has been removed are still parties to Convention No. 89. [49] In this regard, the Committee has recalled on a number of occasions that Convention No. 89 will be open for denunciation from 27 February 2021 [50] and has invited countries to give consideration to the ratification of Convention No. 171, which is not devised as a gender-specific instrument, but focuses on the protection of all workers in all branches and occupations. [51]

Box 4.1
Case law on the prohibition of night work of women in India

In 2000, the Madras High Court ruled that section 66(1)(b) of the Factories Act, 1948, which provides that no women shall be required or allowed to work in any factory except between the hours of 6 a.m. and 7 p.m., was in violation of the fundamental right to equality of women guaranteed in the Constitution, was discriminatory against women on the grounds of gender and interfered with the fundamental right of petitioners to practice any profession or to carry on any occupation, trade or business. In declaring section 66 unconstitutional, the Court also made provision for the safety and security of women working at night. *

Since this decision, a number of factories in the state of Tamil Nadu, as well as other states, have sought the intervention of the courts to declare section 66 null and void, thereby enabling the employment of women during the night. Based on the judgment of the Madras High Court, various other courts have granted stays of operation (suspensions) of section 66 of the Factories Act.

* See Madras High Court, *Vasantha R.* v. *Union Of India (Uoi) and others,* 8 Dec. 2000, Equivalent citations: (2001) IILLJ 843 Mad, Bench: E. Padmanabhan.

[48] ILO: *Night work of women in industry*, 2001, op. cit., para. 164.

[49] This is the case, for example, in *Bangladesh, Bosnia and Herzegovina, Brazil, Democratic Republic of the Congo, Djibouti, Ghana, Guatemala, Kenya, Malawi, Panama, Romania, Serbia* and *South Africa*.

[50] See, for example, *Ghana* – CEACR, Convention No. 89, direct request, published in 2015; *Bangladesh* – CEACR, Convention No. 89, direct request, published in 2014; and *Guatemala* – CEACR, Convention No. 89, direct request, published in 2014.

[51] See, for example, *Djibouti* – CEACR, Convention No. 89, direct request, published in 2015; *Bosnia and Herzegovina* – CEACR, Convention No. 89, direct request, published in 2014; and *Kenya* – CEACR, Convention No. 89, direct request, published in 2014.

409. ***Among the countries that still prohibit night work of women, a few prohibit it in all sectors of the economy.*** [52] ***In this regard, the Committee has recalled that general protective measures for women workers, such as blanket prohibitions, in contrast with special measures aimed at protecting maternity, are increasingly regarded as obsolete and unnecessary infringements on the fundamental principle of equality of opportunity and treatment between men and women.*** [53]

410. In other cases, such as the sub-Saharan African countries, the ban only applies to work in factories, manufacturing, mines, quarries, building sites and workshops. [54] In *Pakistan*, the prohibition covers work in factories. [55] In *Angola*, *Bahrain*, *Cameroon*, *Gabon* and *Madagascar*, the prohibition applies to industrial undertakings. In *Nigeria*, night work of women is prohibited in public or private industrial and agricultural undertakings. [56] In *Lebanon*, it is prohibited in mechanical and manual industries. [57]

411. In a few countries, in accordance with Article 3 of Convention No. 89, the prohibition of night work of women is not applicable to family undertakings. These countries include *Angola*, *Bahrain*, *Chad*, *Iraq* and *Lebanon*, where night work restrictions do not apply to undertakings in which members of the same family are employed.

412. The majority of countries that prohibit night work of women provide exceptions in cases of force majeure and for perishable materials, as envisaged in Article 4(a) and (b) of Convention No. 89. [58] For example, in *Pakistan*, the Government may adopt rules providing for exceptions to the prohibition of women working in fish-curing or fish canning factories where their employment during prohibited hours is necessary to prevent damage or deterioration of raw materials. [59]

413. The legislation in a few countries provides for exceptions in case of serious emergencies or national interest, as envisaged in Article 5 of Convention No. 89. For example, in *the former Yugoslav Republic of Macedonia*, women may be assigned to night work when it is so required by serious economic, social or similar circumstances, subject to authorization from the authority responsible for labour issues. [60] In the *Central African Republic* [61] and in *Congo* [62] in case of exceptional economic conditions, and where public interest so requires, the prohibition of night work by women may be temporarily suspended by decree adopted after consultation with the concerned workers' and

[52] For example, *Algeria*, *Plurinational State of Bolivia*, *Costa Rica*, *Iraq*, *Ukraine* and *United Arab Emirates*.

[53] See *Bahrain* – CEACR, Convention No. 89, direct request, published in 2014; *Plurinational State of Bolivia* – CEACR, Convention No. 89, direct request, published in 2014.

[54] For example, *Central African Republic*, *Chad*, *Congo*, *Guinea*, *Mauritania* and *Senegal*.

[55] Section 2(j) of the Factories Act, 1934, in *Pakistan*.

[56] Section 55(1) of the Labour Act.

[57] Section 27 of the Labour Code (Law of 23 September 1946 and subsequent amendments).

[58] For example, *Angola*, *Bahrain*, *Gabon*, *Guinea*, *Iraq*, *Montenegro*, *Madagascar*, *the former Yugoslav Republic of Macedonia* and *United Arab Emirates*.

[59] Section 45 of the Factories Act, 1934, in *Pakistan*.

[60] Section 131(4) of the Law on Labour Relations.

[61] Section 3 of the Order respecting the employment of women and pregnant women, No. 3759 of 1954.

[62] Section 110 of the Labour Code (Law No. 45-75 of 1975).

employers' organizations. In *India* [63] and *Pakistan*, [64] in case of public emergency the state government may, exempt any factory from the prohibition of night work of women.

414. With regard to the exclusion of certain categories of workers from the prohibition of night work, the legislation in a number of countries exempts women holding responsible positions of a managerial or technical nature, as provided for in Article 8(a) of Convention No. 89. [65] Certain countries also exclude from the prohibition women employed in health and welfare services, who are not ordinarily engaged in manual work, as envisaged in Article 8(b) of the Convention. For example, in *Mauritania* [66] and *Montenegro*, [67] women are allowed to work at night in health and welfare services. In *Costa Rica*, the prohibition of night work of women does not apply to nurses or social workers. In companies that provide services of public interest and whose work is not unhealthy or dangerous, women are allowed to work at night, on condition that it is compatible with their physical and mental health and morals. In these cases, the Ministry of Labour and Social Security provides explicit authorization. [68] Some countries allow additional exceptions to the prohibition for other categories of workers not envisaged in Convention No. 89. For example, in *Iraq*, women employed in transport and communication services are exempt from the prohibition. [69] In the *Plurinational State of Bolivia* [70] and *Costa Rica*, [71] women domestic workers are allowed to work at night. In *Angola*, the prohibition does not apply to workers engaged in cleaning services and food processing, unless they have children under ten years of age. [72] The legislation in the *United Arab Emirates* provides for several exceptions, including the tourism, health care and transport sectors, and in cases of serious accidents, repair work or extraordinary pressure. [73] In *Algeria* [74] and *Guinea*, [75] ad hoc exceptions not provided for in the Convention may be authorized by the labour inspector in exceptional circumstances. [76] In this regard, the Committee notes that the only exceptions allowed by Convention No. 89 are those specifically set out in Articles 3, 4, 5 and 8. [77]

[63] Section 5 of the Factories Act, 1948.

[64] Section 8 of the Factories Act, 1934.

[65] For example, *Angola*, *Bahrain*, *Chad*, *Guinea*, *Nigeria* and *United Arab Emirates*.

[66] Section 166 of the Labour Code (Law No. 2004-017 of 2004).

[67] Section 105 of the Labour Act, 2008 (*Official Gazette* No. 49/08).

[68] Section 88(b) of the Labour Code of 1943 and subsequent amendments.

[69] Section 86 of the Labour Code (Labour Law, 2015).

[70] Section 60 of the General Labour Law of 1942.

[71] Section 88(b) of the Labour Code of 1943 and subsequent amendments.

[72] Section 245(10) of the General Labour Act, 2015.

[73] Section 1 of Ministerial Order No. 46/1, 1980.

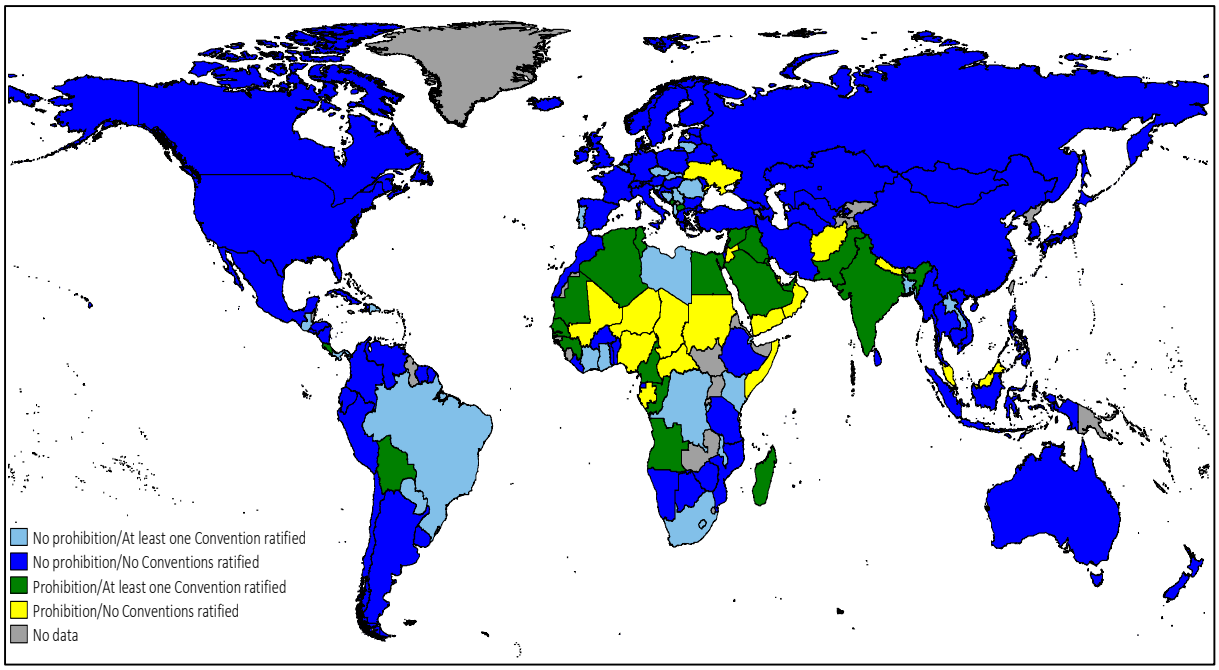
[74] Section 29 of the Law on Labour Relations (Law No. 90-11 of 1990).

[75] Section 221(8) of the Labour Code (Law No. L/2014/072/CNT of 2014).

[76] See *Algeria* – CEACR, Convention No. 89, direct request, published in 2009.

[77] These exceptions are: women working in an undertaking in which only members of the same family are employed (Art. 3); in cases of force majeure, when in any undertaking there occurs an interruption of work which it was impossible to foresee, and which is not of a recurring character; and in cases where the work has to do with raw materials or materials in course of treatment which are subject to rapid deterioration when such night work is necessary to preserve the said materials from certain loss (Art. 4); in case of serious emergency the national interest demands it (Art. 5); and women holding responsible positions of a managerial or technical character; and women employed in health and welfare services who are not ordinarily engaged in manual work (Art. 8).

Figure 4.5. Prohibition of night work of women around the world



415. Noting that many countries are in the process of easing or eliminating legal restrictions on the employment of women during the night with the aim of improving their employment opportunities and promoting gender equality, the Committee recalls that Article 11(3) of the 1979 United Nations Convention on the Elimination of All Forms of Discrimination against Women requires States parties to periodically review their protective legislation in light of scientific and technological knowledge with a view to revising all gender-specific provisions and discriminatory constraints. This obligation was later reaffirmed in point 5(b) of the 1985 ILO resolution on equal opportunities and equal treatment for men and women in employment. [78] In the context of its comments on the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Committee has emphasized that protective measures applicable to women's employment which are based on stereotypes regarding women's professional abilities and role in society, violate the principle of equality of opportunity and treatment between men and women in employment and occupation. ***Therefore protective measures for women should be limited to the protection of maternity in the strict sense, and provisions relating to the protection of persons working under hazardous or difficult conditions, including night work, should be aimed at protecting the health and safety of both men and women at work, while taking account of gender differences with regard to specific risks to their health.*** [79] ***With a view to repealing discriminatory protective measures applicable to women's employment, the Committee has recognized that it may be necessary to examine what other measures, such as improved health protection of both men and***

[78] The Committee also referred to the 1985 Resolution in its comments on the Discrimination (Employment and Occupation), Convention, 1958 (No. 111), for example with respect to *Plurinational State of Bolivia* – CEACR, Convention No. 111, observation, published in 2008; *Republic of Moldova* – CEACR, Convention No. 111, direct request, published in 2007.

[79] See *Angola* – CEACR, Convention No. 111, direct request, published in 2016; *Jordan* – CEACR, Convention No. 111, observation, published in 2014; *Kiribati* – CEACR, Convention No. 111, direct request, published in 2014; *Russian Federation* – CEACR, Convention No. 111, observation, published in 2015.

women, adequate transportation and security, as well as social services, are necessary to ensure that women can work on an equal footing with men. [80]

416. The Committee has also drawn the attention of countries that have ratified Convention No. 89 to its Protocol, which offers broader exemptions from the prohibition on night work and variations in the duration of the night period, while maintaining the focus on the protection of women from arduous working conditions.

(b) The adoption of Convention No. 171 and Recommendation No. 178: A conceptual framework

(i) Rationale of the instruments: Combining equality, productivity and protection

417. The Protocol to Convention No. 89 gives greater flexibility to the Convention through the possibility of introducing exceptions from the prohibition of night work and variations in the duration of the night period agreed between the organizations representative of the employers and workers concerned. While maintaining the focus on the protection of women from arduous working conditions, it therefore opens the possibility for women to work at night under certain well-specified conditions. [81]

418. On the other hand, Convention No. 171 is not devised as a gender-specific instrument, but focuses on the protection of all night workers, thereby shifting the emphasis from a specific category of workers and sector of economic activity to the protection of night workers irrespective of gender in almost all branches and occupations. [82] It demonstrates the major shift that has occurred over time from a purely protective approach concerning the employment of women to one based on promoting genuine equality between women and men and eliminating discriminatory law and practice.

419. The Protocol to Convention No. 89, Convention No. 171 and Recommendation No. 178 were all adopted in 1990.

(ii) Definitions of night work and night worker

Box 4.2

Article 1 of Convention No. 171 and Paragraph 1 of Recommendation No. 178 provide that:

For the purposes of this Convention/Recommendation:

(a) the term “night work” means all work which is performed during a period of not less than seven consecutive hours, including the interval from midnight to 5 a.m., to be determined by the competent authority after consulting the most representative organisations of employers and workers or by collective agreements;

(b) the term “night worker” means an employed person whose work requires performance of a substantial number of hours of night work which exceeds a specified limit. This limit shall be fixed by the competent authority after consulting the most representative organisations of employers and workers or by collective agreements.

[80] See *General Survey on the fundamental Conventions*, 2012, paras 839–840. When reviewing provisions prohibiting night work for women, a distinction should be made between special measures to protect maternity, as envisaged in Article 5 of Convention No. 111, and measures based on stereotyped perceptions of the capacity and role of women in society, which are contrary to the principle of equality of opportunity and treatment; see also, for example, *Algeria* – CEACR, Convention No. 111, observation, published in 2014.

[81] *Bahrain* – CEACR, Convention No. 89, direct request, published in 2009.

[82] *Bahrain* – CEACR, Convention No. 89, direct request, published in 2014.

420. In contrast with Conventions Nos 4, 41 and 89, which define the term "night", Convention No. 171 and Recommendation No. 178 focus on definitions of the terms "night work" and "night worker". [83] While the definition of night work refers to a specific period of the night, the definition of night worker relates to the frequency with which a person works at night. This difference has crucial implications in determining who is covered by the benefits of the Convention. [84] For instance, while the maternity protection provision in Article 7 of Convention No. 171 refers to night work, and therefore applies to any woman worker from the moment she works during the night (independently of the frequency), some other provisions apply specifically to night workers, that is workers who perform a substantial number of hours of night work (these include Article 4 on health assessment, Article 6 on the treatment of workers medically unfit for night work and Article 8 on compensation). [85] As emphasized during the preparatory work for the instruments, the use of the term "night worker", as opposed to "night work", has the effect of limiting the number of workers covered by the respective provision. [86]

421. Two aspects should be noted in relation to the definition of night work: the total length of the period defined as night, which is at least seven hours, and the interval or core period that has to be included in the definition of night. [87] The minimum length of the night period set out in Convention No. 171 is shorter than in previous ILO Conventions, which specify, for example, 11 consecutive hours. [88] However, as emphasized during the preparatory work in the second discussion, this period may go beyond seven hours, after consultation with employer and worker representatives. Nevertheless, the interval "from midnight to 5 a.m." is considered to be the minimum protected period of the night, and any work during this period qualifies as night work. The determination of this interval is centred firmly on the hours that are critical for the disturbance of physiological and other circadian rhythms. [89]

422. ***The Committee welcomes the fact that a significant number of ratifying and non-ratifying States have adopted a legal definition of either night work*** [90] ***or the night***

[83] In the Office original version, the term "night" was defined as a period which should normally comprise not less than eight consecutive hours. ILO: *Night work*, Report V(2), ILC, 76th Session, Geneva, 1989, p. 34.

[84] It should be noted that, during the preparatory work for the new night work instruments, the discussion on Article 1, containing the definitions of "night work" and "night worker", mainly focused on whether or not the instruments should apply to all work at night, even if it is occasional and only a short period is worked during the night (as defined by the competent authority). ILO: *Night work*, 1989, op. cit., p. 38.

[85] See *Albania* – CEACR, Convention No. 171, direct request, published in 2010; and *Lithuania* – CEACR, Convention No. 171, direct request, published in 2010.

[86] ILO: *Record of Proceedings* No. 30, Report of the Committee on Night Work, ILC, 76th Session, Geneva, 1989, p. 30/8.

[87] ibid., p. 30/10.

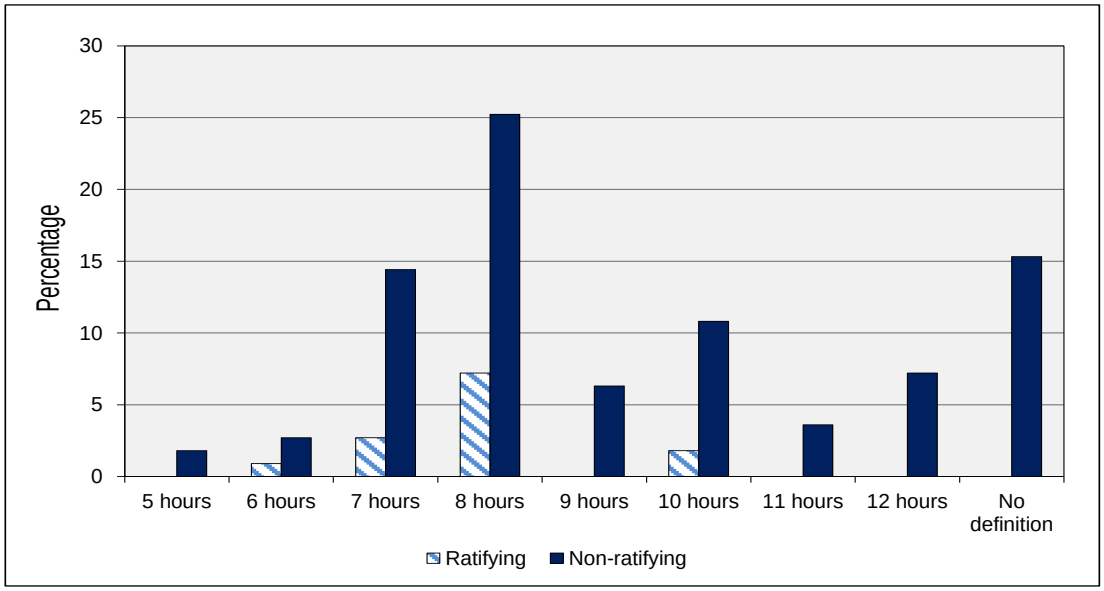
[88] Conventions Nos 4, 41 and 89 all define night as a period of at least 11 consecutive hours. What slightly differs between them is that, in Conventions Nos 4 and 41, the interval that has to be included in this period (between ten o' clock in the evening and five o' clock in the morning) is defined in the Conventions, while in Convention No. 89 the interval shall be prescribed by the competent authority and has to be of at least seven consecutive hours falling between ten o 'clock in the evening and seven o'clock in the morning. Article 1 of the Protocol of 1990 to Convention No. 89 significantly extends the possibility of variations in the duration of the night period, which may be introduced by decision of the competent authority with the agreement of, and in consultation with, the representative organizations of employers and workers.

[89] See ILO: *Night work*, Report IV(2A), ILC, 77th Session, Geneva, 1990, p. 34; and ILO: *Record of Proceedings* No. 26, ILC, 77th Session, 1990, p. 26/2.

[90] For example, *Albania, Algeria, Angola, Antigua and Barbuda, Argentina, Belgium, Benin, Plurinational State of Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Burundi, Cameroon, Central African Republic, Chad, Chile, Colombia, Congo, Democratic Republic of the Congo, Costa Rica, Croatia, Cuba, Czech Republic, Côte d'Ivoire, Djibouti, Ecuador, Ethiopia, Finland, France, Gabon, Georgia, Ghana, Guatemala, Honduras,*

period, [91] ***or both,*** [92] ***and that, in a great majority of these countries, the length of the night period is – in conformity with the language of Convention No. 171 – either more than seven hours*** [93] ***or precisely seven hours,*** [94] ***while in a few countries it is less than seven hours (six or five hours).*** [95]

Figure 4.6. Share of ILO member States by duration of night (length of night period in national legislation, based on data from 111 ILO member States)



423. All the countries where the legislation provides a definition of night or night work comply with the interval or core period required by Convention No. 171 and Recommendation No. 178. Although the starting and ending times of the period vary widely between countries, the interval from 10 p.m. to 6 a.m. is fairly frequent.

Hungary, Iceland, Islamic Republic of Iran, Iraq, Italy, Japan, Republic of Korea, Latvia, Lithuania, Madagascar, Mauritius, Mexico, Republic of Moldova, Montenegro, Morocco, Mozambique, Netherlands, Nicaragua, Norway, Oman, Panama, Peru, Portugal, Romania, Senegal, Serbia, Seychelles, Slovakia, Slovenia, South Africa, Spain, Switzerland, Syrian Arab Republic, the former Yugoslav Republic of Macedonia, Togo, Turkmenistan, Ukraine, Uruguay and *Bolivarian Republic of Venezuela.*

[91] For example, *Austria, Azerbaijan, Bahrain, Belarus, Cambodia, Cyprus, Denmark, Dominican Republic, Egypt, Equatorial Guinea, Estonia, Greece, Guinea, Indonesia, Kazakhstan, Luxembourg, Malta, Nigeria, Philippines, Poland, Russian Federation, Singapore, Sri Lanka, Suriname, Sweden, Tajikistan, United Republic of Tanzania, Turkey, United Kingdom* and *Uzbekistan.*

[92] For example, *China, Germany* and *Lao People's Democratic Republic.*

[93] For example, *Albania, Algeria, Angola, Argentina, Azerbaijan, Bahrain, Belarus, Belgium, Benin, Plurinational State of Bolivia, Bosnia and Herzegovina, Bulgaria, Cameroon, Cabo Verde, Chile, China, Colombia, Democratic Republic of the Congo, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Estonia, Ethiopia, France, Gabon, Georgia, Greece, Guatemala, Guinea, Honduras, Hungary, Indonesia, Islamic Republic of Iran, Iraq, Kazakhstan, Republic of Korea, Lao People's Democratic Republic, Latvia, Lithuania, Luxembourg, Mauritius, Mexico, Republic of Moldova, Montenegro, Morocco, Mozambique, Namibia, Nicaragua, Norway, Oman, Panama, Peru, Poland, Portugal, Romania, Russian Federation, Serbia, Seychelles, Slovakia, Slovenia, South Africa, Spain, Suriname, Sweden, Syrian Arab Republic, Tajikistan, United Republic of Tanzania, the former Yugoslav Republic of Macedonia, Turkey, Turkmenistan, Ukraine, Uruguay, Uzbekistan* and *Bolivarian Republic of Venezuela.*

[94] For example, *Antigua and Barbuda, Austria, Brazil, Burkina Faso, Burundi, Central African Republic, Chad, Congo, Czech Republic, Denmark, Djibouti, Finland, Germany, Japan, Madagascar, Malta, Senegal, Switzerland, Togo* and *United Kingdom.*

[95] For example, *Cambodia, Cyprus, Iceland, Italy, Netherlands* and *Philippines.*

424. With regard to the definition of night worker, the phrase "substantial number of hours" was intended to narrow the definition to cover only those workers seriously affected by night work, excluding occasional or marginal cases. Article 1(b) of the Convention leaves it to the competent authority to set the period for which it fixes a specified limit, such as a week, month or year, on condition that the number of hours fixed [96] is substantial with reference to the period chosen.

425. ***The Committee notes with concern that a high number of countries, including a number of ratifying States, do not have a legal definition of night worker. In this respect, the Committee has consistently emphasized the importance of including a clear definition of night workers in national legislation, as several of the provisions of the Convention apply specifically to night workers (including Article 4 on health assessment, Article 6 on the treatment of workers medically unfit for night work and Article 8 on compensation), rather than to night work.*** [97]

426. A number of countries that have defined the term night worker in their legislation use the day as the reference period and it is necessary to work for at least three hours at night each day to qualify as a night worker. For example, the legislation in *Albania* defines night workers as employees who work at least three of their normal daily working hours during the night, or who are likely to perform a specific part of their annual work during the night, as defined by the law and specified in the individual or collective contract. [98] In *Angola*, a night worker is someone who works entirely during the night time, or performs at least three hours of night work a day. [99]

427. Some countries establish a specific reference period to qualify as a night worker, but leave open the possibility to fix another reference period and maximum frequency by agreement. For example, in *Iceland*, to qualify as night workers, employees normally have to work at least three hours a day, or a certain proportion of their annual working hours at night, in accordance with an agreement between the organizations of the social partners. [100] Similarly, in *Luxembourg*, night workers are both those who normally work at least three hours of their daily working time at night, or who are likely to perform a certain proportion of their work during the night period, as defined by collective agreement or agreement between the social partners at the national or sectoral level, on condition that the proportion is higher than one quarter of their annual working time. [101] In some cases, no reference period is fixed, for example in the *Philippines*, where a night worker is defined as any employed person whose work requires performance of a substantial number of hours of night work which exceeds a specified limit. The limit is fixed by the Secretary of Labour after consultation with worker and employer representatives. [102]

428. Certain member States, mainly European countries, use either the day or the year as a reference period. For example, in *Cyprus*, night worker means any worker who: (a) normally works at least three hours of their daily working time during the night; or

[96] The proposed threshold of 200 hours a year was considered to be too low. See *Record of Proceedings* No. 26, 1990, op. cit., p. 26/6.

[97] See, for example, *Albania* – CEACR, Convention No. 171, direct request, published in 2010; *Luxembourg* – CEACR, Convention No. 171, direct request, published in 2010; and *Lithuania* – CEACR, Convention No. 171, direct request, published in 2010.

[98] Section 80(3) of the Labour Law, as amended by Law No. 136/2015.

[99] Section 3(30) of the General Labour Act (No. 7/15, of 21 April 2015).

[100] Section 52 of Act No. 46/1980.

[101] Section L. 211-14(2) of the Labour Code.

[102] Section 154 of the Republic Act No. 10151.

(b) is likely during the night time to work at least 726 hours of their annual working time, provided that no smaller number of hours is specified by collective agreement. [103] In *Sweden*, the Working Hours Act provides that night workers are those who normally perform at least three hours of their working shift during the night, or will probably perform at least one third of their annual working time during the night. [104] Similarly, the Workers' Charter in *Spain* prescribes that a person is considered to be a night worker if he or she normally performs no fewer than three hours of daily working time at night, or not less than one third of annual working time at night. [105]

429. Certain countries set other reference periods, such as the month or week, sometimes combined with the year. One example is *France*, where a night worker is the one who performs: (a) within regular working hours, a minimum of three hours of night work on a day at least twice a week; or (b) within a certain reference period, at least a certain number of hours of night work in accordance with the conditions set out in the collective convention or agreement in force or, in the absence of such a convention or agreement, 270 hours of night work over a reference period of 12 consecutive months. The Government of *Romania* reports that a night worker is an employee performing night work for: (a) at least three hours of daily working time; or (b) at least 30 per cent of monthly working time. [106] In the *Czech Republic*, to qualify as a night worker, the Labour Code [107] requires employed persons to work on average no fewer than three hours at night within 24 consecutive hours at least once a week within a period of 26 consecutive weeks.

430. ***Recalling that, for the purposes of the Convention, the term "night worker" means a person who performs a substantial number of hours of night work which exceeds a specified limit, which is to be fixed by the competent authority after consulting the most representative organizations of employers and workers, the Committee encourages all governments to consider the possibility of introducing a definition of the term "night worker", as appropriate, as indicated in Article 1 of the Convention.***

(iii) Scope of application and exclusions of Conventions and Recommendations

431. In accordance with Article 2 of Convention No. 171 and Paragraph 2 of Recommendation No. 178, the instruments apply to all employed persons, that is men and women working in the public and private sectors, [108] full- and part-time, [109] and in nearly all occupations. However, during the preparatory work, it was considered that workers in agriculture, stock-raising, fishing, maritime transport and inland navigation were all categories with specific characteristics with regard to night work which justified their exclusion from the scope of application of the new night work instruments. [110]

432. International standards have progressively raised the age for admission to work and have prohibited night work of young persons whenever it presents a danger to their health, safety or morals by its nature or the circumstances in which it is carried out. In 1919, the

[103] Section 2 of the Organization of Working Time Law of 2002.

[104] Section 13 of the Working Hours Act.

[105] Section 36.1(3) of the Workers' Charter.

[106] Section 125(1.1) of the Labour Code.

[107] Sections 78(1)(k) and 94(1) of the Labour Code, as amended by Act No. 365/2011.

[108] ILO: *Night work*, Report V(2), 1989, op. cit., p. 41.

[109] ILO: *Record of Proceedings* No. 30, 1989, op. cit., p. 30/11.

[110] ILO: *Night work*, Report V(1), 1989, op. cit., p. 70.

Night Work of Young Persons (Industry) Convention, 1919 (No. 6), set a general prohibition of night work for young people under 18 years of age in industrial undertakings. [111]

433. Other international instruments prohibit night work by children by ensuring long periods of rest that include the night period. For example, the Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 79), prohibits night work by young persons under 18 years of age during a period of at least 12 consecutive hours, including the interval between 10 o'clock in the evening and 6 o'clock in the morning. The exceptions allowed for artistic performances are in turn limited to midnight (Article 5(4)(b)). Moreover, the Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90), defines night work to be prohibited to young persons under 16 years of age as the period of at least 12 consecutive hours including the interval between 10 o'clock in the evening and 6 o'clock in the morning, and night work to be prohibited to young persons under the age of 18 years as an interval of at least seven consecutive hours falling between 10 o'clock in the evening and 7 o'clock in the morning (Article 2).

434. These Conventions on night work of young persons may be applied in a complementary manner with the fundamental Minimum Age Convention, 1973 (No. 138), which extends the coverage of the child labour standards to all sectors of activity, without distinction as to status in occupation. This Convention, which includes flexibility clauses, invites member States to progressively raise the minimum age for admission to work to at least 15 years. [112] Furthermore, both Convention No. 138 (Article 3) and the Worst Forms of Child Labour Convention, 1999 (No. 182) (Articles 3(d) and 4(1)), prohibit young persons below the age of 18 to carry out hazardous work, as determined by the competent authority. Some member States which have ratified Convention No. 138 and/or Convention No. 182 have identified night work as hazardous work to be prohibited to young persons under 18 years of age.

Box 4.3
Do Convention No. 171 and Recommendation No. 178 apply to young workers?

Depending on the definition of night work and night worker adopted by countries, a young person may have occasions to work a number of hours during the period defined as night. During the preparatory work for the new night work instruments, the question was raised of whether the instruments would apply to young persons, or would be limited to adults only. The Office's answer was that the new instruments, as envisaged, would not be limited to adults. [1] On this basis, it may be concluded that, in the exceptional cases in which young people are allowed to work at night if, in accordance with the national definition of night work and night worker, they are considered to perform night work or qualify as night workers, the protective provisions of Convention No. 171 and Recommendation No. 178 apply to them. [2]

[1] ILO: *Night work*, Report V(2), 1989, op. cit., p. 28.

[2] A hypothetical situation would be that of a 17-year-old woman in a country in which night work is performed between 9 p.m. and 7 a.m. As the length of the night is ten hours, it is possible that this young woman may work a maximum of one hour a day at night. Therefore, in the event of pregnancy, Article 7 of the Convention, which applies to all women working at night, irrespective of frequency, would apply to her.

[111] With the exception of young persons over the age of 16, in certain industrial undertakings, on work which, by reason of the nature of the process, is required to be carried on continuously day and night.

[112] The Convention allows, however, member States whose economy and educational facilities are insufficiently developed to initially specify a minimum age of 14 years (Art. 2(4)).

435. Convention No. 171 offers member States the possibility, after consulting the representative organizations of employers and workers concerned, to exclude wholly or partly from its scope of application limited categories of workers when the application of the Convention to them would raise special problems of a substantial nature. [113] The intention behind Article 2(2) is not to permit a blanket exception for an entire industry, [114] but rather to offer flexibility with a view to the ratification of the Convention. [115] As emphasized during the preparatory work, exclusions must only be possible in relation to limited groups, not broad sectors, which should be strictly defined in relation to the problems of application that may be present. [116]

436. With regard to Article 2(3), governments that avail themselves of the possibility afforded in paragraph 2 are required to indicate in their reports on the application of the Convention under article 22 of the Constitution the particular categories of workers thus excluded and the reasons for their exclusion. This information is intended to assist the supervisory machinery to determine whether the conditions set out in paragraph 2 have been met. [117]

437. Many governments report that no category or sector is excluded from the legislation on night work. [118] Some other countries, such as *Madagascar* [119] and *Philippines* [120] exempt from the scope of application of the night work legislation all or some of the sectors set out Article 2(1) of the Convention.

438. A number of countries report that domestic workers are not included in the scope of application of the night work legislation. For example, the Labour Code [121] in the *Dominican Republic* excludes domestic workers from the scope of application of its night work provisions. Indeed, domestic workers are not subject to any provisions respecting their hours of work, although they must have a rest period of at least nine consecutive hours between two working days. [122] In its article 22 reports, the Government has indicated that economic reasons have prevented the rules on the night period from being extended to domestic workers. The Government also noted that this exclusion was discussed and agreed with the representative organizations of employers and workers. [123] Similarly, the Labour Act in *Bahrain* excludes domestic workers (and persons regarded as such, including gardeners, home security guards, babysitters, drivers and cooks working for the employer or his family members) from the application of many of its provisions, including

[113] Article 2(2) of the Convention.

[114] ILO: *Night work*, Report V(2), 1989, op. cit., p. 44.

[115] ILO: *Record of Proceedings* No. 30, 1989, op. cit., p. 30/12.

[116] ibid., p. 30/11.

[117] ibid., p. 30/12.

[118] For instance, *Brazil, Costa Rica, Cuba, Hungary, Latvia, Panama, Peru, Russian Federation, Slovakia, Slovenia, Senegal, Seychelles, Uruguay* and *Bolivarian Republic of Venezuela*.

[119] Under section 1(2), the provisions of the Labour Code do not apply to State supervisory staff, who are governed by the General Statute of Civil Servants, or to workers covered by the Maritime Code.

[120] Book III, Rule XV, section 1, of the Omnibus Rules Implementing the Labour Code provides that the rules on the employment of night workers shall apply to all persons who are employed or permitted or suffered to work at night, except those employed in agriculture, stock-raising, fishing, maritime transport and inland navigation.

[121] Section 259 of the Labour Code.

[122] Section 261 of the Labour Code.

[123] See *Dominican Republic* – CEACR, Convention No. 171, direct request, published in 1997 and 1998.

those on night work. [124] Other countries in which domestic workers are excluded from the night work provisions include *Egypt*, [125] *Luxembourg*, [126] *Mozambique*, [127]*Oman* [128] and *Syrian Arab Republic*. [129] The Committee draws attention to the vulnerable employment situation of live-in domestic workers, especially those with care responsibilities, who often report extensive and unpredictable working hours, including night work, which has a specific impact on women during and after pregnancy. [130]

439. ***Recalling that the spirit of the protection afforded by the Convention implies that exclusions are possible only for limited groups, and not broad sectors, the Committee emphasizes the importance of defining any such exclusions with strict reference to the problems of a substantial nature which may arise as a consequence of the application of the Convention in their regard.***

(iv) Methods of application

Box 4.4

Article 11 of Convention No. 171 and Paragraph 3 of Recommendation No. 178 provide that:

1. The provisions of this Convention/Recommendation may be implemented by laws or regulations, collective agreements, arbitration awards or court decisions, a combination of these means or in any other manner appropriate to national conditions and practice. In so far as they have not been given effect by other means, they shall/should be implemented by laws or regulations.

2. Where the provisions of this Convention/Recommendation are implemented by laws or regulations, there shall/should be prior consultation with the most representative organisations of employers and workers.

440. These provisions allow the application of the instruments through a wide range of possible means consistent with national practice and conditions. The second sentence of paragraph 1, as clarified during the preparatory work, means that, for workers who are not protected in any other way, there is a residual requirement for legislative action. [131] When countries have recourse to laws and regulations to give effect to the instruments, prior consultations are required.

Box 4.5
Implementation of Convention No. 171 through collective agreements

Several countries report that certain aspects of night work are covered by collective agreements. One aspect that is frequently included in collective agreements is compensation. For example, in *Togo*, the Labour Code provides that day work and night

[124] Section 2(b)(1) of Labour Act No. 36/2002.

[125] Section 4(a) of the Labour Code.

[126] Section L.212-2 of the Labour Code.

[127] Section 3(a) of the Labour Code.

[128] Section 2(3) of the Labour Code.

[129] Section 5(4) of Labour Law No. 17 of 2010, as amended in 2014.

[130] See ILO. *Working time of live-in domestic workers*, Domestic Work Policy Brief No. 7. The Domestic Workers Recommendation, 2011 (No. 201), takes into account the specific situation of domestic workers whose normal duties are performed at night and calls upon ratifying States to consider measures regarding rest periods, including on call and standby periods (Paragraph 9(1) and (2)).

[131] ILO: *Night work*, Report IV(2A), 1990, op. cit., p. 69.

work shall be remunerated at a normal rate, unless otherwise provided by collective agreement. [1] The Interoccupational Collective Agreement provides that workers performing at least six hours of work at night have the right to an allowance that is equal to three times the hourly wage of ordinary workers in the establishment. [2] Similarly, in *Cyprus*, specific provisions on night work allowances are contained in collective agreements covering sectors in which night work is performed.

The definition of night workers is also covered by collective agreements. For example, in *Italy,* night workers perform at least part of their work during the night period, as defined in collective agreements. In the absence of a collective agreement, night workers are those who perform night work for at least 80 working days a year. [3] In *Malta,* night workers usually perform at least three hours of their daily working time during the night period or over 50 per cent of their annual working time at night, or such lower proportion as may be specified in the applicable collective agreement. [4]

Another aspect that is frequently left to collective bargaining concerns social services for night workers. In *Belgium,* collective agreement No. 46 of 1990 provides that, when a worker is usually employed on night work between 8 p.m. and 6 a.m. and is absent from his/her place of residence for more than 12 hours a day, or the commuting time is at least of four hours a day, the employer is obliged to organize transport. [5] In *Côte d'Ivoire,* in the absence of transport provided by the employer, workers engaged in night work benefit from a transportation allowance determined in agreement between the employers' and workers' organizations or an agreement concluded at the establishment level. [6]

[1] Section 146 of the Labour Code.

[2] Clause 35 of the Interoccupational Collective Agreement of Togo, of December 2011.

[3] Section 1(2)(e) of Decree No. 66/2003.

[4] Section 2 of the Organization of Working Time Regulations S.L.452.87.

[5] Section 12 of collective agreement No. 46 of 23 March 1990.

[6] Section 10 of Decree No. 96-204 of 7 March 1996 on night work.

2. Minimum protective measures for night workers

Box 4.6
Progressive application of protective measures

Article 3 of Convention No. 171 provides that:

1. Specific measures required by the nature of night work, which shall include, as a minimum, those referred to in Articles 4 to 10, shall be taken for night workers in order to protect their health, assist them to meet their family and social responsibilities, provide opportunities for occupational advancement, and compensate them appropriately. Such measures shall also be taken in the fields of safety and maternity protection for all workers performing night work.

2. The measures referred to in paragraph 1 above may be applied progressively.

441. Convention No. 171 and Recommendation No. 178 are intended to provide a minimum and coherent package of measures which are essential to attenuate the consequences of night work. As illustrated in figure 4.7, Article 3 of Convention No. 171 constitutes the heart of this package, embedding as a minimum the requirements of Articles 4–10. Recommendation No. 178 complements these requirements.

Figure 4.7. Protective measures for night workers

442. As highlighted during the preparatory work, Article 3 of the Convention has two purposes: requiring the application of the Convention to include measures pertaining to each of Articles 4–10 and allowing the progressive application of these provisions. As a result, the Convention could first be applied to specific industries or sectors, or to larger enterprises, or on the basis of other criteria, on condition that some measures are applied under each of Articles 4–10. [132] Progress is required in the measures adopted and the workers covered, but may be gradual. Moreover, the progressive application referred to in Article 3(2) applies to measures referred to in paragraph 1, and not to other conditions set out in the Convention. For example, although the periods referred to in Article 7 in relation to maternity protection may not be replaced by shorter periods with a view to progressive application, the social services referred to in Article 9 may be introduced measure by measure and progressively improved.

443. In examining the application of the Convention, the Committee has noted that these provisions include a number of measures that are necessary to ensure a minimum level of protection for night workers and are designed to assist them to meet their family and social responsibilities. [133] These measures are the result of a long-standing consensus on the harmful effects of night work on the health of workers, as well as their social and family

[132] ILO: *Night work*, Report IV(1), ILC, 77th Session, Geneva, 1990, pp. 3–4.

[133] *Madagascar* – CEACR, Convention No. 171, direct request, published in 2012.

life. They reflect the need to ensure a range of protective measures for all night workers, especially in relation to health and safety, social assistance and maternity protection, and emphasize the need to introduce systems of shift work based on consultations within the enterprise. [134] The Committee has also recalled that, under Article 3(2) of the Convention, the measures taken may be applied progressively, but remain compulsory and have to be applied. [135] ***In this respect, the Committee encourages all governments to pursue efforts to take the necessary measures to strengthen the protection of night work and night workers.***

Box 4.7
Cases of progressive application of protective measures for night workers

Good practices in the progressive implementation of protective measures for night workers can be found in recent national legislative reforms. Among ratifying countries, *Albania* reformed its Labour Code in 2015 [1] to include some of the Committee's recommendations regarding the application of the Convention. The new Code introduced a definition of "night worker", [2] the requirement for employers to consult worker representatives on the need for and forms of organization of night work, and maternity protection measures for women working at night. [3] *Côte d'Ivoire* only ratified Convention No. 171 in 2016 but its legislation on night work protection was adopted in 1996. This legislation, which is also referred to in the new Labour Code of 2015, includes limits on normal hours of work and overtime at night, medical assessments and transfer to day work in the event of inability to perform night work for health reasons, transport facilities for employees working at night and first-aid facilities. [4]

Among non-ratifying countries, the *Philippines* carried out a review of its night work legislation between 2010 and 2012 aimed at adapting it to the evolving economic situation of the country, particularly regarding the employment of women at night in the BPO. [5] The reform repealed the prohibition of night work of women and introduced provisions on the protection of night work in accordance with the Convention, including on health assessments of night workers, the transfer to day work of workers who are not fit for night work, night work maternity protection and mandatory facilities, such as first aid and transport. [6]

[1] Law No. 136/2015, amending Law No. 7961 of 12 July 1995, Labour Code of *Albania*.

[2] Section 80(3) of the Labour Code.

[3] Section 108 of the Labour Code.

[4] Sections 5, 6, 10, 11 and 13 of Decree No. 96-204 of 7 March 1996 on night work.

[5] Republic Act No. 10151 of 2010 and Department Order No. 119-12 of 2012 implementing Republic Act No. 10151.

[6] Sections 3 to 8 of Department Order No. 119-12 of 2012.

A. Health and safety of night workers

444. The provisions on health and safety of night workers refer to: the assessment of workers' health and advice, the transfer and benefits for workers unfit to work at night, first-aid facilities, and a safe and healthy environment for night workers.

[134] *Brazil* – CEACR, Convention No. 171, direct request, published in 2010.

[135] *Dominican Republic* – CEACR, Convention No. 171, direct request, published in 2010.

(a) Assessment of workers' health and advice

Box 4.8

Article 4 of Convention No. 171 provides that:

1. At their request, workers shall have the right to undergo a health assessment without charge and to receive advice on how to reduce or avoid health problems associated with their work:

(a) before taking up an assignment as a night worker;

(b) at regular intervals during such an assignment;

(c) if they experience health problems during such an assignment which are not caused by factors other than the performance of night work.

2. With the exception of a finding of unfitness for night work, the findings of such assessments shall not be transmitted to others without the workers' consent and shall not be used to their detriment.

Paragraph 10 of Recommendation No. 178 provides that:

10. Employers and the worker representatives concerned should be able to consult the occupational health services, where they exist, on the consequences of various forms of organisation of night work, especially when undertaken by rotating crews.

445. Article 4 of the Convention requires night workers to have the right, at their request, to undergo a health assessment at different times during their assignment to night work. The preparatory work highlighted the necessity of the medical supervision of workers who are regularly engaged in night work because it provides an opportunity to detect, before they are engaged or during their employment, certain medical indications of inability to adjust to night work and, subsequently, of intolerance to night work. For example, a health assessment before taking up a night work assignment is crucial to forecast the physiological tolerance of a worker to night work and rotating hours of work, which varies from one individual to another. Moreover, a health assessment during their assignment to night work is also important, as a proportion of apparently healthy workers could show signs of inability to adjust to night work some months after starting to work at night. Finally, during the health assessment meetings, night workers should be informed and advised on how best to adapt to night work, especially with regard to sleep, diet and activities unrelated to work. [136]

446. It should also be noted that health assessments of night workers need not be performed by a certified medical doctor, [137] but could also be carried out by a person with the necessary qualifications, such as a public health nurse. [138] Moreover, a health assessment does not necessarily mean a fully-fledged medical examination, [139] but should cover the main health problems that could be caused or exacerbated by night work. [140] With regard to the responsibility to pay for health assessments, depending on national practices, they may not necessarily be at the cost of the employer, as public health services could be used, [141] on condition that the worker does not bear the cost. Finally, all medical findings from health assessments must remain confidential, and the only information that

[136] ILO: *Night work*, Report V(1), 1989, op. cit., p. 49.

[137] See ILO: *Record of Proceedings* No. 30, 1989, op. cit., p. 30/13.

[138] ILO: *Record of Proceedings* No. 26, Report of the Committee on Night Work, ILC, 77th Session, Geneva, 1990, p. 26/8.

[139] ibid., p. 26/8.

[140] ILO: *Record of Proceedings* No. 30, 1989, op. cit., p. 30/13.

[141] ibid.

may be transmitted to the employer is whether or not a worker is fit to work at night at the time of the examination. [142]

447. In this respect, the Committee is pleased to note the indication by many countries that special provisions on night work require employees to be offered a free health examination before being assigned to night work, and thereafter at regular intervals. For example, among ratifying countries, the Labour Code of the *Czech Republic* requires the employer to ensure that employees working at night undergo medical examinations by occupational medical services: (a) before their assignment to night work; (b) regularly, as needed, but at least once a year; and (c) at any time during their night work assignment at their request and free of charge. [143] In *Côte d'Ivoire*, the Labour Code requires the employer to provide for a medical examination of workers before they take up their assignment and for newly hired staff before the end of their trial period and then periodically during the course of the assignment. [144] Health checks of night workers must be undertaken at least twice a year in order to assess their ability to perform night work. [145] Other examples include *Lithuania,* [146] *Luxembourg* [147] and *Slovakia.* [148]

448. Among non-ratifying countries, [149] the Government of the *Republic of Korea* reports that special health examinations are to be conducted before assigning an employee to night work, within six months after the assignment and every 12 months thereafter. [150] Health examinations and follow-up checks are also required when night work is performed for eight consecutive hours including the interval between midnight and 5 a.m., at least four times a month on average over six months. They are also required when work is performed

[142] ILO: *Record of Proceedings* No. 26, 1990, op. cit., p. 26/8.

[143] Section 94(2) of the Labour Code.

[144] Section 43(2) of the Labour Code.

[145] Section 11 of Decree No. 96-204 of 7 Mar. 1996.

[146] Section 154(6) of the Labour Code provides that employees working at night shall receive free medical check-ups in accordance with the procedure laid down by the Government, and also at their request (if they suffer from complaints related to work at night).

[147] In accordance with sections L.326-1 and 3 of the Labour Code, night workers have to undergo a medical examination before starting their employment, as well as periodic medical examinations.

[148] Section 98(3) and (4) of the Labour Code requires employers to ensure that employees working at night undergo health examinations: (a) prior to assignment; (b) regularly, as required, at least once per year; (c) at any time during the course of their assignment to night work in relation to health problems caused by the performance of night work; and (d) if so requested by a pregnant woman, a mother who has given birth within the last nine months, or a breastfeeding woman. The cost of such examination are borne by the employer.

[149] Other examples include: *Austria* (section 12(b) of the Working Hours Act), *Bulgaria* (section 140a(2) of the Labour Code), *Cabo Verde* (section 164 of the Labour Code), *Denmark* (section 6 of the Working Time Act (consolidated Act No. 896 of 2004)), *Estonia* (section 13(1)(7)(1) of the Occupational Health and Safety Act), *Finland* (section 4 of Decree No. 1485/2001 on medical examinations in work presenting special risks of illness), *France* (sections L.3122-11 and L.4624-1 of the Labour Code), *Indonesia* (sections 2(1), 3(1) and 5(1) of the Regulation of the Ministry of Manpower and Transmigration N.PER-02/MEN/1980 on the medical examination of workers), *Italy* (section 18bis of Decree No. 66/2003), *Japan* (sections 65 and 66 of the Industrial Safety and Health Act and section 45 of the Ordinance on Industrial Safety and Health), *Latvia* (section 138(4) of the Labour Law), *Malta* (section 10(1) of the Organisation of Working Time Regulations), *Republic of Moldova* (section 103(4) of the Labour Code), *Netherlands* (section 18 of the Working Conditions Act and section 2.43 of the Working Conditions Decree), *Norway* (section 10-11(7) of the Working Environment Act), *Romania* (section 127 of the Labour Code), *Spain* (section 36(4) of the Workers' Charter), *Sweden* (section 4 of the Swedish Work Environment Authority Regulations, AFS 2005:6), *Switzerland* (section 17(c) of the Labour Law), *the former Yugoslav Republic of Macedonia* (section 128(3) of the Law on Labour Relations), *Turkey* (section 69 of the Labour Code) and *United Kingdom* (section 7(1) of the Working Time Regulations).

[150] Section 43 of the Enforcement Regulations of the Occupational Safety and Health Act.

between 10 p.m. and 6 a.m. for at least 60 hours a month on average over six months. [151] In the *Philippines*, at their request, workers may undergo a health assessment without charge and receive advice on how to reduce or avoid health problems associated with their work: (a) before taking up an assignment as a night worker; (b) at regular intervals during such an assignment; and (c) if they experience health problems during the assignment. Unless they are found to be unfit for night work, the findings of such assessments shall be confidential and must not be used to their detriment. [152] The Government of *South Africa* reports that an employer who requires or permits an employee to perform work on a regular basis between 11 p.m. and 6 a.m. must inform the employee in writing of the health and safety hazards associated with the work and of the right of the employee to undergo a medical examination. [153] An employer, if so requested by an employee who is performing regular night work, must make arrangements for the employee to undergo a medical examination. An employee is entitled to undergo such an examination when commencing regular night work and at regular intervals thereafter while continuing to work regularly at night. [154] In *Greece*, all workers must undergo the necessary medical examinations before starting to work at night, and then at regular intervals, to examine their suitability for the work. The medical examinations are subject to medical confidentiality and the cost is not borne by the workers. [155] In *Angola*, the legislation provides that night workers shall undergo a medical examination every year, or whenever determined by the competent authorities. [156]

449. In many other countries, [157] the legislation regulating health assessments does not differentiate between night and day workers. For example, in *Belgium*, the legislation provides for regular health examinations of workers at their request, and the confidentiality of worker health records. [158] Similarly, the Government of the *Bolivarian Republic of Venezuela* reports that workers have the right to periodic preventive medical examinations and full access to their findings, as well as the confidentiality of the medical results. [159] The Government of *Togo* reports that employers are required to ensure that their employees undergo medical examinations before and regularly during their assignment. [160] In *Burkina Faso*, the Labour Code requires employers to ensure that their workers undergo medical examinations, including pre-employment and end-of-contract medical examinations. The cost of these medical examinations and the related tests is borne by the employer. [161] In *Brazil*, the Consolidation of Labour Laws (CLT) provides

[151] Section 43 of the Occupational Safety and Health Act and section 98(2) of its Enforcement Regulations.

[152] Book III, Rule XV, section 3, of the Omnibus Rules Implementing the Labour Code, entitled Employment of Night Workers.

[153] Section 17(3) of the Code of Good Practice on Arrangement of Working Time issued under section 87(1)(a) of the Basic Conditions of Employment Act.

[154] Section 17(3)(b) of the Basic Conditions of Employment Act.

[155] Section 9(1) and (3) of Presidential Decree No. 88/99.

[156] Section 91(3) of the General Labour Act.

[157] For example: *Egypt* (section 216 of the Labour Code), *Ghana* (section 19(2) of the Labour Regulation 2007), *Mauritania* (section 257 of the Labour Code), *Rwanda* (section 48 of Ministerial Order No. 2 of 2012) and *Tajikistan* (section 348(2) of the Labour Code).

[158] Sections 5(1) and 90 of the Royal Decree of 28 May 2003 on workers' health control.

[159] Section 53(10) of the Basic Act on prevention, working conditions and the working environment (LOPCYMAT).

[160] Section 1 of Decree No. 005/2011/MTESS of 2011.

[161] Section 261 of the Labour Code.

that all workers must undergo a medical examination at the employer's expense upon recruitment, when their contract ends and periodically during employment. [162]

450. However, the Committee observes that a number of governments report that their national legislation does not provide health assessments for night workers, [163] or that this right only exists when work involves hazardous conditions, [164] but that night work is not always included in the list of hazardous conditions. When examining the application of Convention No. 171, the Committee has recalled that Article 4 requires night workers to have the right to undergo, at their request and without charge, a health assessment during their assignment to night work, and not only in the case of those engaged in hazardous or dangerous occupations. [165]

451. ***The Committee encourages all governments to take steps, when their national situation so allows, to adopt the necessary laws, regulations or other texts to ensure that night workers have the right to undergo a health assessment without charge: before taking up an assignment as a night worker; at regular intervals during such an assignment; and if they experience health problems during such an assignment, which are caused by or associated with night work.***

(b) Transfer and benefits for workers unfit to work at night

Box 4.9

Article 6 of Convention No. 171 provides that:

1. Night workers certified, for reasons of health, as unfit for night work shall be transferred, whenever practicable, to a similar job for which they are fit.

2. If transfer to such a job is not practicable, these workers shall be granted the same benefits as other workers who are unable to work or to secure employment.

3. A night worker certified as unfit for night work shall be given the same protection against dismissal or notice of dismissal as other workers who are prevented from working for reasons of health.

452. Based on the idea that age and length of service may intensify the chronic disorganization of circadian rhythms and its effects on sleep, the intention behind Article 6 is to facilitate the transfer to normal day-time hours of workers who, for health reasons, cannot continue to work at night. Whenever practicable, a person found to be unfit for night work is to be transferred to work of the same level and nature as their previous position.

453. As indicated during the preparatory work, the purpose of paragraph 2 of Article 6 is to protect night workers who are found to be unfit for night work and who, despite being fit to work during the day, are not offered day work. Such workers could be protected in various ways, such as sickness or unemployment insurance benefits, or early retirement or disability benefit. [166]

[162] Section 168 of the Consolidation of Labour Laws (CLT).

[163] For example, *Cambodia, China, Equatorial Guinea, Iraq, Malawi, Montenegro, Samoa, Singapore, Sri Lanka* and *Thailand.*

[164] For example, *Belarus* (section 21 of Act No. 356-z of 23 June 2008 on Occupational Health and Safety).

[165] See *Albania* – CEACR, Convention No. 171, direct request, published in 2014.

[166] ILO: *Record of Proceedings* No. 26, 1990, op. cit., p. 26/9.

454. Similarly, the intention of paragraph 3 is to ensure that night workers who are temporarily unfit to work at night [167] enjoy the same protection against dismissal or notice of dismissal as other workers who are prevented from working for reasons of health.

455. The Committee welcomes the fact that national legislation in numerous ratifying and non-ratifying countries [168] provides for the transfer to day work of workers who are found to be medically unfit for night work. For example, among ratifying countries, the Government of *Belgium* indicates that, by collective agreement, workers certified by an occupational physician as being unable to perform night work have to be offered another position not involving night work which is suitable to their qualifications. [169] In *Cyprus*, when it is found by a medical examination that night workers have health problems caused by night work, they have to be transferred, whenever possible, to day work to which they are suited. [170] In *Côte d'Ivoire*, a worker who is unfit for night work, as certified by a special medical report, has to be transferred to another position. [171]

456. Among non-ratifying countries, the Government of *Burkina Faso* reports that, on the basis of regular health assessments, the occupational physician may propose the transfer to day work of employees found to be unfit to work at night. The employer has 30 days to take the necessary measures to move the worker to another post compatible with her or his health conditions. [172] In *France*, whenever required by the health condition of the worker, as assessed by an occupational physician, night workers must be transferred permanently or temporarily to day work that matches their qualifications and is equivalent to their previous position. [173] In *Indonesia*, if health assessments indicate that a worker is unable to work at night, the worker has to be transferred to a day job suitable to her or his qualifications. [174]

457. Certain countries report that, although the national legislation does not contain specific provisions on the transfer of night workers, the general labour legislation provides that a worker unfit to perform work due to health problems, but still able to work in other positions, must be transferred to a job more suitable to her or his health. For example, the Government of *Honduras* reports that, under a general provision in the Labour Code, when workers are unable to work in their original positions, but can work in another position, employers are required to redeploy them, provided that the new job is related to the same enterprise or activity. [175] The Government of the *Republic of Korea* reports that if it is deemed necessary, as a result of a health examination, the employer has to relocate the workplace, transfer the worker to other work, shorten working hours, restrict night work,

[167] During the preparatory work leading to the adoption of the instruments, the Employer Vice-Chairperson added that the wording is based on Article 6 of the Termination of Employment Convention, 1982 (No. 158), which provides that temporary absence from work because of illness or injury shall not constitute a valid reason for termination of employment. ibid.

[168] For example, *Bosnia and Herzegovina, Croatia, Denmark, Finland, Iceland, Italy, Japan, South Africa, Sweden, Switzerland, United Republic of Tanzania, Turkey* and *Uruguay*.

[169] Clause 11bis of Collective Agreement No. 46 of 23 March 1990.

[170] Section 10(2) of the Organization of Working Time Law 2002.

[171] Section 11 of Decree No. 96-204.

[172] Sections 6 and 38 of Joint Decree No. 2013-010/MFPTSS/MS of 2013.

[173] Section L.3122-14 of the Labour Code.

[174] Sections 2(1), 3(1) and 5(1) of the Regulation of the Ministry of Manpower and Transmigration No. PER-02/MEN/1980 on medical examination of workers.

[175] Section 442 of the Labour Code.

conduct work environment monitoring, install or improve facilities and equipment, or take other appropriate measures. [176]

458. With reference to workers who are found to be permanently unfit for night work, and whose transfer to a similar position for which they are fit proves impracticable, some countries report that in such cases the workers concerned are entitled to the same benefits as other workers who are not fit for work. For instance, the Government of *Belgium* indicates that, when transfer is not practicable, the worker is entitled to the same unemployment benefits as workers who are generally unfit for work. The Government of the *Philippines* reports that night workers who are certified by a competent physician as being unfit for night work must be transferred, whenever practicable, to a suitable and similar or equivalent position. If such transfer is not practicable, or if the workers are unable to work for a period of not less than six months, they must be granted the same benefits as other workers who are unable to work due to illness. [177]

459. However, the Committee observes that many countries encounter obstacles in providing for solutions regarding situations in which a transfer is impracticable and workers are found to be permanently unfit for night work. The Committee notes in this regard the comments of the *Czech–Moravian Confederation of Trade Unions*, according to which sufficient effect is not given to Article 6(2) of the Convention by the labour legislation of the *Czech Republic*. In this respect, the Committee has consistently recalled that the Convention requires workers who are permanently unfit to work at night, but who may not necessarily be unfit for day work, and whose transfer to an alternative position proves impracticable, to be entitled to the same benefits (for example unemployment, sickness or disability benefits) as day workers who are generally unfit for work. [178]

460. ***The Committee emphasizes that the possibility for night workers to be transferred to a day work position when they are unfit for work at night or, if a transfer proves not to be practicable, to enjoy the same benefits as other workers who are unable to work or to secure employment, is a fundamental element of the minimum package of measures provided for in Convention No. 171 and its associated Recommendation in order to protect night workers from the consequences of night work.***

461. With reference to Article 3(3) of the Convention, some countries report that workers found to be temporarily unfit for night work are afforded the same protection against dismissal as other workers prevented from working for health reasons. For example, the Government of the *Philippines* reports that a night worker certified as temporarily unfit for night work for a period of less than six months is entitled to the same protection against dismissal or notice of dismissal as other workers who are prevented from working for health reasons. [179] In *Indonesia*, if the health assessments find that the worker is unable to work at night, she or he can be transferred to a day job in accordance with her/his capacities and is protected from any threat of lay-off due to health reasons. [180] In *Slovenia* if, according to an occupational doctor, night work is harmful for a worker's health, the employer is required to transfer her or him to appropriate day work. All workers who are

[176] Section 43(5) of the Occupational Safety and Health Act.

[177] Book III, Rule XV, section 5, of the Omnibus Rules Implementing the Labour Code, entitled Employment of Night Workers.

[178] See, for example, *Cyprus* – CEACR, Convention No. 171, direct request, published in 2009; and *Czech Republic* – CEACR, Convention No. 171, direct request, published in 2015.

[179] Book III, Rule XV, section 5, of the Omnibus Rules Implementing the Labour Code.

[180] Sections 2(1), 3(1) and 5(1) of the Ministry of Manpower and Transmigration Regulation No. PER-02/MEN/1980 on medical examination of workers.

unable to work for medical reasons have equal rights respecting justified absence from work due to health conditions and the same protection relating to the termination of the employment contract. [181]

(c) First-aid facilities

Box 4.10

Article 5 of Convention No. 171 provides that:

> Suitable first-aid facilities shall be made available for workers performing night work, including arrangements whereby such workers, where necessary, can be taken quickly to a place where appropriate treatment can be provided.

462. The purpose of this provision is the adoption of appropriate arrangements to ensure the existence of first-aid facilities for night workers. While these arrangements are necessary at all times of the day, they are particularly important at night, when normal daytime services may not be in operation, especially for transport to a place where appropriate treatment can be provided. [182] Even if the presence of a doctor or nurse is not required, a person trained in first aid may well be necessary. [183]

463. While most countries only have general provisions applicable to all workers and to all working-time arrangements, some countries have adopted specific legislation on this subject. Among ratifying countries, the legislation in the *Czech Republic* requires the employer to provide first-aid facilities in workplaces where night work is performed and to ensure that such workplaces are so equipped that emergency medical assistance can be called, if necessary. [184] In *Côte d'Ivoire*, similar facilities must be available to night workers. [185] Among non-ratifying countries, the legislation in the *Philippines* requires the availability of suitable first-aid emergency facilities for workers engaged in night work. [186] In *Uruguay*, the employer is required to provide workers engaged in night work with adequate means of first aid, including practical arrangements to enable such workers, whenever necessary, to be moved rapidly to a place where appropriate medical treatment can be provided. [187] In *Spain*, night workers and shift workers must enjoy at all times a level of protection adapted to the nature of their work, including appropriate protective and preventive measures equivalent to those available to other workers in the undertaking. [188]

464. ***The Committee emphasizes the importance of suitable first-aid facilities being made available for workers engaged in night work, including arrangements whereby such workers, where necessary, can be taken quickly to a place where appropriate treatment can be provided, in order to improve the health and safety conditions of night workers.***

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[181] Sections 137 and 90 of the Employment Relationship Act.

[182] ILO: *Night work*, Report IV(2A), 1990, op. cit., p. 49.

[183] ILO: *Night work*, Report V(2), 1989, op. cit., p. 91.

[184] Section 94(4) of the Labour Code.

[185] Section 12 of Decree No. 96-204.

[186] Section 4 of Departmental Order No. 119-12 of 2012, Rules Implementing the Republic Act No. 10151 of 2012.

[187] Section 5 of Decree No. 234/015 issuing Night Work Regulations.

[188] Section 36(4) of the Workers' Charter.

(d) A safe and healthy environment for night workers

Box 4.11

During the preparatory work, it was recognized that the human organism is more sensitive at night to certain environmental disturbances and forms of work organization, and that there are cumulative effects that should be avoided or reduced. [1] For example, the sensitivity of humans to harmful or obnoxious effects of the working environment varies at different times in the 24-hour cycle, and substances may be absorbed differently depending on the time of exposure. This may be of importance, for example, in relation to nocturnal sensitivity to chemicals, dust or noise. [2]

This is the rationale behind Paragraphs 11 and 12 of Recommendation No. 178, which indicate that, in "determining the content of the tasks assigned to night workers, account should be taken of the nature of night work and of the effects of environmental factors and forms of work organisation." This provision does not necessarily mean that exposure limit values should be different, for example, in the chemical industry, but that the different effects of environmental factors on night workers need to be taken into account in organizing work. [3] The Recommendation also calls on employers to adopt specific measures to maintain during night work the same level of protection against occupational hazards as by day. In this respect, although both night workers and day workers should have high levels and standards of protection, additional measures may be necessary during night work to achieve the same level of protection. [4]

The national legislation in some countries contains provisions that take into account the nature of night work in relation to environmental factors and forms of work organization. For example, in *Cyprus*, night workers whose work entails specific risks or significant physical or mental stress may not work at night for more than eight hours in any 24-hour period. [5] The Working Hours Act in *Sweden* includes a similar provision. [6] In *Turkey*, the employer is required to ensure that night workers receive health surveillance appropriate to the health and safety risks that they incur at work. [7] The Government of *Portugal* reports that the employer has to organize occupational safety and health activities so that shift workers enjoy a level of safety and health protection appropriate to the nature of their work. The employer is required to ensure that the means of occupational safety and health protection and prevention for shift workers are equivalent to those of other workers, and that they are immediately available. In *Finland*, the Occupational Safety and Health Act provides that an employee performing night work shall, when necessary, be provided with an opportunity to change tasks or move to day work, whenever possible, in order to eliminate risks to the employee's health arising out of the conditions of the workplace or the nature of the work. [8]

[1] ILO: *Record of Proceedings* No. 26, 1990, op. cit., p. 26/17.

[2] ILO: *Night work*, Report V(1), 1989, op. cit., p. 10.

[3] ILO: *Record of Proceedings* No. 30, 1989, op. cit., p. 30/29.

[4] ILO: *Record of Proceedings* No. 26, 1990, op. cit., p. 26/17. Paragraph 11 of the Recommendation gives the example of the isolation of workers, which occurs more frequently during night work. ILO: *Night work,* Report IV(2A), 1990, op. cit., p. 87. See also ILO: *Record of Proceedings* No. 30, 1989, op. cit., p. 30/29.

[5] Section 9(2) of the Organization of Working Time Law of 2002.

[6] Section 13(a) of the Working Hours Act, 1982.

[7] Section 15(1)(a) of the Occupational Health and Safety Law, No. 6331 of 2012.

[8] Section 30 of the Occupational Safety and Health Act.

465. In this respect, certain workers' organizations highlighted the effects of night work on workers' health and the consequent importance of protecting workers from these effects. For example, the *Confederation of Unions for Professional and Managerial Staff in Finland* drew attention to the stress factors arising out of night work, and emphasize that the main aim of the regulation of night work is to protect employees. Employers should reduce the negative health effects of night work and the health risks arising out of night work must be monitored. In their view, the current reform of the Working Hours Act needs

to be carried out so that *Finland* can ratify the Night Work Convention. Moreover, the *Independent and Self-Governing Trade Union "Solidarnosc"* of *Poland* indicates that the Polish legislator basically treats night workers in the same way as employees working during the day, despite the fact that night work is particularly arduous and runs counter to the biological rhythm of the human body. Quoting an expert study, "*Solidarnosc"* indicates that it has been scientifically proven that shift work and night work, which place a high level of strain on the body, can facilitate the occurrence of or aggravate various pathological conditions. It adds that, as night work most often occurs in companies operating permanently on a 24-hour basis, where the work involves the operation of machinery and other technical equipment, it significantly increases the risk of accidents at work. Night work also has a devastating effect on the worker's family life and social life. Night work therefore deserves special protection from the legislator.

466. ***The Committee emphasizes the need to protect the health of workers from the effects of night work through the improvement of their working environment.***

B. Maternity protection

467. Maternity protection is a complex subject that is dealt with in other ILO instruments. However, Convention No. 171 contains a special type of maternity protection that differs from the protection provided, for instance, by the Maternity Protection Convention (Revised), 1952 (No. 103), and the Maternity Protection Convention, 2000 (No. 183). It should be recalled in this respect that the protection set out in Article 7 of Convention No. 171 concerns the effect of night work on pregnancy and is intended to protect women from the additional strain of night work during the latter stages of pregnancy and after confinement. In other words, Article 7 does not prohibit night work during pregnancy and immediately after confinement, but recognizes the need for special maternity protection for women night workers due to the nature of night work. [189] This is a different approach from maternity leave, which includes a compulsory period of leave after childbirth for the purposes of recovery and care of the baby.

Box 4.12
Periods of protection

Article 7(1) of Convention No. 171 provides that:

1. Measures shall be taken to ensure that an alternative to night work is available to women workers who would otherwise be called upon to perform such work:

(a) before and after childbirth, for a period of at least sixteen weeks of which at least eight weeks shall be before the expected date of childbirth;

(b) for additional periods in respect of which a medical certificate is produced stating that it is necessary for the health of the mother or child:

(i) during pregnancy;

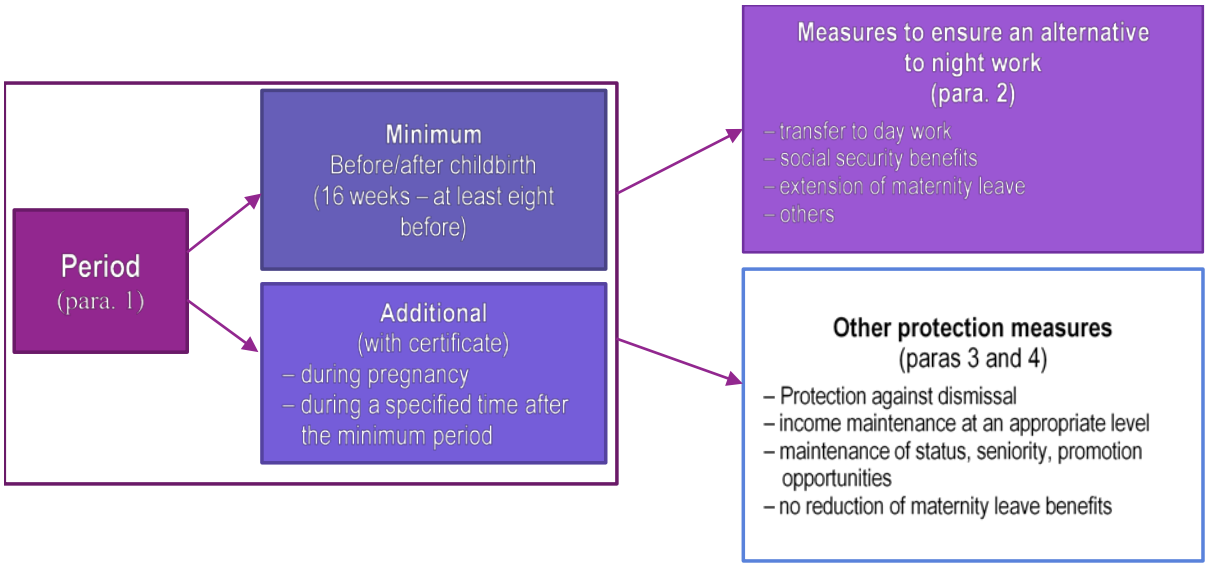
(ii) during a specified time beyond the period after childbirth fixed pursuant to subparagraph (a) above, the length of which shall be determined by the competent authority after consulting the most representative organisations of employers and workers.

[189] During the discussion of this provision of the Convention, two different approaches were advocated: one considered that prohibiting night work of pregnant women was inconsistent with equality and that women should be given the possibility to choose; the other maintained that in many circumstances women may be unable to exercise free choice and defend themselves in the face of pressure from employers. However, as highlighted at the end of the second discussion, the two views had in common the desire to provide appropriate protection. ILO: *Record of Proceedings* No. 30, 1989, op. cit., p. 30/17 and No. 26, 1990, op. cit., p. 26/10. Such protection may be available either at a request of the pregnant woman or upon a medical certificate.

468. Article 7(1) establishes a general obligation for measures to be taken to provide pregnant women who work at night with an alternative to night work for a certain period of time. It refers to two different periods: a minimum period of 16 weeks before and after childbirth, [190] of which at least eight weeks should be before confinement; and an additional period, during pregnancy and/or during a specified time after the minimum period, the length of which is to be fixed by the competent authority, upon production of a medical certificate stating that this is necessary for the health of the mother or child. [191]

469. Paragraph 19 of the Recommendation, which indicates that at any point during pregnancy, once this is known, women night workers who so request should be assigned to day work, as far as practicable, goes beyond the Convention and sets out additional measures that could be taken. [192]

Figure 4.8. Article 7: Night work maternity protection in a nutshell



470. Article 7(2) sets out specific measures to find an alternative to night work, including transfer to day work, where this is possible, or the provision of social security benefits or an extension of maternity leave. It is important to recall that this list is non-exhaustive and other measures may be adopted.

471. Article 7(3) enumerates additional rights strictly in the sense of this Convention to protect pregnant women working at night, including the prohibition of their dismissal or being given notice of dismissal for reasons connected with pregnancy or childbirth, the maintenance of income at a level sufficient for the upkeep of the woman and her child in accordance with a suitable standard of living, and protection against the loss of benefits in relation to status, seniority and access to promotion which may attach to their regular night work position. The rationale behind this paragraph is the principle that women should not

[190] The initial proposed text of this Article referred to a period of six months, three months before and three after childbirth. However, this period was considered to be too long in relation to the provisions of the Maternity Protection Convention (Revised), 1952 (No. 103), and the actual practice in many countries. ILO: *Record of Proceedings* No. 26, 1990, op. cit., p. 26/9.

[191] The Maternity Protection Recommendation, 1952 (No. 95), indicates that night work should be prohibited for all pregnant women and nursing mothers (Paragraph 5(1)).

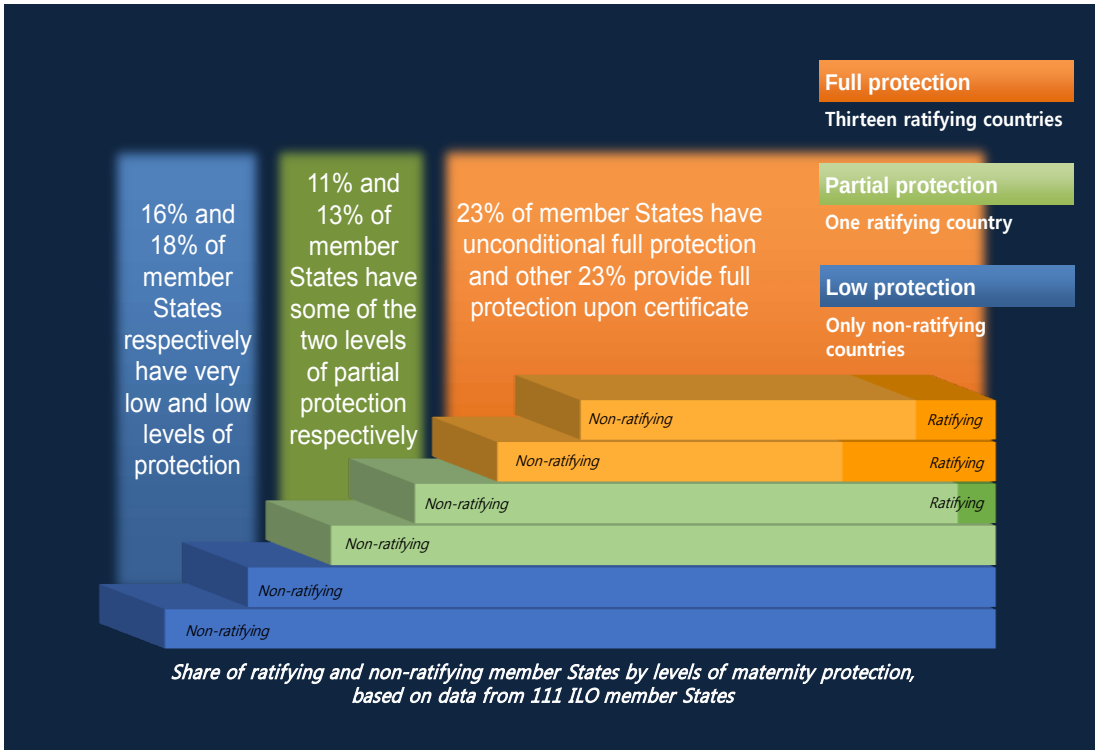
[192] During the second discussion of the instruments, it was pointed out that statistically spontaneous abortions are more frequent among night workers and that everything feasible should therefore be done to meet a request from a pregnant woman for transfer to day work. ILO: *Record of Proceedings* No. 26, 1990, op. cit., p. 26/19.

lose their jobs or income as a result of benefiting from the protection afforded by the Convention. [193]

472. With specific reference to income, although it was acknowledged during the preparatory work that "it might be impossible to guarantee previous income which comprised regular pay plus supplements for night work", [194] Article 7(3)(b) seeks to guarantee a sufficient level of income, as also provided in Article 4(2) of Convention No. 103. Moreover, Article 7(3)(c) seeks to ensure that recourse to alternatives, such as leave taken during the protection period, does not result in a deterioration of the woman's rights, position or status. [195]

473. Analysis of national provisions on maternity protection for night work shows, as illustrated in figure 4.9 below, the existence of a large variety of maternity protection arrangements for night workers implying different degrees of compliance with the requirements of Article 7(1) and (2) of the Convention.

Figure 4.9. Steps to full maternity protection during night work



[193] ILO: *Night work*, Report V(2), 1989, op. cit., p. 23. Convention No. 103 provides that dismissal is not lawful during maternity leave. Recommendation No. 95 calls, wherever possible, for women to be protected against dismissal from the date when their employer is notified by medical certificate of the pregnancy. Neither instrument is designed to deal with conditions which make it inadvisable for women to work during a period that is longer than maternity leave.

[194] ILO: *Record of Proceedings* No. 30, 1989, op. cit., p. 30/16.

[195] ILO: *Record of Proceedings* No. 26, 1990, op. cit., p. 26/11

474. A number of countries, [196] including some ratifying countries, [197] both prohibit the performance of night work by pregnant women during a period before and after childbirth and provide for alternatives to night work, such as transfer to day work and, if such transfer is not possible, social security benefits and/or an extension of maternity leave. For example, the legislation in *Belgium* provides that a woman worker cannot be requested to perform night work during a period of eight weeks before the expected date of childbirth. However, upon the production of a medical certificate, she may request not to perform any night work throughout pregnancy, as well as for four weeks following the expiry of the eight-week period of prohibition of work after childbirth. [198] Moreover, if the contract of a pregnant woman or nursing mother is suspended, she is entitled to receive from the sickness insurance scheme an indemnity equal to 60 per cent of the lost wages. An allowance is also provided by the health insurance scheme where transfer to day work entails a loss of earnings. [199] The Government of *Chile* reports that pregnant employees usually employed in work considered by the authorities to be detrimental to their health, including night work, must be transferred to work that does not expose them to hazards, without a reduction of pay. Moreover, women workers are entitled to 18 weeks of maternity leave (six weeks prenatal and 12 postnatal). [200] In *Lao People's Democratic Republic*, the Labour Law provides that it is forbidden to employ pregnant women at night and until the child is one year of age. If the woman is engaged in night work, she must be temporarily transferred by the employer to a new and more appropriate position, with the same wage. [201] In the *Philippines*, employers are required to take measures to provide an alternative to night work for pregnant and nursing employees, including transfer to day work, where possible, as well as the provision of social security benefits or an extension of maternity leave. Where it is practicable, pregnant or nursing employees must be assigned to day work before and after childbirth for a period of at least 16 weeks, or for longer periods divided between the time before and after childbirth. A medical certificate issued by a competent physician is necessary for the granting of additional periods of assignment to day work, and for extensions of maternity leave. When transfer to day work is not possible, a woman employee may be allowed to extend, as recommended by a competent physician, her maternity leave without pay or using her leave credits, if any. [202]

475. Certain countries report that, even though the general labour legislation does not specifically provide for alternatives to night work before and after childbirth for a period of at least 16 weeks, it does provide for maternity leave which is long enough to compensate for this lack of protection. This is the case, for example, in *Brazil*, where pregnant women working at night have to be transferred to another position, if so required by their state of health, and reinstated in their previous position upon completion of the period of maternity leave, without prejudice to pay and other rights. These provisions are supplemented by the period of maternity leave which, for working women, is 120 days, that is more than 16 weeks, that has to start between the 28th day prior to the presumed

[196] For instance, *Bosnia and Herzegovina, Denmark, Ethiopia, France, Poland, Romania, South Africa* and *Uruguay.*

[197] For instance, *Czech Republic* and *Madagascar*.

[198] Section 43(1) of the Labour Act.

[199] Section 219ter(2) of the Royal Decree of 3 July 1996.

[200] Sections 195 and 202 of the Labour Code.

[201] Section 97 of the Labour Law 2013 (Law No. 43/NA).

[202] Book III, Rule XV, sections 6 and 8, of the Omnibus Rules Implementing the Labour Code.

date of childbirth and the actual day of confinement. [203] In *Finland*, the legislation combines general protective provisions with a long period of maternity leave. More specifically, if work or working conditions may cause a particular risk to a pregnant employee or the unborn child, and the hazard cannot be eliminated, the employer has to try and transfer the women to suitable work during pregnancy. [204] Maternity leave and the period for which the maternity allowance is paid is 105 week days, following which the employee may take parental leave and receive the parental allowance for 158 week days. Pregnant women may go on maternity leave between 30 and 50 week days before they are due to give birth. In this respect, the Committee observes that, in order to replace the alternative measures envisaged in Article 7(1)(a) and (b), the period of maternity leave must at least coincide or be longer than the period of 16 weeks provided for in the Convention, with at least eight weeks before confinement. Other examples of countries where the legislation provides for long periods of maternity leave that coincide with or go beyond the period of protection required by the Convention include: *Austria*, *Georgia*, *Kazakhstan*, *Russian Federation*, *Serbia*, *South Africa* and *the former Yugoslav Republic of Macedonia.*

476. A number of countries have adopted measures that only partially protect pregnant women working at night. For example, the Government of *Colombia* indicates that women are entitled to 18 weeks of maternity leave after childbirth. [205] In *Honduras*, the assignment of pregnant women to more than five hours of night work is prohibited. [206] In *Bangladesh*, the Labour Act prohibits the engagement of women workers in night work for eight weeks following childbirth, even with their consent. [207] In *Ghana*, the Labour Act provides that, without her consent, a pregnant woman may not be assigned to night work between the hours of 10 p.m. and 7 a.m. [208] In *Singapore*, the Employment (Female Workmen) Regulations prohibit pregnant workers from being employed during the night (between 11 p.m. and 6 a.m.), unless they consent in writing and are not certified unfit by a doctor. [209]

477. The legislation in a number of ratifying and non-ratifying countries provides for alternative measures to night work only on condition that a medical certificate is produced indicating that night work is not suitable for the health of the pregnant woman and the baby. Examples of ratifying countries in which this condition is applicable include *Albania*, *Cyprus* and *Côte d'Ivoire*. In *Albania*, employers cannot require pregnant women and women with children up to one year of age to perform night work, if such work is detrimental to the safety and health of the woman and/or child, and this is specified in a medical certificate. When the medical certificate indicates that the return to night work of a pregnant or a nursing woman after maternity leave is not possible, but the woman is able to perform day work, she must be transferred to similar day work which is appropriate to her health condition. If the transfer is technically or objectively not feasible, the employee receives statutory social security benefits for as long as necessary to protect her health and safety and that of the child. [210] In *Côte d'Ivoire*, night work is prohibited for pregnant

[203] Section 392 of the Consolidation of Labour Laws.

[204] Section 11(2) of the Occupational Safety and Health Act.

[205] Section 236 of the Substantive Labour Code, as amended by Act No. 1822 of 2017.

[206] Section 147 of the Labour Code.

[207] Section 45 of the Labour Act, 2006.

[208] Section 55 of the Labour Act, 2003.

[209] Section 3 of the Employment (Female Workmen) Regulations.

[210] Section 108(1), (2) and (3) of the Labour Code, as amended by Law No. 136/2015.

women, unless medical advice indicates the contrary. Moreover, if the medical condition of the worker so requires, she may be transferred to another position, at the initiative of the employer or the request of the worker, with no reduction in wages, even if the new post is at a lower level. If transfer is not possible, the contract is suspended until the end of the maternity leave, and the wages continue to be paid by the employer. The duration of maternity leave is of 14 weeks, with six weeks before the expected date of confinement and eight weeks after. [211]

478. The legislation in other countries contains general provisions on measures in case of hazards or health problems during pregnancy, without explicitly referring to night work. For example, in *Gabon*, where women are prohibited from night work, with exceptions, during pregnancy and three months after the date of resumption of work, a woman whose work is considered dangerous or who presents a medical certificate calling for the nature of her work to be changed for medical reasons, must be transferred to more suitable work, without reduction of wages. If this is not possible, the contract is suspended for a maximum of three months, during which period she is entitled to half the wages received before the suspension of the contract. [212] The Government of *Peru* indicates that the employer is required to take the necessary measures to avoid the exposure of pregnant or nursing workers to hazardous types of work and that legislation recognizes the right of women to be transferred to another position that does not imply a risk to their overall health, without affecting their remuneration or category.

479. In some cases, the legislation only provides for the possibility of transfer to a more suitable job, without explicitly indicating the measures to be taken where transfer is not possible. For example, the Government of *Cuba* reports that a pregnant worker who, as prescribed by a medical certificate, is unable to remain in her current position as it is considered to be harmful to her pregnancy, has the right to be transferred to a new job, with the guarantee of 100 per cent of the average wages received during the 12 months prior to her transfer. In *Burkina Faso*, a woman cannot be employed in jobs that are likely to impair fertility or, in the event of pregnancy, her health or that of the baby. When a woman is usually employed in a job recognized by the competent authority as being dangerous for her health, she has the right, during pregnancy, to be transferred to a more suitable job without reduction of wages. This right is also recognized on an individual basis for women presenting a medical certificate indicating that a change in the nature of work is needed to safeguard her health or that of her baby. [213] Other countries with similar provisions include *Azerbaijan, Central African Republic, Dominican Republic, Mexico, Namibia* and *Nicaragua*.

480. Although several countries report that night work is prohibited for pregnant and/or nursing women, their legislation appears to be silent regarding alternative to work or income maintenance. [214] A number of countries where the legislation prohibits night work of women report exceptions to this prohibition, frequently for nurses and other health sector employees, domestic workers and in the hotels and restaurant and service sectors, where women engaged in night work do not enjoy any protection measures in the event of maternity. In this regard, the Committee has recalled that general protective measures for women workers, such as blanket prohibitions, in contrast with special measures aimed at protecting maternity, are increasingly regarded as obsolete and unnecessary infringements

[211] Sections 22(2) and 23 of the Labour Code.

[212] Section 172 of the Labour Code.

[213] Sections 142(1) and 143 of the Labour Code and section 3 of Decree No. 2010/356.

[214] For instance, *India*, *Indonesia, Mauritius, Seychelles, Thailand* and *Togo.*

on the fundamental principle of equality of opportunity and treatment between men and women [215] and contrary to the provisions of Convention No. 111 and the UN Convention on the Elimination of All Forms of Discrimination against Women.

481. Moreover, certain countries that do not prohibit night work of women report that their legislation does not include restrictions on or regulation of night work for pregnant women. ***Recalling that pregnant and nursing women may be particularly vulnerable to night work, the Committee emphasizes the fundamental importance of ensuring that women night workers in this condition are given an alternative to night work for a period of at least 16 weeks, including at least eight weeks before the expected date of childbirth, and for additional periods when it is considered necessary for the health of the mother or child. For the right to alternative work to be effective, any change in working hours must not affect the woman's income levels.***

482. Regarding the other measures required in paragraphs 3 and 4 of Article 7, including protection against dismissal and maintenance of income and status, an example is the *Philippines*, where a woman employee may not be dismissed for reasons of pregnancy, childbirth and childcare responsibilities, and must not lose benefits relating to her employment status, seniority and access to promotion deriving from her regular night work position. [216]

483. The Committee observes that the legislation in many countries contains only general provisions on one or more of these issues. [217] The Committee notes that, according to Article 11(3) of the UN Convention on the Elimination of All Forms of Discrimination against Women, protective legislation relating to maternity must be reviewed periodically in the light of scientific and technological knowledge and revised, repealed or extended as necessary. This helps ensure that the obligation under this Convention to prevent discrimination against women on the grounds of maternity is met, and to ensure their effective right to work (Article 11(2)).

484. In many non-ratifying countries, protection is guaranteed against dismissal, and/or income maintenance is ensured during maternity leave and/or in the case of transfer to a more suitable job. [218] For example, the legislation in *Iraq* provides that a working mother

[215] See *Bahrain* – CEACR, Convention No. 89, direct request, published in 2014; *Plurinational State of Bolivia* – CEACR, Convention No. 89, direct request, published in 2014.

[216] Book III, Rule XV, section 8, of the Omnibus Rules Implementing the Labour Code.

[217] For example, in *Brazil* the termination of the employment contract or dismissal of a pregnant worker is prohibited from the date of confirmation of pregnancy until five months after childbirth (section 391 of the Consolidation of Labour Laws and section 10(II)(b) of the Transitional Constitutional Provisions Act). Moreover, the legislation guarantees the maintenance income for pregnant workers during maternity leave and provides that, following maternity leave, women workers return to their position without prejudice to their wages and other rights (section 392 of the Consolidation of Labour Laws). Similarly, the Labour Code of *Côte d'Ivoire* provides that employers cannot terminate employment contracts due to pregnancy and during maternity leave, unless the termination is related to a cause not linked to the pregnancy of the worker. If during pregnancy the worker is assigned to a different post because of her condition, she has the right to reinstatement in her previous post following maternity leave. Transfer to another position or the suspension of the contract cannot entail a reduction in wages, even if the new post is at a lower level. The period of maternity leave must be considered as a period of effective work for the calculation of seniority benefits (section 23 of the Labour Code). Also in *Slovenia*, the legislation prohibits the termination or cancellation of the contract of a woman during pregnancy and breastfeeding for up to one year following childbirth and guarantees the right to return to work under the same conditions following parental leave (sections 90, 115 and 186 of the Employment Relationship Act).

[218] For example, *Angola, Bahrain, Benin, Bosnia and Herzegovina, Burkina Faso, Cambodia, Cameroon, Central African Republic, Chad, Costa Rica, Cuba, Djibouti, Ethiopia, Gabon, Ghana, Guinea, Hungary, Iceland, Latvia, Mozambique, Namibia, Nicaragua, Nigeria, Philippines, Russian Federation* and *Spain.*

is entitled, following maternity leave, to return to the same position or to be employed in a similar position with the same wage. [219]

C. Appropriate compensation for night workers that recognizes the nature of night work

Box 4.13

Article 8 of Convention No. 171 provides that:

Compensation for night workers in the form of working time, pay or similar benefits shall recognise the nature of night work.

485. Article 8 of the Convention sets forth the principle that the special nature of night work entails the granting of special treatment for night workers. This Article is broad enough to encompass various types of compensation, not only financial, including the alternatives of reduced working time and additional benefits, depending on the circumstances. [220] It should be recalled that this provision applies to night workers, rather than night work, in accordance with the definition set out in Article 1 of the Convention.

486. The general principle of Article 8 is supplemented by Paragraphs 8 and 9 of Recommendation No. 178. Paragraph 8(1) indicates that appropriate financial compensation for night work should be additional to the remuneration paid for the same work performed to the same requirements during the day; [221] respect the principle of equal pay for men and women for the same work, or for work of equal value; [222] and that it should be possible for it to be converted by agreement into reduced working time (time off). In this connection, Paragraph 8(2) indicates that, in determining such compensation, the extent of reductions in working hours may be taken into account. The intention is that, when compensation is being determined, the extent of reduced working hours already granted under Paragraph 4(2) may be taken into account. [223]

487. Paragraph 9 of the Recommendation [224] is mainly intended to protect against the situation in which a worker could, as a result of illness or accident, have a reduced income

[219] Section 87(6) of the Labour Code.

[220] During the preparatory work, many governments and social partners expressed a preference for collective bargaining on compensation. In this respect, the Office pointed out that no minimum level of compensation is set in this provision. Moreover, while the Convention can be implemented through collective bargaining under Article 11, other action may be required in many countries for workers whose conditions of employment are not determined by collective agreement. ILO: *Night work*, Report IV(2A), 1990, op. cit., p. 62.

[221] The phrase "to the same requirements" was inserted during the second discussion, so that the comparison would be with the same work performed to the same requirements during the day. ILO: *Record of Proceedings* No. 26, 1990, op. cit., p. 26/16.

[222] For a detailed explanation of this concept, see ILO: *Giving globalization a human face*, General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, ILC, 101st Session, 2012, paras 672–675.

[223] Paragraph 4(2) of Recommendation No. 178 provides that the normal hours of work of night workers should generally be less on average than and, in any case, not exceed on average those of workers performing the same work to the same requirements by day in the branch of activity or the undertaking concerned. It should be noted that Paragraph 8(2) was inserted during the second discussion. As indicated by the Employer Vice-Chairperson, the aim is not to deprive anyone of benefits, but to recognize that it is not appropriate in all cases to provide both reduced working hours and appropriate financial compensation. ILO: *Record of Proceedings* No. 26, 1990, op. cit., p. 26/16.

[224] Paragraph 9 of the Recommendation indicates that, where financial compensation for night work is "a normal element in a night worker's earnings, it should be included in the calculation of the remuneration of paid annual

because financial compensation for night work has not been incorporated into the basic wage or considered for the calculation of benefits. [225] Accordingly, as emphasized during the second discussion of the draft instruments, this Paragraph indicates that, when payment for night work constitutes part of normal earnings, remuneration for annual leave, public holidays or other types of paid absence should be based on that amount. The same applies to the calculation of social security contributions and benefits. [226] A distinction was also made between night work allowances, which are generally considered to be part of wages for the purposes of calculating compensation for paid absence and social security, and special indemnities for additional expenses due to night work, such as transport, which are not. [227]

488. In this regard, the Committee notes that a majority of countries, including all ratifying countries, have specific legal provisions recognizing the nature of night work through some kind of compensation for night workers. In a few of these countries, [228] provision is made for both financial compensation and a reduction in working time for night work. For example, in *Belarus,* [229] each hour of night work or scheduled night shift work is paid at a higher rate, as specified by collective agreement or arrangement with the employer, of not less than 20 per cent of the hourly rate, and working time for night work is one hour less than normal working hours. This is also the case in *Brazil*, where the night rate is at least 20 per cent higher than the day rate in urban areas and 25 per cent higher in rural areas. Working time at night is also reduced from eight to seven hours, with the same level of pay. [230]

489. In many countries, the rate of pay for work at night is higher than for the same work during the day. [231] For example, in *Honduras*, the rate for night work is 25 per cent higher than for day work. The same rate of pay applies for hours worked at night during the "mixed working day" (work which is performed during both day and night time). Moreover, the rate for overtime at night is 50 per cent higher than for day work, and the premium is 75 per cent for work performed as an extension of night work. [232] The Government of the *Islamic Republic of Iran* reports that non-shift workers and workers performing mixed work are paid a 35 per cent supplement for every hour of night work performed. [233] The Labour Standards Act of *Japan* provides that, if a worker is engaged in night work, the employer must pay premium wages at a rate of no less than 25 per cent

leave, paid public holidays and other absences that are normally paid as well as in the fixing of social security contributions and benefits".

[225] There were differing preferences regarding the incorporation of financial compensation for night work into the basic wage or its addition to the wage for the calculation of various benefits and contributions. What emerged clearly from the replies was that financial compensation should either be included in the basic wage or added to it for the purposes of such calculations. ILO: *Night work*, Report V(2), 1989, op. cit., p. 90.

[226] ILO: *Record of Proceedings* No. 26, 1990, op. cit., p. 26/17.

[227] ibid.

[228] For instance, *France* (section L. 3122-8 of the Labour Code), and *Turkmenistan* (sections 62 and 123 of the Labour Code).

[229] Sections 70 and 117 of the Labour Code.

[230] Sections 73 and 73(1) of the Consolidated Labour Laws.

[231] For example *Albania, Algeria, Angola, Azerbaijan, Bahrain, Colombia, Côte d'Ivoire, Dominican Republic, El Salvador, Guinea, Republic of Korea, Serbia* and *the former Yugoslav Republic of Macedonia*.

[232] Sections 329, 330(b) and (c) of the Labour Code.

[233] Sections 53 and 58 of the Labour Code.

above the normal wage. [234] The Government of *Kazakhstan* indicates that every hour of night work is paid at a higher rate determined by the worker's employment contract, collective agreement and/or written rules and instructions issued by the employer. The rate must be at least 1.5 times higher than the standard daily or hourly rate. [235]

490. The minimum increase in rates for night work ranges between 5 per cent *(United Republic of Tanzania)*, 6 per cent *(Namibia)*, 10 per cent *(Czech Republic)*, 15 per cent *(Luxembourg)*, 20 per cent (*Poland* and *Russian Federation*), 25 per cent *(Mozambique)*, 30 per cent (*Madagascar*, if night work is performed regularly, and *Bolivarian Republic of Venezuela*), 35 per cent *(Peru)*, 50 per cent *(Latvia)* and up to 75 per cent *(Colombia)*. Moreover, the legislation in certain countries envisages a pay scale based on specific criteria. For example, the General Labour Law of *Angola* provides that night work gives right to a wage increase in comparison to the same work performed by day of: 20 per cent for workers in large enterprises; 15 per cent for workers in medium-sized enterprises; 10 per cent for workers in small enterprises; and 5 per cent for workers in micro enterprises. [236]

491. In certain countries, only overtime at night is paid at a higher rate than for day work. For example, in *Benin*, the Labour Code provides that overtime at night is paid at a premium equivalent to 50 per cent of the normal hourly rate during the week, or 100 per cent if the overtime is performed during the weekend or public holidays. The Labour Proclamation in *Ethiopia* provides that overtime work performed at night is paid at an increased rate of one-and-a-half times the ordinary hourly rate. In some countries, the premium is higher when night work is performed during the weekend. For example, the Government of *Morocco* reports that the difference in pay for overtime at night is 50 per cent for overtime between 9 p.m. and 6 a.m. in non-agricultural establishments and between 8 p.m. and 5 a.m. for the agricultural activities. If the overtime is performed during the weekly rest period, the wage supplement is 100 per cent, even if a compensatory rest day is granted. [237]

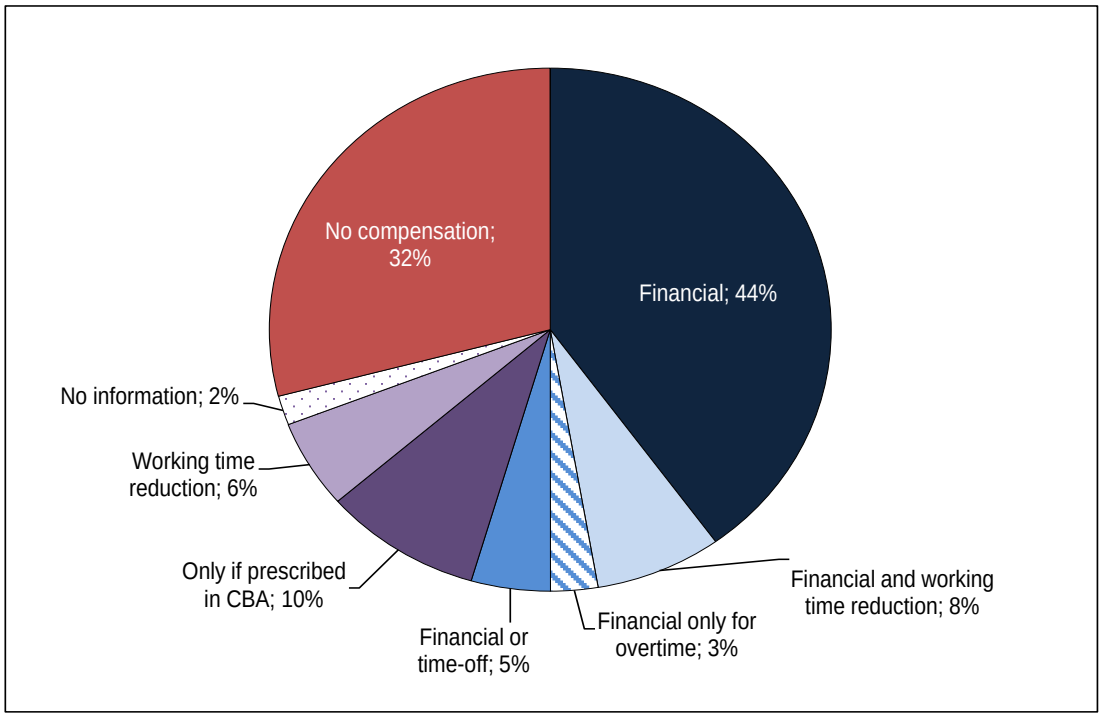
[234] Section 37 of the Labour Standards Act and the Cabinet Order to Specify the Minimum Premium Wage Rates for Overtime Work and Work on Days Off stipulated in article 37(1) of the Labour Standards Act.

[235] Section 110 of the Labour Code.

[236] Section 112 of the General Labour Law.

[237] Section 201 of the Labour Code.

Figure 4.10. Different types of compensation for night work



Source: ILO calculations based on data from 111 ILO member States.

492. In a number of countries, night work gives rise to either financial compensation or compensatory rest. For example, the Government of *Romania* indicates that night workers benefit from either: (a) a work schedule one hour shorter than the normal working day on days when they perform at least three hours of night work, without any decrease in basic pay; or (b) additional payment of at least 15 per cent of basic pay for each hour of night work performed. [238] In *Switzerland*, the employer must pay a wage supplement of at least 25 per cent to night workers who temporarily work at night (less than 25 nights a year). Workers engaged in regular or periodic night work are entitled to compensation in time off equal to 10 per cent of the hours worked at night. Compensatory rest time must be granted within one year. The Government of *South Africa* indicates that an employee working at night is compensated by an allowance, which may be a shift allowance, or a reduction in working hours. [239] The Government of *Uruguay* reports that, once hours of work exceed five consecutive hours between 10 p.m. and 6 a.m., night work is either paid with a 20 per cent supplement on the normal rate, or an equivalent reduction in hours of work. [240]

493. In several countries, working time at night is shortened while keeping the same wage rate. For example, in *Argentina*, in the event of alternating night and day working hours, the working day is reduced proportionally by eight minutes for every hour of night work, or the additional eight minutes are paid as overtime. The working day shall not exceed six hours a day and 36 per week if either the work or the conditions in which it is performed are declared unhealthy. [241] In *Equatorial Guinea*, a period of six hours worked during the

[238] Section 126 of the Labour Code.

[239] Section 17(2) of the Basic Conditions of Employment Act, 1997.

[240] Sections 9 and 10 of Decree No. 234/015.

[241] Section 200 of Act No. 20744 on employment contracts.

night or seven hours during a mixed period is paid as eight hours of day work. This has to be taken into account for the calculation of the minimum wage established by law or collective agreement, or the wages paid if work is performed over different periods. [242] The Government of *Bulgaria* also reports that the working day consists of eight hours during the day and seven hours at night, with night work being paid at a higher rate. This applies to shifts with over four hours of night work, while anyone working between 10 p.m. and 6 a.m. is entitled to additional pay regardless of the number of hours worked. [243] In this regard, the *Confederation of Industrial Chambers of the United States of Mexico* indicates that compensation takes the form of shortened working time, as for work during the day normal working hours are eight hours per day, or 48 hours per week, while for night work, normal working hours are seven hours per day, or 42 hours per week, which results in six hours less of work per week for night work.

494. A number of countries indicate that under special legislative provisions, compensation for night work is regulated by collective agreement. [244] In *Slovenia*, the additional pay for night work is to be determined by the branch collective agreement. [245] In *Togo*, day and night work are paid at the normal rate, unless prescribed differently by collective agreement. [246] Other countries report that there are no provisions regulating pay for night work, but that in practice employers and workers are free to agree on higher rates. For example, the Government of the *United Kingdom* indicates that there are no special arrangements in place to recognize the nature of night work, but that employers and workers are free to agree their own arrangements. In this respect, *Business New Zealand* indicates that, while there are no statutory provisions on compensation for night workers, this is a matter on which the parties are free to bargain if they so wish.

495. The Committee observes that a number of countries [247] report that the legislation makes no distinction between day and night work in respect of compensation. ***Recalling that the Convention requires compensation for all night workers in the form of working time, pay or similar benefits in order to recognize the special nature of night work, the Committee urges all governments to ensure that all night workers are compensated for the inherent risks and constraints of night work.***

D. Social services

Box 4.14

Article 9 of Convention No. 171 provides that:

Appropriate social services shall be provided for night workers and, where necessary, for workers performing night work.

[242] Section 55(9) of the General Labour Code.

[243] Sections 136(3) and 261 of the Labour Code.

[244] For instance, *Belgium* (clause 13 of Collective Agreement No. 46 of 1990), *Bosnia and Herzegovina* (clause 11 of the General Collective Agreement for the territory of the Federation of Bosnia and Herzegovina), *Cameroon* (as indicated in the Government's report), *Congo* (section 56 of the Labour Code), *Djibouti* (section 258 of the Labour Code), *Gabon* (section 126 of the Labour Code), *Kenya* (as indicated in the Government's report), *United Kingdom* (as indicated in the Government's report) and *United States* (as indicated in the Government's report).

[245] Section 128 of the Employment Relationship Act.

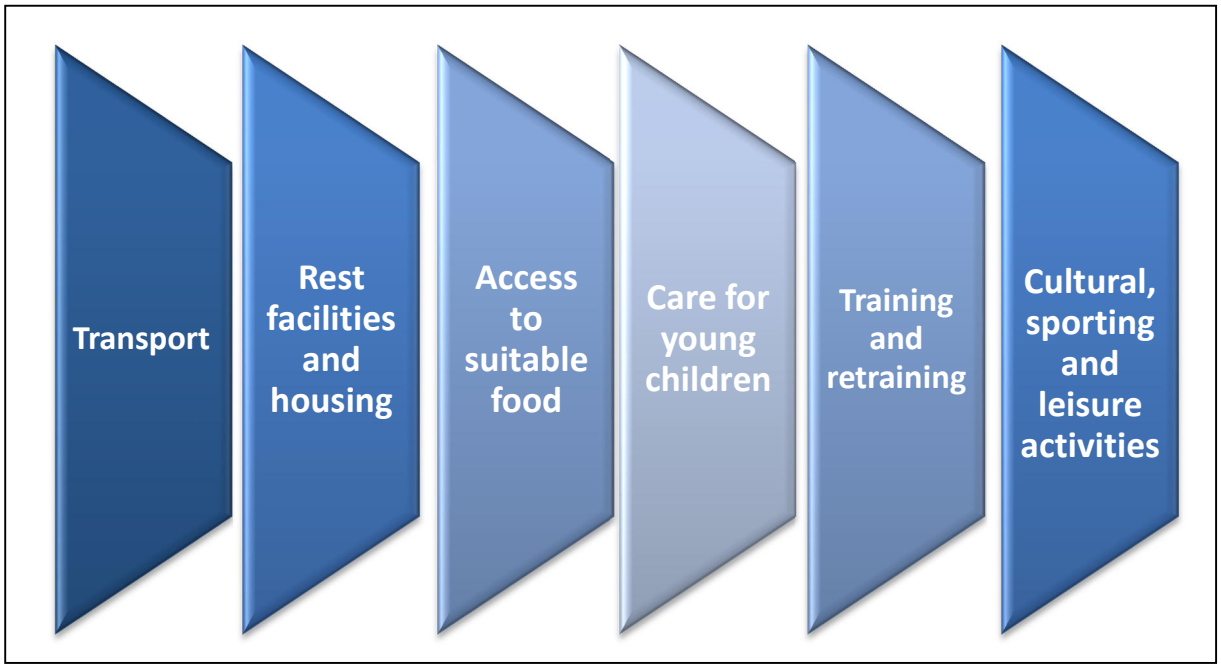
[246] Section 146 of the Labour Code.

[247] For example, *Bangladesh, Costa Rica, Georgia, Guatemala, India, Jamaica, Kuwait, Malta, New Zealand, Nicaragua, Nigeria, Rwanda, Samoa, Seychelles, Sri Lanka, Suriname, United Kingdom* and *United States.*

496. The intention behind the general provision set out in Article 9, which may at first sight seem vague, is to remain flexible in the face of differing circumstances at the national or enterprise levels. [248] To understand the wording of Article 9, it is useful to bear in mind the definition of night worker, which is more restrictive than that of a worker performing night work. Social services should be provided not only for night workers but also, where necessary, for all those workers performing night work, whether or not they qualify as night workers. [249]

497. Paragraphs 13–18 of the Recommendation further develop the concrete measures related to social services for night workers. As shown in figure 4.11 the expression "social services" refers to a large variety of measures which fall into six categories: transportation, resting facilities, access to food, care of young children, training and retraining, and cultural, sporting and recreational activities.

Figure 4.11. Social services for night workers



498. At first glance, Title V of Recommendation No. 178 may seem overwhelming. However, it should be recalled that the measures set out in Paragraphs 13 to 18 are a list of examples of possible actions that may be taken, and do not constitute obligations or regulations. While these measures can be financed in different ways, and may be impractical in some circumstances, they are intended to illustrate possibilities. [250] Moreover, Article 3 of the Convention allows for the progressive application of such services, as circumstances permit. [251]

[248] It should be recalled that, during the preparatory work, emphasis was often placed in the discussions on this point on the differences of practice between developing and industrialized countries, and small and large enterprises.

[249] For instance, transport and food and beverage, which are services appropriate for all those working at night. ILO: *Record of Proceedings* No. 26, 1990, op. cit., p. 26/12.

[250] ILO: *Night work*, Report IV(2A), 1990, op. cit., p. 89.

[251] ibid., p. 64.

499. The Committee observes that a majority of countries, including a number of ratifying countries, do not require the provision of social services specifically for night workers or workers performing night work. In this respect, the Committee has recalled that appropriate social services are among the specific measures required by the nature of night work which must be adopted for night workers to protect their health and assist them in meeting their family and social responsibilities. Consequently, and recalling that Article 3 of the Convention allows these measures to be taken progressively, the Committee calls for consideration to be given to the necessary steps to give effect to this Article of the Convention.

(a) Transportation

500. Of all the social services listed in the Recommendation, transport is of particular importance, as night workers may experience difficulties in travelling to and from their work because public transport is inadequate or travel is unsafe at such hours. The time spent commuting may also be longer for night workers than for workers during normal working hours. [252] Paragraph 13, which calls for measures to be taken to limit or reduce the time spent by night workers in travelling between their residence and workplace, to avoid or reduce additional travelling expenses for them and to improve their safety when travelling at night, [253] intends to bring together three aspects of the transport of night workers: the time spent travelling, additional expenses and safety.

501. Certain countries provide for transport facilities or allowances for night workers. [254] For example, in *Switzerland*, employers that regularly engage night workers have to arrange transport for them to improve their safety on the way to and from work. [255] In *Slovenia*, an employer may not assign a worker to night work if no transport to and from work is organized. [256] In the *Philippines*, transport and/or properly ventilated temporary sleeping or resting quarters, separate for men and women workers, has to be provided, except: (a) where there is an agreement between the management and the workers providing for equivalent or superior benefits; (b) the start or end of work does not fall between midnight and 5 a.m.; (c) when the workplace is located in an area that is accessible 24 hours a day by public transport; or (d) where the number of employees does not exceed a specified number, as may be provided for by the Secretary of Labour and Employment. [257] In *Cambodia*, in enterprises and establishments where night work is performed, the owner or director of the enterprise or establishment has to provide night

[252] ILO: *Night work*, Report V(1), 1989, op. cit., p. 53

[253] Such measures may include: "(a) co-ordination between the starting and finishing times of daily periods of work which include night work and the schedules of local public transport services; (b) provision by the employer of collective means of transport for night workers where public transport services are not available; (c) assistance to night workers in the acquisition of appropriate means of transport; (d) the payment of appropriate compensation for additional travelling expenses; (e) the building of housing complexes within a reasonable distance of the workplace." See also ILO: *General Survey on the fundamental Conventions*, 2012, paragraph 840: with a view to repealing discriminatory protective measures applicable to women's employment, including night work, it may be necessary to examine what other measures, such as adequate transportation and security, are necessary to ensure that women can work on an equal footing with men.

[254] For example, *Côte d'Ivoire*, *Madagascar* and *South Africa*.

[255] Section 17(e) of the Labour Law.

[256] Section 151(5) of the Employment Relationship Act.

[257] Section 4(e) of Departmental Order No. 119-12, Rules Implementing the Republic Act No. 10151 of 2012.

workers with an appropriate place to sleep, or otherwise with a safe means of transport to the worker's house at the end of the night work. [258]

502. In certain countries, the provision of transport facilities for night workers is covered by collective agreements. [259] For example, the Government of *France* reports that collective agreements provide for measures to reconcile the professional activities of night workers with their personal life and family and social responsibilities, for instance means of transportation. In the case of work performed between 9 p.m. and midnight in shops that provide goods or services in areas considered by the Labour Code as international touristic areas, collective agreements have to envisage the provision of transport by the employer so that the workers can return home. [260] In *Belgium*, a collective agreement provides that when workers who usually work at night are absent from their place of residence for more than 12 hours a day, or commuting takes over four hours a day, the employer is required to organize their transport. [261]

503. In some countries, general provisions on transport are relevant for workers performing both night and day work. For example, in *Mauritius*, an employer, irrespective of the distance between the workers' residence and place of work, has to provide free transport from their residence to the place of work and back, if workers are required to attend or finish work at a time when no public bus service is available. [262] In *Guatemala*, [263] transport costs have to be borne by the employer if the work is located at least 15 kilometres away from the workers usual place of residence. [264]

504. In a few countries, transport facilities are only provided for women engaged in night work. For example, in *Turkey*, the employer is required to provide transport for women working on the night shift in cases where there is no adequate access to public means of transport. [265] In *India*, the decision of the Madras High Court in 2000 provided that the employment of women at night shall be accompanied by the implementation by employers of measures to guarantee their safety and security, including for instance separate transport for women workers. [266]

505. Finally, some governments report that in practice transport for night workers is only provided in certain sectors. This is the case in the *Dominican Republic*, for instance, in hotels and call centres, in *Equatorial Guinea* in the private sector and in *China* in medium and large cities.

(b) Rest facilities and housing

506. With regard to rest facilities and housing, the Recommendation calls for measures to be taken to improve the quality of rest for night workers, including "(a) advice and, where appropriate, assistance to night workers for noise insulation of their housing; and

[258] Section 6 of Ministerial Order No. 80 of 1999.

[259] For example, *Colombia* and *Uzbekistan*.

[260] Sections L.3122-15, L.3132-24 and L.3122-19 of the Labour Code.

[261] Clause 12 of Collective Agreement No. 46 of 1990.

[262] Section 26(2) of the Employment Rights Act, 2008.

[263] Section 33 of the Labour Code.

[264] Other examples include: *Egypt* (section 221 of the Labour Code) and *Samoa* (section 23(a) of the Occupational Safety and Health Act, 2002).

[265] Section 6 of the Regulation on working conditions of women working on night shifts of 2013.

[266] Madras High Court, *Vasantha R.* v. *Union of India (UoI)* and others on 8 Dec. 2000; Equivalent citations: (2001) IILLJ 843 Mad, Bench: E Padmanabhan, para. 105(n).

(b) design and equipping of housing complexes which take into account the need to reduce noise levels". The Recommendation also indicates that "suitably equipped resting facilities should be made available to night workers in appropriate places in the undertaking". [267]

507. The rationale underlying these provisions is that night workers, who sleep during daytime hours, may be disturbed by the typical noise of daily life. This is why improved housing, including soundproofing, as well as rest facilities at the workplace to be used during breaks, may enhance the capacity for recovery of night workers. [268]

508. The legislation in a few countries requires measures to be taken regarding the rest of night workers. [269] In *Morocco*, the employer has to provide rest areas for women performing night work. [270] In *Costa Rica*, when workers have to sleep at the workplace due to the nature of their work, the employer is legally required to provide them with clean premises for that purpose. [271] The Government of *Cabo Verde* reports that employers have to ensure that rest areas for night workers are available at the workplace. [272]

(c) Access to suitable food

509. With regard to the availability of suitable food and access to meal facilities, [273] night work displaces natural body rhythms, including digestion and metabolism, both of which are deactivated at night. Food consumed at night therefore has to be suited to the night-time deactivation of the digestive system. Moreover, workplace canteens are often closed at night, and night workers on continuous or semi-continuous rotating shifts often cannot leave the workplace during their meal breaks. It should be noted that Paragraph 16(a) does not necessarily mean that food and beverages should be made available without charge.

510. In this regard, a number of countries envisage the provision of meals and drinks for night workers. In *Finland*, the employer, when necessary, has to provide employees engaged in night work with an opportunity to take meals, if so required by the length of working time and if the provision of meals is appropriate in view of the circumstances. [274] The legislation in *Côte d'Ivoire* provides that night workers are entitled to a meal allowance equal to three times the hourly minimum wage if they work for more than six hours at night. [275] Drinking water must be made available for night workers in *Albania* [276] and the *Philippines*, [277] while in *Colombia* provisions on food and

[267] Paragraphs 14 and 15 of the Recommendation.

[268] For example, the planting of trees as a barrier to noise and avoiding the construction of highways close to workers' housing are measures that could be afforded even in less developed countries. ILO: *Record of Proceedings* No. 26, 1990, op. cit., p. 26/18.

[269] For example, *Cambodia*, *Philippines* and *Switzerland*.

[270] Section 1 of Decree No. 2-04-568 of 2004.

[271] Section 295 of the Labour Code.

[272] Section 165 of the Labour Code.

[273] Paragraph 16 of the Recommendation provides that the employer "should take the necessary measures to enable workers performing night work to obtain meals and beverages. Such measures, devised in such a way as to meet the needs of night workers, may include: (a) making available, at appropriate places in the undertaking, food and beverages suitable for consumption at night; (b) access to facilities where workers may, at night, prepare or heat and eat food which they have brought."

[274] Section 30 of the Occupational Safety and Health Act.

[275] Section 9 of Decree No. 96-204 of 7 March 1996.

[276] Section 69 of the Labour Code.

[277] Section 4(d) of Departmental Order No. 119-12 of 2012, Rules Implementing the Republic Act No. 10151 of 2012.

refreshments for night workers are sometimes included in collective agreements. The Government of *Equatorial Guinea* indicates that this type of facility is often provided in practice for night workers in the private sector. In *Slovenia*, the Employment Relationship Act requires the employer to provide night workers with adequate food. [278]

(d) Other social services

511. With reference to care for young children, [279] the legislation in only a few countries requires employers to adopt childcare measures for workers engaged in night work. In *France*, the employer is required to provide compensation to cover childcare for workers employed between 9 p.m. and midnight in shops providing goods and services in international tourist areas. [280] In *Switzerland*, childcare measures have to be adopted by employers which regularly employ night workers. [281] In *Morocco*, the Labour Code requires the provision of nursing rooms in companies employing more than 50 employees over 16 years of age. These rooms can also be used as day-care centres for the children of employees. [282]

512. Finally, with regard to education, training and cultural, sporting and recreational activities, Paragraphs 18 and 22 of the Recommendation call for the specific constraints on night workers to be duly taken into consideration within the framework of measures to encourage training and retraining, as well as cultural, sporting or recreational activities for workers. These provisions reflect the fact that the irregular hours and short evenings resulting from night work, particularly for workers engaged in rotating shifts, may be an obstacle to the updating of skills or retraining, as training generally takes place during the day, when night workers tend to sleep. [283]

513. ***Emphasizing the need to ensure that night workers can benefit from social services that are adapted to the nature of night work, the Committee encourages all governments, to the extent possible in light of their national circumstances, to progressively take the necessary measures to ensure that establishments provide night workers and, where necessary, workers performing night work, with appropriate social services.***

[278] Section 151(3) of the Employment Relationship Act.

[279] Paragraph 17 of the Recommendation provides that the "extent to which night work is performed locally should be one of the factors to be taken into consideration when deciding on the establishment of crèches or other services for the care of young children, choosing their location and determining their opening hours".

[280] Section L.3122-19 of the Labour Code.

[281] Section 17(e) of the Labour Law and section 46 of Ordinance No. 1 issued under the Labour Law.

[282] Section 162 of the Labour Code.

[283] ILO: *Night work*, Report V(1), 1989, op. cit., p. 56

E. Consultation

Box 4.15
Consultation

Article 10 of Convention No. 171 provides that:

1. Before introducing work schedules requiring the services of night workers, the employer shall consult the worker representatives concerned on the details of such schedules and the forms of organisation of night work that are best adapted to the establishment and its personnel as well as on the occupational health measures and social services which are required. In establishments employing night workers this consultation shall take place regularly.

2. For the purposes of this Article the "workers' representatives" means persons who are recognised as such by national law or practice, in accordance with the Workers' Representatives Convention, 1971.

514. Article 10 of the Convention introduces consultation as an important protective principle. During the second discussion of the draft instruments, a number of clarifications were put forward on how consultations are to be interpreted in this context. [284] These clarifications may be summarized as follows: (a) consultation has to take place before the implementation of a decision; (b) consultations are not about the introduction of night work, but its consequences; (c) consultation is an ongoing process; (d) consultations are only held with worker representatives (not directly with workers), and paragraph 2 provides a definition of worker representatives; and (e) the results of consultations are not binding on the employer.

515. Moreover, Paragraph 25 of the Recommendation indicates that night workers who have a trade union or worker representation function should, like other workers who assume such a function, be able to exercise it in appropriate conditions. The need to carry out worker representation functions should be taken into consideration when decisions are made concerning assignment of worker representatives to night work. This Paragraph seeks to ensure that the transfer of worker representatives to night work does not prevent them from carrying out their representation duties [285] and that trade union or worker representation functions can be exercised in appropriate conditions. [286]

516. The legislation in certain countries contains provisions on this subject. For example, among ratifying countries, the Labour Code of *Slovakia* requires employers to negotiate regularly the organization of night work with worker representatives. [287] The beginning and end of working hours and the timetable of work shifts have to be determined by the employer after agreement with worker representatives and have to be announced by the employer in writing at a place that is accessible to employees. [288] In *Slovenia*, prior to the introduction of night work, or if night work is performed regularly by night workers, the employer must consult trade unions at least once a year on the determination of the time to be considered as night working hours, the form of organization of night work, health and safety measures at work and social measures. [289] In *Cyprus*, when night work entails specific risks of significant physical or mental stress to workers, the work has to be agreed

[284] ILO: *Record of Proceedings* No. 26, 1990, op. cit., pp. 26/12 and 13.

[285] ibid., p. 26/21.

[286] ILO: *Night work*, Report IV(2A), 1990, op. cit., p. 99.

[287] Section 98(6) of the Labour Code.

[288] Section 90(4) of the Labour Code.

[289] Section 153 of the Employment Relationship Act, ZDR-1.

in consultation between the employer and representatives of workers, or their representatives on health and safety matters. [290] The Labour Code of the *Czech Republic* requires the employer to consult in advance with the trade unions on measures concerning the regulation of working hours, including possible recourse to night work, particularly with regard to occupational safety and health. [291] The Government of *Belgium* reports that, before introducing working-time arrangements involving night work, the employer must consult the worker representatives. [292] In *Albania*, before the adoption of a workplan requiring the performance of night work, the employer must consult the worker representatives concerned about the details of the plan, the forms of organization of night work which are most suitable for the company and its personnel, measures for workers' health and the necessary social services. Consultations should take place regularly in companies where employees work at night. [293]

517. Among non-ratifying countries, the introduction of night work in *Italy* has to be preceded by consultation of the trade unions in the company, where they exist, affiliated to the organizations that have signed the applicable collective agreement. In the absence of such trade unions, the consultations are held with the workers' territorial organizations. [294] In the *Philippines*, the employer is required, at its own initiative, to consult recognized worker representatives or the union on the details of night work schedules. In establishments employing night workers, consultations have to take place regularly and appropriate changes to work schedules have to be agreed upon before they are implemented. [295] The Government of *Serbia* indicates that, before introducing night work, the employer is required to consult the trade unions on the security and protection of life and health measures for employees working at night. [296] In *Norway*, before imposing night work, the employer has to discuss the need to do so with the elected representatives of the employees. [297]

518. ***The Committee emphasizes the primary importance of regular consultations taking place at the enterprise level between the employer and the representatives of workers regarding the organization of night work and the necessary occupational health measures and social services.***

F. Limits to night work: Hours of work, rest periods and overtime

519. Although Convention No. 171 does not contain provisions on limits to the hours of night work, Recommendation No. 178 sets out a number of principles in this respect.

520. With regard to hours of work, Paragraph 4(1) of the Recommendation indicates that the normal hours of work for night workers should, in normal circumstances, not exceed

[290] Section 9(3) of Law No. 63(I)/2002.

[291] Section 99 of the Labour Code.

[292] Section 2 of the Royal Decree of 16 April 1998 on the application of the Night Work Act of 17 Feb. 1997.

[293] Section 163(7) of the Labour Code, as amended by Law No. 316/2015.

[294] Section 12(1) of Decree No. 66/2003.

[295] Section 10 of Department Order No. 119-12 of 2012.

[296] Section 62(3) of the Labour Code.

[297] Section 10-11(3) of the Working Environment Act.

eight in any 24-hour period in which they perform night work, as the balance between work and leisure needs to be maintained on a daily basis. [298]

521. It should be noted that this limit refers to normal hours of work, [299] and does not therefore include overtime. The wording "in which they perform night work" is intended, as highlighted during the preparatory work, to limit this protection to night workers and to daily periods in which they perform night work. This accords with the idea that the instruments should apply to workers seriously affected by night work, but not to occasional or marginal cases of night work. [300]

522. Three exceptions are allowed to this principle: (a) work which includes substantial periods of mere attendance and stand-by; (b) alternative working schedules giving workers at least equivalent protection over different periods; and (c) exceptional circumstances. The first exception concerns long night shifts for hotel clerks, guards and other jobs which may be considered as less intensive or intermittent in nature. [301] The second exception is intended to cover the great variety of circumstances that may arise in practice, in order to recognize the possible diversity of schedules. The third exception is intended to take into account situations, such as construction sites in remote areas which require long continuous hours of work over a certain period. In such cases, exceptions from provisions on maximum working hours should be granted by the competent authority or established by collective agreement. [302]

523. Paragraph 4(2) and (3) of the Recommendation indicate that the normal hours of work of night workers should generally be less on average than and, in any case, not exceed on average those of workers performing the same work to the same requirements by day. They add that, if general measures are taken to reduce normal weekly hours of work or increase days of paid leave, night workers should benefit from them at least to the same extent as other workers. [303]

524. The legislation in many ratifying and non-ratifying countries contains provisions setting specific limits on the number of normal working hours at night. While the limit in most of these countries is set at eight hours a day, it is lower in several member States. These limits may or may not coincide with the limit for the normal hours of work of day workers. For example, among ratifying countries, the legislation in the *Czech Republic* provides that the length of the night shift must not exceed eight hours within a period of 24 consecutive hours. If this is not possible for operational reasons, the employer is required to schedule weekly working time so that the average length of the shift does not exceed eight hours in any period of 26 consecutive weeks. The basis for calculating the

[298] In a statement opposing a proposed amendment to the original provision, as proposed by the Office, on the grounds that modern practices, such as flexible and compressed hours, were not being taken into account and that many workers prefer extended hours with correspondingly long leisure hours, the Worker members indicated that longer shifts often require more time to recover, and that extended leisure is therefore an illusion. The amendment was rejected. ILO: *Record of Proceedings* No. 30, 1989, op. cit., p. 30/21

[299] For the concept of normal hours of work and overtime, see Chapter I.

[300] ILO: *Night work*, Report IV(2A), 1990, op. cit., p. 75.

[301] ILO: *Night work*, Report V(2), 1989, op. cit., p. 74.

[302] ILO: *Record of Proceedings* No. 26, 1990, op. cit., p. 26/15.

[303] ibid. With reference to this wording, the Worker members indicated that it must be clear that the situation normally referred to would be where night workers have reduced hours, the need for which arises from the special nature of night work. Accordingly, if there is a general reduction in working time, night workers, whose hours are already less than those of other workers, would have a corresponding reduction to maintain their preferential treatment with increased days of paid leave.

average length of a night work shift is the five-day working week. [304] In *Côte d'Ivoire,* night work cannot exceed eight consecutive hours of actual work, interrupted by one or two 15-minute breaks. Hours worked in excess of this limit are considered as overtime and remunerated as such. [305]

525. Among non-ratifying countries, in *Azerbaijan*, if half of total working hours are at night, working hours are reduced by one hour, from eight hours for day workers to seven hours for night workers. [306] In *Croatia,* normal hours of work for night workers must not, over a four-month period, exceed an average of eight hours in any 24 hours. [307]

526. In a few non-ratifying countries, the limit on normal hours of work at night is set above the maximum of eight hours indicated in the Recommendation. For example, the Government of *Suriname* reports that the categories of workers who are allowed to perform night work can work up to ten hours a day and 60 hours a week, or 12 hours a day and 72 hours a week. [308] In the *Netherlands,* night work can be performed for a maximum of ten hours a night. If workers perform night work 16 times or more, they must not work more than 40 hours a week on average over a period of 16 weeks. Notwithstanding this provision, workers may perform over 12 hours of night work, followed by a consecutive rest period of at least 12 hours, no more than five times every 14 days and 22 times over a 52-week period. [309]

527. The Committee notes that many countries report that their legislation does not contain specific provisions on normal working hours at night, and that general provisions apply.[310] The general limits to normal working hours are analysed in Chapter I above.

528. A few countries report that their legislation does not establish any specific limit for normal hours of work at night. For example, the Government of *New Zealand* indicates that all employment agreements must fix the maximum number of hours to be worked by the employee, which may not be more than 40 hours a week (not including overtime), unless the employers and employees agree otherwise. [311] In this respect, *Business New Zealand* indicates that workers are capable of deciding for themselves when they wish to work and that the employment legislation in *New Zealand* applies to all work situations, at whatever time of the day or night work is performed. However, the *New Zealand Council of Trade Unions* refers to the extraordinarily weak and piecemeal nature of the restrictions established and considers that the legislative framework does not establish adequate limits on normal daily or weekly hours of work.

529. With regard to overtime, Paragraph 5(1) of the Recommendation calls for work to be organized in such a way that additional hours are avoided "as far as possible" before or

[304] Section 94(1) of the Labour Code.

[305] Section 5 of Decree No. 96-204 of 1996.

[306] Sections 89 and 97(2) of the Labour Code.

[307] Section 69 of the Labour Act.

[308] Section 4 of the Labour Code.

[309] Section 5(8) of the Working Time Act.

[310] *Antigua and Barbuda, Austria, Bahrain, Bangladesh, Bosnia and Herzegovina, Burundi, Canada, Cabo Verde, Chad, Chile, China, Colombia, Cuba, Democratic Republic of the Congo, Dominican Republic, Egypt, Eritrea, Ethiopia, Ghana, Guinea, India, Indonesia, Japan, Republic of Korea, Kuwait, Lao People's Democratic Republic, Malawi, Mauritania, Mauritius, Montenegro, Morocco, Mozambique, Myanmar, Namibia, Oman, Peru, Philippines, Poland, Qatar, Rwanda, Samoa, Serbia, Seychelles, Singapore, South Africa, Sri Lanka, Sudan, Syrian Arab Republic, United Republic of Tanzania, Thailand, Uruguay* and *Zimbabwe*.

[311] Section 11B of the Employment Relations Act 2000.

after a period of work which includes night work. As outlined in the preparatory work, the fatigue experienced by workers as a result of overtime before or after a night shift is greater than at other times of the day, as it further reduces the insufficient period of sleep that has already been shortened. [312] The expression "as far as possible" recognizes that it is not always possible to refrain from resorting to overtime. However, this flexibility should not be applied in hazardous or strenuous occupations.

530. The Committee observes that, while the majority of countries do not set a specific limit on overtime for night work, the general rules apply to both day and night workers, [313] with only a few countries setting specific limits on overtime during night work. For example, among ratifying countries, the legislation in *Côte d'Ivoire* provides that the extension of night work for compelling reasons relating to the operation of an establishment may exceed by a maximum of one hour the normal limit on working hours at night (eight hours). [314] Among non-ratifying countries, in *Bulgaria*, overtime performed at night may not exceed 20 hours in any calendar month, four hours in any calendar week or two hours over two consecutive working days. [315] In *Germany*, the daily hours of work of night workers may not exceed eight hours. They may be extended to ten hours only if an average of eight hours a day is not exceeded within any calendar month or four-week period. [316]

531. A few non-ratifying countries prohibit overtime at night. For example, in *Angola*, overtime at night is prohibited, except when necessary to: prevent or eliminate the consequences of accidents, natural disasters or other situations of force majeure; replace workers who do not show up for work at the beginning of their shift; or when so authorized by the labour inspector. [317] Similarly, in the *Islamic Republic of Iran*, the Labour Code prohibits overtime at night. [318]

532. The Committee observes that certain countries do not set any limit on overtime for night work. In this connection, the *International Trade Union Confederation* highlights in its observations that globalization and the increased use of new technologies often mean that businesses extend their operations to 24-hour days, which frequently require workers to perform overtime during the night. Working-time arrangements that require workers to work at night and sleep during the day are commonly associated with chronic sleep deprivation. It further states that night work over extended periods can give rise to serious health risks and limit life expectancy. However, the temporal aspect of night work is still not addressed by the ILO's working-time Conventions. Moreover, staggered working hours at the end of the day should clearly be covered by the definition of night work.

533. ***In this respect, the Committee considers that setting clear and enforceable limits for both normal hours of work and overtime is useful to allow night workers to recover from night work, protect their health and safety and maintain a balance between work and leisure.***

[312] ILO: *Night work*, Report V(1), 1989, op. cit., p. 45.

[313] General limits on overtime are examined in Chapter 1.

[314] Section 6 of Decree No. 36-204.

[315] Section 146(2) of the Labour Code.

[316] Section 6(2) of the Hours of Work Act.

[317] Section 116(5) of the General Labour Law.

[318] Section 61 of the Labour Code.

Box 4.16
Night work of women in agricultural undertakings

The Night Work of Women (Agriculture) Recommendation, 1921 (No. 13), is the only ILO instrument that deals specifically with the work of women in agriculture. While night work in industry was generally admitted to be undesirable and prejudicial to health, work is frequently performed at night by choice in the agricultural sector to benefit from cool temperatures. For this reason, the rationale of Recommendation No. 13 is not the elimination of night work in agriculture, but the need for protection when night work is performed by women in the sector.

Recommendation No. 13 calls on member States to take steps to regulate the employment of women wage earners in agricultural undertakings during the night in such a way as to ensure a period of rest compatible with their physical necessities and consisting of not less than nine hours, which shall, when possible, be consecutive.

When Recommendation No. 13 was adopted, member States agreed that night work of women in agriculture was not widespread as, contrary to industry, practically every kind of agricultural work was dependent on daylight. However, the introduction of new technology and the use of modern lighting has made night work possible in certain types of agriculture, such as fruit picking and livestock management. Some Governments report [1] that night work in agriculture remains uncommon. Moreover, in many countries, agriculture has declined in importance as a source of employment, particularly for women, [2] over the past 20 years. In contrast, agriculture remains the largest sector for women's employment in Oceania, southern Asia and sub-Saharan Africa, where it accounts for around 60 per cent of women's work. [3] Night work of women in agriculture is reported, for instance, in South Bengal, where women are employed for long hours at night cleaning shrimps and prawns. [4]

National regulatory frameworks do not often contain special provisions on night work of women in agriculture. However, in a few countries, night work of women in agriculture is prohibited, or subject to protective legislation. For example, the Government of *Senegal* reports that night work of women in agriculture is prohibited. Similarly, in *India*, the Plantation Labour Act of 1951 prohibits the employment of women in agriculture between 7 p.m. and 6 a.m., unless authorization is obtained from the state government. [5] Moreover, the Employment Act in *Malaysia* provides that night work for women is prohibited between 10 o' clock in the evening and 5 o'clock in the morning. [6] In the *Philippines*, the legislation provides that no women, regardless of age, are permitted to work, with or without compensation, in any agricultural undertaking at night unless she is given a rest period of not less than nine consecutive hours. Exceptions are possible for emergencies or force majeure, in the case of women in managerial positions or when women employees are members of the family operating the establishment or undertaking. [7]

[1] For instance, *Mauritius* and *Peru*.

[2] UN Statistic Division: *The World's Women 2015*, p. 96.

[3] ibid.

[4] A. Talwar and S. Ganguly: "Feminization of India's agricultural workforce", in ILO: *Decent work in agriculture*, 2003, p. 30.

[5] Section 25 of the Plantation Labour Act of 1951.

[6] Section 34 of the Employment Act.

[7] Book III, Rule XII, of the Omnibus Rules Implementing the Labour Code.

534. With reference to rest periods between shifts, Paragraph 6 of the Recommendation indicates that, where shift work involves night work: (a) in no case should two consecutive full-time shifts be performed, except in cases of force majeure or of actual or imminent accident; (b) a rest period of at least 11 hours between two shifts should be guaranteed as

far as possible. [319] During the preparatory work, it was recalled that a fairly frequent industrial practice is that workers, at the end of the night shift, have to replace a colleague on the incoming shift who is absent. In most cases, this practice involves 16 consecutive hours of work, of which eight hours are overtime. In this regard, it was emphasized that working a double shift is more harmful during night shifts. [320] Such practices could be avoided by having replacement workers available, either at the establishment or on call. Nevertheless, it was recognized that in continuous shift work it is essential for workers to stay in their place until replacements arrive. It was also recognized that cases of force majeure or actual or imminent accidents may justify double shifts. [321]

535. The Committee notes that, while most countries do not provide any information on this subject, certain countries indicate that it is prohibited to work two successive shifts. [322] For example, in *Burkina Faso*, it is prohibited to assign the same worker to two successive shifts, except for exceptional reasons, or imperative reasons relating to the operation of the service, and only for a limited period. [323] In other countries, such as *Latvia*, the legislation provides that one shift must relieve the other at the time specified in the shift schedule. If a shift is not relieved at the specified time, an employee who has not been relieved must continue working if the work cannot be interrupted. The time worked by an employee after the end of the shift is considered overtime. [324]

536. Finally, regarding breaks during the working day, Paragraph 7 of the Recommendation indicates that daily periods of work which include night work should include a break or breaks to enable workers to rest and eat. The scheduling and total length of these breaks should take account of the demands placed on workers by the nature of night work. [325]

537. As indicated during the preparatory work, while breaks in the daily work routine respond to the need for food and rest to combat fatigue, the need for rest is greater at night because the capacity of workers is reduced by the physiological state of deactivation of bodily functions, and the consequent need for sleep. A real need for food may arise during the second half of a shift, in proportion to the expenditure of energy required by the work. [326] It should be noted that this provision of the Recommendation, as finally drafted, does not imply that breaks are to be paid. [327]

[319] This was added at the proposal of the Worker members, based on the explanation by the Employer members that certain shift rotas do not permit an 11-hour rest period. ILO: *Record of Proceedings* No. 30, 1989, op. cit., p. 30/24

[320] ILO: *Night work*, Report V(1), 1989, op. cit., p. 46.

[321] ILO: *Night work*, Report V(2), 1989, op. cit., p. 80.

[322] For instance, *Belgium, Kazakhstan, Republic of Korea, Republic of Moldova* and *Ukraine*.

[323] Section 12 of Decree No. 2009-013/MTSS/SG/DGT/DER of 2009 determining the organization of shift work.

[324] Section 3 of the Labour Law.

[325] This formulation makes it clear that the nature of night work must be taken into account when deciding on the scheduling and length of breaks. ILO: *Record of Proceedings* No. 26, op. cit., p. 26/16.

[326] ILO: *Night work*, Report V(1), op. cit., p. 48.

[327] In the original Office version of this provisions, a second clause read as follows: "The time accorded for this purpose at night should be considered as time actually worked. However, after the debate during the first discussion at the Conference regarding whether breaks should or should not be paid, this clause was deleted. ILO: *Record of Proceedings* No. 30, op. cit., p. 30/24.

538. In this respect, the majority of countries report that there are no specific provisions on breaks during night work, but that the general legislation applies. [328]

G. Other restrictions

539. Recommendation No. 178 also contains other measures for the protection of night workers. Paragraph 20 outlines the need to take into consideration the special situations of workers with family responsibilities, workers undergoing training and older workers in decisions on the composition of night crews. [329] Moreover, it calls for reasonable notice to be given of night work assignments, except in cases of force majeure or of actual or imminent accident. [330] Special consideration should also be given to workers who have spent a number of years on night work with respect to vacancies for day work for which they have the necessary qualifications and opportunities for voluntary early or phased retirement. [331]

540. In *France*, workers who have performed a number of years of night work are entitled to special consideration. Workers exposed to hardship in their working conditions or working time, including night work, can accumulate points giving access to training so that they can find work that is less or not exposed to hazards, have access to part-time jobs with the same level of remuneration or take early retirement. [332] In *Belgium*, a worker aged 55 or over with at least 20 years of service in a night work position has the right to request a transfer to day work, irrespective of health issues. [333]

541. Finally, Paragraph 27 of the Recommendation sets out the principle of limiting recourse to night work. Wherever possible, advantage should be taken of scientific and technical progress and of innovations relating to work organization in order to limit recourse to night work. In this connection, the Working Environment Act in *Norway* provides that night work is not permitted unless necessitated by the nature of the work [334] and the French Labour Code sets out the principle of the exceptional nature of night work. [335]

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[328] The subject of breaks during the working day has already been examined under Chapter II of this General Survey.

[329] As emphasized during the preparatory work, shift work can disrupt family responsibilities and attendance at training courses. Taking these possible problems into account would be consistent with other ILO standards, such as the Workers with Family Responsibilities Convention (No. 156) and Recommendation (No. 165), 1981, and the Older Workers Recommendation, 1980 (No. 162). ILO: *Night work*, Report IV (2A), 1990, op. cit., p. 95. With regard to workers with family responsibilities, it was emphasized during the preparatory work that Convention No. 156 and Recommendation No. 165 are intended to allow workers to reconcile work and family obligations and to prevent discrimination on that basis. In particular, Paragraph 19 of Recommendation No. 165 calls for family responsibilities to be taken into account in shift work arrangements and assignments to night work. See ILO: *Record of Proceedings* No. 26, 1990, op. cit., p. 26/20.

[330] Paragraph 21 of the Recommendation.

[331] Paragraphs 23 and 24 of the Recommendation.

[332] Title VI, Part Four, Book I, of the Labour Code, as amended in 2014.

[333] Clause 7(2) of Collective Agreement No. 46 of 1990, as amended.

[334] Section 10-11(2) of the Working Environment Act.

[335] Section L.3122-1 (former section L.3122-32) provides that the use of night work shall take into account requirements to protect the health and safety of workers, and that night work must be justified by the need to ensure the continuity of economic activity or the provision of services of social utility. Exceptions were envisaged in the Labour Code (former sections L.3122-33 and L.3122-36), which allowed the introduction of night work in an undertaking under a collective agreement, or with the authorization of the labour inspector, following fair and serious negotiations between the parties. The constitutionality of these provisions was challenged by a company that uses night work on the grounds that they are not in compliance with the requirements of legal certainty and

Box 4.17
Protection of night work in EU law

A good example of the protection of night work at the regional level is Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organization of working time, which regulates some aspects of night work. While Convention No. 171 and Recommendation No. 178 together establish a comprehensive system for the regulation of night work and the protection of night workers, touching on almost every aspect of the issue, the Directive focuses on key aspects of night work in a less detailed manner.

Although the definition of night in the Directive is similar to that of the ILO most recent night work instruments (not less than seven hours, including the interval between midnight and 5 a.m.), the definition of night worker in the Directive departs from that of the Convention and Recommendation. While, for the latter instruments, a night worker is a person who performs a substantial number of hours of night work which exceeds a specified limit (leaving the determination of this limit to the national authorities in consultation with representative organizations of workers and employers), the Directive sets a double criteria for qualifying as a night worker: working at least three hours of daily working time at night as a normal course and, working a certain proportion of annual working time during the night, as defined by Member States. [1]

Another difference between the Directive and most recent ILO night work instruments is working time at night. While the Directive establishes binding parameters regarding the length of night work, Recommendation No. 178 contains non-binding, although very detailed guidelines on this issue. [2] Moreover, while Recommendation No. 178 calls for night work overtime to be avoided as far as possible, the Preamble to the Directive states that it should be limited.

Both the Directive and Convention No. 171 provide for a free health assessment of workers before assignment and thereafter at regular intervals. If the worker is certified as medically unfit to perform night work, transfer to suitable day work is provided for in both the Directive and the Convention. However, Convention No. 171 envisages a higher level of protection in the event that transfer to day work is not practicable, as it calls for the same benefits as for other workers who are unable to work or secure employment.

Maternity protection is dealt with in Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding. Both Directive 92/85/EEC and Convention No. 171 provide for the possibility of such workers being transferred to day work or granted an extension of maternity leave where such transfer is not technically and/or objectively feasible. [3]

Other aspects relating to night work, such as compensation and social services, which are regulated by Convention No. 171 and Recommendation No. 178, are not covered by the Directives.

[1] Article 2 of Directive 2003/88/EC.

[2] In accordance with Article 8(a) of the Directive, normal hours of work for night workers must not exceed on average eight hours in any 24-hour period. In conformity with Article 16(c) of the Directive, the reference period is to be determined by national legislation after consultation with the two sides of industry, or by collective agreement. In contrast, Paragraph 4(1) of Recommendation No. 178 does not refer to an average period and indicates that normal hours of work for night workers should not exceed eight in any 24-hour period in which they perform night work.

[3] Article 7(2) of Directive No. 92/85/EEC and Article 7(2) of Convention No. 171.

clarity set out in article 34 of the Constitution and articles 4, 5, 6 and 16 of the 1789 Declaration of the Rights of Man and of the Citizen respecting freedom of entrepreneurship and equality before the law. In Decision No. 2014-373 of 4 April 2014, the Constitutional Council found that, in providing that the use of night work is exceptional and must be justified by the need to ensure the continuity of the economic activity or social services, the legislator, in applying article 34 of the Constitution with regard to the fundamental principles of labour law, achieved a conciliation that is not manifestly unbalanced between the freedom of enterprise arising out of article 4 of the 1789 Declaration and the requirements of the 1946 Preamble to the Constitution, particularly for the protection of health and rest. The Council accordingly dismissed the challenge and found that the contested provisions were in conformity with the Constitution.

Conclusions

542. The Committee recalls that Conventions Nos 4 and 41 have been abrogated by the International Labour Conference in June 2017 and that Convention No. 89 will be opened to denunciation for a period of 12 months as from 27 February 2021, as indicated in the Committee's General Observation on working time of 2014. The Committee also notes that there is an overall trend for an increase in the proportion of night workers in the labour force, which is consistent with the impact of economic and technological changes on work practices. ***The Committee further notes that a number of research projects on the effects of night work on workers suggest that night work could have an impact on workers' health and safety, work–life balance and productivity, depending on the manner in which night work is organized.*** The Committee also notes that compliance with Convention No. 171 contributes to the achievement of equality between women and men, and accordingly is consistent with the principle contained in Convention No. 111 and the UN Convention on the Elimination of All Forms of Discrimination against Women. In this context, the Committee wishes to emphasize the importance of the principle of protection in relation to night work, as enshrined in Convention No. 171 and Recommendation No. 178.

543. ***With respect to the application of the protective measures provided for in these instruments, as a minimum package of measures to protect night workers, the Committee wishes to emphasize once again the great flexibility afforded by Article 3(2) of Convention No. 171, which allows for the progressive application of these measures***. In this regard, examination of national law and practice reveals that the legislation in a number of countries complies either in part or fully with many of the provisions examined in this chapter. Nonetheless, the Committee observes a number of aspects that are still not fully reflected in national law and practice.

544. ***Definition of night worker: the Committee notes with concern that a large number of countries do not have a legal definition of night worker in accordance with Article 1 of Convention No. 171. In this respect, the Committee recalls that several provisions of the Convention apply specifically to night workers (such as Article 4 on health assessments, Article 6 on the treatment of workers medically unfit for night work and Article 8 on compensation), rather than to night work.***

545. ***Maternity: the Committee observes that in a number of countries, pregnant and breastfeeding women who work at night are either only partially protected or are not protected at all. In this respect, the Committee wishes to recall that pregnant and breastfeeding women may be particularly vulnerable to night work, and it emphasizes the importance of women night workers in this situation being given an alternative to night work. To ensure that the right to alternative work is effective, any change in working hours must not affect a woman's income levels. At the same time, the Committee emphasizes that protective measures applicable to women's employment at night which go beyond maternity protection and are based on stereotyped perceptions regarding women's professional abilities and role in society, violate the principle of equality of opportunity and treatment between men and women and therefore the provisions of Convention No. 111 and the UN Convention on the Elimination of All Forms of Discrimination against Women.***

546. ***Appropriate compensation: the Committee observes that a number of countries report that national legislation makes no distinction between day and night work in relation to remuneration. In this regard, the Committee wishes to highlight the***

importance of granting compensation to all night workers in the form of working time, pay or similar benefits that recognizes the special nature of night work.

547. ***Social services: the Committee notes that a majority of countries do not specifically require the provision of social or medical services to night workers or workers performing night work. Bearing in mind however that under Convention No. 171 there is an obligation to provide first-aid facilities for workers performing night work, the Committee considers it essential for night workers and, where necessary, workers performing night work, to benefit from social services, including first-aid facilities that are specific to the nature of night work, to the extent permitted by national circumstances.***

548. ***Limits on overtime during night work: the Committee observes that a majority of countries do not set specific limits on overtime during night work. The Committee considers that setting clear limits for normal and total hours of work at night is essential to allow workers to recover from night work, protect the health and safety of the workers and maintain a balance between work and leisure, as well as for the purposes of productivity.***

549. ***Consultations: the Committee highlights the fundamental importance that regular consultations take place at the enterprise level between the employer and the workers' representatives concerning night work issues.***

Chapter V. Part-time work

1. Introduction

550. This chapter examined part-time work, covered by two instruments adopted by the ILO in 1994: the Part-Time Work Convention, 1994 (No. 175) and the Part-Time Work Recommendation, 1994 (No. 182). A number of factors have contributed to the development of part-time work over the years. It allows employers greater flexibility in planning work, aligning schedules with peaks in demand and retaining workers who cannot commit to full-time work. For the workers, part-time work can help to reconcile family, educational or other obligations, while providing an income, and may at some point lead to full-time employment. Governments have also developed policies to encourage part-time work, particularly for certain groups in the labour market, such as women, young people, the long-term unemployed, and also to encourage older workers to remain in employment. [1] Policies to promote part-time work have also been used to assist workers with family responsibilities.

551. Research suggests that part-time work is used by employers for three different reasons: as a recruitment and retention strategy based on workers' preferences; to provide optimal staffing and operational flexibility adapted to the demand for labour across the day, week or season; and to create a secondary, less remunerated and more precarious pool of workers, through the generation of low-paid, low-skilled jobs, sometimes by circumventing regulations or collective agreements that protect the wages and other working conditions of full-time workers. [2] Part-time work may also be used by lawmakers as an instrument of employment policy in the fight against unemployment. [3]

552. The legal definition of part-time employment normally refers to normal hours of work that are fewer than those of comparable full-time workers. However, as national definitions of the full-time working week vary, for comparative statistical purposes part-time work is often defined as working for pay for fewer than 35 hours per week. [4]

553. The available data suggest that there is a substantial volume of part-time work in many parts of the world, and that it is often performed mainly by women (see figure 5.1 below). Globally, women make up 57 per cent of those working on a part-time basis. Across 100 countries covering 87 per cent of global employment, more than one third of employed women (34.2 per cent) work on a part-time basis of less than 35 hours per week, compared to 23.4 per cent of employed men. [5] Global estimates of part-time work for pay

[1] ILO: *Non-standard employment around the world: Understanding challenges, shaping prospects* (Geneva, 2016), p. 75.

[2] C. Fagan et al.: *In search of good quality part-time employment*, ILO Conditions of Work and Employment Series No. 43, ILO, *Geneva*, 2014.

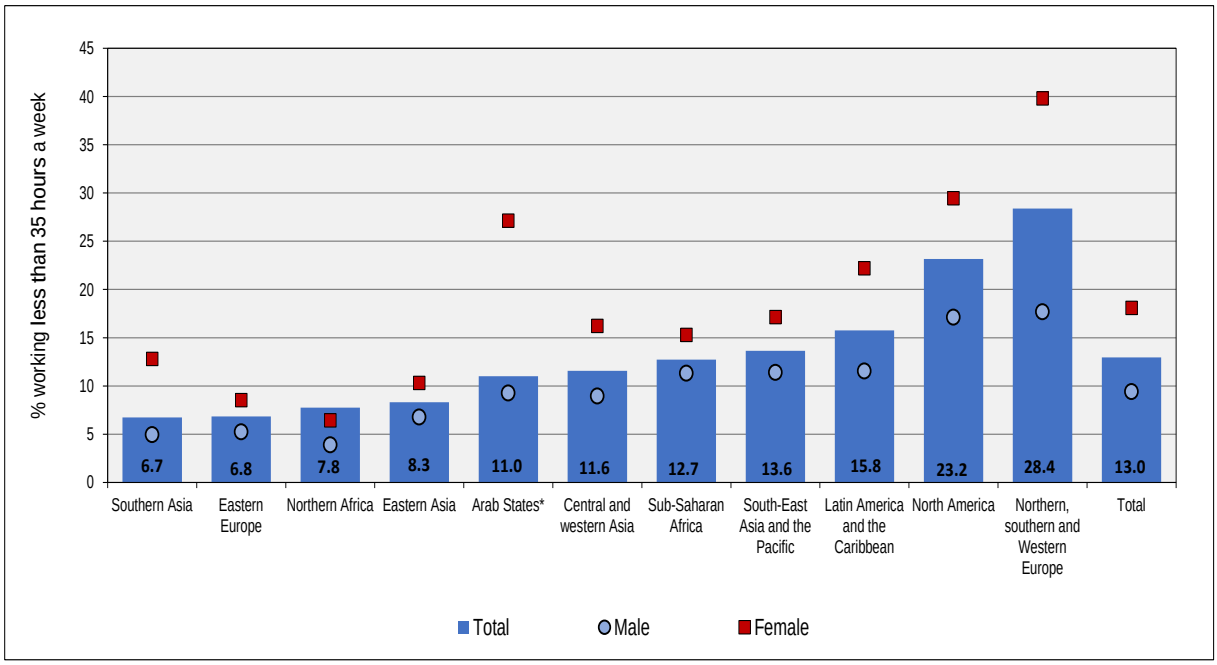
[3] See for instance in *Germany*: Federal Parliament Printing Matter 14/4374 of 24 Oct. 2000, p. 11 ff.

[4] A. van Bastelaer et al.: *The definition of part-time work for the purpose of international comparisons*, OECD, Paris, 1997.

[5] See also ILO: *Women at Work: Trends 2016*, p. 17.

indicate that the highest rates are in northern, southern and Western Europe, North America and Latin America and the Caribbean, while the lowest rates are found in southern Asia, Eastern Europe and northern Africa.

Figure 5.1. Percentage of employees working fewer than 35 hours per week for pay (employees)



Note: Global estimates based on 131 countries representing 95 per cent of world employment. Data for the latest available year (2013 or later for 80 countries).
* Arab States: the number of countries considered is insufficient to build firm conclusions.
Sources: ILOSTAT and ILO calculations based on labour force or other nationally representative household survey data.

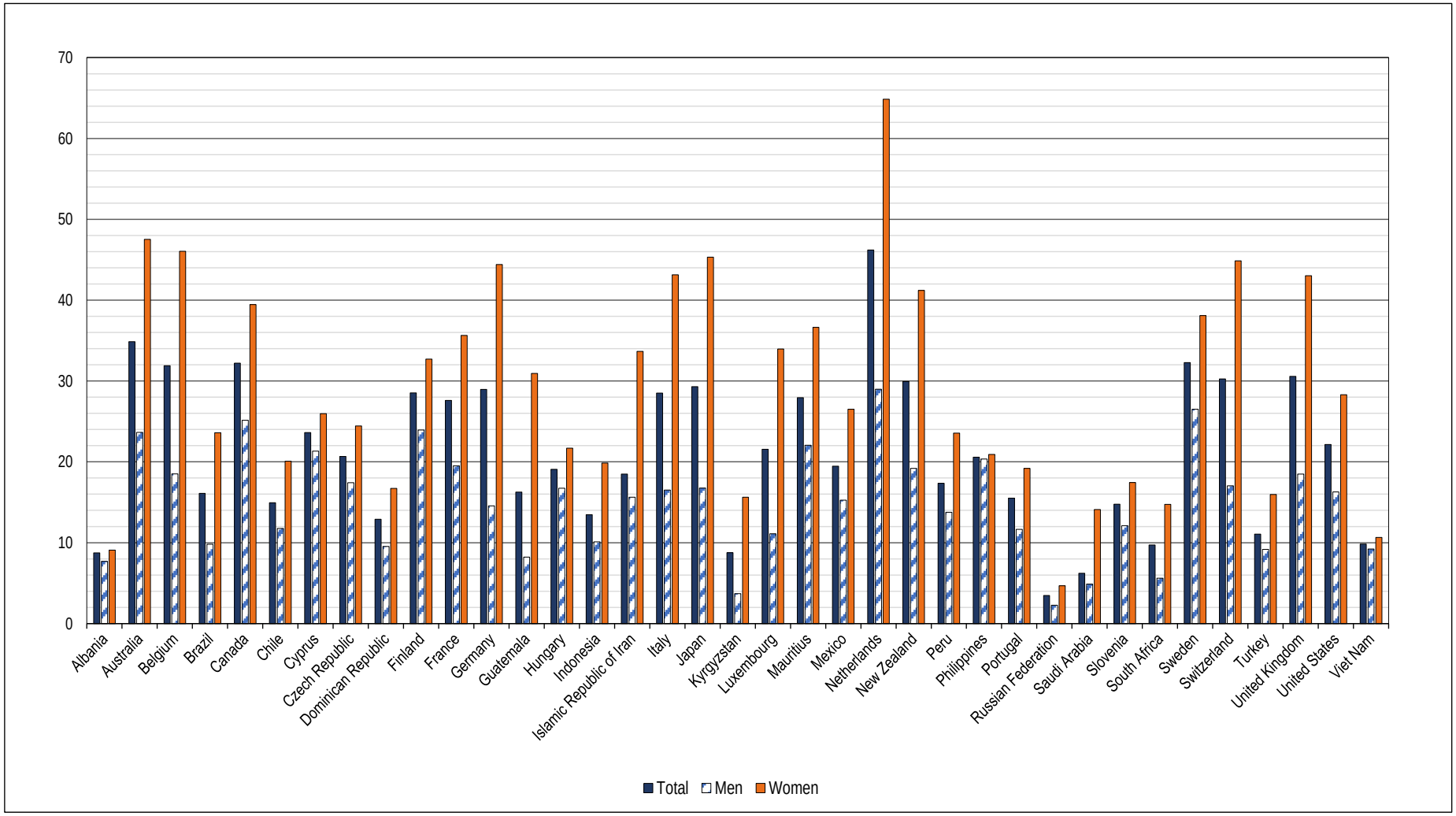
554. This is confirmed by recent reports indicating that nearly one in five employees worked part-time in Europe in 2014, most prominently in northern Europe. [6] For example, in the *Netherlands*, sometimes called the world's first "part-time economy", part-time work accounted for over 45 per cent of total wage employment, with nearly two-thirds (64.9 per cent) of women being employed part-time. Part-time work in Europe is most common in education, health and social services, other services and in retail and wholesale. [7] At the global level these are also the sectors with the highest relative concentration of women. [8]

[6] ILO: *Non-standard employment around the world: Understanding challenges, shaping prospects*, op. cit.

[7] ibid., pp. 76 and 125–126.

[8] ILO: *World Employment Social Outlook: Trends for women 2017* (Geneva, 2017), pp. 11–12; ILO: *Women at Work: Trends 2016*, p. 53.

Figure 5.2. Percentage of the workforce working less than 35 hours per week



Note: All data for 2015 (except *Australia* and *Brazil* – 2014, and *United States* – 2013).

Sources: Data based on ILOSTAT and national survey data.

555. Trends in part-time work vary outside Europe, with the overall percentage of part-time workers being low (under 10 per cent) in countries such as *Kyrgyzstan* and *Saudi Arabia*, and higher in *Australia*, *Canada* and *Japan*. Women make up the largest percentage of part-time workers in all countries. Over 40 per cent of women workers work under 35 hours per week in countries such as *Australia, Belgium, Germany, Italy, Japan, Netherlands, New Zealand, Switzerland* and *United Kingdom*. Even in countries where the total number of workers working fewer than 35 hours per week is below 15 per cent, such as *Dominican Republic, Saudi Arabia* and *South Africa*, women still make up the majority of those concerned.

556. In certain countries, part-time workers are defined as short-term contracted employees, rather than employees working under a certain number of hours per week. [9] In *Australia*, there is an overlap between part-time and casual employment, with most part-time workers being classified as casual, rather than permanent part-time employees. [10] The distinction is important in *Australia*, as permanent part-time workers enjoy better working and employment conditions than casual part-time workers who do not have access to paid leave (annual leave, carer's leave, parental leave). *Japan* is another notable exception, as part-time work is linked to status within the firm, rather than to the hours worked.

557. Another important consideration in the growth of part-time work in recent decades is whether it reflects a voluntary choice by workers, or is an involuntary situation resulting from the impossibility of finding suitable full-time work. [11] This can be analysed through the prism of time-related underemployment, defined as when persons: (a) are willing to work additional hours; (b) are available to work additional hours; and (c) have worked less than a given working time threshold (chosen according to national circumstances). [12] Based on the available data, ILO research shows that the time-related underemployment rate, as a percentage of total employment, ranges from around 5 per cent in Europe to around 15 per cent in Africa, and is considerably higher among women than men in all regions. [13] Despite national variations between countries, these data suggest that voluntary part-time work may correspond more closely to workers' preferences in Europe than in other regions, and that voluntary part-time work may concern men more than women.

558. Stereotyped perceptions and traditional attitudes regarding the role of women as caregivers increase the gender gap in part-time employment. In the services sector, for instance in retail or care work, many of the work opportunities that are created are for part-time work only and require skills that are often understood as "natural" to women. Involuntary regular or long-term part-time employment is a major source of inequality, both in respect of full-time employment and because it is often a characteristic of female employment in low-skilled jobs. This in turn can have an immediate impact on pay equity and long-term effects including on poverty in old age. Gender gaps in involuntary

[9] A.L. Kalleberg: "Nonstandard employment relations: Part-time, temporary, and contract work", in *Annual Review of Sociology*, 26, 2000, pp. 341–365; ILO: *Non-standard employment around the world: Understanding challenges, shaping prospects*, op. cit.

[10] ibid.

[11] OECD: "How good is part-time work?", in *OECD Employment Outlook 2010: Moving beyond the jobs crisis* (Paris, 2010), pp. 211–216.

[12] ILO: *Non-standard forms of employment*, Report for discussion at the Meeting of Experts on Non-Standard Forms of Employment, Geneva, 16–19 February 2015, p. 19.

[13] ibid.

part-time work are also widening. [14] In 2015, 42.4 per cent of female part-time workers cited "family and personal responsibilities" or "looking after children or incapacitated adults" as the reason for their part-time employment compared to 11.8 per cent of male part-time workers. In some cases, part-time work is used by employers specifically to reduce costs. The Committee has acknowledged that involuntary part-time work is problematic and has requested information from countries on the measures and policies adopted to address the situation of workers "trapped in involuntary part-time work", notably women and young persons. [15] Trade unions have also expressed concern in ILO meetings about involuntary part-time work in the case of workers who are seeking full-time employment to ensure a decent income. [16]

559. Another form of part-time work may be termed "marginal", and can be defined as work for fewer than 15 hours per week. [17] "Marginal" part-time work, involving very few hours, can be an attractive option for those who want paid work, but with limited hours. Nevertheless, in many instances, it is associated with a high level of variability and a lack of predictability of working hours and schedules, and can take the form of "on-call" work (see below). [18] In *Denmark, Germany, Netherlands* and *United Kingdom*, over 40 per cent of establishments employ at least some of their workers for fewer than 15 hours per week. [19] The term "marginal part-time work" is not universally accepted, as employers have expressed concern that the reference to fewer than 15 hours per week is arbitrary and might not suit some employees. [20]

560. In view of the importance of data collection in understanding the various forms of part-time work, the Committee has often requested member States to provide statistical information, disaggregated by sex and age, to better determine the extent to which Convention No. 175, is applied and its impact on the labour market. [21] ***The Committee urges member States to collect all relevant data, disaggregated by sex and depending on***

[14] ILO: *World Employment Social Outlook: Trends for women 2017* (Geneva, 2017), p. 14. See also in this regard GALLUP–ILO: *Towards a better future for women at work: Voices of women and men*, 2017, pp. 39 and 44.

[15] *Finland* – CEACR, Convention No. 175, direct request, published in 2014; *Italy* – CEACR, Convention No. 175, direct request, published in 2013. See also *Greece* – CEACR, Convention No. 111, observations, published in 2013 and 2015. See also more recently, *Belgium* – CEACR, Convention No. 100, observation, published in 2018; *Japan* – CEACR, Convention No. 100, observation, published in 2018; *Netherlands* – CEACR, Convention No. 100, observation, published in 2018; *Republic of Korea* – CEACR, Convention No. 100, direct request, published in 2018; *New Zealand* – CEACR, Convention No. 100, direct request, published in 2018; *Islamic Republic of Iran* – CEACR, Convention No. 111, observation, published in 2018; *Italy* – CEACR, Convention No. 111, observation, published in 2018; *Netherland*s – CEACR, Convention No. 111, observation, published in 2018; *Japan* – CEACR, Convention No. 156, observation, published in 2018; *Netherlands* – CEACR, Convention No. 156, observation, published in 2018.

[16] ILO: *Final report*, Tripartite Meeting of Experts on Working-time Arrangements, Geneva, 17–21 October 2011, p. 5.

[17] ILO: *Non-standard employment around the world: Understanding challenges, shaping prospects*, op. cit., p. 81.

[18] J. Messenger and P. Wallot: *The diversity of "marginal" part-time employment*, INWORK Policy Brief No. 7, ILO, Geneva, 2015. Women are also more likely than men to be in marginal part-time work, see ILO: *Women at Work: Trends 2016*, p. 55.

[19] A. Riedmann, G. van Gyes, A. Romain, A. Kerkhofs, S. Bechmann: *European company survey 2009*, European Commission, Luxembourg, 2010; ILO: *Non-standard employment around the world: Understanding challenges, shaping prospects*, op. cit.

[20] ILO: *Final report*, Tripartite Meeting of Experts on Working-time Arrangements, op. cit., p. 16.

[21] *Albania* – CEACR, Convention No. 175, direct request, published in 2011; *Cyprus* – CEACR, Convention No. 175, direct request, published in 2009; *Portugal* – CEACR, Convention No. 175, direct request, published in 2008.

national circumstances, other factors such as age, disability and origin, on part-time work. [22]

2. The main principles of Convention No. 175 and Recommendation No. 182

561. Part-time work emerged as an important aspect of the labour market in the latter part of the twentieth century. Until a few decades ago, it was assumed that the vast majority, if not all workers, would automatically conform to the standard pattern of full-time employment. The growth of part-time work in industrialized countries has coincided with the rise in women's labour market participation rates over recent decades and the increasing employment share of the services sectors. As it has become more widespread, employers have been more willing to offer part-time working arrangements and employees to accept them. In the early 1990s, there were already indications that part-time employment arrangements were becoming more widespread in countries undergoing the transition from centrally planned to market economies and in certain regions of the world, such as Latin America. [23] For these reasons, at its 251st Session (November 1991), the Governing Body of the International Labour Office decided to place on the agenda of the 80th Session (1993) of the International Labour Conference the question of part-time work.

562. In the early 1990s, ILO constituents had different views on part-time work and its importance in the labour market. Governments considered that there were advantages in spreading the available employment more widely, thereby reducing unemployment. Part-time work was also seen as a stepping stone to full-time employment. Certain governments therefore adopted measures to promote part-time work as a means of access to the labour market, particularly for young persons without work experience and the long-term unemployed, for whom part-time work might be the only realistic employment option available. [24] However, employers in many countries had shown a reluctance to make use of part-time work, partly due to the perception that it involved disadvantages, such as increased fixed costs for recruitment, training, personal equipment and personnel administration, scheduling difficulties and communication problems. [25] But, as employers in some countries found that labour costs were lower for part-time workers, this perception began to change. Although the low average wages of part-time workers were largely attributed to occupational, sectoral and skill differences, part-time workers in some countries received lower hourly pay than comparable full-time workers. More importantly, in many countries, large elements of non-wage costs, such as social security contributions, were not always payable in respect of part-time workers, especially those on relatively short hours. Employers who were favourable to part-time work viewed its greatest advantages in terms of enterprise flexibility and adjustment to operational needs, particularly in the retail sector, with the advent of the trend towards longer shop opening hours. [26]

563. The positions adopted by workers' organizations to the issue in the early 1990s reflected the dilemma that this form of employment constituted for established trade unions. On the one hand, many workers accepted part-time work because they could not

[22] The information provided to the Office should include data disaggregated by sex and age, by economic sector and as a time series (over a period of years to give a historical perspective).

[23] ILO: *Part-time work*, Report V(l), ILC, 80th Session, Geneva, 1993.

[24] ibid.

[25] ibid., p. 2.

[26] ibid., p. 2.

find full-time work or because of family responsibilities, they did not have the necessary time to take on a full-time job. Although part-time work responded to the aspirations of many workers, for many others it meant low wages, little social protection and few prospects of improving their employment situation. This was partly because labour legislation and welfare systems, which were largely designed for the full-time employment relationship, often left part-time workers with lower levels of protection and benefits than their full-time colleagues. [27] For these reasons, part-time work was viewed by workers' organizations as constituting a threat to the normal pattern of employment, that is, the regular full-time employment relationship. Non-standard forms of employment were seen by workers' organizations as part of a trend to divide the labour market into the "core" and "peripheral" workforce, which undermined their ability to organize effectively at the workplace and was seen as prejudicial to the general terms and conditions of employment of the workforce (particularly when associated with higher rates of unemployment). [28]

Box 5.1
Other ILO instruments addressing certain aspects of part-time work

The Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168), Article 5(4)(f) refers to the possibility of adapting social security schemes to the occupational circumstances of part-time workers; Article 10(3) requires member States to endeavour to provide the payment of benefits to part-time workers who are actually seeking full-time work. The total of benefits and earnings from their part-time work may be such as to maintain incentives to take up full-time work. Article 25(1) provides that each Member shall ensure that statutory social security schemes which are based on occupational activity are adjusted to the occupational circumstances of part-time workers, unless their hours of work or earnings can be considered, under prescribed conditions, as negligible. The Employment Promotion and Protection against Unemployment Recommendation, 1988 (No. 176), provides for guidance in Paragraphs 12 and 22.

Pursuant to Paragraph 58 of the Nursing Personnel Recommendation, 1977 (No. 157), the conditions of employment of temporary and part-time nursing personnel should be equivalent to those of permanent and full-time staff respectively, their entitlements being, as appropriate, calculated on a pro rata basis.

The Workers with Family Responsibilities Recommendation, 1981 (No. 165), takes into account that the terms and conditions of employment of part-time workers, many of whom have family responsibilities, should be adequately regulated and supervised (Paragraph 21(1)).

Pursuant to Paragraph 21(2) of Recommendation No. 165, the terms and conditions of employment, including social security coverage, of part-time workers … should be, to the extent possible, equivalent to those of full-time and permanent workers respectively; in appropriate cases, their entitlement may be calculated on a pro rata basis. Part-time workers should also be given the option to obtain or return to full-time employment when a vacancy exists and when the circumstances which determined assignment to part-time employment no longer exist (Paragraph 21(3)).

564. Although prior to the adoption of Convention No. 175 and Recommendation No. 182, certain ILO instruments took into account the specific circumstances and needs of part-time workers, there were no ILO standards specifically addressing their situation in a comprehensive manner. The great majority of the Committee's comments made on part-time work were related to the Employment Policy Convention, 1964 (No. 122), with its emphasis on the need for countries to pursue, as a major goal, an active policy designed

[27] ibid., p. 3.

[28] ibid., p. 76.

to promote full, productive and freely chosen employment. [29] The Committee also made a number of general comments in its General Reports in the late 1980s and early 1990s, noting that the development of atypical forms of employment (part-time work, temporary work, fixed-term contracts) was playing a part in reducing unemployment, while emphasizing that such arrangements were not always chosen voluntarily by workers and could be used to avoid basic minimum standards. [30] It also indicated its fear that certain "flexible" forms of work contract (part-time or temporary jobs largely concentrated on women in the service sector), while helping employer operations, could deprive these workers of the full-time employment that they might be seeking. [31]

565. The preparatory work for the part-time work instruments identified some of the concerns affecting labour protection for part-time work. The report prepared for the discussion noted that, although the provisions relating directly to part-time work contained in international labour standards were confined to certain aspects of part-time work and to certain categories of workers, it did not follow that part-time workers were not in general covered by the provisions of ILO Conventions and Recommendations. [32] In other words, these standards did not explicitly exclude part-time workers. However, the report also noted that, while part-time workers fell within the scope of existing international labour standards, the instruments were not specifically formulated to take into account the protection and promotion of part-time work. It added that the emergence of part-time work as an important phenomenon in the labour markets of industrialized countries in recent decades indicated the need for international labour standards dealing specifically with the protection and promotion of part-time employment. It concluded that, although existing ILO standards covered a number of important aspects of part-time work, the coverage was fragmented. [33] Convention No. 175 and Recommendation No. 182 are both designed to provide a more global approach to address the concerns of part-time workers. [34]

A. Definition of part-time work

566. A broad definition of part-time work is used in the instruments, which apply to all part-time workers, who are defined as employed persons whose normal hours of work are fewer than those of comparable full-time workers. [35] Normal hours of work can be calculated weekly or on average over a given period. [36] In order to promote equality in employment conditions and social protection coverage, it is necessary to define the term "comparable full-time worker" which, in accordance with Convention No. 175, refers to

[29] Article 1(1) of the Employment Policy Convention, 1964 (No. 122).

[30] ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations: General report and observations concerning particular countries*, Report III (Part 4A), ILC, 75th Session, Geneva, 1988, para. 56.

[31] ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations: General Report and observations concerning particular countries*, Report III (Part 4A), ILC, 76th Session, Geneva, 1989, para. 53.

[32] ILO: *Part-time work*, Report V(l), 1993, op. cit., p. 84. In addition to Convention No. 122, the Conventions identified in the report as being particularly applicable to part-time workers include the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Protection of Wages Convention, 1949 (No. 95), and the Equal Remuneration Convention, 1951 (No. 100).

[33] ibid., pp. 84–86.

[34] ibid., p. 86.

[35] Article 1(a) of Convention No. 175 and Paragraphs 2(a) and 3 of Recommendation No. 182.

[36] Article 1(b) of Convention No. 175 and Paragraph 2(b) of Recommendation No. 182.

a full-time worker who: "(i) has the same type of employment relationship; (ii) is engaged in the same or a similar type of work or occupation; and (iii) is employed in the same establishment or, when there is no comparable full-time worker in that establishment, in the same enterprise or, when there is no comparable full-time worker in that enterprise, in the same branch of activity, as the part-time worker concerned". [37]

567. The instruments also specify the categories of workers who are not considered part-time workers, namely "full-time workers affected by partial unemployment, that is by a collective or temporary reduction of their normal hours of work for economic, technical or structural reasons". [38] Convention No. 175 also indicates that Members may, "after consulting the representative organizations of employers and workers concerned, exclude wholly or partly from its scope particular categories of workers or of establishments from its scope when its application to them would raise particular problems of a substantial nature". [39] Countries that make use of this flexibility clause have to include in their reports on the application of the Convention information on the categories of workers or establishments excluded from its scope, and the reasons for such exclusion. [40]

B. Equal treatment between part-time and full-time workers

568. The principle of equal treatment between part- and full-time workers lies at the heart of the part-time work instruments, based on the promotion of equality of employment conditions and social protection coverage for part- and full-time workers in similar positions. The intention is to protect against unequal treatment arising out of the contractual status of part-time workers.

569. The instruments therefore cover a number of issues on which equal treatment for part-time workers is important. Convention No. 175 provides that part-time workers are entitled to the same protection as comparable full-time workers in respect of the right to organize, bargain collectively and act as workers' representatives, occupational safety and health, and discrimination in employment and occupation. [41] The Convention also calls for measures to be taken to ensure that part-time workers enjoy conditions equivalent to those of comparable full-time workers with regard to maternity protection, termination of employment and other entitlements (including paid annual leave, paid public holidays and sick leave). [42] Recommendation No. 182 adds that the same rules should apply to both full-time and part-time workers with respect to the scheduling of annual leave and work on customary rest days and public holidays. [43] It also calls for part-time workers to have access, on an equitable basis, and as far as possible under equivalent conditions, to all forms of leave available to comparable full-time workers, in particular paid educational leave, parental leave and leave in cases of illness of a child or another family member of a worker's immediate family. [44]

[37] Article 1(c) of Convention No. 175 and Paragraph 2(c) of Recommendation No. 182.

[38] Article 1(d) of Convention No. 175.

[39] Article 3(1) of Convention No. 175.

[40] Article 3(2) of Convention No. 175.

[41] Article 4 of Convention No. 175.

[42] Article 7 of Convention No. 175.

[43] Paragraph 14 of Recommendation No. 182.

[44] Paragraph 13 of Recommendation No. 182.

570. The principle of equal treatment for part-time workers may also include the application of proportionality, where appropriate. Thus, while access to some conditions may be equal between part-time workers and comparable full-time workers, payments or entitlements may be allocated to a part-time worker in proportion to the hours worked, based on the applicable employment or social protection system. Convention No. 175 provides that the wage of a part-time worker, "calculated proportionately on an hourly, performance-related, or piece-rate basis", must not be lower than that of a comparable full-time worker solely because she or he works part-time. [45] The pro rata rule is also applicable to pecuniary entitlements relating to maternity leave, termination of employment, paid annual leave and paid public holidays, and sick leave. [46] Recommendation No. 182 adds that part-time workers should benefit on an equitable basis from financial compensation, in addition to basic wages, which is received by a comparable full-time worker. [47] It also calls for measures to be taken, as far as practicable, to ensure that part-time workers have access on an equitable basis to the welfare facilities and social services of the establishment, which should be adapted to take their needs into account. [48]

571. Equal treatment and proportionality between part-time and comparable full-time workers is also applicable with regard to statutory social security schemes. Convention No. 175 provides that social security schemes which are based on occupational activity are to be adapted so that part-time workers enjoy conditions equivalent to those of comparable full-time workers, which may be determined in proportion to hours of work, contributions or earnings, or through other methods consistent with national law and practice. [49] The Convention allows part-time workers whose hours of work or earnings are below specified thresholds to be excluded from statutory social security schemes, except in regard to employment injury benefits, and from other measures set out in Article 7, except maternity protection measures other than those provided under statutory social security schemes. [50] The most representative organizations of employers and workers have to be consulted on the establishment, review and revision of such thresholds, which must be sufficiently low as to not exclude an unduly large percentage of part-time workers. However, in seeking to improve some of these conditions for part-time workers, Recommendation No. 182 calls for threshold requirements for access to coverage to be progressively reduced to allow part-time workers to be covered as widely as possible. [51] Also, where part-time workers have more than one job, their total hours of work, contributions or earnings should be taken into account in determining whether they meet threshold requirements in statutory social security schemes based on occupational activity. [52]

[45] Article 5 of Convention No. 175.

[46] Article 7 of Convention No. 175.

[47] Paragraph 10 of Recommendation No. 182.

[48] Paragraph 11 of Recommendation No. 182.

[49] Article 6 of Convention No. 175.

[50] Article 8 of Convention No. 175.

[51] Paragraphs 7 and 8 of Recommendation No. 182.

[52] Paragraph 9 of Recommendation No. 182.

C. Productive and freely chosen part-time work

572. The employment-related rights and entitlements available to full-time workers have not always been available to part-time workers, which has limited the attraction of part-time work. While the principle of equal treatment is important, other measures need to be taken to ensure that productive and freely chosen part-time work is a viable option.

573. Convention No. 175 requires the adoption of measures to facilitate access to productive and freely chosen part-time work which meets the needs of both employers and workers, and ensures the protection described above. [53] These measures include: a review of laws and regulations that may prevent or discourage recourse to part-time work; the use of employment services to identify and publicize possibilities for part-time work in their information and placement activities; and employment policies that pay special attention to the needs and preferences of specific groups, such as the unemployed, workers with family responsibilities, older workers, workers with disabilities and workers undergoing education or training. [54] Recommendation No. 182 calls for employers to consult the representatives of the workers concerned on the introduction or extension of part-time work on a broad scale, on the applicable rules and procedures and on any protective and promotional measures. [55] It encourages employers to adopt measures to facilitate access to part-time work at all levels of the enterprise, including skilled and managerial positions where appropriate. The Recommendation adds that measures should be taken to overcome specific constraints on the access of part-time workers to training, career opportunities and occupational mobility. [56] The focus on training in the Recommendation is important, as this is a limitation that often negatively affects the career prospects of part-time workers.

574. To ensure that part-time work is freely chosen, it is important to offer the possibility of transferring from full-time to part-time work and vice versa. This is particularly key to facilitate the re-entry of parents returning from maternity and parental leave wishing to reintegrate the paid labour force and to help avoid the "part-time trap". [57] In this respect, the Convention provides that measures shall be taken to ensure that transfer from full-time to part-time work and vice versa is voluntary, in accordance with national law and practice. [58] The Recommendation adds that employers should give consideration to requests by workers for transfer from full-time to part-time work that becomes available in the enterprise, and also for transfer from part-time to full-time work. [59] Where national or establishment-level conditions permit, workers should be able to transfer to part-time work in justified cases, such as pregnancy or the need to care for a young child or a disabled or sick member of a worker's immediate family, and subsequently to return to full-time work. Under the terms of the Recommendation, a worker's refusal to transfer from full-time to part-time work or vice versa should not in itself constitute a valid reason for termination of employment, without prejudice to termination, in accordance with

[53] Article 9(1) of Convention No. 175.

[54] Article 9(2) of Convention No. 175.

[55] Paragraph 4 of Recommendation No. 182.

[56] Paragraph 15 of Recommendation No. 182.

[57] J.C. Messenger and N. Ray: "The 'deconstruction' of part-time work", in J. Berg (ed.): *Labour markets, institutions and inequality* (Cheltenham, Edward Elgar Publishing, 2015), pp. 184–210.

[58] Article 10 of Convention No. 175.

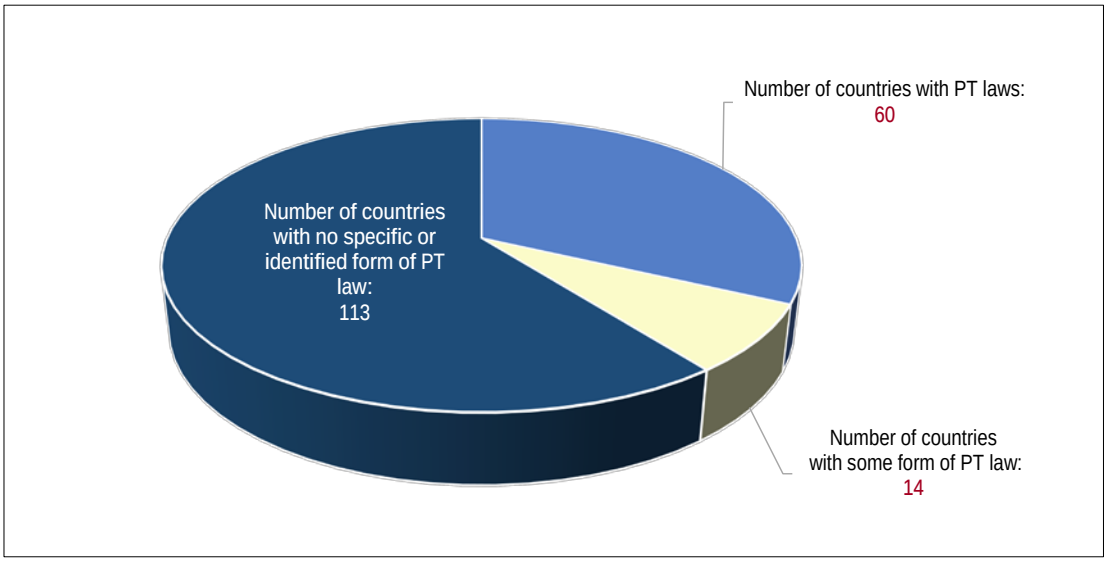
[59] Paragraph 18 of Recommendation No. 182.

national law and practice, for other reasons such as may arise from operational requirements of the establishment concerned. [60]

Box 5.2
Countries with national legislation on part-time work

Although only 17 countries have ratified Convention No. 175, around 60 countries reported, in the context of this General Survey on working time, that their national legislation addresses at least some key dimensions of part-time work (such as the definition of part-time workers and anti-discrimination measures), and a further 14 countries have also been identified as having legislation that addresses part-time work in some form. It would therefore appear that the legislation in almost half of ILO member States addresses part-time work.

Figure 5.3. Countries with national legislation on part-time work



575. ***The Committee wishes to observe that, although only 17 member States have ratified Convention No. 175, many other countries have legislation that address the opportunities for and challenges of part-time work, and may provide a starting point towards ratification of the Convention in the future***.

[60] Paragraph 19 of Recommendation No. 182.

3. Implementation of Convention No. 175 and Recommendation No. 182

3.1. Implementation at national level

A. Definitions of part-time work at national level

Box 5.3

Article 1 of Convention No. 175 provides that:

For the purposes of this Convention:

(a) the term "part-time worker" means an employed person whose normal hours of work are less than those of comparable full-time workers;

(b) the normal hours of work referred to in subparagraph (a) may be calculated weekly or on average over a given period of employment;

(c) the term "comparable full-time worker" refers to a full-time worker who:

(i) has the same type of employment relationship;

(ii) is engaged in the same or a similar type of work or occupation; and

(iii) is employed in the same establishment or, when there is no comparable full-time worker in that establishment, in the same enterprise or, when there is no comparable full-time worker in that enterprise, in the same branch of activity, as the part-time worker concerned;

(d) full-time workers affected by partial unemployment, that is by a collective and temporary reduction in their normal hours of work for economic, technical or structural reasons, are not considered to be part-time workers.

576. When placing the item on part-time work on the agenda of the Conference, the Governing Body drew attention to certain distinctions in order to clarify the category of workers on whom the standards would focus. A major concern was the tendency to group part-time workers with other groups of workers whose situation was considered to be "non-standard" or "atypical". [61] The emphasis of the proposed instruments on part-time work was to cover workers whose hours of work were shorter than the normal hours of full-time workers in the same branch or establishment.

577. The legislation in many countries uses variants of the wording contained in Convention No. 175 and Recommendation No. 182 to define part-time work. For example, in *Albania*, the Labour Code provides that: "Through the part-time employment contract, the employee accepts to work on the basis of hours, half or complete working days for a normal weekly or monthly duration, which are shorter than those of full-time employees working under the same conditions". [62] The term "comparable full-time worker" is also used in the legislation in several other countries. [63]

578. The legislation in other countries adopts a different approach that focuses on defining part-time work as being less than full-time working hours, rather than those of a comparable full-time worker in the same enterprise or activity, and therefore relies on the national definition of full-time working hours. In *Burkina Faso*, part-time work is defined as a "contract of employment the duration of which is less than the statutory weekly hours

[61] ILO: *Part-time work*, Report V(l), 1993, op. cit., p. 5.

[62] Article 14(1) of the Labour Code.

[63] *Algeria, Belgium, Plurinational State of Bolivia, Croatia, Japan, Republic of Korea, Malta, Mauritius, Portugal, Romania* and *Spain.*

of work or a duration that is considered to be equivalent. Where a worker's weekly working time is less than 40 hours or the hours considered as equivalent in non-agricultural establishments, she or he is considered to be a part-time worker". [64] The Labour Law in *Bosnia and Herzegovina* provides that the "labour contract may be concluded for full-time or part-time work. Full-time work shall be 40 hours per week, unless otherwise defined to be shorter in accordance with the law, a collective agreement, a rule book on labour or a labour contract. Part-time work shall be considered working hours shorter than full-time work". [65] The definition of full-time working hours, rather than comparable workers or enterprises, is also used in other legal systems. [66]

579. The concept of hours averaging is used to define part-time working hours or workers in some legal systems, sometimes in combination with a comparable definition of full-time hours. For example, in *Cabo Verde*, a part-time worker is defined as "a person whose normal working hours, calculated on a weekly basis, or on average for a period of up to one year, less than that of a full-time worker in a comparable situation". [67] Hours averaging can allow some flexibility in the allocation of part-time working hours, which may have both positive and negative consequences for workers and employers, depending on how hours are allocated and the period identified. Most legal systems that use this system limit the averaging of part-time working hours to one year. [68]

580. Another approach adopted is to base the legal definition of part-time work on the number of hours worked per day, per week, or a combination, that is less than full-time working hours. This approach offers the advantage that the working hours that define part-time work are set out in unambiguous terms. One country where this approach is adopted is *Angola*, where the Labour Code provides that "Part-time work is work in which the worker carries out the activity for up to a maximum of five hours during the normal day period and four hours during the normal night period". [69] In the *Seychelles*, a "part-time worker" means a worker other than a casual worker who works for the same employer for a period less than 25 hours a week or, irrespective of the hours worked, for a period less than three days a week. [70] Variants of these definitions are found in other countries. [71]

581. Percentages of full-time daily working hours, weekly working hours, or both, are also used in legal definitions of part-time work. The level at which the percentage is set can play an important role in determining whether work is truly part time, or whether it borders on full-time work. The Labour Code in *Mali* defines part-time work as "working hours that are at least one fifth shorter than normal hours of work, as set by law or collective agreement". [72] The legislation in other countries also adopts this method. [73] The legislation in *Malaysia* has taken the unique approach of specifying an upper and a lower limit to determine a part-time employee, and provides that: "'part-time employee' means a person … whose average hours of work per week, as agreed between him and his

[64] Section 47 of the Labour Code.

[65] Article 36 of the Labour Law.

[66] *France, Estonia, Latvia, Madagascar* and *Syrian Arab Republic.*

[67] Section 176 of the Labour Code.

[68] *Cyprus, Iceland, Malta* and *Portugal.*

[69] Section 102(1) of the Labour Code.

[70] Regulation 2 of the Employment (Conditions of Employment) Regulations, 1991.

[71] *China, Côte d'Ivoire, Kazakhstan, Kyrgyzstan, Lithuania, Peru, Romania, Samoa* and *Singapore.*

[72] Section L.133 of the Labour Code.

[73] *Argentina, Montenegro, Mozambique, Senegal* and *Tunisia.*

employer … are more than thirty per centum but do not exceed seventy per centum of the normal hours per week of a full-time employee employed in a similar capacity in the same enterprise". [74]

582. The growth of different types of contracts has had a substantial impact on legal definitions of part-time work, as multiple types of part-time contracts are accepted in some countries. However, the use of multiple definitions may result in administrative difficulties for employers and workers if the different definitions formulated by the legislation are not clear. For example, in *Bulgaria*, there are two types of part-time work: agreed part-time work and part-time work introduced by the employer. Agreed part-time work is based on the understanding that the worker and the employer fix the length of normal working time and the allocation of hours (for example on a daily basis, or on certain days of the week). Part-time work introduced by the employer refers to full-time employees being able to convert to part-time work for a period of up to three months. [75]

583. The definition of part-time work or workers is not always determined directly in national labour legislation. For example, in *Australia*, the distinction between permanent part-time employees and part-time casual employees is defined by the Modern Australian Awards System. [76] The definition of part-time workers in national legislation may also be more limited. For example, the legislation on part-time work in *Ecuador* only applies to certain days of the week, as it provides that it is a type of work in which a worker is required to provide the employer with lawful and personal services on Saturdays, Sundays and mandatory rest days, for full or partial days. [77] The definition of part-time work in such cases therefore addresses very specific employment and labour market issues, but this approach may neglect the needs of broader groups of part-time workers who may not meet the conditions established in these legal provisions.

584. ***The Committee wishes to emphasize that the existence of a substantive definition of part-time work or worker in national legislation can be of benefit to both workers and employers in providing essential guidance on the difference between full-time and part-time employment and how it is to be considered in public policies or collective agreements that may seek to distinguish between these types of workers. The Committee also wishes to underline the importance of ensuring that the definition of part-time work is not framed in such a way as to create gaps that deprive workers from the rights recognized in Convention No. 175.***

[74] Section 2 of the Employment (Amendment) Act, 2012.

[75] Articles 138(1) and 138(a) of the Labour Code.

[76] Report submitted under article 22 of the ILO Constitution, 2013, on Convention No. 175. According to the Fair Work Ombudsman, a part-time employee works on average fewer than 38 hours per week. Part-time employees who usually work regular hours each week are entitled to the same benefits as full-time employees, but on a pro rata basis, as a permanent employee or on a fixed-term contract. Casual part-time workers usually work irregular hours, and do not benefit from paid sick leave or annual leave.

[77] Section 50 of the Act on the *Maquila* and part-time labour contracting. This type of contract can only be concluded with workers who are not already employed under the normal 40-hour week (section 57).

B. Scope of application

Box 5.4

Article 3 of Convention No. 175 provides that:

1. This Convention applies to all part-time workers, it being understood that a Member may, after consulting the representative organizations of employers and workers concerned, exclude wholly or partly from its scope particular categories of workers or of establishments when its application to them would raise particular problems of a substantial nature.

2. Each Member having ratified this Convention which avails itself of the possibility afforded in the preceding paragraph shall, in its reports on the application of the Convention under article 22 of the Constitution of the International Labour Organization, indicate any particular category of workers or of establishments thus excluded and the reasons why this exclusion was or is still judged necessary.

585. During the preparatory work, it was specified that the proposed instruments were not intended to cover other types of non-standard or atypical work, such as temporary, casual or seasonal work, or workers engaged in temporary, seasonal or casual employment relationships, unless they work shorter hours than their full-time colleagues. [78]

586. Although the instruments cover all part-time workers, exclusions are allowed for certain categories of workers, after consulting workers' and employers' organizations. However, member States which avail themselves of such exclusions are required to provide explanations to the supervisory bodies.

587. National legislation may exclude certain categories of workers from the application of the provisions on part-time work for a number of different reasons. Some groups of workers may be covered by legislation other than labour law, including public sector workers, as well as the police and the armed forces. In some cases, the situation is more complex. For example, the Fair Work Act in *Australia* does not apply to state public and local government employees in the States of Western Australia, New South Wales, Queensland, South Australia and Tasmania. [79] Federal law in *Canada* does not define part-time work, but in the provinces of Newfoundland, Labrador and Nunavut provincial public sector regulations provide guidance on how to address part-time work. [80] In the *United States*, the Fair Labor Standards Act (FLSA) applies equally to full-time and part-time workers. Under the Employee Retirement Income Security Act (ERISA), a part-time employee who works 1,000 hours or more for a company during a calendar year is treated exactly in the same way as a full-time employee for purposes of qualifying for retirement coverage. Certain State legislations address part-time employment. For instance, section 556 of the California Labor Code provides that employees are not entitled to a weekly rest day when the total hours of employment do not exceed 30 hours in any week or six hours in any one day thereof. In *Japan*, part-time work is addressed by separate legislation for national and local government employees. [81]

588. In some countries, part-time work laws are not applicable to seasonal or casual workers, while in others their application is restricted to workers who earn above a certain income threshold, or excludes those who are considered to be in managerial positions.

[78] ILO: *Part-time work*, Report V(l), 1993, op. cit., p. 5.

[79] Article 22 report on Convention No. 175, 2013.

[80] Newfoundland and Labrador: Labour Standards Regulation, Labour Standards Act, Hours of Work Policy; Nunavut: Public Service Regulations, 1990.

[81] National public sector workers are governed by the National Public Service Act and the Rules of the National Personnel Authority. Local public sector workers are governed by the Local Public Sector Workers Act.

Casual, seasonal and daily workers who are excluded from the part-time work provisions of the national legislation may be covered by other provisions in national law, which may concern a large number of workers in certain countries, particularly in sectors where such types of work are prevalent, such as agriculture. In some countries, this type of work is addressed as seasonal work. [82] In other cases, coverage may depend on consistency of working hours over a certain period, particularly in the case of daily, irregular or intermittent work. In some countries, the workers concerned may be covered by specific legislation. [83]

589. In certain countries, lists have been developed of specific categories of workers who are excluded from part-time work provisions. While some are excluded because they are covered by other legislation, others are excluded without further protection. For example, the legislation in *Singapore* excludes managers and executives earning over 4,500 Singaporean dollars (SGD) a month as their basic salary, who may not be covered by other laws, but also excludes seafarers and domestic workers, who are covered by other legal provisions. [84] In some countries, it appears that action is being taken to extend legal protection to part-time workers who may historically have been excluded from the general provisions on part-time work.

590. ***The Committee encourages governments, in consultation with the social partners, to review periodically existing exclusions affecting part-time workers and, where appropriate, to examine the possibility of extending the scope of the legal provisions on part-time work.*** [85]

C. Equal treatment

591. The principle of equal treatment is an important dimension of part-time work. The approach adopted in the part-time work instruments is based on promoting equality of treatment in employment conditions and social protection coverage between part-time and full-time workers in similar positions. The intention is to provide protection against disadvantages which may arise out of the contractual status of part-time workers.

592. In certain cases, part-time workers may not benefit from certain forms of protection because they work too few hours or do not earn enough to meet specific legal thresholds for full protection under national legislation. One of the main concerns expressed during the preparatory work related to the level of discrimination experienced by part-time workers due to their shorter working hours. Such discrimination can arise in several ways. First, part-time workers may be excluded from coverage by regulations or collective agreements based on their number of hours worked or earnings. Second, they may be subject to what might be termed "less than proportional" treatment through the payment of lower wage rates for the same work or work of equal value. [86] Third, a social benefit or labour protection provision may be designed in such a way that it does not take into account the circumstances associated with part-time work. Finally, there may be de facto discrimination in terms of work schedules and training and career development opportunities. It was therefore important to consider the metric that could be used to help ensure part-time workers would not be on the short end of labour protection. For this

[82] *Madagascar* – section 51 of the Labour Code.

[83] *Madagascar* – section 46 of the Labour Code; *Philippines* – DOLE, "Explanatory bulletin on part-time employment", 1996.

[84] *Singapore* – Employment Act.

[85] Article 3(2) of the Convention.

[86] ILO: *Part-time work*, Report V(l), 1993, op. cit., p. 31.

reason, the rights, protections, and terms and conditions of employment for part-time workers have generally been measured in comparison to the treatment enjoyed by comparable full-time workers. [87] Convention No. 175 addresses this concern in different ways.

(a) Right to the same protection

Box 5.5

Article 4 of Convention No. 175 provides that:

Measures shall be taken to ensure that part-time workers receive the same protection as that accorded to comparable full-time workers in respect of:

(a) the right to organize, the right to bargain collectively and the right to act as workers' representatives;

(b) occupational safety and health;

(c) discrimination in employment and occupation.

593. From the reports provided for this General Survey, the Committee notes that most countries do not make a distinction between full-time and part-time workers in relation to the rights set out in Article 4 of Convention No. 175. The labour legislation in many countries does not distinguish between workers on the basis of their hours of work, but rather in terms of their employment status. This group of countries may be described as providing "universal coverage" for legal protection in relation to the right to: organize, bargain collectively and act as workers' representatives; the right to occupational health and safety (OSH); and protection against discrimination in employment and occupation. [88]

594. While these labour rights are protected by labour law in most countries, some or all of these rights may also be based on the rights set out in the national Constitution. The Government of *Brazil* reports that, in light of the constitutional right to equality, all employees, including those in part-time work, have the right to organize and bargain collectively, the right to OSH and the right to protection against discrimination. [89] In *Costa Rica*, where the labour legislation does not contain a definition of part-time work, all of these rights are applicable under the Constitution and the labour legislation, which applies to all workers without exception. [90] In other countries, constitutional protections, in conjunction with the labour rights established in labour law, apply mainly to freedom of association and the right to bargain collectively. [91]

[87] ibid., p. 31.

[88] *Albania, Australia, Austria, Bangladesh, Bosnia and Herzegovina, Brazil, Burkina Faso, Chile, Colombia, Costa Rica, Côte d'Ivoire, Croatia, Czech Republic, Denmark, Dominican Republic, Ecuador, Egypt, Equatorial Guinea, Estonia, Finland, France, Germany, Guyana, Hungary, Iceland, Islamic Republic of Iran, Japan, Republic of Korea, Latvia, Lithuania, Luxembourg, Madagascar, Mali, Mauritius, Mexico, Netherlands, New Zealand, Nicaragua, Peru, Philippines, Portugal, Rwanda, Singapore, Spain, Sweden, Syrian Arab Republic, the former Yugoslav Republic of Macedonia, Tunisia, United States, Bolivarian Republic of Venezuela* and *Zimbabwe*.

[89] *Brazil* – the right to organize and bargain collectively – articles 5(XVII) and 8 of the Constitution and sections 511 et seq. of the Consolidation of Labour Laws (CLT); occupational safety and health – article 7(XXII) of the Constitution and section 154 of the CLT; and discrimination – article 7(XXX), (XXXI) and (XXXII) of the Constitution.

[90] *Costa Rica* – the Constitution provides for equality before the law (articles 33 and 68), the right to organize (article 60), the right to strike and lock out (article 61), occupational safety and health (article 66) and the right to social security (article 73). The respective provisions of the Labour Code apply to all workers, without exception relating to hours of work.

[91] *Kenya* – Constitution; workers' rights are also set out in the Labour Relations Act, 2007; *Philippines* – article XIII(3) of the Constitution and section 243 of the Labour Code; *Ukraine* – the right to organize is guaranteed

595. In some countries, not all of the rights set out in Article 4 of Convention No. 175 are protected, although comparable protection between full-time and part-time workers exists in relation to specific rights, such as freedom of association and collective bargaining. It should be recalled that the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in accordance with Article 2, applies to "Workers and employers, without distinction whatsoever" [92] and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), refers simply to "workers". At national level, in some countries these rights are applicable under the labour legislation to all workers, including part-time workers.

596. The situation is similar regarding the application of OSH rights to part-time workers. In principle, the level of OSH protection afforded to workers does not vary on the basis of hours of work. The Occupational Safety and Health Convention, 1981 (No. 155), which sets out the basic principles of OSH policy, applies to all employed persons. At the national level, the OSH legislation in many countries applies to all workers. [93] For example, in *Poland*, the Labour Code requires employers to "guarantee safe and hygienic working conditions to the employees". [94] The Government of *El Salvador* reports that the Directorate-General of Labour is responsible for ensuring that part-time workers receive the same protection as full-time workers with regard to OSH and for verifying the internal labour rules that companies submit for approval.

597. With regard to the prevention of discrimination in employment and occupation against part-time workers, the legal measures adopted are not as straightforward as those respecting industrial relations and OSH. With the evident exception of the part-time work instruments, international labour standards are not generally formulated to take specifically into account the protection and promotion of part-time work. Nevertheless, Convention No. 111, which covers all workers, has played an important role in providing protection against discrimination and promoting equality of opportunity and treatment in employment or occupation based on sex (among other grounds of discrimination), which is of great importance for part-time workers, who are in the majority, women. Similarly, the Equal Remuneration Convention, 1951 (No. 100), also plays a key role in eliminating gender-based wage discrimination. [95] Article 4 of Convention No. 175 recalls that part-time workers should enjoy full protection against discrimination on all prohibited grounds.

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by the Constitution (article 36), the Labour Code (section 243) and the Trade Unions (Rights and Guarantees of Activity) Act; the right to collective bargaining is guaranteed by the Constitution, the Labour Code (section 14), the Collective Agreements Act, the Trade Unions (Rights and Guarantees of Activity) Act and the Employers' Organizations (Associations, Rights and Guarantees of Activity) Act); *Zimbabwe* – articles 5 and 65(2) of the Constitution, as well as the Labour Act.

[92] Article 9(1) of Convention No. 87 provides that: "The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations." Article 5(1) of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), contains the same wording, while Article 6, in relation to public sector workers, provides that: "This Convention does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way."

[93] *India*, *Jamaica*, *Malawi*, *Oman*, *Serbia*, *Slovakia*, *Switzerland* and *Uzbekistan*.

[94] Section 15 of the Labour Code.

[95] See for example: *Japan* – CEACR, Convention No. 100, observations, published in 2015 and 2018; *Republic of Korea* – CEACR, Convention No. 100, observations, published in 2014 and 2018; *Netherlands* – CEACR, Convention No. 100, observation and direct request, published in 2018; *Spain* – CEACR, Convention No. 100, observation, published in 2015. For further analysis on the impact of part-time work on the gender pay gap, see J. Rubery and A. Koukiadaki: *Closing the gender pay gap: A review of the issues, policy mechanisms and international evidence* (Geneva, ILO, 2016).

598. In some countries, the broad non-discrimination legislation is applicable to part-time workers, which is undoubtedly entirely appropriate in cases where part-time workers form part of a group that tends to face discrimination, such as women and ethnic minorities. [96] In other countries, specific legal provisions address discrimination against part-time workers. [97] The Government of the *Republic of Korea* reports that it has enacted legislation to protect part-time workers, including the prohibition of unreasonable discrimination against them. [98] ***The Committee observes that the existence of anti-discrimination measures specifically designed to address the situation of part-time workers can help to ensure that workers and employers know their respective rights and responsibilities as they relate to part-time work.***

(b) Right to equivalent employment conditions

Box 5.6

Article 7 of Convention No. 175 provides that:

Measures shall be taken to ensure that part-time workers receive conditions equivalent to those of comparable full-time workers in the fields of:

(a) maternity protection;

(b) termination of employment;

(c) paid annual leave and paid public holidays; and

(d) sick leave

it being understood that pecuniary entitlements may be determined in proportion to hours of work or earnings.

599. Many laws and policies on employment conditions contain thresholds based on full-time working hours, which are often not met by part-time workers. The employment conditions involved may include maternity protection, termination of employment rights, paid annual leave and paid public holidays, sick leave and wages. The central concern in this respect is whether or not part-time workers have access to these benefits, under conditions equivalent to those of comparable full-time workers.

600. The question also arises of the cases in which part-time workers should be paid a part or proportion of entitlements in relation to comparable full-time workers, or in other words of whether the legal principle of "*pro rata temporis*", defined as a rate proportional to the time worked should apply to part-time workers with regard to financial benefits. The preparatory work for the part-time work instruments noted that proportional or pro rata payment of financial benefits had already been discussed and implemented in a number of countries, and that the Employer representatives agreed that financial benefits should be paid on a pro rata or proportional basis. [99] The Worker representatives did not oppose the pro rata payment of benefits, on condition that payment was based on a clear ratio between part-time and comparable full-time jobs. [100] Indeed, the principle of pro rata

[96] *Bulgaria* – section 8(3) of the Labour Code; *Cabo Verde* – sections 15 and 177(2) of the Labour Code; *Georgia* – section 2 of the Labour Code; *Kazakhstan* – Labour Code.

[97] *Belgium* – Act of 2002; *Estonia* – section 111 of the Equal Treatment Act; *Poland* – section 113 of the Labour Code; *Sweden* – section 3 of Act No. 293/2002 on the prohibition of discrimination against employees working part time and employees with fixed-term employment.

[98] Act on the protection of fixed-term and part-time workers.

[99] ILO: *Part-time work*, Report V(l), 1993, op. cit., p. 74.

[100] ibid., p. 78.

benefits had already been endorsed in the 1975 ILO Declaration on Equality of Opportunity and Treatment for Women Workers, which acknowledged that women made up the majority of part-time workers and that measures needed to be taken to ensure equality of treatment, including the pro rata payment of fringe benefits. [101] The pro rata payment of benefits is also addressed in other international labour standards. [102]

601. The approach adopted in the part-time work instruments has found expression in Council Directive 97/81/EC and its implementation in EU Member States. The Directive recognizes the principle of non-discrimination between full-time and part-time workers and allows Member States to apply the proportionality rule to quantifiable rights derived from working time (including wages, social contributions, indemnities and performance per unit of time), while absolute equality applies to basic rights that are not quantifiable (such as trade union rights, OSH protection and non-discrimination in employment and occupation).

602. Recommendation No. 182 provides that part-time workers should have access on an equitable basis, and as far as possible under equivalent conditions, to all forms of leave available to comparable full-time workers, in particular paid educational leave, parental leave and leave in the case of illness of a child or another family member of the worker's immediate family. Where appropriate, they should benefit from the same rules as comparable full-time workers in respect of the scheduling of annual leave, customary rest days and work on public holidays. [103]

(i) Maternity protection

603. As both figures 5.1 and 5.2 at the beginning of this chapter highlighted, the majority of part-time workers are women. A large number of them are of child-bearing age and for this reason, maternity protection is particularly important for part-time workers. At the time prior to and during the development of Convention No. 175, it was recognized that maternity protection would need to be included. The standard that was used was Convention No. 103, which provided guidance on how benefits were to be paid, labour protections, and responsibilities of the employer and the worker. Since the adoption of Convention No. 175 in 1994, the Conference adopted the Maternity Protection Convention, 2000 (No. 183), which updated the responsibilities, protections, and benefit payments system that had been proposed in the earlier Convention No. 103. As these standards have different requirements for maternity leave and benefits, the different regimes created by these standards will also affect part-time workers.

604. Many countries make no distinction in national law and policy between part-time workers and comparable full-time workers with regard to maternity rights. [104] For example, the legislation in *Germany* provides that, if a part-time worker performs work within the framework of a contract, the worker is subject to the same conditions of employment and social insurance as other employees with regard to both benefits respecting pregnancy and

[101] ILO: *Equality of opportunity and treatment for women workers*, ILC, Report VIII, 60th Session, Geneva, 1975.

[102] Paragraph 21 of the Family Responsibilities Recommendation, 1981 (No. 165), and Paragraph 18(1) of the Nursing Personnel Recommendation, 1977 (No. 157).

[103] Paragraphs 13 and 14 of Recommendation No. 182. However, in the *United States*, the Family and Medical Leave Act (FMLA) applies only to employees having at least 1,250 hours of service for the employer during the 12-month period immediately preceding the leave.

[104] *Albania, Algeria, Australia, Azerbaijan, Burkina Faso, Costa Rica, Côte d'Ivoire, Croatia, Ecuador, El Salvador, Estonia, Germany, Honduras, Hungary, Iceland, Islamic Republic of Iran, Republic of Korea, Madagascar, Nicaragua, Norway, Peru, Romania, Tunisia, Uruguay, Uzbekistan, Bolivarian Republic of Venezuela* and *Zimbabwe.*

maternity and the right to a basic maternity allowance. [105] Similar principles are also found in *Rwanda*. [106]

605. In other countries, while part-time workers benefit from maternity rights, some form of proportionality may apply to the payment of cash benefits. The laws and policies respecting benefits in some countries place emphasis on proportionality, based on the fact that part-time workers may contribute proportionally less than full-time workers. [107] For example, the Government of *Colombia* reports that social benefits (including maternity benefit) are paid in proportion to the time worked and the wages earned, based on the principle that workers receive proportional compensation.

606. Some countries impose eligibility requirements for access to maternity benefits, which may take the form of a qualifying period of employment. [108] In this respect, Paragraph 8(2) of Recommendation No. 182 indicates that the periods of service required should not be longer for part-time workers than for comparable full-time workers. A requirement may be established that part-time workers must be affiliated to a social insurance/public scheme for a certain period or a period of employment with the same employer for access to maternity benefit. [109] A variety of time frames for continuous contributions or employment are established at the national level. [110] For example, in *Cyprus*, workers have to have made continuous payments for 26 weeks prior to maternity leave. Other countries which require a minimum period of contribution use coefficients to determine the amount of the benefits available to part-time workers. [111]

607. Article 8(1) of Convention No. 175 provides for the possibility of excluding workers whose hours of work or earnings are below specified thresholds from the scope of statutory social security schemes. [112] However, Article 6(5) of Convention No. 183 requires Members to ensure that the conditions to qualify for cash benefits can be satisfied by a large majority of women to whom the Convention applies. [113] In this respect, it is possible that some legal eligibility requirements may hinder some women who work part-time from having access to maternity cash benefits.

(ii) Termination of employment

608. Over the past four decades, many countries which have adopted legislation on part-time work have included provisions on the rights of these workers in respect of dismissal. Before 2000, most of these were industrialized countries, in many of which no distinction was made in the statutory provisions governing dismissal between part-time

[105] Social Code (SGB), Chapter Five, sections 24(c) to (i), and Maternity Protection Act (MuSchG), sections 13 and 14.

[106] *Netherlands* – Self-Employed Persons Disablement Act and Sickness Act; *Rwanda* – Act No. 13/2009 regulating labour.

[107] *Bosnia and Herzegovina, Brazil, Colombia, Cuba, Czech Republic, France, Iraq, Luxembourg, Malawi, Mali, Mauritius, Montenegro, Mozambique, Philippines, Portugal, Samoa, Seychelles, Switzerland* and *the former Yugoslav Republic of Macedonia.*.

[108] *Albania, Algeria, Austria, Plurinational State of Bolivia, Chile, Finland, Grenada, Latvia, Malawi* and *St Lucia.*

[109] ILO: *Maternity and paternity at work: Law and practice across the world*, Geneva, 2014, p. 43.

[110] *Guyana.*

[111] *Spain.*

[112] Except for employment injury benefits.

[113] Convention No. 183 applies to all employed women, including those in atypical forms of dependent work (Article 2(1)).

and full-time workers. As part-time work has grown in many developing countries, so too have the provisions on protection from dismissal which also include part-time workers.

609. The legislation in some countries prohibits discrimination on the basis of working time with regard to changes in employment contracts or termination of employment, and therefore includes part-time workers. For example, in the *Netherlands*, the law provides that employers shall not discriminate against workers on the basis of working time with regard to the conclusion, alteration (with the consent of both parties) or termination of an employment contract, unless such discrimination is objectively justified. [114] Many countries report that dismissal and compensation rules applicable to full-time workers apply equally to part-time workers. [115] For example, in *Singapore*, the legislation on termination of employment affords part-time workers entitlements that are commensurate with those of full-time employees. [116] In *Iceland*, the legislation provides similar protection against dismissal for both full- and part-time workers. [117]

610. In some countries, qualifying conditions apply for part-time workers in relation to compensation for dismissal. In *Cyprus*, for the purposes of compensation for unlawful dismissal or redundancy payments, only workers who work more than 18 hours per week are eligible. [118] A similar hours-based approach is applied in *Peru* where, if workers work less than four hours per day for the same employer, their right to compensation is limited. [119] In other countries, much longer minimum thresholds are established to qualify for these payments. In *St Lucia*, part-time workers qualify for redundancy pay if they have been continuously employed for an aggregate of two years and have not worked fewer than three days per week. [120]

611. Questions also arise regarding whether or not (and under what conditions) a full-time worker may be required to work part time, particularly where the rejection of part-time work may result in dismissal. The Committee has expressed concern that, in the event that a worker can only challenge termination of employment if the reasons given are not substantiated, and the worker has no right to severance pay, the worker is then effectively obliged to accept the transition from full-time to part-time work. [121]

(iii) Paid annual leave, paid holidays and sick leave for part-time workers

612. The entitlement of part-time workers to paid annual leave, paid holidays and sick leave is addressed in different ways in the various countries around the world. In some countries, part-time workers have access to all of these forms of holidays and leave in the same manner as full-time workers, while in many others part-time workers benefit from

[114] Sections I, II, III and IV of the Equal Treatment Act.

[115] *Austria, Belarus, Bosnia and Herzegovina, Brazil, Burkina Faso, Costa Rica, Côte d'Ivoire, Czech Republic, Equatorial Guinea, Estonia, Finland, France, Guyana, Hungary, Latvia, Mauritius, Netherlands, New Zealand, Nicaragua, Philippines, Samoa, Seychelles, the former Yugoslav Republic of Macedonia* and *Bolivarian Republic of Venezuela.*

[116] Employment Act and Central Provident Fund Act.

[117] Law No. 13 of 2003.

[118] Section 2 of the Termination of Employment (Amendment) (No. 2) Law No. 79(1) of 2002.

[119] Section 22 of Legislative Decree No. 728.

[120] Part III(11) (terms and conditions of continued employment), section 165 of Labour Act No. 37 of 2006.

[121] *Slovenia* – CEACR, Convention No. 175, direct request, published in 2004.

these entitlements in almost the same way as full-time workers. [122] In other countries, some conditions apply to part-time workers with regard to all or a particular type of leave or holiday, [123] such as a form of qualifying period, for example of employment with the same employer, before becoming eligible for paid annual leave or sick leave. [124] In other counties, [125] some form of proportional pay is available for part-time workers during the leave period. [126] In *Brazil*, part-time workers are entitled to a certain number of days of annual leave depending on the number of hours worked over a 12-month period: for example, they are entitled to 18 days of annual leave for between 22 and 25 working hours per week, and 16 days for between 20 and 22 hours per week. [127] A variation is to take into account the length of continuous service with the same employer to increase the number of days of annual leave entitlement of part-time workers over the years. For example, in *Malaysia*, part-time workers are entitled to no fewer than six days of leave for every 12 months of continuous service with the same employer if they have been employed by that employer for less than two years; no fewer than eight days for every 12 months if they have been employed by the same employer for between two and five years; rising to 11 days for every 12 months with the same employer for five or more years. [128]

613. With regard to paid public holidays, the issue is whether part-time workers are entitled to the same, or at a minimum proportional access to, or payment for public holidays, as comparable full-time workers. In many countries, part-time workers are entitled to the same or proportional payment or access to annual leave, public holidays and sick leave as comparable full-time workers. [129] In some countries, part-time workers are eligible for paid sick leave on the same basis as full-time workers, although based on the contributions actually made. [130] In other countries, although part-time workers may be entitled to proportional paid sick leave under the same conditions as comparable full-time workers, this entitlement is subject to a threshold of a certain period of service. [131] Moreover, the national insurance schemes in some countries set a requirement of a minimum earnings threshold for cash benefits in the event of illness. [132]

(c) Remuneration of part-time workers

Box 5.7

Article 5 of Convention No. 175 provides that:

> Measures appropriate to national law and practice shall be taken to ensure that part-time workers do not, solely because they work part time, receive a basic wage which, calculated proportionately on an hourly, performance-related, or piece-rate basis, is lower than the basic wage of comparable full-time workers, calculated according to the same method.

[122] *Australia, Austria, Burkina Faso, Costa Rica, Côte d'Ivoire, Estonia, Honduras, Iceland, Iraq, Jamaica, Rwanda, Samoa, Switzerland, Tunisia, Uruguay* and *Bolivarian Republic of Venezuela.*

[123] *France* and *Madagascar.*

[124] *Cyprus* – Annual Holidays with Pay Law; *Mauritius* – sections 27 and 28 of the Employment Rights Act.

[125] *Cook Islands, Italy, Mali, Netherlands, Portugal, Singapore, Spain* and *Uzbekistan.*

[126] *Bulgaria* – section 23(2) of the Labour Code.

[127] Provisional Measure No. 2.164-41 of 2001.

[128] Regulation 7 of the Employment (Part-Time Employees) Regulations, 2010.

[129] See above, and also *Mauritius.*

[130] *Latvia.*

[131] *Albania* and *France.*

[132] *Guyana.*

614. Part-time workers generally have lower incomes than full-time workers, even when they are in similar work with similar levels of responsibility, simply because they are paid for fewer hours. This may mean that the wages of part-time workers are not sufficient to cover their needs or those of dependent family members. A part-time wage can contribute to the resources available to a household. But, if a family unit contains only one or two part-time workers, this can place a strain on family income. In these circumstances, involuntary part-time work can constitute a very real problem for workers who have no other labour market options.

615. Recent ILO studies have found that part-time employment is often associated with wage penalties, although in some cases it may benefit from wage premiums. [133] There may be several reasons for this. First, part-time workers tend to work in sectors where hourly rates of pay may be lower than the national average. Second, they tend to be employed in lower level jobs. Third, their access to premium payments (such as overtime premiums) may be restricted, as they are normally only paid once normal full-time working hours have been exceeded. Part-time workers also tend to be from groups that are traditionally underpaid, such as young workers (who may have a lower wage rate due to their age), women (who may not receive equal pay for work of equal value) and minority groups (ethnic, social or religious). These factors may result in lower wages for part-time workers than for comparable full-time workers. In contrast, wage premiums may be paid if the work is very seasonal to compensate for the additional hours required. [134] They may also reflect the higher productivity of part-time workers as a result of the lower "fatigue" effect. [135]

616. A variety of approaches have been adopted at the national level to the wages of part-time workers. In many countries, wage discrimination against part-time workers is prohibited. [136] For example, in *Mexico*, wages can be fixed per unit of time, unit of work, by commission or in some other way. [137] In addition, minimum wage rates ensure a baseline level of compensation for all workers. [138] In some countries, the payment formulae used are based on calculations involving daily hours, weekly hours and hours actually worked to ensure the uniformity of the wages rate applicable to part-time and full-time workers. [139]

617. In a number of countries, a system is used under which part-time wages are proportional to working hours. [140] There are variations in this type of system. For example, in *Australia*, wages, including the calculation of proportional wages for part-time work, are based on the national minimum wage order and awards-setting minimum wage rates

[133] ILO: *Non-standard employment around the world: Understanding challenges, shaping prospects*, op. cit., pp. 192–194; Fagan et al.: *In search of good quality part-time employment*, Conditions of Work and Employment Series No. 43 (ILO, Geneva, 2014); J. Rubery and A. Koukiadaki: *Closing the gender pay gap: A review of the issues, policy mechanisms and international evidence*, op. cit.

[134] ILO: *Non-standard employment around the world: Understanding challenges, shaping prospects*, op. cit., p. 194.

[135] ibid.

[136] *Austria, Burkina Faso, Costa Rica, Czech Republic, Panama, Rwanda* and *Bolivarian Republic of Venezuela.*

[137] Section 83 of the Labour Code.

[138] *Republic of Korea, Mauritius* and *United States.*

[139] *Guyana.*

[140] *Bosnia and Herzegovina, Colombia, Cyprus, Hungary, Lithuania, Samoa, Switzerland, Turkmenistan* and *Uzbekistan.*

in specific occupations and industries. [141] In *Timor-Leste*, a worker who works on a part-time basis is paid proportionally for the number of hours worked and the amount is calculated on the basis of the hourly rate paid to a full-time worker in the same position or job. [142] In *Peru*, proportional payment of minimum pay only covers workers who work fewer than four hours per day. [143] However, in other countries, such as *France*, the remuneration of part-time employees is proportional to that of employees with equal qualifications who work full-time. [144] However, some workers' organizations report the non-payment of overtime. The *General Confederation of Labour – Force Ouvrière* indicates that in *France* it is possible not to pay overtime rates if it is so specified in a branch agreement, which envisages the possibility of adapting the employment contract. [145]

618. Overtime would not at first sight appear an important issue in relation to part-time work, as it is based on the idea of working hours longer than normal full-time working hours. Part-time workers often do not receive a wage premium for any additional hours worked, unless they reach the limit for full-time hours, and do not tend to receive the premium rates associated with overtime. For example, in *Malaysia*, the overtime rate of pay (1.5 times the hourly rate) is paid for each hour or part thereof which exceeds the normal hours of work of a full-time worker employed in a similar capacity in the same enterprise. [146] Trade unions have expressed concern regarding the problems faced by part-time workers in relation to payment for additional hours of work. [147]

(d) Social security protection

Box 5.8

Article 6 of Convention No. 175 provides that:

> Statutory social security schemes which are based on occupational activity shall be adapted so that part-time workers enjoy conditions equivalent to those of comparable full-time workers; these conditions may be determined in proportion to hours of work, contributions or earnings, or through other methods consistent with national law and practice.

619. With regard to the social security of part-time workers, Recommendation No. 182 adds that governments should reduce the risk that part-time workers may be penalized by social security schemes which subject the right to benefits to a qualifying period or fix the amount of benefits by reference both to the average of former earnings and to the length of the periods of contribution, insurance or employment. The Recommendation also indicates that the thresholds adopted by private occupational schemes which supplement or replace statutory social security schemes should be progressively reduced to allow part-time workers to be covered as widely as possible, and that these workers should be protected under conditions equivalent to those of comparable full-time workers.

[141] Awards (modern awards) establish minimum pay rates and conditions of employment in *Australia*. There are 122 industry or occupation awards that cover most people who work in the country. See Fair Work Ombudsman for more details (https://www.fairwork.gov.au/awards-and-agreements/awards [last accessed 8 Feb. 2018]).

[142] *Timor-Leste* – article 41 of the Labour Law.

[143] Section 3 of Ministerial Decision No. 091-92-TR.

[144] *France* – section L.3123-5 of the Labour Code.

[145] Section L.3123-22 of the Labour Code.

[146] *Malaysia* – article 5(1) of the Employment (Part-Time Employees) Regulations 2010.

[147] *Netherlands* – article 22 report on Convention No. 175.

620. Access to social security is a greater issue for part-time workers than for full-time workers, for which these systems are normally designed. National laws and regulations may exist to address specific dimensions of social security that may also establish thresholds that impact most on part-time workers. While these legal provisions do not define part-time work, they usually establish an hour or earnings threshold that may limit the rights or benefits available to part-time workers.

621. National social security systems often encompass both statutory and enterprise or occupational insurance and pension schemes, covering the contingencies of old age, invalidity, sickness, maternity, medical care and unemployment. The benefits provided by these systems are mostly financial. The right of access to these systems can vary from a constitutional right to a right based on occupational activity. When access is a constitutional right, it is removed from the employment context and becomes a right based on citizenship. [148] In some countries, coverage of certain contingencies is universal, at least at a basic level, and therefore covers all residents irrespective of their actual or former employment situation. However, access to certain schemes may be based on occupational activity, depending on the benefit or social security scheme. [149]

622. In other countries, part-time workers have to work for a certain number of hours per week, complete a period of service or attain a specified level of earnings before they become entitled to certain of the social security rights or benefits available to full-time workers, or before they or their employers became liable to pay certain social security contributions or taxes. Once the threshold has been attained, entitlement to cash benefits and allowances in the event of the contingency is generally set on a proportional basis. For some types of benefit, and particularly unemployment compensation, pensions and maternity benefit, eligibility is often defined in terms of the number and level of contributions that have been made over one or more specified periods of employment, rather than the number of hours or a minimum period of service.

623. Different types of thresholds are determined for access to social security systems at the national level. One is a wage-based threshold, which may be based on earnings, and may be set at a relatively low level to allow broad application. [150] Earnings can be turned into credits, for which there may be an annual ceiling. [151] Earnings per month is also used in some cases as a threshold for access to social security systems. [152] In some countries, it has been decided to move from a system based on hours of work to monthly earnings to determine future access to social benefits. [153]

624. Time-based thresholds for access to social security systems may be based on hours of work per day, the number of weeks worked or the number of months worked up to one year for access to the various types of social security benefits. For example, in *Portugal*, the amount of the contributions paid in respect of workers who are not hired on a monthly basis under a full-time work schedule is based on the hourly rate, when the number of

[148] *Brazil* – article 194 of the Constitution.

[149] *Algeria, Australia, Colombia, Costa Rica, Côte d'Ivoire, Dominican Republic, Ecuador, Equatorial Guinea, Estonia, Guyana, Islamic Republic of Iran, Latvia, Madagascar, Malawi, Netherlands, Peru, Poland, Rwanda, Seychelles, the former Yugoslav Republic of Macedonia, Turkey, Ukraine, Bolivarian Republic of Venezuela* and *Zimbabwe.*

[150] *Cyprus* – Social Insurance (Contributions) Regulations.

[151] *United States.*

[152] *Czech Republic.*

[153] *United Kingdom* – Universal Credit Regulations, 2013.

hours declared is not less than 30 hours per worker. [154] In *Canada*, an employee has to accumulate between 420 and 700 hours of insurable employment during the qualifying period to receive a particular type of benefit. Some countries establish a minimum number of hours per week or a number of weeks of contributions for access to some social security schemes. [155] A threshold of a minimum period of contributions to the specific scheme, for example for ordinary pensions, is also found in national legislation. [156]

625. Combined time and remuneration-based thresholds are sometimes set for access to parts of social security systems. In *Japan*, part-time workers are normally covered if their weekly hours of work and their monthly days of work are three-quarters of those of comparable full-time workers. If they are lower than this level, there are five conditions to be covered by employee pension and health insurance: [157] (1) prescribed weekly working hours are 20 or more; (2) the monthly wage is ¥88,000 or higher; (3) the expected period of service is one year or longer; (4) the employee is not a student; and (5) the employee works at a company with 501 or more employees. [158] The legislation has recently been amended and, since April 2017, companies with less than 500 employees are subject to pension and health insurance if a labour-management agreement has been concluded to this effect. The Government of the *Plurinational State of Bolivia* reports that, for long-term social security, workers need to have worked an average of 20 days per month and earned wages equal to or greater than the national minimum wage for coverage by this type of insurance system.

626. It should be recalled that employers and part-time workers may have reasons to avoid social security contributions. For employers, the administrative and contribution costs to be paid to social security systems for each worker may tempt them to try and cut costs by hiring part-time workers, by restricting their hours or wages to ensure that they are not required to pay social contributions for these workers. [159] Part-time workers may seek to avoid the payment of contributions for certain forms of social security with a view to maximizing their current earnings, especially if their pay is low or the number of working hours insufficient. The decision for certain part-time workers may also be based on the fact that they are covered by the State (universal access) or by family members (a spouse or parent) for specific health insurance or pension schemes. Finally, where the earnings of part-time workers are the main or sole source of income, they may try to avoid paying social security contributions due to the pressure of low earnings. In such cases, maximizing short- or medium-term income may outweigh medium- or longer-term needs, such as access to old-age pension schemes. ***Nonetheless, access to social security benefits is important for many if not most part-time workers, and setting earnings and working hours' thresholds at an equitable level is an important way of improving this access, and perhaps the willingness of part-time workers to contribute to social security systems.*** [160]

[154] Section 16 of Decree No. 1-A/2011.

[155] *Albania* – Act No. 7703 of 1993 on social insurance and Act No. 7870 of 1994 on health insurance; *Mexico* – sections 11, 27, 28, 97, 102, 104, 109 and 128 of the Social Security Act.

[156] *Switzerland* – Old-Age and Survivors' Insurance Act (LAVS) and Federal Disability Insurance Act (LAI).

[157] Japan Pension Service (http://www.nenkin.go.jp/international/english/healthinsurance/employee.html [last accessed 8 Feb. 2018]).

[158] Pension Function Reinforcement Act (Act No. 62 of 2012).

[159] ILO: *Part-time work*, Report V(I), op. cit., p. 11.

[160] ibid., pp. 43–44.

(e) Access to training, career opportunities and occupational mobility

Box 5.9

Paragraph 15 of Recommendation No. 182 provides that:

Where appropriate, measures should be taken to overcome specific constraints on the access of part-time workers to training, career opportunities and occupational mobility.

627. In addition to the protection of their employment rights, perhaps one of the most problematic issues for part-time workers is the often poor perception of part-time work. Part-time workers may be viewed as not being as committed to their work and the enterprise as full-time employees, without taking into account the reasons why they are in this form of work. This can have serious consequences for their opportunities for training, career development and occupational mobility. Offering better career prospects and training opportunities is a very important means of making part-time work more attractive.

628. As with other working and employment conditions, full-time workers normally have access to training, career opportunities and occupational mobility. The issue is the extent to which the respective legal provisions or policies also apply, or apply equally to part-time workers. The Committee has emphasized that access to education and a wide range of vocational training courses is of paramount importance for achieving gender equality in the labour market. It is a key factor in determining the actual possibilities of gaining access to a wider range of paid occupations and employment, especially those with opportunities for advancement and promotion. This includes on-the-job training as well as the actual process of training. Providing access to vocational guidance and taking active measures to promote access to education and training, free from considerations based on stereotypes or prejudices, is essential in broadening the range of occupations from which men and women are able to choose. [161] In a number of countries, the provisions to give effect to the principle of equality of treatment in this respect specifically require opportunities for improvement to be available to both full- and part-time workers. For example, in *Burkina Faso*, the National Council for Employment and Vocational Training is responsible for ensuring the application of the legal requirement of equal treatment for all in access to training, career opportunities and occupational mobility. [162] In some countries, the principle of equality of treatment applies specifically to training. [163] For example, in *Azerbaijan*, workers with an employment contract have the right to further training, to acquire new skills and to improve their qualifications, whether they work full or part time. [164]

629. In a few countries, discrimination in access to opportunities for the improvement of the workers' skills is explicitly prohibited. [165] The legislation in *Egypt* provides that all workers shall be treated equally in respect of training, employment opportunities and the right to occupational mobility without discrimination. [166] In *Denmark*, the Framework

[161] ILO: *General Survey on the fundamental Conventions*, 2012, para. 750; see also ILO: Resolution on equal opportunities and equal treatment for men and women in employment, ILC, 71st Session, 1985.

[162] Decree No. 2009-661/PRES/PM/MJE/MTSS/MESSRS of 2009.

[163] *Belarus, Bosnia and Herzegovina, Burkina Faso, Croatia, Cyprus, Egypt, Greece, Latvia, Madagascar, Republic of Moldova, Rwanda, Singapore* and *Senegal.*

[164] Section 9 of the Labour Code.

[165] *United Kingdom* – section 5 of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations, 2000.

[166] Articles 11–26 of the Labour Code.

Agreement on Part-Time Work concluded by the *Danish Confederation of Trade Unions* and the *Confederation of Danish Employers* provides that, if the parties to a collective agreement (which generally covers most sectors of the economy) identify obstacles to opportunities for part-time work, such obstacles should be eliminated. [167] It also requires employers to take measures to facilitate the access of part-time workers to vocational training to enhance their career opportunities and mobility.

630. In certain countries, specific laws and policies on the training, career development and mobility of part-time workers encourage employment, including full-time employment. [168] In *Japan*, employers are required to provide training for part-time workers, and the Ministry of Health, Labour and Welfare makes available career development subsidies to help human resource departments in companies transform non-regular jobs (temporary or part time) into regular jobs. [169] The Government of *New Zealand* reports that financial assistance is provided to part-time workers, for example to obtain a full driving licence and to help them engage in training programmes, including the Straight to Work and Training for Work programmes. In *Portugal*, the Measure to Assist Geographical Mobility in the Labour Market is intended to promote the occupational integration of the unemployed, including through financial assistance to subsidize the cost of travelling substantial distances to work, including for part-time workers. [170] A Tripartite Council for Skills, Innovation and Productivity has been established in *Singapore* to: help people make informed choices in education, training and careers; develop an integrated high-quality system of education and training that responds to constantly evolving needs; promote employer recognition and career development based on skills; and foster a culture that supports and celebrates lifelong learning. Part-time workers can use these systems to convert from part-time to full-time work, if they so choose.

631. It is clear that governments continue to recognize that skills training can be an important factor for workers seeking part-time employment, and those who are already working part time. Employers can also benefit from the increased productivity resulting from the training of part-time workers.

632. ***The Committee emphasizes the importance of the full implementation of the principle of equal treatment of part-time workers with full-time workers, as set out in Convention No. 175 and other relevant international labour standards, including Conventions Nos 100 and 111. Women constitute a large proportion of persons in part-time work. The inequalities, disparities and disadvantages that they are facing deserve particular attention and should be addressed dynamically. Convention No. 175 and Recommendation No. 182 allow some flexibility in the regulation of part-time work and in ensuring "equivalent" (and therefore not necessarily identical) conditions for part-time workers as for comparable full-time workers in certain areas. Nevertheless, equal access is required to certain rights, and particularly freedom of association, the right to collective bargaining, protection against discrimination and occupational safety and health. Ensuring that part-time workers have access to social security coverage, in law and practice, is also a key element of good quality part-time work. Convention No. 175 calls on ratifying States to ensure that statutory social security schemes based on occupational activity afford part-time workers conditions that are equivalent to those***

[167] Section 5 of the Framework Agreement on Part-Time Work.

[168] *Australia* – Fair Work Act; *Hungary* – Act No. IV of 1991 on job assistance and unemployment benefits.

[169] Article 11 of the Part-Time Workers Act.

[170] Order No. 85/2015.

of comparable full-time workers. Although workers whose hours of work or earnings are below specified thresholds may be excluded from the scope of statutory social security schemes (with the exception of those providing employment injury benefits), the Committee recalls that any such thresholds must be sufficiently low so as not to exclude an unduly large percentage of part-time workers, and be periodically reviewed. Recommendation No. 182 further calls for the progressive reduction of any threshold requirements. Ensuring the proper coverage of part-time workers by social security schemes is particularly important for the protection of these workers and their families at times where they may face particular hardship (due to sickness or unemployment for instance). It can also contribute to the sustainability of social insurance funds and benefit society as a whole. Finally, sound labour market policies should also seek to promote access to training and career development opportunities for part-time workers, as called for by Recommendation No. 182.

D. Promotion of productive and freely chosen part-time work

(a) Measures to access part-time work

Box 5.10

Article 9 of Convention No. 175 provides that:

1. Measures shall be taken to facilitate access to productive and freely chosen part-time work which meets the needs of both employers and workers, provided that the protection referred to in Articles 4 to 7 is ensured.

2. These measures shall include:

(a) the review of laws and regulations that may prevent or discourage recourse to or acceptance of part-time work;

(b) the use of employment services, where they exist, to identify and publicize possibilities for part-time work in their information and placement activities;

(c) special attention, in employment policies, to the needs and preferences of specific groups such as the unemployed, workers with family responsibilities, older workers, workers with disabilities and workers undergoing education or training.

3. These measures may also include research and dissemination of information on the degree to which part-time work responds to the economic and social aims of employers and workers.

633. A wide variety of policies can be used to achieve the aims of the Convention, as illustrated by the emphasis placed by countries on different issues to promote freely chosen part-time work. The differences of emphasis may be based on specific socio-economic concerns, or to encourage the labour market participation of a broad range of citizens. However, the laws and policies implemented to promote freely chosen part-time work may not always meet their intended aims, and workers' organizations have expressed concern that some of the measures adopted may actually undermine these aims, for example if emphasis in national policy is placed solely on the creation of part-time work, and not also on developing full-time opportunities to allow workers substantive choices. [171]

634. A variety of policy measures have been adopted to help workers to choose part-time work more freely, and are often intended to address unemployment issues affecting certain groups or parts of the labour market. The Government of *Honduras* reports that the *Chama*

[171] In some countries, the Committee has commented on the fact that measures to cope with the financial and economic crisis have resulted in a substantial increase of part-time work particularly for women; see for example *Greece* – CEACR, Conventions Nos 111 and 156, observations, published in 2013; and *Spain* – CEACR, Convention No. 100, observation, published in 2015.

Communitaria policy to provide employment opportunities and reduce unemployment is intended to support unemployed persons who have not had access to formal employment opportunities through the implementation of small-scale social works for forest conservation or agricultural improvement. Similarly, the Government of *France* reports that part-time work policies have been developed to address rural employment concerns. In 1981, a collective agreement was signed by workers and employers in the agricultural sector to use working-time arrangements to address productivity issues. The agreement has evolved over time and, in 2012, in order to develop a shared employment scheme, provisions were included in the agreement for the generation of part-time employment due to the shortage of full-time workers in rural areas, and to help small-scale agricultural and craft enterprises experiencing labour shortages.

635. Some national policies on part-time work are targeted at specific groups experiencing difficulty in accessing or participating in the labour market, including the unemployed, underemployed, persons with disabilities and older workers. [172] In this context, national employment agencies provide special support and services to help these groups obtain part-time work, as well as drawing the attention of employers to the availability of these pools of workers.

636. Governments in a number of countries report that public employment services provide support to part-time workers and seek opportunities to promote part-time work. National employment services register part-time workers, [173] encourage the hiring of part-time workers, [174] provide online information on part-time laws and regulations [175] and provide multilingual information on part-time work. [176] For example, the Government of *Peru* has developed the Single Window for Employment Promotion to facilitate labour market integration, improve the scope of sustainable enterprises and provide free services in a single location in support of policy initiatives that benefit both citizens and businesses. [177]

637. Tripartite initiatives have contributed to the development of freely chosen part-time work. The Tripartite Advisory Committee on Flexible Working-Time Arrangements in *Singapore* encourages employers to adopt flexible arrangements, including part-time work, though the WorkPro Work–Life Grant. [178] The programme is intended to help

[172] *Hungary* – section 4 of Government Decree No. 71/2009; *Latvia* – the Government reports that the State Employment Agency organizes active employment measures for specific groups of the unemployed, including persons with disabilities, persons over the age of 55 and the long-term unemployed with one or more dependants; *Mauritius* – the Government reports that the National Employment Policy is aimed at meeting the expectations of the unemployed, underemployed part-time workers, persons with disabilities, and at enabling upcoming educated and trained jobseekers to find gainful employment.

[173] *Mauritius* – the Employment Service of the Ministry of Labour, Industrial Relations and Employment operates 13 Employment Information Centres as a platform for jobseekers to register for jobs and employers to notify vacancies and recruit labour.

[174] *Cyprus* – Public Employment Services register people who wish to find part-time work and labour officers visit prospective employers with a view to encouraging them to recruit workers on a part-time basis.

[175] *Netherlands* – the Government reports that it disseminates information on laws and regulations on part-time work through the Internet and in leaflets.

[176] *Cyprus* – the Department of Labour Relations has issued a guide (in Bulgarian, English, Polish, Russian and Turkish) which is available to the public or can be downloaded.

[177] Supreme Decree No. 001-2012-TR approved the creation of the "Single Window for Employment Promotion", as amended by Supreme Decree No. 002-2015-111.

[178] *Singapore* – the Government also encourages employers to pilot and adopt flexible working arrangements, including part-time work, through the WorkPro Work–Life Grant.

workers manage their work–life needs and assist employers in attracting and retaining valued workers.

638. Free choice of part-time work is not necessarily restricted to one part-time job. Employment laws and policies in some cases recognize that workers may be engaged under more than one part-time contract. [179] However, primacy is given to the first part-time contract signed by the worker, which means that any other part-time contract has to work around the first contract signed. Recognition that part-time workers may be engaged in more than one part-time job is an important acknowledgement of a labour market reality, [180] which should contribute to policy debates about part-time work and provide insight into the debate on the ability of workers to freely choose part-time or full-time work.

639. Part-time work can provide opportunities for some workers who might otherwise experience difficulties in participating in full-time employment. The Committee therefore welcomes the efforts made by governments and the social partners to facilitate access to and regulate these types of working-time arrangements. Nevertheless, it is important for workers to be able to avail themselves of full-time employment opportunities, if they so wish. Also, when legislation, collective agreements or other measures regarding the promotion of part-time work reflect the assumption that the main responsibility for family care lies with women or excludes men from certain rights and benefits, it reinforces and prolongs stereotypes regarding the roles of women and men in the family and in society. [181] ***Furthermore, part-time workers need to benefit from decent employment and working conditions, as required by Convention No. 175, and national laws and policies should be adopted or strengthened to ensure good quality part-time work.***

(b) Measures to transfer from full-time to part-time work and vice versa

Box 5.11

Article 10 of Convention No. 175 provides that:

> Where appropriate, measures shall be taken to ensure that transfer from full-time to part-time work or vice versa is voluntary, in accordance with national law and practice.

640. When the instruments on part-time work were being discussed and adopted, the concept of transfer from full-time to part-time work and vice versa was not common, but was under consideration in the European Communities (now the European Union). An attitudes survey conducted in the early 1990s by the Commission of the European Communities indicated that approximately one in five full-time workers expressed a preference for working part-time. [182] Both Convention No. 175 and Recommendation No. 182 include provisions addressing the concept of transfer from full-time to part-time work and vice versa. Convention No. 175 emphasizes that such transfers should be voluntary, while Paragraph 18 of Recommendation No. 182 adds that employers, where appropriate, should give consideration to requests by workers for transfers from full-time to part-time work and from part-time to full-time work that becomes available in the

[179] *China* and *Rwanda.*

[180] This also raises the issue of short hours contracts, in the context of which workers are forced to take on more than one job to obtain sufficient income.

[181] See ILO: *General Survey on the fundamental Conventions*, 2012, para. 786.

[182] Commission of the European Communities: *Working time, employment and production capacity: Reorganization/reduction of working time,* Social Europe, Supplement 4/91, 1992, pp. 13–15.

enterprise, and that employers should provide timely information to the workers on the availability of full-time and part-time positions to facilitate such transfers. In this regard, the national legislation in some countries specifies the conditions under which transfers can take place.

641. Two important considerations have influenced the development of national laws and policies on the right to transfer between full-time and part-time work. The first is procedural, and a requirement may be established to satisfy certain conditions before the right is attained to request a transfer. One such condition may be continuous employment, in which case a worker may need to have worked for the same employer for a certain time, such as 12 continuous months, before a request can be made to transfer from full-time to part-time work. [183]

642. The second concerns the reasons considered acceptable to justify a request for transfer. The legislation in some countries includes a list of specific circumstances in which employers are required to consider a request or to allow a transfer from full-time to part-time work. These circumstances are usually intended to allow the worker to address family responsibilities. For example, in *Cyprus* and *Romania*, employers are required to consider all requests by employees to transfer from full-time to part-time employment (and vice versa). [184]

643. Alternatively, employers may be under the obligation to notify full-time and part-time employees of opportunities to transition from one to the other. For example, the legislation in *Estonia* requires employers "to notify a full-time employee of the possibility of part-time work and a part-time employee of the possibility of full-time work, considering the knowledge and skills of the employee". [185] Legal requirements such as these help to provide some motivation to both employers and workers to genuinely consider the possibility of transitioning between full-time and part-time work and vice versa. However, this only addresses consideration of the issue and does not appear to create an obligation to make a transition happen in practice.

644. Convention No. 175 and Recommendation No. 182 do not address the ways in which such transfers should take place. Very different approaches have been adopted at the national level to regulating the practical aspects of transfer from full-time to part-time work and vice versa. The Government of *Australia* reports that, in the case of a transfer, the employer cannot change the essential terms of the contract of employment without the agreement of the employee. [186] In contrast, in other countries, the termination of the full-time or part-time contract is required before transfer can take place from full-time to part-time work (or vice versa). [187] The new employment contract may need to be approved by the authorities or a legal notary. [188] It is unclear whether this process results in diminished employment rights, affects tenure or continuity of employment, or changes access to social insurance entitlements related to employment status.

645. Agreements between workers and employers concerning the terms of transfer, in one direction or the other, may help to limit uncertainty about the associated employment

[183] *Australia* – section 9 of the Fair Work Act.

[184] *Cyprus* – article 9 of the Part-Time Employees (Elimination of Unfavourable Treatment) Laws of 2002 to 2007 (Appendix VII); *Romania* – article 107 of the Labour Code.

[185] Section 28 of the Employment Contracts Act. Also see article 107(2) of the Labour Code of *Romania*.

[186] Article 22 report on Convention No. 175, 2013.

[187] *Seychelles* and *Switzerland.*

[188] *Portugal* – section 155 of the Labour Code.

rights. In some countries, issues relating to the transfer between full-time and part-time work are simply left to the worker and employer to determine. [189] The legislation in other countries requires any changes involved in the transfer to be set out in writing. [190] Workers' representatives may be involved in this process, either through collective agreements [191] or works councils. [192]

646. In certain countries, the circumstances are specified in which an employer must find a way of accommodating transfers between full-time and part-time work. These may be related to social concerns beyond the workplace, including family responsibilities and the mental and physical well-being of workers. In some countries, there is a legal obligation for employers to allow transfer from full-time to part-time work where the worker (often a woman) is taking care of children, or sick or disabled family members. [193] For example, the Labour Code in *Belarus* requires employers to establish a part-time working day or week for women with a child up to 14 years of age, or if they are caring for a sick family member whose state of health is medically certified. [194] However, the Committee wishes to point out that when legislation reflects the assumption that the main responsibility for family care lies with women or excludes men from certain rights and benefits, it reinforces and prolongs stereotypes regarding the roles of women and men in the family and in society. Therefore, measures to assist workers with family responsibilities, including part-time work, should be available to men and women on an equal footing. [195]

647. The legislation in *Serbia* lists types of long-standing illness that may provide grounds for allowing a worker to transfer from full-time to part-time work, including cerebral palsy, poliomyelitis, muscular dystrophy and other serious diseases, based on the opinion of the competent health authority. [196] In some countries, transfer from full-time to part-time work must be allowed if a worker is suffering from oncological diseases, such as cancer, or severe chronic degenerative pathologies which may require treatment that can diminish the capacity to work full time. [197] By allowing such workers to work part-time, employers may be able to retain workers who have the skills or training needed by the enterprise.

648. Transfer from full-time to part-time work has been addressed through both law and policy measures. The Government of the *Republic of Korea* reports that under the current

[189] *Czech Republic*, *Turkmenistan* and *Ukraine.*

[190] *Burkina Faso* – section 85(2) of the Labour Code; *Tunisia* – section 94(9) of the Labour Code.

[191] *Brazil* – section 58-A(2) of the Consolidation of Labour Laws.

[192] *Zimbabwe*, section 25A of the Labour Act.

[193] *Hungary*, *Italy*, *Portugal*, *Rwanda*, *Serbia* and *Uzbekistan.*

[194] Articles 118 and 289 of the Labour Code.

[195] ILO: *General Survey on the fundamental Conventions*, 2012, para. 786; see also, for example, *Kazakhstan* – CEACR, Convention No. 111, observation, published in 2016; *Tunisia* – CEACR, Convention No. 111, direct request, published in 2015; *Azerbaijan* – CEACR, Convention No. 156, direct request, published in 2014. In its comments on the application by the *Republic of Korea* of the Workers with Family Responsibilities Convention, 1981 (No. 156), the Committee noted that while part-time work was promoted by the Government as a priority measure to spread the flexible work system within a variety of childcare working hour reduction systems, female workers account for 74.2 per cent of part-time jobs, which showed that the gender gap in part-time jobs was significant. The Committee recalled that the assumption that the main responsibility for family care and the household lay with women, thus reinforcing stereotypical attitudes regarding the roles of men and women and existing gender inequality, ran counter to the objectives of the Convention: *Republic of Korea* – CEACR, Convention No. 156, observation, published in 2011.

[196] Article 40 of the Labour Law.

[197] *Italy* – section 3 of Act No. 104 of 1992.

legislation, full-time workers are allowed to transfer to part-time work for specific periods of time and for reasons such as childbirth, childcare, family care, household duties, studies and health care. [198] A system has also been introduced for the adoption and use of convertible part-time work. If a worker transfers from full-time to part-time work for the reasons outlined above, subsidies may be payable, including: compensation for reduced earnings; fixed amounts for up to a month each year for small and medium-sized enterprises (SMEs); and labour costs for replacement workers. [199] The Government is also engaged in promotional activities, including public campaigns to promote a culture of work–life balance, and has provided manuals for personnel managers on the introduction and operation of a convertible part-time work system.

649. The focus of the part-time work instruments in relation to transfer between full-time and part-time work is on the right to make such a change, but they are silent on the duration of such a change. The same applies in most national legislation, although *San Marino* is an example of a country where the period of transfer between full-time and part-time work is defined as not exceeding 18 months in any three-year period. [200] If the period of transfer is specified, workers and employers can anticipate when employment conditions will revert to their original form. Renewal of the transfer should also be possible in unforeseen circumstances. If the duration of the transfer is known, the worker and employer can then determine whether the worker will remain part-time or return to full-time work. This helps to prevent workers from remaining in part-time work if they wish to transfer back to full-time work. In this regard, Paragraph 20 of Recommendation No. 182 indicates that "Where national or establishment-level conditions permit, workers should be enabled to transfer to part-time work in justified cases, such as pregnancy or the need to care for a young child or a disabled or sick member of a worker's immediate family, and subsequently to return to full-time work".

650. The possibility to transfer between full-time and part-time work can be important for both workers and employers. It allows workers to address personal needs for a certain period of time, while remaining in employment. It allows employers to retain productive employees in their enterprise who they might otherwise lose. If these issues are addressed in law or policy measures, this can provide both workers and employers with guidance on how they can be carried out efficiently and effectively.

651. ***The Committee encourages constituents to consider national laws and policies on the transfer from full-time to part-time work and vice versa, when appropriate, on the basis of Article 10 of Convention No. 175 and Paragraph 20 of Recommendation No. 182.***

[198] *Republic of Korea* – article 74 (protection of pregnant women) of the Labour Standards Act; articles 19-2 and 22-2 (reduction of working hours for periods of childcare) of the Act on equal employment and support for work–family reconciliation; article 7 of the Act on the protection of fixed-term and part-time workers.

[199] *Republic of Korea* – coverage of subsidies: compensation for wage cuts – for every full-time worker who transfers to a part-time work arrangement, a subsidy of up to 400,000 Korean won (KRW) a month will be provided to compensate for the wage difference due to loss of working hours for a maximum of one year; indirect labour costs – a fixed amount of KRW200,000 a month for up to one year will be provided for each SME; labour costs for substitute workers – KRW600,000 (KRW300,000 for large businesses) a month is offered for up to one year to any employer that has hired a substitute for a full-time worker who transferred to a part-time work arrangement. Since September 2016, the subsidies have increased (wage cut compensation subsidy – from KRW200,000 to 400,000 a month), the application process has been simplified (the prior approval system has been abolished) and entitlement has been expanded.

[200] Section 14 of Legislative Decree No. 156 of 2011.

3.2. An example of transnational regulation: The European Directive on Part-Time Work

652. In 1997, the European Union (EU) chose to address part-time work through a Directive [201] which implements a framework agreement negotiated by workers' and employers' organizations at EU level. European Council Directive 97/81/EC concerning the Framework Agreement on part-time work concluded by the *Union of Industrial and Employers' Confederations of Europe*, the *European Centre of Enterprises with Public Participation* and the *European Trade Union Confederation* has a dual purpose: (a) the removal of discrimination against part-time workers and the improvement of the quality of part-time work; and (b) to facilitate the development of part-time work on a voluntary basis and to contribute to the flexible organization of working time in a manner which takes into account the needs of employers and workers. [202] The Directive applies to part-time workers who have an employment contract or employment relationship as defined at the national level. Part-time workers who work on a casual basis may be excluded for objective reasons from the scope of the Directive, after consultation with the social partners. Such exclusions should be reviewed periodically to ascertain whether the objective reasons still remain. [203]

653. Part-time workers must not be treated in a less favourable manner than comparable full-time workers in respect of employment conditions solely because they work part-time, unless different treatment can be justified on objective grounds. The principle of proportionality is to be applied where appropriate. Where justified by objective reasons, access to particular employment conditions may be made subject to a period of service, time worked or earnings qualification, after consultation with the social partners. Such qualifications should be reviewed periodically having regard to the principle of non-discrimination. [204] Member States of the EU countries should, after consultation with the social partners and in the context of the principle of non-discrimination, identify, review and, where appropriate, eliminate any obstacle of a legal or administrative nature to the development of part-time work opportunities. The social partners should make similar efforts within their sphere of competence. A worker's refusal to transfer from full-time to part-time work or vice versa should not in itself constitute a valid reason for termination of employment. Employers should, as far as possible, give consideration to: requests to transfer from full-time work to part-time work that becomes available in the establishment, and requests to transfer from part-time to full-time work or to increase working time where the opportunity arises; the provision of timely information on the availability of part-time and full-time positions in the establishment; measures to facilitate access to part-time work at all levels of the enterprise and, where appropriate, to facilitate access to vocational training for part-time workers; and the provision of appropriate information to workers'

[201] The EU has a number of legal instruments to create EU law, including the use of directives, which seek to create a legal framework that addresses a policy concern, but allow the EU Member States the choice of how to legally implement provisions. Traditionally directives are created and developed by the EU institutions, with inputs from Member States and social partners.

[202] Clause 1 of the Framework Agreement.

[203] Clause 2 of the Framework Agreement.

[204] Clause 4.

representatives about part-time working in the enterprise. [205] This Directive applies in all EU Member States. [206]

Conclusions

654. The main aim of the part-time work instruments is to improve the conditions and quality of part-time work and explicitly guarantee or extend labour and employment rights to this group of workers. The standards call for the adoption of national law and policies to promote good quality part-time work, which includes equal treatment in respect of employment protection (termination of employment and maternity protection), non-discrimination, occupational safety and health and the right to organize and bargain collectively. [207] They also require equal treatment in social protection systems, including maternity and other family-related leave entitlements. [208]

655. ***The Committee emphasizes that the protections established by the instruments are based on equal treatment between part-time workers and comparable full-time workers through pro rata arrangements for hourly pay and other employment conditions, including performance bonuses, overtime, annual leave and paid public holidays, and sick leave***. [209] ***Equal access to training and development opportunities and effective access to part-time work at all occupational levels should also be ensured, and work schedules should be designed to take into account the needs of part-time workers, particularly those with family responsibilities, older workers, workers with disabilities, and those combining work and training.*** [210] ***Finally, transfer from full-time to part-time work and vice versa is an important legal and policy concern for the promotion of part-time work. Addressing these fundamental issues in national law and policy or via collective bargaining can also help achieve this goal.*** Countries are increasingly seeking to address the issues related to part-time work in both law and policy as it becomes a more common form of employment around the world. Over 100 countries report laws or policies that address all or various dimensions of part-time work.

656. The Committee also recalls that the collection of data, disaggregated by sex, and depending on the national circumstance, other facts such as age, origin, or disability, on part-time work can help to provide context as to the effectiveness of existing legislation and policy measures meant to address the needs of part-time workers. This information can also be useful for governments to improve the quality of part-time work and develop targeted policy measures for this purpose. Data collection on part-time work can help to identify the laws and policy measures that are necessary to address the needs of part-time workers, improve the quality of part-time work and develop targeted policy measures for this purpose.

[205] Clause 5.

[206] *Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom*. Candidate countries for membership in the EU may also use the Directive within their legal systems and must do so by the time of accession into the EU. These currently include *Albania, Montenegro, Serbia, the former Yugoslav Republic of Macedonia* and *Turkey.*

[207] Fagan: *In search of good quality part-time employment*, 2014, op. cit., p. 42.

[208] ibid.

[209] ibid.

[210] ibid.

Chapter VI. Working-time arrangements

1. Introduction

657. Economic trends over recent decades have resulted in working-time arrangements that are increasingly diverse, decentralized and individualized. [1] They have also led, in many cases, to greater tension between workers' needs and preferences and business requirements regarding hours of work. These developments include the division of working time into smaller segments, in order to more closely tailor staffing levels to customer requirements, and the expansion of operating and shop opening hours towards a "24/7" economy. These new realities also raise new challenges, such as underemployment (due to insufficient working hours) and the difficulty for workers to balance paid work with their personal lives, including family responsibilities, which has affected the relationship between hours of work, rest periods and leisure time. In order to address these challenges, there is a need to narrow the gap between the actual and preferred working hours of workers. Improving working conditions by narrowing this gap can help to improve productivity for workers and enterprises. It is in this context that working-time arrangements are taking on greater importance, particularly in the formulation of laws and policies on working time.

658. Balancing the competing needs of employers and workers with regard to the formulation of laws and policies on working-time arrangements may not always be straightforward. Legislation on working-time arrangements can be designed to prevent employers from imposing unsafe or hazardous working-time arrangements. There are instances where workers may also need to be protected from deciding or opting to agree to working-time arrangements that can lead to long working hours. The Committee is concerned about workers deciding to opt out of their guaranteed legal right to limited working hours in agreeing to working-time arrangements that might exceed the legal limits on working hours. [2]

[1] ILO: *Working time in the twenty-first century*, Report for discussion at the Tripartite Meeting of Experts on Working-Time Arrangements (Geneva, 17–21 October, 2011); ILO: *Non-standard employment around the world: Understanding challenges, shaping prospects* (Geneva, 2016); J.C. Messenger (ed.): *Working time and workers' preferences in industrialized countries: Finding the balance* (London and Geneva, Routledge and ILO, 2004); S. Lee, D. McCann and J.C. Messenger: *Working time around the world: Trends in working hours, laws and policies in a global comparative perspective* (London and Geneva, Routledge and ILO, 2007).

[2] For example, the European Union Working Time Directive guarantees certain rights regarding working time including: a limit to weekly working hours, which must not exceed 48 hours on average, including any overtime; a minimum daily rest period of 11 consecutive hours in every 24; a rest break during working hours if the worker is on duty for longer than six hours; a minimum weekly rest period of 24 uninterrupted hours for each seven-day period, in addition to the 11 hours' daily rest; paid annual leave of at least four weeks per year; extra protection for night work. However, it does include an "opt-out" clause, which relates mainly to maximum weekly working hours. The debate over this clause has, to date, halted attempts to revise or amend the Directive.

2. Changes in work schedules for personal reasons

659. Competitive demands have led to changes in working-time arrangements at the enterprise level, while changes in labour supply, and particularly the larger numbers of women in paid employment, are contributing to a growing concern about conflicts between paid employment and personal responsibilities, such as caring for family members. [3] Measures to assist workers improve the balance between their working and personal lives are therefore taking on greater importance. [4]

660. In countries that have adopted legal provisions allowing workers to change work schedules for personal reasons, the primary reasons for which they are permitted to do so include maternity, [5] childcare, [6] care for sick family members [7] or for elderly family members, [8] or their own health issues. [9] The legislation in *Portugal* allows changes to work schedules not only to reconcile work and family life, but also for students when their work schedule clashes with their curriculum. Workers' health concerns are a specified reason that is taken into account in some countries for the scheduling of hours of work, [10] particularly for older workers. [11]

661. In some countries, the courts have ruled that employers may not implement work scheduling that would cause disproportionate harm to an employee. [12] Other legal grounds, such as religion, play a role in certain countries, such as the *Philippines*, where employers are required to respect the weekly rest day when the workers' preferences are based on religious grounds. [13] There are also legal provisions in some countries which allow workers to change work schedule due to traumas experienced outside of the workplace. For example, in *Peru*, the legislation recognizes the need to prevent, punish and eradicate violence against women and family members by allowing victims of violence to change their work schedule. [14] Such measures are intended to help a worker who is traumatized by domestic violence to continue in paid employment, while recognizing the difficult personal circumstances that they face. While such action may have short-term implications

[3] ILO and Gallup. *Towards a better future for women and work: Voices of women and men* (Geneva, ILO, 2017), pp. 39–43. One of the key findings of the Gallup Survey in 2016 was that almost universally, men and women mention the "balance between work and family" as one of the top challenges that working women in their countries face.

[4] D. Anxo et al.: "Introduction: Working time in industrialized countries", in Messenger (ed.): *Working time and workers' preferences in industrialized countries: Finding the balance*, op. cit., p. 3. Part IV (Terms and Conditions of Employment) of the Workers with Family Responsibilities Recommendation, 1981 (No. 165), provides guidance to the type of measures that improve the working conditions and quality of working life of workers with family responsibilities, including those aimed at the progressive reduction of working hours and reduction of overtime, flexible working schedules, rest periods and holidays (Paragraphs 17–20).

[5] *Slovakia*, *Ukraine* and *United States*.

[6] *El Salvador*, *Chile*, *France*, *Republic of Moldova* and *Russian Federation*.

[7] *Nicaragua.*

[8] *Hungary.*

[9] *Republic of Korea.*

[10] *Republic of Korea.*

[11] *Norway.*

[12] *Hungary* (Judicial Decision No. 195 of 2010).

[13] Section 91(2) of the Labor Code.

[14] Section 11(b) of Act No. 30364.

for scheduling, in the medium- to longer-term it can help enterprises retain skilled and valued employees whom they might otherwise lose.

662. A legal concern is that a change in a work schedule may result in a change in the terms of the employment contract. The provisions adopted in national legislation therefore seek to prevent the terms of the contract from being changed unilaterally, or to the disadvantage of the worker. National legislation that allows workers to change work schedules therefore also usually includes provisions outlining the permissible approaches that can be adopted by workers and employers, which may take several forms.

663. The first is based on mutual consent or agreement to changes in working hours between the employer and the worker, in which case any changes to work schedules or the section of the employment contract covering hours of work have to be agreed between workers and employers. [15] For example, in *Romania*, employers may establish individualized work schedules involving the flexible organization of working time with the agreement or at the request of the employee concerned. [16] The legislation in *Brazil* provides that: "In individual employment contracts, it is only permissible to change the respective conditions by mutual consent, and on condition that they do not directly or indirectly result in prejudice to the employee, under penalty of any clause in breach of this guarantee being null and void." [17] Such provisions are intended to offer workers and employers the flexibility to make changes in work schedules, without compromising the protections set out in labour law.

664. A legal requirement has been established in other countries for employers to consider a request or to consult on a change of work schedule. These are known as "right to request" laws. In some cases, employees are entitled to request a change in working hours, which must be addressed by the employer within a specified time frame. [18] This is the case in *New Zealand*, where employees can request at any time and for any reason to change their hours of work and the employer is required to deal with the request as soon as possible, and in any case within one month of the request. [19] Similarly, employers in some countries are legally required to consult workers on proposed changes to the work schedule. [20]

665. Collective agreements may also provide a legal basis for mutually agreed changes to work schedules in cases where the law allows negotiations on such changes within the framework of a collective agreement and the legislation governing daily and weekly hours of work. [21] In some countries, trade union representatives and the employer can also negotiate specific terms in collective agreements. [22] In other countries, such as *Chile*, the law allows amendments to a collective agreement through covenants in response to collective or individual requests to change work schedules in enterprises that have a minimum threshold of unionized workers. [23]

[15] *Australia*, *Republic of Moldova* and *Panama*.

[16] Article 118 of the Labour Code.

[17] Section 468 of the Consolidation of Labour Laws.

[18] *Switzerland* and *Turkmenistan*.

[19] Part 6AA of the Employment Relations Act.

[20] *Croatia* and *Finland*.

[21] *Burkina Faso.*

[22] *Sweden.*

[23] Act No. 20.940 of 2017.

666. In some countries, there is a legal requirement for negotiations between workers and employers to be undertaken in "good faith", which also applies to changes in work schedules. For example, in *France*, employers are required to assess employee requests based on common rules of conduct and, in exercising their obligations, the parties have to conduct their negotiations based on the principle of good faith or fair treatment. This is especially important where there is no regulation covering changes to working schedules. Codes to promote working conditions as part of good faith collective bargaining have been incorporated into national laws, such as the Code of Good Practice in *South Africa*, which includes information and guidelines for employers and employees concerning the arrangement of working time and the impact on health, safety and family responsibilities. The Code has to be read in conjunction with the working-time provisions of the national labour legislation. [24]

667. Another important variable when changing working schedules is how long the change is intended to apply for. In some cases, the national legislation is silent on this period, while in other countries there are legal provisions requiring the indication of a specific period for any change in work schedule. For example, in *Kazakhstan*, flexible working schemes have to specify the fixed working hours, the flexible hours that a worker may wish to work and a reference period, which must not exceed six months. [25]

668. Comparable legal conditions exist in the *Netherlands*, where workers must have completed one year of continuous employment with the employer before submitting a request, which has to be made four months in advance of the proposed change to the work schedule. Whether or not the employer agrees to the change, workers can only submit a new application every two years. [26]

3. Shift work arrangements at the national level

669. The concept of shift work may be defined as "a method of organization of working time in which workers succeed one another at the workplace so that the establishment can operate longer than the hours of work of individual workers". [27] Shift work allows companies to extend their operating hours beyond the working time of individual workers, and to accommodate peak periods of demand (examples include the "stacking" of multiple part-time work shifts in the retail trade). Shift systems can take a nearly infinite variety of forms, but they consist of two basic patterns: fixed shift systems, in which a particular group of workers always works the same shift; and rotating shift systems, in which workers are assigned to work shifts that vary regularly over time and "rotate" around the clock (for example, from morning to afternoon/evening to night shift). The most common shift systems are the two-shift fixed (morning/afternoon and afternoon/evening) and three-shift fixed (morning, afternoon/evening and night) systems. If a firm operates non-stop during the week, shift operations are considered to be "continuous". Such continuous shift operations, by their very nature, require night work and weekend work for at least some groups of workers, often based on three-shift fixed systems of eight hours a shift, or

[24] Section 87(1)(a) of the Basic Conditions of Employment Act, read in conjunction with Chapter Two of the Act on the regulation of working time.

[25] Article 74 of the Labour Code.

[26] Section 2 of the Adjustment of Working Time Act.

[27] ILO: *Working time in the twenty-first century*, op. cit., p. 45.

alternatively rotating shifts. They may also be based on two-shift systems, in view of the increasing use of 12-hour shifts in enterprises.

Box 6.1
Defining shift work: Systems, patterns and variables *

The main systems are discontinuous, semi-continuous and continuous shifts:

(a) discontinuous shift work: the undertaking operates fewer than 24 hours a day, with a daily break and usually a weekend break; as there are normally two shifts a day, this is often called the "two-shift system";

(b) semi-continuous shift work: the undertaking operates 24 hours a day, that is without a daily break, but with a break at the weekend; and

(c) continuous shift work: the undertaking operates 24 hours a day, seven days a week, that is without a daily break or a break at weekends or on public holidays.

Within the framework of these systems, groups of shift workers (teams) can be assigned to shifts according to the following two basic patterns:

(a) fixed (or permanent) shifts, in which each worker belongs to a team that is permanently assigned to a given shift (essentially in the discontinuous, or two-shift system, with crews being permanently assigned to the day shift or the night shift); and

(b) rotating (or alternating) shifts, in which each worker belongs to a team that alternates between the day and the night shift, or rotates between the morning, afternoon and the night shift (used in all three systems).

In the case of rotating or alternating shifts, there are two other important variables:

(a) frequency of rotation: teams may change shifts every week (the most common practice), or at shorter or longer intervals; and

(b) the length of the rotation cycle (that is, the period necessary for a worker to get back to the same point and resume the sequence of days of work and rest over a number of weeks), which in a continuous shift system depends on the frequency of rotation and the number of crews used.

* J.M. Clerc (ed.): *Introduction to working conditions and environment* (Geneva, ILO, 1985), pp. 121–122.

670. Article 2(5) of the European Union Working Time Directive [28] defines "shift work" as "any method of organising work in shifts whereby workers succeed each other at the same work stations according to a certain pattern, including a rotating pattern, and which may be continuous or discontinuous, entailing the need for workers to work at different times over a given period of days or weeks". Article 2(6) defines a "shift worker" as "any worker whose work schedule is part of shift work". The legislation in some countries contains a definition of "shift work". For example, in *Romania*, "shift work is a method of organizing the work schedule, including a rotating schedule of a continuous or discontinuous type, requiring the employee to perform an activity within different time ranges in relation to a daily or weekly period, as established in the employment contract", and a "shiftworker" is "an employee whose work schedule is on a shift work schedule". Similarly, in *Poland*, shift work is defined as "the performance of work according to the applicable working-time schedule providing for a change of the time of work performance by individual employees after a specific number of hours, days or weeks", with this type of work being possible "regardless of the working-time system applied".

[28] Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organization of working time.

671. In other countries, there is no explicit definition of "shift work" or "shift worker" in national legislation, but the working-time provisions of the national labour legislation provide legal guidance on these issues. In some countries where there is no definition of "shift work" in the national legislation, shifts are permitted on condition that they are structured in accordance with the regulations on maximum working time, night work and rest periods. [29] In other countries, the maximum duration of working hours is specified, and this limit is then used to structure shift work arrangements. [30] For example, the legislation in the *Dominican Republic* does not define shift work, but provides that day work is between 7 a.m. and 9 p.m., night work is between 9 p.m. and 7 a.m., and a "mixed day" includes periods of night and day work, in which the night period is less than three hours. [31] This does not define or restrict shift work, but outlines the periods that need to be taken into account when developing a shift working arrangement.

672. In some cases, national legislation limits the length of a single shift. For example, in *Brazil*, the Federal Constitution limits rotating shift work hours (defined as variable daily shift lengths including, even in part, both day and night work, which can disrupt the worker's circadian rhythms) to a normal limit of six hours a day. [32] In other countries, such as the *Republic of Moldova*, the length of a single shift is limited to less than 12 hours, [33] while in *Azerbaijan* [34] and *Belarus* [35] no shift may be more than 12 hours. In *Turkmenistan*, the legislation provides that when working in shifts, each group of workers must carry out their work for the specified number of working hours for one shift, which must not exceed 12 hours. [36] In some countries, limits are applied to shift length depending on the shift system used, with longer hours for fewer shifts and shorter hours for more shifts. [37]

673. Shift patterns have received attention from policy-makers in many countries, with the legislative provisions in some cases focusing on shift rotation, which can be problematic for workers' health and well-being if not properly structured. For example, in some countries the legislation prohibits overlapping shifts, [38] or requires rest periods between shifts so that workers do not work more than one consecutive shift. [39] In other cases, a change is required from a night shift to a day shift. [40] For example, in *Greece*, the legislation provides that in enterprises that operate continuously (on a 24-hour basis) with

[29] *Netherlands.*

[30] *El Salvador*, *Honduras* and *Madagascar*.

[31] Section 149 of the Labour Code.

[32] Section 7, XIV, of Federal Constitution. There are also specific daily limits for specific types of work: six hours in the banking sector (Consolidation of Labour Laws, section 224), telephone and data-processing services (Consolidation of Labour Laws, section 227) and work in underground mines (Consolidation of Labour Laws, section 293), as provided in Title III, Chapter I, of the Consolidation of Labour Laws and certain industry-specific regulations.

[33] *Republic of Moldova*.

[34] Section 92 of the Labour Code.

[35] Articles 112–114 of the Labour Code.

[36] Article 72 of the Labour Code.

[37] *Switzerland.*

[38] *India*.

[39] *Chile*, *Mongolia*, *Mozambique* and *Ukraine*.

[40] *Montenegro*.

rotating shifts, workers who work on a night shift one week should work on a day shift the following week. [41]

674. By contrast, in view of the implications of shift systems for both enterprise performance and the well-being of workers, laws have been adopted providing for a required period of consultation prior to the implementation by enterprises of any changes to the scheduling of shifts. Employers wishing to change shift schedules may be required to consult the trade union or workers' representatives during a specific period of time in advance of any change. [42] For example, the legislation in the *Russian Federation* requires employers to notify workers of shift schedules no later than one month prior to their entry into force, and calls for this provision to be included in an annex of any collective agreement between the trade union and the employer. [43]

675. Where national laws are silent or do not go into detail on shift work, collective agreements and workplace rules may fill the regulatory gap, especially in countries that have limited legislation, but rely primarily on collective agreements between the social partners to negotiate terms and conditions of employment (including hours of work and rest). [44] Collective agreements may also address variations or rotations in shifts, while workplace rules sometimes determine how shift work is implemented at the workplace, in accordance with the statutory maximum daily and weekly hours of work. [45]

676. In certain cases, special exceptions apply to the organization of shift work, particularly in economic sectors where it is necessary to provide a continuous service, such as medical facilities. [46] In other cases, more flexible arrangements are adopted to limit the impact of shift work on young workers, [47] students, workers with disabilities or workers engaged in heavy physical work. [48]

677. The Hours of Work (Industry) Convention, 1919 (No. 1), establishes specific limits for working hours in the case of shift work. Article 2(c) provides that shift workers may be employed in excess of eight hours in any one day and 48 hours in any one week, provided that these limits are respected over a three-week period. Article 4 provides additional flexibility in the case of "processes which are required by reason of the nature of the process to be carried on continuously by a succession of shifts". In such cases, working hours may reach an average of 56 hours a week (no reference period is specified). Over the years, the Committee has commented on the implementation of these provisions. For example, it has noted that the Labour Code in *Bulgaria* provides that, when working hours are averaged, the maximum duration of a work shift is 12 hours and the maximum duration of the working week is 56 hours, but that such flexibility is not limited to continuous processes, as required by Article 4 of the Convention. [49] It has noted that, in *Ghana*, the Labour Code allows the average number of hours worked to be calculated over

[41] Section 8 of Presidential Decree of 27 June 1932.

[42] *Czech Republic*, *Norway*, *Serbia*, *Tajikistan*, *the former Yugoslav Republic of Macedonia* and *Turkmenistan*.

[43] Article 372 of the Labour Code. According to the Russian Government, article 372 of the Labour Code requires the inclusion of an annex to a collective agreement that contains adopted local regulations. This annex is presumably legally enforceable.

[44] For instance, in *Denmark* and *Sweden*.

[45] *Honduras.*

[46] *Sudan.*

[47] *Kyrgyzstan.*

[48] *Russian Federation.*

[49] *Bularia* – CEACR – Convention No. 1, direct request, published in 2015.

a maximum period of four weeks in the case of shift work, while Article 2(c) of the Convention does not allow the use of reference periods longer than three weeks. [50] In *Belgium*, the Labour Code allows normal hours of work (eight hours a day and 38 hours a week) to be exceeded when the work is carried on by successive shifts. In such cases, the average weekly hours of work may not exceed 40 over a reference period of three months, which may be extended to one year, and actual working time may not exceed 11 hours a day or 50 hours a week. In this respect, the Committee has recalled that Article 2(c) of Convention No. 1 allows normal working hours in the context of shift work to be exceeded only if the average number of hours over a period of three weeks or less does not exceed eight a day and 48 a week. [51]

4. Hours averaging schemes [52]

678. Statutory hours-averaging schemes allow for variations in daily and weekly hours of work within specified legal limits, such as maximum daily and weekly hours, while requiring that working hours either do not exceed a specified weekly average over the period within which the hours are averaged (the "reference period"), or remain within a fixed annual total. [53] On condition that the maximum limits are respected, including the weekly average or annual total, no overtime premium is payable for hours worked beyond the normal statutory hours of work. Other important provisions respecting annualized hours or other types of hours-averaging arrangements include the notice period for changes in work schedules, the reference periods worked are averaged [54] and the conditions under which overtime is paid (for example, if the total annual hours are exceeded). In some cases, the annual total includes some "reserve hours", which are worked only when required. Under fully annualized hours arrangements, wages are normally kept constant and are paid on an average basis throughout the year. Annualized working-hours arrangements and other types of hours averaging are particularly useful in industries with strong and predictable seasonal variations in demand (such as holiday resorts). However, annualized working-hours arrangements are among the most complex scheduling systems and require careful planning and implementation. [55]

679. National legislation respecting hours averaging varies in terms of the schemes that are permitted. In some cases, countries use one or more "reference periods" as the basis for hours averaging, namely monthly, quarterly or annual hours. In countries where hours-averaging schemes are permitted or defined by law, the main requirement is compliance with the statutory daily or weekly limits on hours of work.

680. In many countries, hours-averaging schemes involve the averaging of hours of work on a weekly basis for up to one month. [56] For example, in *Saudi Arabia*, the legislation provides that in firms where work is carried out in shifts, an employer may, with the ministry's approval, increase the number of working hours to more than eight hours a day or 48 hours a week, on condition that the average hours of work over a period of three

[50] *Ghana* – CEACR – Convention No. 1, direct request, published in 2015.

[51] *Belgium* – CEACR, Convention No. 1, direct request, published in 2010.

[52] Hours averaging in the context of meeting obligations under Conventions Nos 1 and 30 can be found in Chapter 1.

[53] ILO: *Working time in the twenty-first century*, op. cit., p. 16.

[54] A reference period for working hours averaging is the period of time over which working hours may be averaged. This may be a week, month, quarter of a year, half a year or a year. Legislation permitting hours averaging usually does not allow the reference period to exceed one year.

[55] ILO: *Working time in the twenty-first century*, op. cit., p. 53.

[56] *Belize*, *Botswana*, *Brunei Darussalam*, *Eritrea*, *Latvia*, *Solomon Islands* and *Uganda*.

weeks is not more or less than eight hours a day or 48 hours a week. [57] The legal provisions in some countries establish a period of less than a month, but allow this period to be exceeded with government approval. For example, in *Malaysia*, the average number of working hours worked over any period of three weeks, or longer as approved by the Director-General, shall not exceed 48 per week. [58] However, in some countries, the number of hours a month that can be worked is specified, which means that weekly hours can vary, provided that the monthly total is respected. For example, in *Madagascar* the statutory duration of work for employees cannot exceed 173.33 hours a month. [59]

681. The legislation in some countries provides for hours averaging over an extended number of weeks or for several months. In a number of countries, the reference period is between two and four months, or the equivalent number of weeks. [60] For example, the legislation in *Portugal* specifies that collective agreements may define normal hours of work on an average basis, in which case the daily limit for hours of work (eight hours) may be increased by up to four hours, and weekly hours may reach 60 hours. Additional hours performed in the case of force majeure are not taken into consideration. When calculated on an average basis, normal hours of work may not exceed an average of 50 hours a week over a period of two months. [61] The labour legislation in *South Africa* allows a longer reference period, providing that "working time may not exceed eight hours per day and 40 hours per week on average per five-day work week during the established settling period not exceeding 4 months". [62] In *Mozambique*, normal hours of work must not exceed eight in the day and 48 hours a week. Hours of work may be calculated on average over a six-month period. [63]

682. Annualized working hours may be thought of as a special case of "averaging", in which the reference period is one year and/or the fixed total number of working hours is distributed over a full year. [64] Only when this total is exceeded do overtime premiums become payable. In addition, remuneration is generally not calculated on the basis of the actual hours worked in a week, but is a fixed sum that corresponds to remuneration for the average working week or a fixed number of hours over the reference period. Annualized hours schemes can potentially offer employers and workers benefits, but need to be carefully calibrated to ensure that the results are fair for both parties. Annualized hours are permitted by law as a reference period in some countries. [65] As with other reference periods, the maximum statutory daily and weekly hours of work have to be respected over the averaging period, and detailed record-keeping is therefore required to ensure compliance. A one year or 12-month period is normally the maximum for the purposes of averaging due at least in part to the complexity of application. For example, the legislation in *Finland* provides that regular weekly working hours can be so arranged that the average

[57] Part VI: Working Conditions and Circumstances, Chapter Two: Working Hours, article 100, Royal Decree No. M/51, 23 Sha'ban 1426/27 Sep. 2005.

[58] Section 60(C)(1) of the Employment Act 1955.

[59] Section 75(1) of the Labour Code.

[60] *Cyprus*, *Lithuania*, *Luxembourg*, *Poland*, *Romania*, *Turkey* and *United Kingdom*.

[61] Section 204 of the Labour Code.

[62] Article 129 of the Labour Code.

[63] Section 85 of the Labour Act.

[64] ILO: *Working time in the twenty-first century*, op. cit., p. 16.

[65] *Azerbaijan*, *France*, *Japan*, *Norway*, *Suriname* and *Uzbekistan*.

is 40 hours over a period of no more than 52 weeks. [66] In *Tajikistan* daily shift work cannot be more than 12 hours a day for a period of up to one year. [67]

683. In some countries, emphasis is not placed on any particular reference period, and a variety of reference periods are permitted, which still have to meet daily and weekly limits. [68] For example, the labour legislation in the *Russian Federation* allows for a period of recording working hours per month, quarter or year. [69] In *Morocco*, hours of work in non-agricultural activities are set at 2,288 hours a year or 44 hours a week, and total annual working time may be apportioned over the year according to the needs of the undertaking, on condition that hours of work do not exceed ten a day. [70]

684. Some countries (*Cambodia*, *Costa Rica* and *Côte d'Ivoire*) report no legal provisions on hours averaging, but also no prohibition of it.

685. In some countries where the legislation contains provisions on hours averaging, the extension of normal daily or weekly hours of work is allowed by collective agreement or agreement between workers' representatives and the employer. This type of derogation is usually based on the extension of normal hours of work by collective agreement for technical, objective or work-related reasons. [71] In other cases, the legally permitted increase relates either to the number of hours in the reference period, or the reference period itself, but must involve a collective agreement. [72] In *Croatia*, workers may work up to 60 hours a week, including overtime, for a period of between one month and one year, on condition that the schedule is set out in a collective agreement and the workers do not work more than 48 hours on average. [73] In other countries, a change in normal or average hours of work is permitted by agreement between workers and the employer. In *Japan*, weekly and monthly variable working-hours systems must be based on a labour–management agreement and, in the case of annual systems, a written agreement with the person representing a majority of the workers in the workplace. [74] Japanese law specifies that, in a monthly and annualized system of variable working hours, workers may work in excess of eight hours a day on condition that the average hours of work a week do not exceed 40. [75] The legislation in the *Republic of Korea* allows the hours in a particular week to be extended to 12 hours a day and 52 a week on condition that the average weekly hours of work do not exceed 40 during a period of not more than three months, and that an agreement is concluded between the employer and employee representatives. [76]

686. Health and safety is an important concern in relation to hours-averaging schemes, as long working hours may have a negative impact on workers' health and well-being, and also on workplace safety. Legal provisions in some countries specifically require health and safety to be taken into account when developing work schedules which include hours-

[66] Section 6 of the Working Hours Act.

[67] Articles 67–70 of the Labour Code.

[68] *Kazakhstan*.

[69] Article 104 of the Labour Code.

[70] Section 184 of the Labour Code.

[71] *Cyprus* and *Italy*.

[72] *Portugal* and *Turkey*.

[73] Article 66 of the Labour Act.

[74] Article 32 of the Labour Standards Act, 1947.

[75] ibid.

[76] Article 51 of the Labour Standards Act.

averaging schemes, particularly when they involve longer average daily and weekly hours of work than those normally permitted by law. [77] This may take the form of a general prohibition on modifications to work contracts to the detriment of the worker, such as in the labour legislation in *Brazil*. [78] The legislation in *Hungary* requires employers to ensure that the work schedule of employees is drawn up in accordance with occupational safety and health requirements and in consideration of the nature of the work. [79] Labour authorities, which may be responsible for approving longer hours-averaging schemes, may also be required to consider the impact on health, welfare and worker well-being of the extension of working hours. [80] In some cases, the reference period for averaging working hours is reduced if work is carried out under harmful or hazardous conditions. [81]

687. Hours-averaging schemes are sometimes applicable to specific sectors or occupations, in view of the special nature of the work or the need for continuity of service, which may not apply in other sectors. In some countries, the national legislation enumerates sectors or occupations in which average working hours may be longer or more varied over a reference period, to address a specific need. [82] For example, in *China*, hours of work may be subject to daily and weekly averaging in industries such as transport, railways, post, telecommunications, water transport, aviation, resource exploration, construction, salt making, sugar manufacturing, tourism and seasonal work. [83] Specific hours-averaging schemes are sometimes applicable in certain occupations, such as doctors, nurses and other medical professionals, due to the need for continuous health services. [84] There are also sometimes very specific hours-averaging systems, under which the hours of work are longer than normal daily or weekly working hours during particular periods in sectors such as agriculture, where planting and harvests are seasonal. [85] There may also be extended averaged working-hours schemes during peak periods in very seasonal industries, such as tourism. [86] In some countries, special rules apply to categories such as hotel and casino workers [87] and surveillance workers. [88]

688. Apart from the specific case of shift work, both Conventions Nos 1 and 30, address the issue of hours averaging in general. [89] The averaging of hours of work over a period of time exceeding a week is authorized in exceptional cases where it is recognized that the normal limits of eight hours a day and 48 hours a week cannot be applied, although the hours worked must not exceed 48 hours a week on average over the reference period. Hours-averaging schemes have been the subject of numerous comments by the Committee in relation to the application of Conventions Nos 1 and 30. In many cases, averaging

[77] *Cyprus*.

[78] Section 468 of the Consolidation of Labour Laws.

[79] Article 97(1) of the Labour Code.

[80] *Norway*.

[81] *Russian Federation*.

[82] *Austria*, *Finland* and *Italy*.

[83] Article 5 of the Labour Law of the People's Republic of China.

[84] *Austria*, *Mauritius* and *Norway*.

[85] *Liberia*, *Madagascar*, *Morocco* and *United Republic of Tanzania*.

[86] *China* and *Turkey*.

[87] *Suriname*.

[88] *Norway*.

[89] See Article 5 of Convention No. 1 and Article 6 of Convention No. 30.

schemes which allow hours of work to exceed the normal limits set by the Conventions (eight hours a day and 48 hours a week) are not restricted to shift work or other exceptional cases. In this respect, the Committee has recognized that:

> modern flexible working-time arrangements could call into question the relevance of certain restrictions imposed by [Convention No. 1] on the maximum duration of daily and weekly working hours, but wishes to emphasize the importance of reasonable limits and protective safeguards in devising such flexible arrangements, so as to ensure that modern working-time arrangements are not prejudicial to the health of workers or to the necessary work–life balance. [90]

5. Compressed work weeks

689. Compressed work weeks involve the same number of working hours being scheduled over fewer days than is typical in a standard work week, resulting in longer working days. This arrangement extends normal daily hours of work beyond eight, but reduces the number of consecutive days worked to fewer than five a week. For example, the structure of a compressed work week based on a 40-hour week would involve reducing the number of working days to four, with ten hours worked each day. This is known as a "4 x 3" arrangement (four consecutive days of work, followed by three consecutive days of rest). The logic underlying compressed work weeks varies according to the workplaces concerned, but these arrangements are often used in offices to reduce the cost of starting up operations, as well as energy and other variable operating costs. The benefit for workers is that they work fewer days per week, which can help to balance work and family life. It can also reduce travel time for workers, thereby contributing to reducing pollution and transport congestion. This form of working-time arrangement is often not referred to specifically in national laws or regulations, and the approaches adopted tend to vary in practice.

690. In certain countries, the national legislation makes specific reference to compressed work weeks. [91] For example, in *Austria*, the work agreement may allow normal daily working time of up to ten hours if the entire work week is distributed regularly over four days. [92] The Labour Code in *Ecuador* allows working days that exceed eight hours a day, but not more than a maximum of 40 hours a week, or ten hours a day, at times that may be distributed irregularly over the five days of the week. [93] The legislation in *South Africa* allows work for up to 12 hours a day on condition that the ordinary hours of work do not exceed 45 in any week, no more than ten hours of overtime are worked in any week and there are no more than five working days in any week. [94] In some cases, national legislation places limits on the period over which a compressed work week can be used. [95] For example, in *Poland*, at the written request of an employee, the legislation allows a shortened working week, during which workers can work fewer than five days a week and no more than 12 hours a day for a period of no more than one month. [96]

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[90] *Portugal* – CEACR, Convention No. 1, observation, published in 2015. See also *Canada* – CEACR, Convention No. 1, direct request, published in 2014; *Malta* – Convention No. 1, direct request, published in 2015; *Mozambique* – Convention No. 1, direct request, published in 2015; *Norway* – Convention No. 30, direct request, published in 2014.

[91] *Côte d'Ivoire*, *Republic of Moldova* and *Portugal*.

[92] Section 4(8) of the Working Time Act (AZG).

[93] Section 42(7) of the Labour Code.

[94] Section 12 of Basic Conditions of Employment Act.

[95] *Mauritius.*

[96] Article 143 of the Labour Code.

691. As with hours-averaging systems, the fact that compressed work weeks are not specifically envisaged in law does not mean that they are prohibited, although such arrangements still have to comply with the statutory limits on maximum daily and weekly hours of work. [97] The Government of *Belgium* reports that, although the national regulations do not introduce compressed work weeks, a four-day working week is not prohibited on condition that daily working-time limits are respected (four days a week with a maximum of nine hours a day).

692. In some cases, compressed work weeks are addressed in collective agreements or agreements between workers and employers. For example, in *Denmark* and *Sweden*, collective agreements at the sectoral or enterprise level indicate whether compressed work weeks are available. Some other countries report that clauses on compressed work weeks may be included in agreements between workers or their representatives and employers. [98] In *Chile*, agreements can be negotiated for the distribution of the ordinary working week over four days. [99]

693. In some countries, the courts have been involved in determining the legality of certain working-time arrangements, such as compressed work weeks. For example, the Government of *Uruguay* reports that although a number of working-time arrangements are not addressed in law, they have been used in collective agreements that have subsequently been found to be unlawful by the judiciary.

694. In certain countries, a combination of law and public policy has been used to address various working-time arrangements, including compressed work weeks. In *Peru*, a Guide on good practices for the reconciliation of work, family and personal life, issued with ministerial approval, covers overtime, hours of work, work schedules, shifts and breaks, and includes compressed working weeks among other working-time options. [100] Comparable guidance has also been developed in the *Philippines*, where the Guidelines on the adoption of flexible work arrangements [101] indicate that, in a compressed working week, the normal working week is reduced to fewer than six days, but total weekly working hours remain at 48, and each working day may not be more than 12 hours.

695. Conventions Nos 1 and 30 do not specifically address compressed working weeks, although the normal limits that they establish apply to such arrangements. In this respect, the Committee has recalled that it appears that in many cases compressed work-weeks are likely to be in contravention of the requirements of Convention No. 1, Convention No. 30, or both, in particular due to the number of daily hours which are typically worked under these arrangements. For example, compressed work-week arrangements, where work is performed by two teams in 12-hour shifts, would be incompatible with the requirements of both Conventions Nos 1 and 30, because the daily work may exceed the nine-hour and ten-hour limits prescribed respectively. [102]

[97] *Colombia*, *France*, *Netherlands*, *New Zealand*, *Senegal*, *Serbia* and *Switzerland*.

[98] *Czech Republic*, *Turkmenistan* and *Singapore*.

[99] Covenants on the distribution of the working day over the week.

[100] Ministerial Decision No. 48-2014-Tll.

[101] Philippines Department Advisory No. 2, 2009.

[102] See, for example, *Argentina* – CEACR, Convention No. 30, observation, published in 2013; *Nicaragua* – CEACR, Convention No. 1, direct request, published in 2014; *Portugal* – CEACR, Convention No. 1, observation, published in 2015.

6. Staggered working hours [103]

696. Staggered working-hours arrangements allow different starting and finishing times for different groups of workers in the same establishment. However, once the starting and finishing times have been chosen (or fixed by the employer), they remain unchanged. Staggered working hours do not offer workers discretion as to the hours they work, although individual workers may be able to change groups or swap with other workers if they prefer different starting and finishing times, either for a specific period or permanently. It has been suggested that staggered working hours can ease the problems of traffic congestion and overburdened public transport at peak hours, as workers arrive and leave at different times, thereby limiting the impact on traffic and public transport during peak periods. [104]

697. Staggered hours are widely used in a number of European countries, including *Italy*, *Slovenia* and *Sweden*, as well as in *Singapore*. [105] While staggered working hours are addressed by policy measures in certain cases, they are not commonly provided for in national legislation. For example, the Government of *Belgium* reports that, while the national regulations do not envisage the introduction of staggered working hours, employers are not forbidden to operate parallel teams with schedules that are not identical, although the schedules must be in compliance with the respective labour legislation. Staggered hours schemes that comply with working-time laws and regulations may be introduced at the sectoral or workplace level, as decided by workers and employers.

7. Flexitime and time banking/ time-saving accounts

698. Basic flexitime arrangements allow workers to choose when they start and finish work, based on their individual needs (within specified limits), and in some cases even the number of hours that they work in a particular week. In addition to formal flexitime arrangements, some employers offer flexible daily hours of work on an informal basis. In general, formal flexitime programmes involve the designation of a period of core hours when all employees are required to be at work (for example, between 10 a.m. and 4 p.m.), although there are no core hours in some flexitime programmes. Core hours are bracketed by periods of flexible hours (for example, from 7 a.m. to 10 a.m. and from 4 p.m. to 7 p.m.), when employees can choose which hours they prefer to work, on condition that they work the required number of hours over a specified period. Flexitime arrangements are often adopted to facilitate work–life balance, rather than for specific business reasons.

699. National labour legislation covers flexitime to varying degrees. In most countries where the legislation addresses flexitime arrangements, there are provisions defining flexitime, and the details are left to workers and employers. [106] The focus is not on explicit

[103] Staggered working hours are different from split working hours that apply in certain sectors of activity, for example in cleaning services and restaurants. In split working hours, the daily working schedule is divided into several parts interspersed with long breaks. This entails very long working days and makes it more difficult to reconcile work and family life. In this respect, the French Court of Cassation considered that the employer's management power applies "unless there is an excessive interference with the employee's right to respect for personal and family life or with his/her right to rest". Cass. (Social Chamber), 3 Nov. 2011, *pourvoi* (appeal) No. 10-14702.

[104] Clerc: *Introduction to working conditions and environment*, op. cit., p. 158.

[105] ILO: *Working time in the twenty-first century*, op. cit., p. 50.

[106] *Austria*, *Belarus*, *Finland*, *France*, *Japan*, *Lithuania* (the law entered into force on 1 July 2017), *Luxembourg* and *Poland*.

starting and finishing times, which are to be determined by workers and employers, but rather on the designation of core and non-core hours at the beginning and end of the day. For example, in *Kyrgyzstan*, the legislation provides that the flexible working time mode sets the time of compulsory attendance at work (fixed time) and the flexible (variable time) during which employees are entitled at their discretion to come to work and leave work. [107] Similarly, the legislation in *Finland* provides that employers and workers can agree on flexible working hours which allow workers, within limits, to determine the beginning and end of daily working hours. [108] Similarly, in the *Republic of Korea*, workers may decide the beginning and end of the workday pursuant to the rules of employment. [109] In other countries, there are provisions focusing on the length of the working day, which are in principle applicable to flexitime arrangements. [110] For example, in *Mexico*, the legislation provides that employers and workers shall determine the length of the working day (within the statutory limits). [111] Although less precise, such provisions allow workers and employers the necessary flexibility to implement flexitime arrangements at the workplace without compromising workers' well-being.

700. Some more complex forms of flexitime arrangements can become time-saving account arrangements (also known as working-time accounts), which allow workers to accumulate credit hours and, in some cases, even to use these stored or "banked" hours to take extended periods of time off. Time banking or time-saving account arrangements allow workers to build up "credits" or "debits" in the hours worked, up to a maximum limit. The periods over which the credits or debits are calculated are much longer than for flexitime, ranging from several months to a year, or even longer. The rules of the specific time banking or saving account arrangements determine how and when "banked" hours can be used. In general, in shorter-term working-time accounts, hours worked over the number of contractually agreed hours can be taken as paid time off. In the case of longer-term accounts, which are much rarer, they take on some of the characteristics of annualized hours arrangements, under which the hours credited can be used for longer paid holidays, sabbaticals or, in some cases, even early retirement. However, in certain cases, there are significant restrictions on the use of such accounts, based on operational needs (such as the advance notice required to take time off), in line with the dual logic of working-time accounts, which are designed both to facilitate work–life balance (similar to flexitime) and to help enterprises adapt working hours to operational needs. [112] The objective that takes precedence, or the balance between them, depends on the structure of the particular arrangement.

701. The details of time banking and savings arrangements vary between countries. In the legislation of some countries, a general approach is adopted, with a basic outline of time banking/saving arrangements being set out, and their implementation left to agreements between workers and employers in collective agreements. [113] Time banking/saving arrangements may cover periods ranging between several months and one year. [114] For

[107] Article 105 of the Labour Code.

[108] Section 13 of the Working Hours Act.

[109] Article 52 of the Labour Standards Act.

[110] *Colombia.*

[111] Section 59 of the Federal Labour Act.

[112] J. Plantenga and C. Remery: *Flexible working time arrangements and gender equality: A comparative review of 30 European countries* (Luxembourg, Publications Office of the European Union, 2010), p. 54.

[113] *Czech Republic*.

[114] *Brazil* and *Czech Republic.*

example, the legislation in *Hungary* sets a maximum duration of four months or 16 weeks for time banking, [115] while the maximum period is one year in *Uzbekistan*. [116] Overtime regulations can also play an important role in framing the time banking/saving arrangements that workers and employers can establish. [117] This is the case for instance in *Malta*. [118]

8. On-call hours (or standby hours)

702. On-call hours [119] mean that workers have to be on standby outside their regular hours of work and may be called to work in case of need by the employer. The hours worked in this context are additional to those fixed in the work schedule. The circumstances in which workers are on call vary. For example, they may be required to be on call at the premises of the employer (as in the case of doctors in nearby accommodation facilities, or live-in domestic workers required to be available to the employer to attend the needs of the family members if necessary), or to be at home or in other designated premises (which restricts what they can do during that time). Alternatively, workers may be able to move around freely and perform a variety of activities, on condition that they can be reached by phone or any other agreed method and can respond to the call to work, if needed.

703. The unpredictability and long hours, including being on standby to respond to calls from their employer or household members, have been recognized as particular concerns for domestic workers, especially live-in workers. The Domestic Workers Recommendation, 2011 (No. 201), encourages member States to regulate the maximum number of hours, compensatory rest period and rate of remuneration for standby and on-call periods during which these workers should remain at the disposal of the household (Paragraphs 8 and 9). [120]

704. At the level of the EU, the Working Time Directive provides that "'working time' means any period during which the worker is working, at the employer's disposal and carrying out his activity or duties, in accordance with national laws and/or practice". [121] The Court of Justice of the European Union has interpreted this provision in two landmark decisions regarding the situation of health professionals. It first held that "time spent on call by doctors in primary health care teams must be regarded in its entirety as working time and, where appropriate as overtime … if they are required to be at the health centre". On the other hand, if they "must merely be contactable at all times when on call, only time linked to the actual provision of primary health care services must be regarded as working

[115] Section 94(1) of the Labour Code.

[116] Article 123 of the Labour Code.

[117] *Portugal* and *Luxembourg*.

[118] Overtime Regulations, 2012 (S.L. 452.110).

[119] On-call hours refer to hours that workers might be on standby for their employer, which is different from on-call-work or casual employment (addressed in more detail in Chapter VII: Emerging issues).

[120] Convention No. 30 defines hours of work as "the time during which the persons employed are at the disposal of the employer". In its 2005 General Survey, the Committee noted that: "the criterion of 'being at the disposal of the employer' does not require that it be 'solely' at such disposal and … the use of the phrase 'disposal of the employer' does not exclude the worker from being able to pursue some personal activities. The issue is the extent to which the worker is restricted from engaging in personal activities during on-call hours, so as to be effectively at the disposal of the employer. This must be a matter of characterization in the circumstances of each case. Thus the time spent 'on call' may or may not be regarded as 'hours of work' within the meaning of the Conventions, depending on the extent to which the worker is restricted from engaging in personal activities during that time."

[121] Article 2(1) of the Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organization of working time.

time". [122] In the second decision, it found that the decisive factor in considering that time spent on call at the hospital constitutes working time is that doctors "are required to be present at the place determined by the employer and to be available to the employer in order to be able to provide their services immediately in case of need". In the view of the Court of Justice of the European Union, "those obligations, which make it impossible for the doctors concerned to choose the place where they stay during waiting periods, must be regarded as coming within the ambit of the performance of their duties" and that conclusion "is not altered by the mere fact that the employer makes available to the doctor a rest room in which he can stay for as long as his professional services are not required". The Court drew a comparison between the situation of doctors who are on standby, when they are required to be permanently accessible but not present in the health centre, and those who must remain available at the place determined by the employer for the whole duration of periods of on-call duty. The latter are subject to appreciably greater constraints since they have to remain apart from their family and social environment and have less freedom to manage the time during which their professional services are not required. [123]

705. The findings in this raised fears among EU Member States that staffing needs would increase tremendously in hospitals to comply with the Directive. The European Commission took the initiative of proposing a revision of the Directive. Among the proposed amendments was the suggestion to draw a distinction between "on-call time" (the period during which the worker has the obligation to be available at the workplace in order to intervene, at the employer's request, to carry out her or his activity or duties) and the "inactive part of on-call time" (the period during which the worker is on call but not required by the employer to effectively carry out her or his activity or duties). [124] The inactive part of on-call time would not have been considered as working time within the meaning of the Directive, unless national legislation, collective agreements or agreements between the social partners decided otherwise. [125] No agreement could be reached on the proposed amendment, despite several attempts and rounds of consultation. [126]

706. The national legislation in many countries, in defining on-call or standby hours, makes use of the concept of being under the supervision or at the disposal of an employer. [127] In some cases, national legislation is very specific on issues such as the differences between on-call and standby hours. For example, the national legislation in *Hungary* defines "on-call hours" as when the employer designates the place where the employee is required to be available, and "standby hours" as when the employee can choose the place where he/she is to remain so as to be able to report for work in a suitable

[122] European Court of Justice: Case C-303/98, *Sindicato de Medicos de Asistencia Publica (SiMAP)* v. *Conselleria de Sanidad y Consumo de la Generalidad Valenciana*.

[123] European Court of Justice: Case C-151/02, *Landeshauptsadt Kiel* v. *Norbert Jaeger*.

[124] See Commission of the European Communities: Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/88/EC concerning certain aspects of the organization of working time, COM(2004) 0697 final; and 2004/0209 (COD).

[125] A number of other critical issues were addressed in this Proposal, including in respect of the "opt-out clause" allowing derogations from the weekly limit to working hours.

[126] In 2017, the Commission dropped the idea of an amendment of the Working Time Directive. Instead, it published an interpretative communication on the Directive, supplemented by an implementation report. European Commission: Interpretative Communication on Directive 2003/88/EC of the European Parliament and of the Council of 4 November concerning certain aspects of the organization of working time (2017/C 165/01); Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee, Report on the implementation by Member States of Directive 2003/88/EC concerning certain aspects of the organization of working time (SWD(2017) 204 final), COM(2017) 254 final.

[127] *Croatia*, *Ireland*, *Japan*, *Papua New Guinea*, *Russian Federation* and *Sweden*.

condition without delay when so instructed by the employer. [128] In other countries, the legislation differentiates between on-call and standby hours based on the level of intensity of the work. The Government of *Germany* reports that the national legislation draws a distinction between: on-site on call (times when the worker must be present at the workplace without being required to work all the time, which usually includes supervisory or observation duties that can be carried out at the worker's initiative when called upon by the employer); on call duty (when the worker is available at the place specified by the employer, on or off the premises, to perform duties immediately if needed); and stand-by duty (when the worker is available, at a place determined by the worker, to go to work if necessary, when called upon to do so). In German law, standby duty (on-site or off-site) is considered to be working time. However, in the case of on-call duty, only the times when the worker's services are actually required are deemed to be working time.

707. A legal requirement of advance notice is important in ensuring that the use made of on-call and standby hours responds to operational needs, while ensuring that workers benefit from greater certainty regarding their hours of work and rest periods. The periods of notice required vary in the different countries, ranging from days to several weeks. For example, in *Angola*, at least one week of advance notice is required for assignment to the on-call roster. [129] In the *Czech Republic*, 14 days of advance notice are required before workers can be placed on standby hours. [130]

708. In some cases, restrictions are placed on the period of on-call or standby hours, which is important in ensuring that workers are not expected to be indefinitely on call or standby. For example, in *Austria*, on-call work can only be agreed for a period of ten days a month or, with a collective agreement, 30 days over a period of three months. [131] The legislation in *Hungary* restricts the duration of standby duty. [132] Such legal limitations can help achieve organizational equity (spreading on-call or standby duties around different workers) and protect workers' health and well-being (knowing how long they will be on call or standby allows them to schedule their work and private life).

709. The distinctions drawn in national legislation between on-call and standby hours are also important in determining the remuneration paid for those hours, with the legislation in some countries specifying the payments due for on-call and standby work, including overtime pay. [133] For example, in *Estonia*, on-call hours have to be paid at a rate of not less than one tenth of agreed normal hourly wages. [134]

710. In cases where national legislation determines forms of on-call or standby work, they are often applicable in sectors where, due to the nature of the work, there is a need for workers to be available at short notice during specific periods. In *Angola*, the sectors in which on-call and standby hours may be used include transport, communications and energy distribution, where continuous operation is required. [135] In *Chile*, on-call shifts are

[128] Section 110(1)–(4) of the Labour Code.

[129] Section 103(B) of the Labour Code.

[130] Section 95 of the Labour Code.

[131] Section 20a of the Working Time Act (AZG).

[132] Section 112(1)–(2) of the Labour Code.

[133] *Hungary*.

[134] Article 60 of the Labour Act.

[135] *Angola*.

legal for flight crews on commercial passenger and cargo aircrafts. [136] Emergency and medical services often require on-call work. Workers who provide emergency or urgent medical care in the *Russian Federation* are governed by legal provisions defining "on-duty at home", which set out the respective responsibilities of workers and employers, including the calculation and recording of such hours. [137] Due to the nature of the work, workers in these occupations are normally aware that on-call or standby hours are a more inherent part of the job than in other sectors. In this regard, the *Federation of Korean Trade Unions* notes that there is a lack of clarity as to what constitutes standby and on-call hours, which can lead to labour–management disputes.

9. Work sharing [138]

711. Working-time adjustments offer an important strategy for limiting or avoiding job losses and helping companies to retain their workforce during economic downturns, particularly through work sharing, which consists of a reduction in working time intended to spread a reduced volume of work over the same (or a similar) number of workers in order to avoid lay-offs, or to create new employment. [139] Such reduced working time may take various forms, and particularly shorter working weeks (for example, spread over three or four working days), as well as reduced daily hours or temporary plant shutdowns for periods of several weeks or even months. Although employees work a reduced number of hours, work-sharing schemes are not considered to be part-time work within the meaning of Convention No. 175. [140]

712. The first recorded work-sharing agreements offering financial compensation for reductions in working time date back to 1891 in *Germany*. During the Great Depression, a wide range of work-sharing initiatives, led by both industry and governments, emerged in both Europe and North America. For example, in the *United States*, work sharing became one of the major initiatives to combat the depression under President Roosevelt. In 1933, the President's Reemployment Agreement encouraged firms to: (i) shorten the

[136] Section 152 of the Labour Code.

[137] Article 350 of the Labour Code and Decree No. 608 of 19 June 2012. The Ministry of Health of the Russian Federation Order No. 148n of 2 April 2014 is also applicable. The calculation of working time under the Labour Code and the Regulations in this case is as follows: the employer is responsible for recording the hours worked while on duty at home (Regulation, para. 4). The start and end of the on-duty period are established according to the work schedule, which must be approved by the employer with due regard to the opinion of the representative workers' association (Regulation, para. 2(2)). Cumulative recording of working time is established for medical workers on duty at home. The procedure for carrying this out must be approved in the rules set out in workplace policies (Regulation, para. 2(1) and the Labour Code, article 104(4). A medical worker's working time is calculated as follows (Regulation, para. 3): every hour spent on duty at home is counted as 30 minutes of working time (Labour Code, article 350(6)); and every hour that the worker spends travelling from home to work (the location where emergency and urgent medical care is provided) and returning home is counted as one hour of working time. The procedure for recording that time must be agreed in a local regulation (with the agreement of the representative workers' association), and that every hour the worker spends providing medical care is counted as one hour of working time. Each time the medical worker who is on call at home is called in to work, the employer must correct (reduce) the time spent on duty at home during the recording period. That correction is carried out in such a way that the total duration of working time for that worker does not exceed the standard amount of working time laid down (Regulation, para. 3(2)).

[138] Work sharing should not be confused with job sharing, which refers to a voluntary arrangement whereby two persons take joint responsibility for one full-time job. For example, a common form of job-sharing is to split one full-time job into two part-time jobs.

[139] J.C. Messenger: *Work sharing: A strategy to preserve jobs during the global jobs crisis*, TRAVAIL, Policy Brief No. 1 (Geneva, ILO, 2009).

[140] Article 1(d) of Convention No. 175 provides that "full-time workers affected by partial unemployment, that is by a collective and temporary reduction in their normal hours of work for economic, technical or structural reasons, are not considered to be part-time workers".

working week to 35 hours; (ii) increase hourly wages; and (iii) recognize workers' legal right to bargain collectively. During the period of prosperity that followed the Second World War, the concept of work sharing faded into the background in all but a handful of European countries. However, the onset of the 2008–09 recession led to the re-emergence of work sharing as a labour market policy tool aimed at preserving existing jobs. Work sharing and partial unemployment benefits are policy responses suggested by the ILO Global Jobs Pact, 2009, to limit or avoid job losses and to help enterprises retain their workforce. [141]

713. Under national work-sharing programmes, enterprises receive benefits when they refrain from resorting to lay-offs and instead "share" the lower amount of work available by reducing the working hours of all employees or all members of a work unit. The reduction in working hours under work sharing is often (although not always) accompanied by reductions in wages, normally in proportion to the reduction in hours of work (although this is not always the case). This important constraint can be alleviated by government wage supplements, which are often provided through partial unemployment compensation. Well-designed work-sharing policies can result in workers being able to keep their jobs and even prepare for the future, and help companies to not only survive the economic crisis, but also to be in a good position to prosper when growth returns (particularly by retaining the workforce with its firm-specific skills), while the costs of social transfer payments, and ultimately of social exclusion, are minimized for governments and society as a whole. By helping to avoid mass lay-offs and helping businesses to retain their workforce, work sharing contributes to minimizing firing and (re)hiring costs, preserving functioning factories and bolstering staff morale during difficult times.

714. Work-sharing policies and programmes commonly include five key elements: (a) the reduction of working hours for all workers in a company, or a specific work unit, in lieu of lay-offs; (b) a corresponding (pro rata) reduction in earnings (total wages); (c) the provision of wage supplements to the affected workers to cushion the effects of temporary reductions in earnings; (d) the establishment of specific time limits for the period of work sharing (to ensure that the programme is a temporary measure in response to an economic crisis); and (e) the creation of links between work-sharing programmes and training/retraining activities. [142] In addition, it is also common to involve workers' and employers' organizations in the design and implementation of government-sponsored work-sharing programmes, which can increase the likelihood of their success. The concept of work sharing is relatively broad and can take different forms, with emphasis being placed on different elements in each particular case, as well as on communication. Formal work-sharing laws and programmes are currently only found in a few countries, although their number appears to be growing as awareness of work sharing increases around the world.

715. The reduction of hours of work is central to work-sharing programmes, under which employers are allowed to cut back a certain number of working hours, with a corresponding reduction in wages, in exchange for avoiding redundancies or dismissals. In most of the countries where work sharing is addressed in laws and policies, such reductions are permitted. [143] In some cases the maximum number of hours that can be cut

[141] ILO: *Recovering from the crisis: A Global Jobs Pact*, ILC, 98th Session, Geneva, 2009.

[142] Messenger: *Work sharing: A strategy to preserve jobs during the global jobs crisis*, op. cit.

[143] *Austria*, *Canada*, *France*, *Germany*, *Hungary* and *Sweden*.

are specified. [144] For example, in *Ecuador*, there must be a minimum of 30 hours of work a week. [145] In *Canada*, the minimum reduction allowed in a work-sharing programme is 10 per cent (one half day) and the maximum is 60 per cent (three days of work). [146] In the *United States*, under Short-Time Compensation (STC) Programmes (work sharing), which are state programmes linked to enabling federal legislation, reductions in hours of work may not be less than 20 per cent of usual weekly hours. [147]

716. The corresponding reduction in wages is not a reduction in the minimum hourly wage rate, but is based on the decrease in the number of hours of working, which results in lower gross earnings. National laws or policies may include measures to ensure that wage losses are minimized. For example, in *Brazil*, the legislation allows a wage reduction in proportion to the reduction in working hours. [148] In *France*, agreements to safeguard jobs, which can be concluded in enterprises facing serious cyclical economic difficulties, involve a commitment by the employer to preserve the jobs of the employees concerned in exchange for a modification in their remuneration or new working-time arrangements or modalities of work organization, or both. In no case may the remuneration fall below 120 per cent of the hourly national minimum wage. [149] In some cases, although wage supplements are not provided by the public authorities, measures to limit the loss of wages may be set out in agreements between workers and employers. [150] Although the protection of jobs is an important function of work-sharing laws and policies, there also appears to be recognition at the national level of the significance of wage and income protection in this context.

717. A number of countries have introduced wage supplements for workers in enterprises that participate in work-sharing programmes. The wage supplements are not intended to replace fully the wages that are lost, but to help make up for some part of the losses. Although this is often the most costly component of work-sharing programmes, it can be far less expensive than paying full unemployment benefit for dismissed or redundant workers. [151] In *Canada*, benefits are paid on the basis of the employee's normal weekly earnings, as calculated from the start of the work-sharing agreement. If irregular hours are worked, the average is calculated by averaging the weekly hours worked over the two years preceding the work-sharing application. [152] Although they provide a form of protection for the workers affected, work-sharing remuneration supplements do not normally make up fully for the wages lost.

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[144] *Brazil*.

[145] Section 47(1) of the Labour Code.

[146] Service Canada: *Work-Sharing Program: Applicant Guide*, January 2017 (https://www.canada.ca/content/dam/canada/employment-social-development/migration/documents/assets/portfolio/docs/en/work_sharing/WS_Applicant_Guide_Jan_2017_E_v.2.pdf [last accessed 8 Feb. 2018]).

[147] *United States* Department of Labor: Short-Time Compensation.

[148] Act No. 13,189 of 2015 (Employment Protection Programme).

[149] Employment Security Act, 2013. In addition, Act No. 2016-1088 of 2016 introduced the possibility to conclude agreements to preserve and develop employment even in enterprises that are not facing economic difficulties. The provisions of the agreement automatically replace any contrary provisions in individual employment contracts, including in respect of wages and working time. Nevertheless, monthly remuneration cannot be less than the average paid over the three-month period preceding the conclusion of the agreement.

[150] *Mozambique*.

[151] J.C. Messenger and N. Ghosheh: *Work sharing during the Great Recession: New developments and beyond*, p. 62. Countries that have used work sharing include *Austria*, *Germany*, *Japan*, *Hungary* and *Sweden*.

[152] Service Canada: *Work-Sharing Program: Applicant Guide*, op. cit.

718. Legislation and policies on work sharing usually include specific time-limits for the work-sharing agreement and any financial assistance in order to ensure that the subsidy does not become permanent, especially in the case of enterprises that are performing badly for reasons that are not related to an economic downturn (such as a lack of competitiveness and productivity). The minimum time frame for work-sharing measures can be as short as six weeks, [153] or they may last up to five years. [154] For example, in *Ecuador*, the initial period provided for by law is six months, which can be extended for a further six months with the authorization of the Ministry of Labour. [155] The statutory period for crisis work-sharing measures in *Germany* is 12 months, although this can be extended to 24 months by legal order of the Federal Ministry for Labour and Social Affairs. [156]

719. Links are established in some work-sharing programmes with training and/or retraining, both with a view to helping workers obtain new skills and adapt to new technologies that may be needed in the enterprise, as well as to enable them to find new jobs. In *Germany*, the Federal Employment Agency has financed training for workers covered by work-sharing schemes. [157] In *Croatia*, the assistance provided to help workers retain their jobs included training and education for workers at risk of losing their jobs. [158] Such training and retraining measures can provide a vital bridge to help workers and employers during difficult economic times and beyond.

720. At the procedural level, in most countries workers and employers are required to develop an application plan for work-sharing measures, which may include modifications to agreements between workers and employers. Governments can play an active role in this process by providing materials, advice or actively engaging with workers and employers in the formulation of the agreements. Application plans may be required to gain access to government funding or to obtain authorization to modify existing collective agreements or to formulate other agreements or plans. [159] Although they may be based on agreements between workers and employers, it is normally the employer that is responsible for applying for work-sharing benefits and legal protections. For example, in *Canada*, the recovery plan submitted by the employer must demonstrate that activities will be implemented during the period covered by the work-sharing agreement to alleviate the work shortage so as to return the unit(s) affected to normal working hours by the end of the agreement. A list of all the employees concerned, signed by their union or employee representative demonstrating their agreement, also has to be provided. [160] In other countries, even in the absence of financial inducements, the legislation may allow a

[153] *Canada*.

[154] *France*, Employment Security Act, 2013, on job retention agreements.

[155] Section 47(1) of the Labour Code.

[156] Section 95 ss of the Social Code, Book III.

[157] L. Bellmann, A. Crimmann, H.-D. Gerner and F. Weissner: "Work sharing as an alternative to layoffs: Lessons from the German experience during the crisis", in J.C. Messenger and N. Ghosheh (eds): *Work sharing during the great recession: New developments and beyond* (ILO, 2013).

[158] Act on Job Retention Aid, which was rescinded by the Act on Termination of Job Retention Aid in February 2017 due to the lack of applicants for this type of aid. The Government indicates that it will retain this type of assistance among its active labour market policy measures, and that it will be extended to include small businesses.

[159] *Ecuador*, *France*, *Germany*, *United States* (state-level interventions in Arizona, Arkansas, California, Colorado, District of Colombia, Florida, Iowa, Kansas, Massachusetts, Maryland, Maine, Minnesota, Missouri, New Hampshire, New York, Oklahoma, Oregon, Pennsylvania, Texas, Vermont and Washington State) and *Viet Nam*.

[160] Service Canada: *Work-Sharing Program: Application Guide*, op. cit.

reduction in hours of work to prevent mass dismissals or redundancies on condition that authorization is obtained from the government. [161]

721. Work sharing can take a variety of forms, even within the same country, often to address the specific circumstances or conditions in different sectors. For example, in *Germany*, which is a leading innovator in work sharing, there are several types of work-sharing laws and policies (see box 6.2). The Government of *France* reports two types of work-sharing schemes. The first is based on job retention agreements, under which companies facing severe economic difficulties can conclude agreements to adjust working time and wages in exchange for job guarantees. [162] The second consists of agreements for the preservation and development of employment at the level of the company or group. [163] In other countries, the focus of work-sharing legislation is on the alternatives available for the reduction of working time and wages. For example, the legislation in *Sweden* offers three levels of working time and wage reductions: a 20 per cent reduction of normal working hours, with a 12 per cent reduction in wages; a 40 per cent reduction in normal working hours, with a 16 per cent reduction in wages; and a 60 per cent reduction in working hours, with a 20 per cent reduction in wages. [164]

Box 6.2
Types of work sharing in *Germany*

Work sharing or short-time work *(Kurzarbeit)* is long-standing concept in Germany. The first reductions in working time, with commensurate reductions in wages, date back to 1891. After World War I, short-time work was integrated into the newly created unemployment benefit scheme in all sectors of industry. The first regulations came into effect in November 1918. Short-time work was deployed on a massive scale during the first economic crisis of the Weimar Republic. In 1924, when the unemployment rate was 11 per cent, a quarter of all workers were involved in short-time work. Although short-time work decreased considerably in the following years, known as the "Golden Twenties", it remained high by today's standards. By the time the world economic crisis peaked in 1932, the share of short-time workers had increased to more than 20 per cent. However, this barely eased labour market difficulties in light of the dramatic unemployment rate, which had reached 44 per cent. The regulations that governed short-time work during the Weimar Republic were broadly taken over by the Federal Republic of Germany. Short-time work was again deployed on a large scale in the second half of the 1960s, during the first post-war economic crisis, and then more recently it was implemented on a massive scale during the global economic and financial crisis of 2008–09.

There are now three types of work-sharing programmes in Germany:

(1) Work sharing for economic reasons is used in the event of a temporary unavoidable reduction in the volume of work due to economic factors or an unavoidable event. This is the main form of work sharing in Germany.

(2) Seasonal work-sharing is mainly used in construction and outdoor occupations to compensate for non-productive times due to weather conditions in colder seasons.

(3) Transfer work-sharing is used for permanent loss of employment due to restructuring measures at the establishment level, and the level of short-term compensation available is similar to that of unemployment benefits. [*]

[*] K. Brenke, U. Rinne and K.F. Zimmermann: *Short-time work: The German answer to the great recession*, IZA Discussion Paper No. 5780 (Bonn, 2011); Messenger and Ghosheh: *Work sharing during the great recession: New developments and beyond*, op. cit.

[161] *Chad* and *Senegal*.

[162] Employment Security Act, 2013.

[163] Act No. 1088 of 2016.

[164] Act No. 2013:948.

722. Various forms of work-sharing laws and policies are also found in *Austria*, *Belgium*, *Netherlands*, *Japan*, *Turkey* and *Uruguay*. [165]

Conclusions

723. Policy-makers and social actors in countries around the world are taking an increased interest in the various types of working-time arrangements. Laws and policies can help to provide guidance to workers and employers on important ways in which working-time arrangements can be developed and implemented through collective agreements and workplace policies. ***Such arrangements can benefit both workers and employers by taking into account their respective needs. Workers' needs include health and well-being, the need to address personal and family responsibilities, and to earn sufficient wages to provide for their families. Employers' needs include the flexibility to address periods of peak demand, local and global competition, and to raise productivity levels and performance.*** As economic and technological developments continue to gather pace, it is important not only to understand how working time can be arranged to meet the needs of workers and employers, but also how these factors will influence the development of different working-time arrangements in the future.

[165] K. Brenke, U. Rinne and K.F. Zimmermann: Short-time work: The German answer to the great recession, IZA Discussion Paper No. 5780 (Bonn, 2011); Messenger and Ghosheh: *Work sharing during the great recession: New developments and beyond*, op. cit.

Chapter VII. Emerging issues

1. Introduction

724. The main aim of the regulation of working time and rest periods has traditionally been to provide at least a minimal level of protection for workers, and then to improve conditions gradually as circumstances permitted. The central focus of the regulation of working time has tended to be quantitative: limiting hours of work, and then further reducing them; guaranteeing a certain amount of weekly rest; and providing a minimum annual holiday with pay, and then increasing its duration. [1] Most countries around the world have adopted legislation addressing the many dimensions of working time and rest periods.

725. Recent regulatory initiatives, through legislation or collective bargaining, in various countries have tended to focus on zero-hours contracts and other forms of on-call work. These arrangements are not a new phenomenon: dockworkers, for instance, were already working "on call" in the nineteenth century. Nevertheless, this type of employment relationship, which overlaps with casual work, has grown in importance and scope in recent years.

726. Other recent developments are also having an influence on working time and its regulation. Information and communication technologies (ICTs) are having an increasingly important impact on the organization of work, as well as on the length and arrangement of working time. These ICTs not only have an impact on the organization of work in industrialized countries, but due to lower cost and greater connectivity, they are becoming more prominent in developing countries as well. The growth of call centres and back office work performed by workers in developing countries illustrates the impact of ICTs in these countries. [2] They have contributed to the development of telework and the blurring of boundaries between working time and rest periods, leading to increasingly pressing calls for a "right to disconnect". The development of the platform economy (or the so-called "gig" economy) and on-demand work also has consequences for the organization of working time. It enables workers to enjoy a certain degree of flexibility in their work schedules, and influences the time when work is performed. However, a growing concern is the legal and policy implications of such platforms. Companies may be incorporated in one country and operate a platform with workers from the country of incorporation or from other industrialized and developing countries. This raises many

[1] The qualitative regulation of working time may focus on the intensity of the work performed, with working hours being adjusted accordingly. For example, in jobs that require intense physical labour (such as construction), regulations may seek to limit hours of work due to the intensity of the work.

[2] For more details see J.C. Messenger and N. Ghosheh (eds): *Offshoring and working conditions in remote work*, op. cit.

issues regarding the laws, including labour laws, which may be applicable, as such systems can involve multiple legal jurisdictions. [3]

727. The terms used to address emerging issues (e.g. ICTs, platform or "gig economy", telework) in this chapter reflect the rapidly developing academic and policy research undertaken in recent years in many industrialized countries, as well as in developing countries. As these issues continue to grow in importance in developing countries, it is likely that the taxonomy of definitions will expand to address the specific impacts that technology can have on working time and working conditions in these countries. Such an expansion would help to enrich policy and regulatory discussions in the future.

2. Zero-hours contracts and other forms of on-call work

728. While working hours in some industries can be excessive, there has recently been a rise in the number of jobs that do not guarantee any specific working hours during a calendar day or week. For example, the care economy has been identified as one of the two main sources of future job growth in both developing and industrialized countries. However, in many developed economies, care workers, the majority of whom are women, are employed on temporary or on-call contracts. [4] A recent ILO report on non-standard forms of employment found that working-time arrangements which involve highly variable and unpredictable hours of work have grown in importance, particularly in industrialized countries, as a means of adapting staffing to changing business needs. [5] Such arrangements, commonly referred to as "on-call work", [6] or "casual employment" in some industrialized countries, are characterized by the short advance notice of schedules, broad fluctuations in working hours, and little or no input from workers into the timing of work. [7] As the working hours for on-call work are often unpredictable, and may be announced at the last minute, rest periods also become unreliable, and workers may not be able to rest if they are waiting to be notified of a call to work. [8] As these developments have taken root in labour markets around the world, emerging policy and legislative responses are now attracting more attention from policy-makers.

729. Existing international labour standards do not directly address on-call work, although some provisions are nonetheless relevant. For example, Paragraph 12 of the Part-Time Work Recommendation, 1994 (No. 182), provides that the "number and scheduling of

[3] For more details see V. De Stefano: *The rise of the "just-in-time workforce": On-demand work, crowdwork and labour protection in the "gig-economy"*, Conditions of Work and Employment Series No. 71 (Geneva, ILO, 2016).

[4] ILO: *Women at Work: Trends 2016*, pp. 89 and 96.

[5] ILO: *Non-standard employment around the world: Understanding challenges, shaping prospects* (Geneva, 2016). See also S. Burri, S. Heeger-Hertter and S. Rossetti: *On-call work in the Netherlands: Trends, impact and policy solutions*, ILO Working Paper (forthcoming, 2018); A. Adams and J. Prassl: *Zero-hours work in the United Kingdom*, ILO Working Paper (forthcoming, 2018); E. McCrate: *Unstable and on-call work schedules in the United States and Canada*, ILO Working Paper (forthcoming, 2018); I. Campbell: *On-call and related forms of casual work in New Zealand and Australia*, ILO Working Paper (forthcoming, 2018).

[6] ibid., p. 29. There is a difference between "on-call work" and "on-call hours". In the latter case, workers need to be on standby outside their regular hours of work and may be called to work in case of need. Such practices are frequent, for example, for medical practitioners in hospitals.

[7] S.J. Lambert, P.J. Fugiel and J.R. Henly: *Precarious work schedules among early-career employees in the US: A national snapshot*, 2014, https://ssascholars.uchicago.edu/work-scheduling-study/files/lambert.fugiel.henly_.precarious_work_schedules.august2014_0.pdf [last accessed 8 Feb. 2018].

[8] N. Ghosheh: *Remembering rest periods in law: Another tool to limit excessive working hours*, Conditions of Work and Employment Series No. 78 (Geneva, ILO, 2016).

hours of work of part-time workers should be established taking into account the interests of the worker as well as the needs of the establishment" and that, as far as possible, "changes in the agreed work schedule and work beyond scheduled hours should be subject to restrictions and to prior notice".

730. In the *United States*, some major retail stores and food service businesses use just-in-time scheduling software to determine "optimum staffing" based on weather forecasts, sales patterns and other data. When sales are slower than foreseen, managers may send employees home before the end of a scheduled shift, or even cancel shifts at the last minute to reduce staffing costs. [9] Employees are sometimes required to call their manager one to two hours before their shift, or to wait for a call from their manager, to find out whether they must report to work. All these factors lead to highly variable working hours and schedules, sometimes without any guaranteed number of hours a day or a week.

731. In the *United Kingdom*, zero-hours contracts have generated considerable media attention. They may be described as an arrangement under which workers are "not guaranteed hours of work, but may be required to make themselves available for work with an employer. Under such contracts, employers are not required to offer workers any fixed number of working hours at all per day, week or month." [10] The interest of employers in using such contracts can be understood in the context of the legal doctrine of "mutuality of obligation". [11] Some contracts also include an exclusivity clause that prevents workers from working for another employer, even during periods when the primary employer has no work to offer. However, such clauses have been deemed abusive and were declared unenforceable by the Government in May 2015.

732. Popular concern led the Government to commission a study analysing the issues associated with zero-hours contracts, among a number of labour market issues. The 2017 "Taylor Review", as it is commonly known, examined some of the concerns regarding zero-hours contracts. According to the report, 905,000 people (2.8 per cent of those in employment) are on zero-hours contracts, the majority of whom work part time (65 per cent). Younger people aged 16–24 are more likely to work on zero-hours contracts and account for one third of such contracts. Of those on zero-hours contracts, 18 per cent are in full-time education, which suggests that the flexibility of such contracts could potentially be beneficial for students who combine work and studies. While the data suggests that there have been large increases in the number of people on zero-hours contracts since 2012, this increase is at least in part due to improved recognition of these contracts among the general public. [12]

[9] ILO: *Non-standard employment around the world: Understanding challenges, shaping prospects*, op. cit., p. 29.

[10] ibid., p. 85.

[11] Mutuality of obligation is a legal institution central to English employment law. As was summarized by L.J. Dillon in *Nethermere* v. *Gardiner*, "there is one *sine qua non* which can firmly be identified as an essential of the existence of a contract of service and that is that there must be mutual obligations on the employer to provide work for the employee and on the employee to perform work for the employer. If such mutuality is not present, then either there is no contract at all or whatever contract there is must be a contract for services or something else, but not a contract of service" (*Nethermere (St Neots) Ltd* v. *Gardiner* [1984] ICR 612 (CA) 632F–G). This concept may make the establishment of the existence of an employment relationship problematic in the case of zero-hours work. The obstacle is, however, not absolute and the outcome would depend on the precise circumstances of the case. On this, see A. Adams and J. Prassl: op. cit. (forthcoming, 2018).

[12] M. Taylor, G. Marsh, D. Nicol and P. Broadbent: *Good work: The Taylor review of modern working practices*, Department for Business, Energy and Industrial Strategy, United Kingdom, 2017, pp. 25 and 48; see: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf [last accessed 8 Feb. 2018].

733. The Taylor Review comes to the conclusion that prohibiting zero-hours contracts in their totality would have a negative impact on many more people than it would help. However, it also indicates that:

> … all the risk must not sit with the individual and after a long period of time … zero hours workers should have the opportunity to request a fixed hours contract. While it could be argued that the right to request flexible working already allows for this, we believe an explicit right for this group should be introduced. The average weekly hours worked over the previous 12 months should be the starting assumption for any new contract.

734. Zero-hours contracts and similar arrangements are also widely used in *Canada*, *Ireland* and, until recently, *New Zealand*. Major changes were introduced in the New Zealand Employment Relations Act in 2016, leading to the prohibition of certain (but not all) forms of zero-hours contracts in the country, [13] and preventing employers from cancelling shifts unless the contract specifies a reasonable notice period and reasonable compensation in the event of cancellation if notice is not given.

735. Other countries have also begun to address the issue of zero-hours contracts in national labour law. The Government of the *Netherlands* reports that "min–max" contracts provide a guaranteed minimum number of working hours, with the workers being paid even if they are not called up by the employer. Moreover, if the agreed hours are fewer than 15 a week and the time of the work is undefined, workers must be paid at least three hours for each shift, regardless of the actual number of hours worked. Furthermore, a "no work, no pay" agreement can only be made for the first 26 weeks of the employment contract. This 26-week period can only be extended by collective agreement for positions involving occasional rather than permanent work (for example, seasonal work or the replacement of a worker who is absent due to illness). In addition, at the request of the Labour Foundation, the Minister for Social Affairs and Employment can decide that certain sectors may not derogate in collective agreements from the obligation to continue paying wages. [14] The legislation in *Germany* [15] provides that on-call contracts must specify the number of daily and weekly hours of work. In the absence of such provisions, a working week of ten hours is assumed to have been agreed and three hours must be paid per shift, irrespective of the number of hours actually worked. Employees are required to respond to being called up only when they are given a minimum of four days' notice. Collective agreements may modify these rules, even to the detriment of employees, on condition that they regulate daily and weekly hours of work, as well as the required notice. In *Italy*, even when intermittent workers agree to accept all calls from the employer, they are not guaranteed a minimum number of days or hours of work. However, during periods when they do not work, employers must pay them a so-called "availability indemnity". In *Turkey*, if the parties to a "part-time employment contract based on on-call work" do not agree otherwise, weekly working time is considered to be fixed at 20 hours. Notice of at least four days is required for each call, unless otherwise provided, and a minimum of four hours' work has to be provided for each call, unless different daily hours are set out in the employment contract. [16]

[13] ILO: *Non-standard employment around the world: Understanding challenges, shaping prospects*, op. cit., p. 260.

[14] Sections 7:628 and 7:628a of the Dutch Civil Code.

[15] Section 12 of the Part-Time and Fixed-Term Contracts Act.

[16] ILO: *Non-standard employment around the world: Understanding challenges, shaping prospects*, op. cit., pp. 260–261.

3. Telework

736. Since the late twentieth century, Information Communication Technology (ICT) has developed at an accelerating pace. ICT includes technology such as smartphones, tablets, laptop and desktop computers, and telefax machines. They have changed how work is done in many ways and have had implications for working hours and rest periods. Since the beginning of the twenty-first century, new ICTs (such as smart phones, tablets and laptop computers) have revolutionized work and personal life. However, although they enable people to remain connected with friends and family across great distances and at all times, they have also extended the connection of workers to the workplace, including to supervisors and co-workers, which can result in paid work encroaching into times and places that were traditionally reserved for personal life. This also raises issues related to workers' privacy as employers can use electronic surveillance techniques.

737. The delinking of paid work from the workplace is an important development enabled by ICTs. Professional services work is now driven by cheaper access to technological devices and the Internet, and can be carried out at any time and/or place through telework, which is leading to both new opportunities and challenges, with implications for both working hours and rest periods.

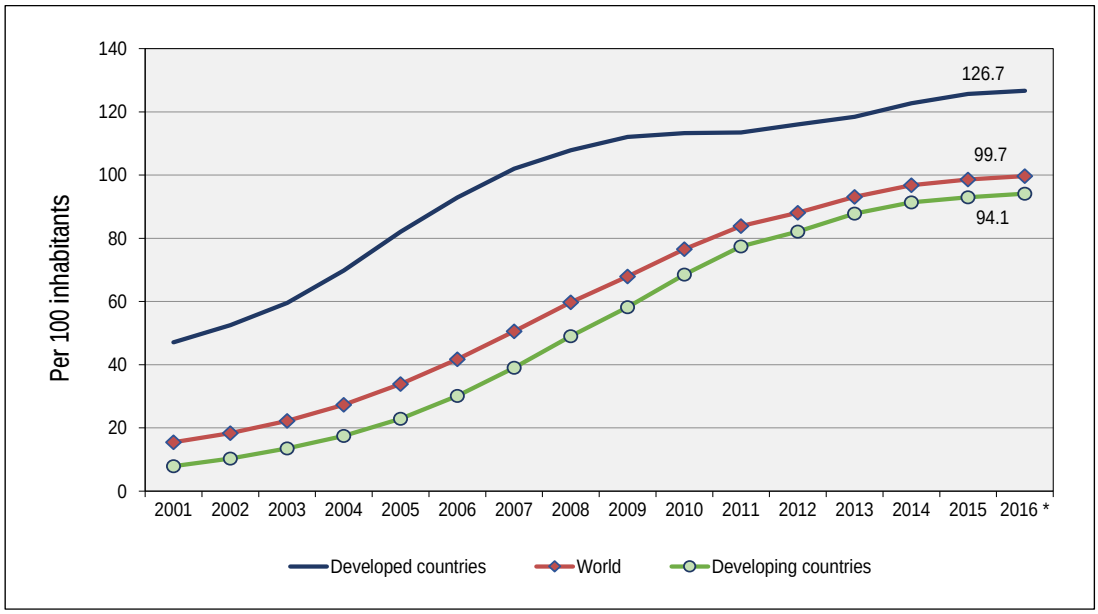
738. For telework to be possible connectivity is vital. It can be provided either through mobile phone networks or the Internet. As shown by data from the *International Telecommunications Union*, the use of both mobile phones and the Internet has grown steadily since the turn of the twenty-first century, with a steady growth in mobile–cellular subscriptions between 2001 and 2016 (figure 7.1), accompanied by the growth in the use of the Internet over the same period (figure 7.2). These two key factors increase the possibility of telework being available as an option for employers and workers. Moreover, the growth in the use of both mobile phones and the Internet is not restricted to industrialized countries. In the past, there has traditionally been a time lag between the availability and adoption of new technology, both within countries (between urban centres and rural peripheries) and between industrialized and developing countries. However, in this case, the rapid growth in both imported low-cost devices and their development in developing countries has accelerated the impact of technology on the personal and working lives of workers, business strategies and how governments can work with these changes, although something of a digital divide remains with regard to Internet access and use.

739. Recent research conducted jointly by the ILO and the European Foundation for the Improvement of Living and Working Conditions (Eurofound) refers to Telework/Information Communication Technology Mobile work (T/ICTM) as a more specific definition of ICTs as they relate to telework. T/ICTM can be defined as the use of ICTs (such as smartphones, tablets, laptops and desktop computers) for the purposes of work outside the employer's premises. The research classified T/ICTM employees in relation to their place of work (home, office or another location) and the intensity and frequency of their work using ICTs outside the employer's premises. It found that the incidence of T/ICTM is related not only to the different pace of technological development in the various countries, but also existing economic structures and work cultures. [17] The countries analysed in the report with high shares of T/ICTM workers include *Finland*, *Japan*, *Netherlands*, *Sweden* and *United States*. Overall, the incidence of T/ICTM varies substantially, ranging from 2 to 40 per cent of employees, depending on the country,

[17] Eurofound and ILO: *Working anytime, anywhere: The effects on the world of work* (Luxembourg and Geneva, 2017), p. 1.

occupation, sector and frequency with which employees engage in this type of work. In most countries, larger proportions of workers carry out T/ICTM occasionally, rather than on a regular basis, and it is used more commonly by professionals and managers, as well as clerical support and sales workers. In general, men are more likely to engage in T/ICTM than women, although women carry out more regular home-based telework than men, suggesting that gender roles and models of work and family life play a role in shaping T/ICTM.

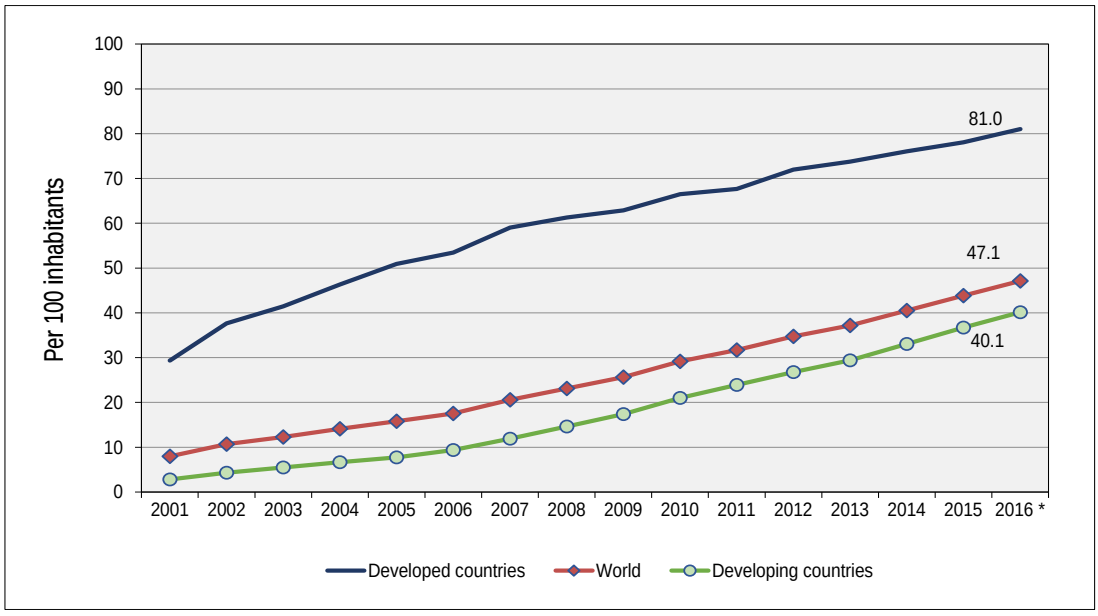
Figure 7.1. Mobile–cellular subscriptions per 100 inhabitants, 2001–16



* = estimate.

Source: ITU World Telecommunication/ICT Indicators Database.

Figure 7.2. Individuals using the Internet per 100 inhabitants, 2001–16



* = estimate.

Source: ITU World Telecommunication/ICT Indicators Database.

740. The ILO–Eurofound study further identifies advantages and disadvantages of T/ICTM work. Advantages for workers include a reduction in commuting times, greater autonomy and flexibility in the organization of work, a better work–life balance and higher productivity. Companies also benefit from the improvement in work–life balance, which can lead to increased motivation and reduced turnover, as well as enhanced productivity and efficiency, and from a reduction in the need for office space and associated costs. The disadvantages of T/ICTM are the tendency to work longer hours, to create an overlap between paid work and personal life (work–home interference) and the intensification of work.

741. Regulation of telework has begun to take shape in several parts of the world. While not widespread, this is an indication that policy-makers and the social actors in some countries are beginning to be aware of how technology can impact on working hours and time via emerging flexible work arrangements, such as T/ICTM work.

742. The Home Work Convention, 1996 (No. 177), does not seek to address the issues raised by the development of telework. The concept of homework within the meaning of the Convention is not linked to the use of ICTs. The Convention defines "home work" as:

> ... work carried out by a person … (i) in his or her home or in other premises of his or her choice, other than the workplace of the employer; (ii) for remuneration; (iii) which results in a product or service as specified by the employer, irrespective of who provides the equipment, materials or other inputs used, unless this person has the degree of autonomy and of economic independence necessary to be considered an independent worker under national laws, regulations or court decisions (Article 1(a)).

However, "persons with employee status do not become homeworkers within the meaning of this Convention simply by occasionally performing their work as employees at home, rather than at their usual workplaces" (Article 1(b)).

743. At the level of the EU, the *European Trade Union Confederation*, the *Union of Industrial and Employers' Confederations of Europe–the European Union of Crafts and Small and Medium-Sized Enterprises* and the *Centre of Enterprises with Public Participation* negotiated a framework agreement on telework in 2002 with a view to meeting the needs of workers and employers. It aims at establishing a general framework at the European level concerning the employment conditions of teleworkers and at reconciling the need for flexibility and security shared by employers and workers. Most importantly, it grants teleworkers the same overall level of protection as workers who carry out their activities at the employer's premises. The agreement defines "telework" as a form of organizing and/or performing work, using information technology, in the context of an employment contract/relationship, where work, which could also be performed at the employer's premises, is carried out away from those premises on a regular basis. Since telework covers a broad and rapidly evolving spectrum of circumstances, the social partners chose a definition of telework that includes various forms of regular telework. The agreement covers: the voluntary nature of teleworking (it cannot be forced on an employee); employment conditions (teleworkers have the same rights as comparable workers in the workplace); data protection (the employer is responsible for taking precautions with regard to data protection); privacy (the employer respects the privacy of teleworkers); equipment (the employer is generally responsible for providing, installing and maintaining the equipment necessary for regular telework, unless workers use their own equipment); occupational health and safety (the employer is responsible for the protection of the occupational health and safety of the teleworker); [18] the training and

[18] The European Agency for Safety and Health at Work has issued guidance on risk assessment for teleworkers (https://osha.europa.eu/en/tools-and-publications/publications/e-facts/efact33/view [last accessed 8 Feb. 2018]).

career development of teleworkers (teleworkers have the same access to training and career development as comparable workers at the employer's premises); and the collective rights of teleworkers (teleworkers have the same collective rights as workers at the employer's premises). With regard to working time, the agreement provides that, within the framework of the applicable legislation, collective agreements and company rules, the teleworker manages the organization of his/her working time and that the workload and performance standards of the teleworker are equivalent to those of comparable workers at the employer's premises. [19] The agreement is intended to support directly the strategy defined by the European Council meeting held in Lisbon in 2000 for the transition to a knowledge-based economy and society, in line with the Lisbon objectives. [20]

744. At the national level, a few countries around the world have begun to address telework in their laws and policies. [21] Although the emphasis of these laws varies, they generally address the rights and responsibilities of employers and workers who enter into telework agreements. For example, in *Poland*, the provision of the Labour Code that addresses telework emphasizes that the location of work is away from the premises of the employer and is based on services rendered by electronic means. [22] Telework in some countries is regulated through working-time legislation, rather than as a separate issue. [23] For example, in the *Netherlands* the Working Conditions Decree applies to performing paid work in the living quarters or another place chosen by the employee, outside of the employer's premises and includes a duty of care for the employer when a worker works outside the employer's premises or elsewhere, to check whether the employee is working according to the legal obligations under the Netherlands Working Conditions Act. In other countries, although the respective working conditions are not defined directly, telework is regulated under existing labour legislation. [24] For example, in *Australia* the right to telework is not specifically addressed in the Fair Work Act, but most workers have the "right to request" flexible working-time arrangements, which may include telework. [25] In *Mexico*:

> Home work is usually performed for an employer, at the worker's home or in a place freely chosen by the worker, without supervision or immediate direction of the person providing the work. Work shall be considered as home work when it is carried out at a distance using information and communication technologies. If the work is carried out under conditions other than those indicated in this Article, it shall be governed by the general provisions of this Act. [26]

[19] European Union Framework Agreement on Telework: http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM:c10131&from=EN [last accessed 8 Feb. 2018].

[20] European Council: *Towards a Europe of innovation and knowledge*, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:c10241 [last accessed 8 Feb. 2018].

[21] *Albania*, *Austria*, *Croatia*, *Germany*, *Kazakhstan*, *Mexico*, *Peru*, *Poland*, *Slovakia* and *Turkey*.

[22] Section 675 of the Labour Code.

[23] *Austria.*

[24] *Peru.*

[25] Section 65 of the Fair Work Act (see also: https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1112a/12bd137 [last accessed 8 Feb. 2018]). Requests for changes in working-time arrangements can be made under the following circumstances: the employee is a parent or has responsibility for care of a child who is of school age or younger; the employee is a carer (within the meaning of the Carer Recognition Act 2010); the employee has a disability; the employee is aged 55 or older; the employee is experiencing violence from a member of the employee's family; the employee provides care or support to a member of the employee's immediate family or a member of the employee's household, who requires care or support because the member is experiencing violence from the member's family.

[26] Section 311 of the Federal Labour Act.

745. Finally, in some countries, telework, including working hours and rest provisions, is regulated through collective bargaining or guidance by the public authorities. [27] For example, the *United Kingdom* Government, the *Confederation of British Industry* and the *Trade Union Congress* agreed a document that provides guidance on teleworking. [28]

4. The right to be disconnected

746. In the world of work of the twenty-first century, connectivity to the workplace is a significant issue for many workers. The "right to be disconnected" and related policies have emerged in response to certain common issues that have arisen recently due to the diverse and new shape of the world of work. Consideration should also be given to the duty to disconnect in certain circumstances. One of these, recently termed "work without end", is now being addressed by various studies and national policies, and is linked to the growing importance of new technologies in professional life. [29] Research has suggested, for example, that the perception of the need to check email constantly creates great stress for workers and denies them what would otherwise be periods of rest. [30] The potential for "work without end" is more likely to occur with T/ICTM. Indeed, while work that is independent of time and place has the advantage that, as a result of ICTs, workers can organize their work (including their working time) based on their individual needs, there is also an inherent danger of boundaries between paid work and private life no longer being respected. [31] The subject of T/ICTM has recently been linked in the media and in policy discussions with lack of respect for rest periods and holidays, stress and even burn out. [32]

747. In a few countries, the worry and stress associated with constant connectivity is now beginning to be recognized, and regulatory measures have been introduced in response. The legislation in *France* provides for what is known as "a right to disconnect", which requires all enterprises with a trade union representative to negotiate annually on the manner in which this right is exercised in the context of bargaining on occupational equality and the quality of life at work. [33] The negotiations concern the ways in which employees exercise the right to disconnect and the establishment in the company of devices to regulate the use of digital tools so as to ensure respect for rest periods, leave and private life. If no agreement is reached, the employer is required to draw up a charter, after consultation with the works council or, failing that, with staff delegates, laying down the procedures for exercising the right to disconnect and providing for the implementation of training and awareness-raising activities on the reasonable use of digital tools for employees and management. In *Italy*, a law adopted in June 2017 regulates flexible working, which involves an agreement between an employer and an employee providing for the performance of work partly outside of the business premises. Such an agreement must, inter alia, address technological and organizational measures to ensure respect for

[27] *Singapore* and *Sweden*.

[28] Telework Guidance (http://webarchive.nationalarchives.gov.uk/+/http://www.berr.gov.uk//files/file27456.pdf [last accessed 8 Feb. 2018]).

[29] Eurofound and ILO: *Working anytime, anywhere: The effects on the world of work*, op. cit., p. 49.

[30] K. Kushlev, and E.W. Dunn: "Checking email less frequently reduces stress", in *Computers in Human Behavior*, 43, 2015, pp. 220–228.

[31] Eurofound and ILO: *Working anytime, anywhere: The effects on the world of work*, op. cit., p. 49.

[32] Kushlev and Dunn: "Checking email less frequently reduces stress", op. cit., pp. 220–228.

[33] Section L.2242-8 of the Labour Code, as amended by section 55 of Act No. 2016-1088 of 2016.

minimum periods of rest (right to disconnect). Measures on a similar right to disconnect are currently under consideration in *Chile* and the *Netherlands*.

748. Employers have also explored and implemented measures to ensure that workers do not connect to the office during non-business hours. For example, the car manufacturer Daimler-Benz has introduced measures to limit the need for workers to check their email outside normal working hours, and also guarantees its staff the option for all new emails to be deleted while they are away on holiday. [34] Those sending an email to the employee who is on holiday receive a "mail on holiday" message indicating that the email has not been received and inviting them to contact a nominated substitute instead. Such company policies can help to relieve the stress associated with the need to remain constantly connected to work and contribute to worker well-being and enterprise productivity by encouraging workers to rest during normal rest periods.

749. Other approaches have also been implemented at the company level. In January 2014, German car manufacturer BMW reached an agreement on T/ICTM with the works council. Under the agreement, all employees are allowed to register time spent working outside the employer's premises as working time, which opens up the possibility of overtime compensation for time spent replying to emails outside the normal working day. Employees are also encouraged to agree on fixed times of "reachability" with their supervisors. This policy is designed to reduce irregular informal T/ICTM work (known as "wild mobile work") to help reconcile paid work and personal life. [35]

5. Gig economy and on-demand work

750. The "gig economy" (also known as the "on-demand economy") is a term that has come into widespread use in the media to describe work brokered through online web platforms. [36] The types of work in the gig economy are varied, with the main ones being "crowdwork" [37] and "work on demand via apps". [38] These two forms of work have some points in common with casual work and raise important questions concerning labour protection, as workers in the gig economy are almost invariably classified as independent contractors and thus do not have access to the rights of workers covered by a recognized employment relationship.

751. The distinction between employee and independent contractor is not a new debate, but has existed for decades. The ILO Employment Relationship Recommendation, 2006 (No. 198) recognizes in its Preamble that "situations exist where contractual arrangements can have the effect of depriving workers of the protection they are due" and emphasizes that "protection should be accessible to all, particularly vulnerable workers, and should be

[34] Eurofound and ILO: *Working anytime, anywhere: The effects on the world of work*, op. cit., p. 50.

[35] ibid.

[36] V. De Stefano: *The rise of the "just-in-time workforce": On-demand work, crowdwork and labour protection in the "gig-economy"*, op. cit.

[37] ibid., p. 2. Crowdwork is executed through online platforms that put in contact an indefinite number of organizations, businesses and individuals through the Internet, potentially connecting clients and workers on a global basis. The nature of the tasks performed on crowdwork platforms may vary considerably, and very often involves "microtasks": extremely parcelled activities, often menial and monotonous, which still require some sort of judgement beyond the understanding of artificial intelligence (for example, tagging photos, valuing emotions or the appropriateness of a site or text, completing surveys).

[38] ibid., p. 3. In "work on demand via apps" jobs related to traditional activities, such as transport, cleaning and running errands, as well as forms of clerical work, are offered and assigned through mobile apps. The businesses running these apps normally intervene in setting minimum quality standards of service and in the selection and management of the workforce.

based on law that is efficient, effective and comprehensive, with expeditious outcomes, and that encourages voluntary compliance". Recommendation No. 198 establishes the principle of the "primacy of facts", whereby the determination of the existence of an employment relationship should be guided by the facts relating to the actual performance of work and not on the basis of how the parties describe the relationship.

752. Different legal approaches have been used to address the distinction between employees and self-employed workers. In the *United States*, the US Department of Labor clarified the criteria under the Fair Labor Standards Act (FLSA) that should be taken into account in determining whether a person should be regarded as an employee under the Act. These criteria are based on a "multi-factor 'economic realities' test", which include: "(A) the extent to which the work performed is an integral part of the employer's business; (B) the worker's opportunity for profit or loss depending on his or her managerial skill; (C) the extent of the relative investments of the employer and the worker; (D) whether the work performed requires special skills and initiative; (E) the permanency of the relationship; and (F) the degree of control exercised or retained by the employer." Each factor is to be examined and analysed in relation to one another, and no single factor is determinative. [39] Multi-factor tests, applied to determine the reality of the work relationship, are used by courts in several common law countries, for instance in *Australia* and the *United Kingdom*. [40]

753. In civil law jurisdictions, a contract of employment is primarily characterised by a relationship of personal dependency or subordination between the parties, with the existence of "control" and "integration" also often being important. Pure "economic dependence" mostly seems neither required nor in itself sufficient when determining "employee status". As a rule, qualification of a relationship requires comprehensive assessment by the courts with numerous indicators being taken into account when determining whether a relationship between two parties qualifies as an employment relationship. In this context, courts may also consider whether a person is allowed to sub-contract the work; does provide equipment or supplies materials; does have the opportunity to profit from the performance of tasks; or is exposed to personal financial risk in carrying out the work. [41] Certain countries including *Germany*, *Italy* and *Spain*, have extended some labour rights to workers in "dependent self-employment", namely, working relationships where workers perform services for a business under a contract different from a contract of employment but depend on one or a small number of clients for their income and are placed in a situation of economic dependency.

754. These concepts will be important as court cases are now appearing in a number of countries to determine whether there is an employment relationship between the gig worker and the technology company or if they are independent contractors. [42]

[39] US DoL, Wage and Hour Division, 2015.

[40] For *Australia* see: *Stevens* v. *Brodribb Sawmilling Co Pty Ltd* (1986) 160 CLR 16; *Hollis* v. *Vabu Pty Ltd* (2001) 207 CLR 21; *ACE Insurance Ltd* v. *Trifunovski* (2013) 209 FCR 146; *Fair Work Ombudsman* v. *Quest South Perth Holdings Pty Ltd & Contracting Solutions Pty Ltd* [2015] FCFCA 37. For the *United Kingdom* see: *Autoclenz Ltd* v. *Belcher* [2001] UKSC 41.

[41] B. Waas, in : B. Waas and G. H. van Voss (eds), *Restatement of Labour Law in Europe*, Vol. 1, The Concept of Employee, 2017, p. XLIII-LII.

[42] In the *United States*, for example, see US District Court (Eastern District of Pennsylvania) case *Razak* v. *Uber Technologies* (*Razak* v. *Uber Technologies, Inc*, Civil Action No. 16-573). In the *United Kingdom* the UK Employment Appeals Tribunal has recently ruled on the relationship between Uber and its drivers. The tribunal ruled that in spite of Uber's claim that drivers were self-employed, it was considered correct to look behind this to the "reality of the situation" and the practical arrangements actually in place, which were more consistent with that of a worker relationship (United Kingdom Employment Appeal Tribunal, Appeal No. UKEAT/0056/17/DA,

755. It is often claimed that the risks of not having access to these employment rights are traded off by workers for the flexibility of being self-employed, with no fixed working hours and workers being able to offer work on apps and platforms whenever they want. [43] The gig economy, by providing complete flexibility in the scheduling of work, also allows workers to reconcile work with other activities (such as care responsibilities, leisure and other work), thereby enabling them to benefit from job opportunities to which they might not otherwise have access.

756. However, while a flexible schedule is a hallmark of jobs in the gig economy, competitive pressures due to the wide availability of Internet connections, which augment the pool of workers competing for jobs, mean that wages are driven down so that workers may be forced to work longer hours to make an adequate living. Also, as some jobs are only posted or need to be carried out during certain times of the day, the flexibility enjoyed by workers to set their own hours may be limited. Finally, as work is posted from different locations and time zones, as is the case with crowdwork, it may require night work or work during unsocial hours. [44]

757. At present, as there does not appear to be much national legislation, especially regarding working time or rest periods, that addresses these issues, this is likely to be a subject of ongoing discussion at the national and international levels, as reflected by the increasing litigation in this area.

Conclusions

758. The ability to telework can allow workers to work more efficiently and address work–life demands better. The gig economy may offer some flexibility to workers for the organization of their working hours. However, these working arrangements are associated with a number of disadvantages, especially for workers, including encroachment on non-working time and rest periods, the unpredictability of working hours, income insecurity and stress associated with the (perceived) need to always be available for, or connected to, work and lost labour protections if they are classified as an independent contractor. These need to be carefully weighed against the advantages. Technology will undoubtedly influence the future frontiers of the regulation of working time, working-time arrangements and rest periods at the national and international levels. In this regard, the right to disconnect may be a way forward in dealing with the blurring of the boundary between work and rest due to the growing use of ICTs. Zero-hours contracts can provide employers with optimum flexibility of staffing and may respond to the needs of limited numbers of workers. Consideration may also be given to the ILO Employment Relationship Recommendation, 2006 (No. 198) to provide guidance on these issues in the future.

Judgment handed down on 10 November 2017; https://assets.publishing.service.gov.uk/media/5a046b06e5274a0ee5a1f171/Uber_B.V._and_Others_v_Mr_Y_Aslam_and_Others_UKEAT_0056_17_DA.pdf [last accessed 8 Feb. 2018]).

[43] V. De Stefano: *The rise of the "just-in-time workforce": On-demand work, crowdwork and labour protection in the "gig-economy"*, op. cit.

[44] ibid.

Chapter VIII. Social dialogue and collective bargaining

1. Introduction

759. The role played by social dialogue in giving effect to ILO working-time standards differs between countries and according to the different industrial relations systems. The ways in which the social partners are involved in the regulation of working time include engagement with the government in tripartite dialogue and consultation to ensure that working-time laws and regulations are inclusive and effective. Tripartite agreements can also be concluded on crisis responses that involve adaptations to working-time regulations. Collective bargaining between employers and their organizations and workers' organizations can also improve, adapt or implement working-time provisions set out in law and shape working-time arrangements that are mutually beneficial and meet the needs of both enterprises and workers. Working-time arrangements can also be developed by employers and workers' representatives at the workplace level, for example through cooperation committees or works councils.

760. In its observations, the *International Trade Union Confederation (ITUC)* recalls the importance of the regulation of hours of work, and particularly of the maximum working day and week for all workers. It emphasizes that working-time arrangements and reductions in long hours can also be advanced through collective bargaining at all levels and through workplace initiatives. According to the *ITUC*, it is important to maintain and strengthen the existing minimum standards on working time. This concerns the substantive regulations as much as the need of consultation and participation of workers' and employers' organizations in regulating working time. At the same time, the *ITUC* states that there is a need for full tripartite consultation in relation to working time standards in order to close existing regulatory gaps, to provide workers simultaneously with strong protection and maximum choice and autonomy in determining their work–life–family balance. The *International Organisation of Employers (IOE)* calls on governments to focus on setting a basic regulatory framework and rely on employers and workers to work out adequate and adaptable solutions for themselves. It considers that the regulation of working time remains relevant in many national contexts, as a general framework for more specific working-time arrangements at the sector or company levels or as a default standard in their absence. The *IOE* is of the view that it is increasingly critical for the regulation of working time to ensure that any regulatory models for working time operate as a default standard rather than the only lawful option for the organization of work and allow employers and workers to agree to vary or, where appropriate, to depart from working time regulation. In other words, it must be possible for working time to be organized, and varied from prevailing norms by agreement, by whatever lawful means is most appropriate to the needs of the enterprise – including individual, team, workplace, collective, union and non-union agreement options. It adds that collective bargaining represents one option for addressing the organization of working time, although it cannot be the only option for varying prescribed or legislated minima. The *IOE* considers that

collective bargaining can at most, like legislation and regulation, provide a framework that sets out the scope within which individual accommodations are reached on particular matters.

761. In earlier chapters, reference is made to a number of situations where employers' and workers' organizations are consulted prior to the introduction of exceptions to normal rules (including limits to working hours and minimum rest periods). The numerous examples provided of collective agreements on working time demonstrate the importance of collective bargaining, together with legislative provisions, in designing regulatory frameworks for working time which balance the interests of workers and employers, in line with the relevant international labour standards. This chapter focuses specifically on the role of tripartite social dialogue and collective bargaining in the regulation of working time.

A. International labour standards on working time and the role of social dialogue and collective bargaining

762. International labour standards on working time require the consultation of social partners by governments in a number of instances. The Reduction of Hours of Work Recommendation, 1962 (No. 116), calls on the competent authority to "make a practice of consulting the most representative employers' and workers' organisations on questions relating to the application of this Recommendation". (Paragraph 20(1)), and sets out a list of issues which should be the subject of consultation. Similarly, the Night Work Convention, 1990 (No. 171), provides that, where its provisions are implemented by laws and regulations, there must be prior consultations with these organizations (Article 11(2)). [1] The Part-Time Work Convention, 1994 (No. 175), contains a similar provision (Article 11).

763. Several instruments set out the requirement to consult the organizations of employers and workers concerned if it is intended to exclude some categories of workers from their scope. This is the case of the Holidays with Pay Convention (Revised), 1970 (No. 132) (Article 2(2)), Convention No. 171 (Article 2(2)), and Convention No. 175 (Article 3(1)). Convention No. 175 also requires consultation of the most representative organizations of employers and workers on the establishment, review and revision of any hours or earnings thresholds under which part-time workers may be excluded from the scope of some of the protection afforded by this Convention (Article 8(4)).

764. The Hours of Work (Industry) Convention, 1919 (No. 1), and the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30), require consultation of workers' and employers' organizations for the introduction of permanent or temporary exceptions to the limits on normal hours of work (Article 6 of Convention No. 1 and Articles 7 and 8 of Convention No. 30). Article 4 of the Weekly Rest (Industry) Convention, 1921 (No. 14), authorizes the introduction of total or partial exceptions to normal weekly rest schemes after consultation with "responsible associations of employers and workers, wherever such exist". The same consultation requirement applies to special weekly rest schemes or temporary exceptions, as provided in Articles 7 and 8 of the Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106).

765. At the enterprise level, workers' representatives must be consulted prior to the introduction of work schedules requiring the services of night workers, while in

[1] The Night Work Recommendation, 1990 (No. 178), contains a similar provision (Paragraph 3(2)).

establishments that employ night workers, such consultation must take place regularly (Article 10 of Convention No. 171). The representatives of the workers concerned should also be consulted on the introduction or extension of part-time work on a broad scale, on the rules and procedures applying to such work and on the protective and promotional measures that may be appropriate (Paragraph 4 of Part-Time Work Recommendation, 1994 (No. 182)).

766. Several instruments specify that they may be implemented in a variety of ways, including through collective agreements. These include Convention No. 106 (Article 1), Convention No. 132 (Article 1), Convention No. 171 (Article 11(1)), Convention No. 175 (Article 11), and Recommendation No. 116 (Paragraph 3). Collective agreements are among the means recognized by Convention No. 1 for allowing the unequal distribution of working hours over the week (Article 2(b)). Convention No. 1 also allows the averaging of working hours over periods longer than a week, although only in exceptional circumstances, as explained in Chapter 1, through collective agreements, which may be given the force of regulations, if the government so decides (Article 5). [2]

B. Role of tripartite dialogue in shaping regulatory frameworks for working time

767. Tripartite committees are consulted on working-time regulations in many countries, including *Burkina Faso*, *Central African Republic*, *Colombia*, *Costa Rica*, *Croatia*, *Cyprus*, *Denmark*, *Dominican Republic*, *Ecuador*, *Egypt*, *El Salvador*, *Ethiopia*, *Finland*, *Georgia*, *Guinea*, *Guyana*, *Honduras*, *Hungary*, *Iceland*, *Jamaica*, *Japan*, *Madagascar*, *Malawi*, *Malta*, *Morocco*, *Mauritania*, *Mauritius*, *Mexico*, *Republic of Moldova*, *Namibia*, *Netherlands*, *Panama*, *Peru*, *Philippines*, *Samoa*, *Serbia*, *Seychelles*, *Sri Lanka*, *Suriname*, *Turkmenistan* and *Uruguay*.

768. In several European countries, consultation with the social partners takes place outside formal institutions, but follows established procedures (*Austria*, *Czech Republic*, *Germany*, *Italy*, *Lithuania*, *Norway*, *Slovenia* and *Sweden*). In other countries, such consultation takes place in formal institutions. For example, in the *Netherlands*, negotiations between the social partners in the Social and Economic Council, the tripartite social dialogue institution, have led to major revisions of the Working Time Act 2007. Tripartite agreements may also form the basis for the amendment of labour legislation. For example, in *Portugal*, a tripartite agreement on a compromise for growth, competitiveness and employment concluded in 2012 included measures on working-time flexibility in order to preserve employment during the peak of the financial crisis. The agreement later provided a basis for amendments to the Labour Code. [3] In *Montenegro*, a tripartite working group agrees on the text of draft labour legislation, including provisions on working time, before it is approved by the Social Council. Through this mechanism, a General Collective Agreement was agreed prescribing wage premiums for night work, work during public holidays and overtime. [4] In *Turkey*, the *Confederation of Turkish Trade Unions* notes that Labour Law No. 4857 of 2013 benefited extensively from the social dialogue mechanism, with the provisions of the law and the regulations being developed through consultations with the social partners. In 2014, hours of work in

[2] Under Articles 6 and 8 of Convention No. 30, such arrangements may be introduced by public regulations adopted after consultation with the workers' and employers' organizations concerned.

[3] The *Portuguese Confederation of Trade and Services* notes that numerous collective agreements now envisage the organization of working time in terms of averages (for example, through working-time banks).

[4] *Official Gazette* Nos 49/08, 59/11 and 66/12.

underground mines were regulated following consultations with the social partners, and working hours in this sector were limited to 37.5 hours a week.

769. In Asia and the Pacific, following the ratification of the Forty-Hour Week Convention, 1935 (No. 47), by the *Republic of Korea* in 2011, the Economic Social and Development Commission (ESCD) created a specialized tripartite commission (the Committee on the Reduction of Hours Worked) to deal specifically with the reduction of working hours. [5] In 2015, the Tripartite Agreement on Structural Reforms of the Labour Market, concluded in the ESCD, addressed the issue of working time. The tripartite partners undertook to work together to reduce the average annual hours of work in all industrial sectors to around 1,800 by the year 2020. They also committed to carry out nationwide campaigns to improve workplace culture and productivity for a better work–life balance and shorter working hours. However, following the conclusion of the Tripartite Agreement, the Government issued guidelines on labour market reforms which did not reflect the consensus, which resulted in the trade unions leaving the Tripartite Agreement. In *Bangladesh*, a Tripartite Consultative Council, consisting of representatives of workers' organizations, employers' organizations and the Government, discusses any proposed changes to policy issues, and separate discussions with the social partners are held on proposed amendments to the labour legislation. [6]

770. In *New Zealand*, the general public, including unions and employer bodies, are consulted over legislative changes, including in 2016, when legislation (including on rest periods) was adopted despite the strong objections of the unions. [7]

771. In the African region, the National Charter on Social Dialogue, which was concluded by the social partners in *Senegal* in 2002, places emphasis on the importance of negotiations on wages, working hours and working-time arrangements. [8] In *Cameroon*, social dialogue is used to determine national legislation or other provisions relating to working time through various forums, including the Tripartite Commission on Collective Bargaining and Revision of Wage Scales. However, the *National Federation of Trade Unions of the Decentralized Territorial Communities of Cameroon* expresses concern that collective bargaining and social dialogue are "almost inexistent" in all sectors in the country. In *Togo*, the National Labour Council provides opinions on issues relating to labour legislation, including overtime and part-time work. In *Zambia*, the Tripartite Consultative Labour Council is a mechanism for the determination of national laws and regulations concerning, among other matters, working hours. In *Ghana*, the National Tripartite Committee establishes minimum conditions, including on working time. [9] In *Cabo Verde*, the greater flexibility of working-time arrangements introduced in the most recent amendment to the Labour Code was the result of a tripartite agreement reached by the Social Dialogue Council in 2015.

772. In the Americas, the most representative employers' and workers' organizations in *Argentina* and *Guatemala* are consulted on all provisions relating to the implementation of ILO Conventions and Recommendations on working time. In *Nicaragua*, consultation

[5] ILO–AICESIS (International Association of Economic and Social Councils and Similar Institutions) database: http://www.aicesis.org/database/organization/80/ [last accessed 8 Feb. 2018).

[6] Chapter 7, section 329, Bangladesh Labor Rules, 2015.

[7] Employment Relations Amendment Act 2016.

[8] ILO NATLEX: http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=73529&p_classification=06 [last accessed 8 Feb. 2018].

[9] S. Hayter: "International comparative trends in collective bargaining", in *Indian Journal of Industrial Relations* (2010, 45(4)).

has been held concerning exceptions to: normal working hours, working-time banking over a period of more than one week, exceptions to the normal weekly rest scheme, deferred annual leave, the definition of "night work" and "night worker" and exemptions from those categories, as well as part-time work. In the *United States*, the federal administrative agencies generally provide the public, by way of notice, the opportunity to comment on proposed legislation; this may include working-time. At the provincial level in *Canada*, public consultations, which include working time, are typically held prior to amendments made to laws and policies. In the province of Manitoba, however, working-time is typically governed by the Labour Management Review Committee, a body comprised of both labour and employer representatives.

773. In a number of cases, consultation on working-time regulations appears to be less institutionalized. In *India*, the Ministry of Labour and Employment holds tripartite meetings for consultation on proposed amendments to working-time laws and regulations. In *Cambodia*, tripartite consultative workshops or meetings are held to discuss labour laws and regulations, including those on working time. The Government of *Singapore* reports that it consults the social partners regularly on all aspects of national laws and regulations related to manpower and employment, including on working time. The Government of *Thailand* reports that the stakeholders comment on all draft labour legislation in public hearings. The Government of the *Islamic Republic of Iran* indicates that the views and opinions of the social partners are obtained and included before the adoption of labour laws and regulations.

C. Collective bargaining and working time

774. In many countries, collective agreements provide a framework for working-time arrangements, although the importance of working-time issues in collective bargaining and the content of the respective provisions in collective agreements varies between countries, regions and sectors. Collective agreements may deal with such topics as: the standard number of hours of work in a day or a week, or some other period, the times of the day that are considered standard, maximum limits for overtime (or additional hours), and compensation for overtime and for unsociable hours, such as nights, Saturdays and Sundays. For example, in *Australia*, 97 per cent of collective agreements contain provisions on hours of work. [10] Collective agreements in particular sectors (for example, mining) may specify shift patterns, such as regular eight-hour shifts or rotating 12-hour shifts. Some collective agreements also specify the maximum number of consecutive days that can be worked and deal with working-time arrangements (such as banked hours), part-time work and leave (including annual leave, sick leave and parental leave). For example, in *Brazil*, in 2005, over 40 per cent of collective agreements in industry and over 50 per cent in services included provisions on working-time banking. [11]

(a) Collective bargaining on working time in the various regions

775. In most of the Member States that joined the EU prior to 1995, collective bargaining plays an important role in the definition of the main working-time provisions, such as normal weekly working hours. The role of collective bargaining in the determination of

[10] B. O'Neill: *General Manager's report into developments in making enterprise agreements under the Fair Work Act 2009: 2009–15* (Melbourne, Fair Work Commission, 2015).

[11] Departamento Intersindical de Estatística e Estudos Socioeconómicos (DIEESE): *A jornada de trabalho nas negociacoes coletivas 1996 a 2004*, II(16), 2005.

working time is more limited in the new EU Member States. [12] In Europe and Central Asia, collective agreements regulate working time in various sectors including in the following countries: *Austria*, *Azerbaijan*, *Belgium*, *Bosnia and Herzegovina*, *Croatia*, *Denmark*, *Finland*, *France*, *Germany*, *Greece*, *Hungary*, *Iceland*, *Italy*, *Latvia*, *Luxembourg*, *Netherlands*, *Portugal*, *Russian Federation*, *Slovakia*, *Slovenia*, *Sweden*, *Switzerland*, *Turkmenistan*, *Ukraine*, *Uzbekistan*, and *United Kingdom.*

776. In most countries, fairly comparable rules apply to the hierarchy of sources of law in relation to statutory provisions, the various types of collective agreements and employment contracts. Acts of Parliament have priority over collective agreements and company rules, and collective agreements have priority over company rules and contracts of employment. In many countries, this hierarchical order is combined with the principle of favourability, under which when provisions at a lower level of the hierarchal order contain standards that are more favourable to employees, these should apply, thereby ensuring that the most favourable treatment prevails. In some cases, regulatory frameworks also allow different arrangements adapted to the needs of enterprises and workers.

777. In the Member States of the EU there have been considerable changes in recent years to the distribution of working-time issues across the various bargaining levels. [13] While the principle of favourability continues to apply in most countries, there have been changes since the economic crisis in 2008 in an increasing number of European countries in respect of negotiated derogations from working-time standards and/or changes in the hierarchy of bargaining agreements.

778. In some countries, derogations are explicitly envisaged in the national legislation, which regulates the conditions under which they are possible or the issues that can be subject to derogation. Such derogations are possible in *Austria*, *Belgium*, *Estonia* and *Germany*. [14] In *Sweden*, where the system of collective bargaining is well coordinated and a high number of employees are covered by collective agreements, exemptions are permitted from the Working Hours Act in its entirety, or from some of its provisions, through collective agreements under certain conditions. Exemption from some provisions requires a collective agreement concluded or approved by a central workers' organization. Exemptions from others can be made through collective agreements concluded by local workers' organizations, but are time bound (for one month). Derogations, either from the Act in its entirety or from certain of its provisions, may not result in conditions that are less favourable than those prescribed by the EU Working Time Directive (2003/88/EC). Many collective agreements also include clauses allowing adjustments to working-time arrangements at the enterprise level which balance the needs of employers for flexibility with those of employees for work–life balance. [15]

779. Even in countries where higher-level agreements are in principle superior to lower-level agreements, clauses may be contained in higher-level agreements allowing

[12] Eurofound: *Working time developments in the 21st century: Work duration and its regulation in the EU*, Luxembourg, 2016, https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef1573en.pdf [last accessed 8 Feb. 2018].

[13] For further details on working-time regulation in the EU, see Eurofound: *Working time developments in the 21st century: Work duration and its regulation in the EU*, op. cit.; and *Developments in working time 2015–16*, Luxembourg, 2017, https://www.eurofound.europa.eu/sites/default/files/ef_comparative_analytical_report/field_ef_source_documents/ef1726_-_developments_in_working_time_2015-2016_updated_08092017.pdf [last accessed 8 Feb. 2018].

[14] *OECD Employment Outlook 2017* (Paris, 2017).

[15] Swedish National Mediation Office: *Annual report 2013* (Stockholm, 2014).

derogations by lower-level agreements. For example, in *Slovenia*, a collective agreement at the lower level may determine different or less favourable provisions than those set out in the higher-level collective agreement if the latter explicitly allows such derogations, but only under the conditions laid down by the latter. These provisions (known as "opening clauses") may also be included in sectoral collective agreements in *Germany*.

780. In *Belgium* and *Togo*, national collective agreements include provisions on working time. In *Belgium*, there is a strict hierarchy of sources of labour law and the provisions of any sectoral agreement that are contrary to an agreement concluded by the National Labour Council are null and void. [16] The same applies to collective agreements that are concluded outside the framework of a joint committee in relation to sectoral or national agreements. Moreover, the provisions of an employment contract or the internal rules of a company which are contrary to a collective agreement that is binding for the employers and workers concerned are also null and void. In *Togo*, the *National Council of Employers* and several unions concluded an inter-occupational collective agreement in 2011 regulating working time, which includes wage premiums.

781. In *France*, the Labour Act of 2016 amended the Labour Code and introduced a new architecture of applicable standards on working time. A distinction is now made between three categories of legal provisions: public order rules, provisions determining the scope of collective bargaining and default provisions applicable only in the absence of a collective agreement. On many aspects of working time, enterprise agreements prevail over branch agreements and may include provisions that differ from those of higher-level agreements, even if they are less favourable to workers. Both lower- and higher-level agreements must however abide by the public order rules. [17] While preliminary steps in this direction had been taken in 2004 and 2008, the greater focus on enterprise agreements is a significant development in the regulation of working time in *France*. The *General Confederation of Labour – Force Ouvrière* emphasizes that the primacy of enterprise agreements over branch agreements on working time established by the 2016 Labour Act weakens the protection of workers by creating competition based on labour costs, including working time.

782. In *Spain*, a legal reform in 2011 established the priority of company-level collective agreements over sectoral agreements in relation to a number of issues, including: remuneration or compensation for overtime, and the specific remuneration for shift work; work schedules and the distribution of hours of work, shift work schemes and the scheduling of annual leave periods; and measures to promote work–life balance. [18] However, the primacy of sectoral agreements was retained at the inter-occupational or sectoral level (regional and national). These rules were again amended in 2012, and this safeguard was removed. [19] The law also now allows enterprises to opt out, normally through an agreement with workers' representatives, of the applicable collective

[16] Section 10 of the Act of 5 December 1968 on collective agreements and joint committees.

[17] For example, with regard to compensation for overtime, pursuant to the public order provisions (sections L.3121-27 and L.3121-28 of the Labour Code), hours of work performed beyond the limit of the 35-hour week give rise to a wage premium or compensatory rest. The provisions on the scope of collective bargaining provide that an enterprise agreement, or failing that a branch agreement, can set the wage premium for overtime, while still retaining legislative control by establishing a minimum premium of 10 per cent (section L.3121-33, I(1) of the Labour Code). If no agreement is applicable, the premium is set at 25 per cent for the first eight additional hours and 50 per cent for further hours.

[18] Royal Decree No. 7/2011 on urgent measures to reform collective bargaining.

[19] Royal Decree No. 3/2012.

agreement for certain specified reasons, and particularly if the enterprise records a fall in revenues or sales for six consecutive months.

783. In Africa, working time is regulated in collective agreements in the *Central African Republic* (in hotels, forestry, public works, banks and urban transport), *Mauritania* (gold mine), *Morocco* (telecommunications and metal manufacturing), *Namibia* (fishing), *Sudan* (oil), *Suriname*, *Togo* and *Tunisia* (construction and public works, pasta manufacturing and private medical clinics), *Benin* and *Kenya* (for breastfeeding mothers in agriculture) and *South Africa* (sectors where there are bargaining councils, which play an important role in regulating working time).

784. In the Americas, there is collective bargaining on working hours in *Argentina*, *Brazil*, *Canada*, *Chile*, *Cuba* and *Guatemala* (in food and pharmaceutical manufacturing, the civil service and local government), *Honduras* and *Mexico* (electricity, oil, public services, airlines and universities) and *Uruguay* (in the wage councils established in most sectors). In *Brazil*, there are two types of collective agreements: those concluded between an employers' organization and a workers' organization; and those concluded between a workers' organization and one or more individual companies. The former are mandatory for all companies and workers represented by the negotiating organizations, while the latter are binding only within the company/ies for which the agreement is concluded. Collective bargaining has played a significant role in the reduction of working time, although some collective agreements include provisions that tend to increase working time, such as those on working-time banking in the car manufacturing sector. Working-time issues tend to be addressed in enterprise agreements, [20] while sectoral agreements tend to restate the existing legal framework. Recently, Act No. 13.467/17 of 2017 has substantially modified the hierarchy of sources of labour law in the country. Both types of collective agreement now prevail over legislative provisions on a number of issues, including hours of work (within the limits set by the Constitution) and the averaging of hours of work over the year. However, the law prohibits the conclusion of collective agreements that abolish or diminish a number of rights, and particularly wage premiums for night work, compensation for overtime (with a wage premium of at least 50 per cent), weekly rest and paid annual leave. Finally, enterprise agreements prevail over sectoral agreements.

785. Collective bargaining also covers hours of work in *Canada*. The *Canadian Labour Congress* notes that workers in unionized environments tend to have more stable and predictable working hours, due both to stronger standards negotiated in collective agreements and the ability to monitor and enforce compliance with basic employment standards. In *Chile*, representative unions can negotiate a special agreement on the distribution of weekly working hours, specifying how the social partners can come to agreement on a number of issues, including how the working week (up to 45 hours) is distributed over four days within an enterprise. In *Cuba*, working-time issues are covered by collective agreements, which have to be approved by a workers' assembly, and the contents have to be divulged to all workers before it can enter into force. Collective bargaining over hours of work in the *United States* covers airlines, construction, retail trade, agriculture and security, and some agreements provide for minimum notice of schedules, minimum hours for part-time workers or other provisions that give employees a greater say in their schedules. [21]

[20] DIEESE: *A jornada de trabalho nas negociacoes coletivas 1996 a 2004*, op. cit., pp. 1–26.

[21] For examples, see National Women's Law Centre: *Bargaining for schedule fairness*, Fact Sheet, 2015, Washington, DC.

786. In Asia and the Pacific, collective agreements set working time in *New Zealand*, and awards, enterprise agreements and other registered agreements in *Australia*. Using collective agreements to determine working time is rarer in emerging countries in Asia, with collective bargaining, where it exists, occurring predominantly at the enterprise level. A system of collective agreements has been developed in *China* as the mechanism for establishing and adjusting issues of "labour remuneration, working hours, rest and vacations, occupational safety and health, and insurance and welfare" through collective negotiation between workers and their employer on an equal footing. [22]

(b) Regulation of the main working-time issues through collective agreements

(i) Duration of working time

Hours of work

787. In *Uruguay*, collective agreements are concluded at the sectoral level. The Collective Agreement for Power and Transmission Plants contains detailed provisions on the length of the working day and week, establishing a 40-hour working week from Monday to Friday, with the exception of employees on rotating shifts and those who are "on call". Due to the type of work carried out in power and transmission plants, a significant number of workers are covered by "on call" or rotating shifts schemes. The collective agreement includes a special regime for work during Carnival and "tourism week". Those who are on rotating shifts during these two periods are paid an additional 50 per cent above the normal rate. The collective agreement for the public sector in Ontario, *Canada*, delegates detailed provisions on regular hours of work through an attached schedule to the collective agreement of the bargaining unit, which means that arrangements respecting variable workdays or weeks can be made at the local or ministry level.

Part-time work

788. In *Switzerland*, a collective agreement in the private sector provides that if workers wish to change their normal number of hours of work, the employer must review their request, having regard to its compatibility with operational requirements. In the case of part-time workers, the hours worked in excess of their specified weekly working time, when they are over five additional hours a week, are paid with a bonus of 25 per cent of the respective basic rate, but are not compensated with an equal number of hours of time off. In *Cabo Verde*, the collective agreement in the telecommunication sector allows workers with disabilities and student workers to request to work part time, with the initiative coming from the worker.

Minimum hours and advance notice

789. In Ontario, *Canada*, the United Food and Commercial Workers International Union has negotiated scheduling provisions for hourly and part-time workers with a grocery chain. [23] Prior to the agreement, part-time employees were informed of their work

[22] Sections 16 and 33, Labour Law, 1994.

[23] United Food and Commercial Workers Canada Local 1006A and Loblaws Supermarkets Limited, 2015. For more details, see E. McCrate: "Unstable and on-call work schedules in the United States and Canada", paper prepared for presentation at the Fifth Conference of the Regulating for Decent Work Network: Future of Work, ILO, Geneva, July 2017.

schedules three days in advance and "overhiring" was a common practice. [24] The 2015 collective agreement requires employees to be given advance notice of their weekly schedules of at least ten days. Reasons for changes to schedules are also agreed. Most importantly, the agreement guarantees a minimum number of hours of work for the most senior part-time workers, who agree to be available beyond the minimum requirements. A minimum of ten hours of rest between two scheduled shifts is also guaranteed, unless workers and management agree on a reduced period of rest. In *New Zealand*, the Unite union led a successful campaign in the fast food industry, where most workers were recruited under zero-hours contracts and over hiring was a widespread practice. [25] Unite negotiated collective agreements with the major fast food chains which included minimum-hour guarantees. Although the detailed provisions vary, a key component is the guarantee for current workers of 80 per cent of the hours worked over the previous three months. [26]

Work sharing

790. Work sharing is a temporary reduction of working time intended to spread a given volume of work over a larger number of workers with a view to avoiding lay-offs, or to increasing employment (see Chapter VI). In *South Africa*, 15 of 38 bargaining council agreements contain clauses on "short time", which is generally defined as a temporary reduction in the number of ordinary hours of work due to a lack of business in the trade, a breakdown of plant, machinery or equipment, or a breakdown or threatened breakdown of buildings, with a view to preserving employment. The agreements also limit the related deduction in earnings, so that they do not exceed one third of the employee's wage. [27] In *Germany*, where work sharing became an important tool to deal with the effects on manufacturing of the global economic crisis in 2008–09, it is regulated by statutory provisions and through collective agreements. The statutory provisions mitigate the financial impact of work sharing through the payment of compensation (for up to 18 months). The compensation amounts to between 60 and 67 per cent of the difference in net wages between normal hours and the hours worked during work sharing. Collective agreements (usually framework agreements) determine the following areas of work sharing: co-determination rights of works councils, the extent of work sharing, the period of prior notice, the reduction in wages for a small reduction in working time, subsidies, termination of employment during work sharing and residual costs. [28]

(ii) Working-time arrangements

791. In countries with multiple bargaining levels, the negotiation of flexible working-time arrangements takes place at the enterprise level, within the context of broader sectoral and

[24] "Overhiring" involves taking on numerous part-time workers to cover a large range of operational hours and to fill any scheduling gap due to absences or fluctuations in demand. For the employees themselves, this often means that they do not work as many hours as they would like.

[25] For additional information, see I. Campbell: "On-call and related forms of casual work in New Zealand and Australia", paper prepared for presentation at the Fifth Conference of the Regulating for Decent Work Network: Future of Work, ILO, Geneva, July 2017.

[26] The Parliament subsequently adopted amendments to the Employment Relations Act in 2016, providing some guarantees to these workers, including the prohibition of some forms of zero-hours contracts. ILO: *Non-standard employment around the world: Understanding challenges, shaping prospects*, op. cit., pp. 272–273.

[27] T. Elsey: "The regulation of working time in South Africa", report prepared for the ILO, 2017.

[28] R. Bispinck and WSI–Tarifarchiv: "Informationen zur Tarifpolitik: Elemente qualitativer Tarifpolitik" 66, Dusseldorf, July 2010.

national framework agreements. These systems require significant degrees of coordination by the social partners.

Night work

792. Some aspects of night work are covered by collective agreements in certain countries (see Chapter IV). For example, in *Zimbabwe*, although "night" and "night worker" are not defined by law, various provisions contain definitions of "night shift", which differ by sector in terms of the time when the night shift starts. In a collective agreement in the security sector, "night work" is defined as the shift that starts at 6 p.m. and finishes at 6 a.m. The employer can vary the starting and finishing times, on condition that working hours do not exceed 12 in any shift. [29] In *Denmark*, a collective agreement in the private sector provides that the night period is defined as between 11 p.m. and 6 a.m. Night workers are defined as employees who normally carry out at least three hours of their daily work, or at least half of their annual hours of work, during the night period. The collective agreement provides that the normal average hours of work of night workers, calculated over a 26-week period, may not exceed eight hours in any 24-hour period on average. [30]

Time banking

793. The concept of "time banking" involves keeping track of hours worked in "accounts" for individual workers (see Chapter VI). Time banking permits workers to build up "credits" or accumulate "deficits" in the hours worked, up to a maximum amount, which can then be "spent", usually in accordance with specific rules. In 2005, the German employers' organization Südwestmetall and the trade union IG Metall signed a general collective agreement which included a provision enabling collective agreements to regulate working time in a way that gives workers some power of decision over their working time, depending on the requirements of the company. The social partners in the metal sector agreed to negotiate a supplementary collective agreement, which allowed long-term accounts of working hours to facilitate the personal planning of working hours through different periods of working life. [31]

(iii) Gender equality

Parental leave

794. In *Sweden*, parents are entitled by law to parental benefit from the public system for a total of 16 months, of which three months leave cannot be transferred from one parent to the other. For 13 months, parental benefit is equivalent to almost 80 per cent of normal pay, with a ceiling for high salaries. Most collective agreements for professionals include supplementary compensation during parental leave. [32]

[29] Collective agreement between the Zimbabwe National Security Association and the Zimbabwe Security Guard Union and Private Security Workers Union, concluded in 2012.

[30] 2014/2017, National Collective Agreement, Salaried employees' collective agreement for trade, knowledge and service between Dansk Erhverv Arbejdsgiver and HK/Privat and HK Handel.

[31] C. Klenner et al.: *Förderung der Vereinbarkeit von Familie und Beruf in Tarifverträgen und Betriebsvereinbarungen in Duetschland*, WSI Diskussionspapier No. 184, 2013, Dusseldorf.

[32] Industry-wide agreement for the energy sector 2013–16, concluded between the EFA – the Swedish Energy Employers' Association and the Swedish Association of Graduate Engineers (Sveriges Ingenjörer), the Swedish Association for Managerial and Professional Staff (LEDARNA) and the Union of Service and Communication Employees (SEKO).

Working-time and family responsibilities

795. In *Mexico*, a collective agreement at a university establishes a specific benefit for a change in working hours during the winter, in accordance with the changes in school hours in the country. [33] Collective agreements in *Uruguay* [34] and *Ukraine* allow working parents to reduce working time if they have young children, while collective agreements in other countries (including the *Russian Federation* and *Uzbekistan*) limit this right to working women.

Box 8.1
Collective bargaining on working time for domestic workers

Provisions on working time for domestic workers, many of whom are women, are contained in several collective and tripartite agreements, most of which are in Europe, and some in Latin America. In some countries, agreements have been concluded with different employers' organizations. Such agreements exist in *Belgium* (one covers working time, standby time, daily and weekly rest, a second provides for working time and standby time and a third covers working time, compensation for night work and weekends), *France* (one covers working time, paid annual leave, public holidays and maternity leave, and a second provides for working time, standby time, night work and weekend work), *Germany* (working time, rest and holidays), *Italy* (working time, night work, rest periods, paid holidays and the protection of working mothers), *Sweden* (minimum wage, overtime, daily and weekly rest, holidays and access to maternity leave), *Switzerland* (rest times, maternity leave and decent working and living conditions for live-in workers) and *Uruguay* (night work, overtime pay, compensation for reduced or suspended hours, a paid day off on Domestic Workers Day, the need to formalize domestic work and commitments to decent working conditions). *

* C. Hobden: *Improving working conditions for domestic workers: Organizing, coordinated action and bargaining*, Labour Relations and Collective Bargaining, Issue Brief No. 2 (Geneva, ILO, 2015).

Special leave for domestic violence [35]

796. A new issue on the bargaining agenda in some countries is the prevention of domestic violence and support in the workplace for victims of domestic violence. The first domestic violence leave clause was negotiated between the Australian Services Union, Victorian Authorities and Services Branch, and the Surf Coast Shire Council in 2010 (Surf Coast Shire Council Enterprise Agreement 2010–13), which envisaged up to 20 days paid domestic violence leave. [36] The leave is intended to enable victims of domestic violence to seek medical assistance and legal advice, and to organize housing for themselves and their children. By 2015, a total of 944 agreements in *Australia* contained a domestic violence clause. [37] In 2016, the Australian Council of Trade Unions called for ten days paid family and domestic violence leave to be introduced into all modern awards.

[33] Collective agreement between the National Autonomous University of Mexico (UNAM) and the Union of Workers of the National Autonomous University of Mexico (STUNAM), concluded in 2016, Title II, clause 27.

[34] Collective agreement between the Union of Public Employees of Uruguay (COFE) and the Government of Uruguay, concluded in 2016.

[35] This section draws closely on: J. Pillinger, V. Schmidt and N. Wintour: *Negotiating for gender equality*, Labour Relations and Collective Bargaining, Issue Brief No. 4 (Geneva, ILO, 2016).

[36] L. McFerran: "Domestic violence is a workplace issue; Australian developments 2009–2016" (unpublished manuscript, 2016). Available at: https://www.wgea.gov.au/sites/default/files/mcferran-domestic-violence-workplace-issue-australian-developments.pdf. [last accessed 8 Feb. 2018].

[37] L. McFerran: "Protecting Australian workers affected by domestic violence: Australian developments 2010–2016" (WWRG Sydney University, unpublished manuscript, 2016).

Although this was declined by the Fair Work Commission, it left open the prospect of awards being varied to include entitlements to unpaid domestic violence leave. [38]

Conclusions

797. ***The social partners play a key role in the regulation and organization of working time. Their consultation is required by most of the instruments covered by the present General Survey, and tripartite consultations and collective agreements are widely recognized as the means of implementing their provisions.*** This chapter shows the variety of practices that exist and the importance of collective bargaining and tripartite social dialogue in the design of working-time policies. In particular, collective bargaining is used to design flexible working-time arrangements that take into account the needs of both workers and employers. In some countries, collective agreements are the main means for determining hours of work. Usually, however, working time is not regulated by social dialogue in isolation. It works alongside, and sometimes influences, statutory regulation.

798. The Committee notes that in recent years a number of countries have adopted reforms consisting of decentralizing to the enterprise level collective bargaining on working time and allowing decentralized agreements to derogate from more protective provisions in higher-level agreements, and even in some cases from legislative provisions on working time. The Committee notes the fears expressed in this regard by workers' organizations concerning the risk of the deterioration of working conditions resulting from the possibility available to enterprises to broaden the scope of competition to include working-time rules. The Committee also notes the observations by employers' organizations expressing a preference for regulation limited to setting a general framework within which working-time rules can be determined as near as possible to the workplace level.

799. ***While noting the importance of collective bargaining to ensure a better matching of working-time rules and the needs of enterprises and their workers, the Committee recalls firstly that the protective provisions of international labour Conventions on working time apply not only to national legislation, but also to collective agreements. The Committee also emphasizes that the rules on the articulation of the various sources of law governing working time are also subject, for countries that have ratified them, to the provisions of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Collective Bargaining Convention, 1981 (No. 154), the overall purpose of which is to promote collective bargaining aimed at reaching agreement on terms and conditions of employment that are more favourable than those already established in law.*** [39] On this basis, the Committee has had occasion to indicate that a provision establishing that provisions of the labour legislation in general may be replaced through collective bargaining would be contrary to the objective of promoting free and voluntary collective bargaining. [40] Based on the obligation to promote collective bargaining, the Committee has also emphasized the need to ensure that collective bargaining is possible

[38] Fair Work Commission: *Statement*, FWCFB 4729, "Fair Work Act 2009: s.156–4 yearly review of modern awards: Family and domestic violence leave clause and family friendly work arrangements". Available at: https://www.fwc.gov.au/documents/decisionssigned/html/2017fwcfb4729.htm. [last accessed 8 Feb. 2018].

[39] ILO: *Collective bargaining in the public service: A way forward*, General Survey concerning labour relations and collective bargaining in the public service, Report III (Part 1B), ILC, 102nd Session, 2013, para. 298.

[40] *Brazil* – CEACR, Convention No. 98, observation, published in 2017.

at all levels, [41] that collective agreements should be binding on their signatories and those that they represent [42] and, while noting the various possibilities for articulation between the different bargaining levels that are compatible with the Conventions, it has emphasized the importance of providing for a system established by common agreement between the parties. [43] ***The Committee considers that respect for these principles is necessary to ensure that collective bargaining and tripartite consultations continue to play an active role in the implementation of ILO Conventions on working time and to guarantee, in conformity with these instruments, the existence of a minimum level of generally applicable protection.***

[41] ILO: *Giving globalization a human face*, General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008, ILC, 101st Session, 2012, para. 222.

[42] *Greece* – CEACR, observation, Convention No. 98, published in 2013. See also, the Collective Agreements Recommendation, 1951 (No. 91), Paragraph 3(1). The Committee on Freedom of Association, on the basis of these principles, and in relation to situations going well beyond the sole issue of working time, has indicated that the elaboration of procedures systematically favouring decentralized bargaining of exclusionary provisions that are less favourable than the provisions at a higher level can lead to a global destabilization of collective bargaining machinery and of workers' and employers' organizations, and constitutes in this regard a weakening of freedom of association and collective bargaining contrary to the principles of Conventions Nos 87 and 98. Committee on Freedom of Association, Case No. 2820, Report No. 365, para. 997.

[43] ILO: *Giving globalization a human face*, op. cit., para. 223.

Chapter IX. Measures taken to ensure compliance with national laws and regulations on working time

800. Most instruments examined in this study contain provisions aimed at the effective enforcement of working-time standards. Such provisions are included in the following instruments: on hours of work (Conventions Nos 1 and 30 and Recommendation No. 116), on weekly rest (Conventions Nos 14 and 106 and Recommendation No. 103), as well as on holidays with pay (Convention No. 132 and Recommendation No. 98), night work (Recommendation No. 178) and part-time work (Recommendation No. 182). These provisions concern: (1) the notification of hours of work and rest; (2) record-keeping; (3) adequate inspection; (4) other compliance mechanisms; and (5) penalties.

801. One means of controlling compliance with these instruments is the requirement for the notification or authorization of exemptions from regular working hours, rest periods and annual leave. Such control is undertaken by the authorities responsible for the enforcement of working-time provisions (which are almost always the national labour inspectorates). Moreover, as previously highlighted by the Committee, the consultation of employers' and workers' organizations concerning exemptions from working-time regulations is also an important means of ensuring compliance. [1] This form of preventive control through the enforcement authorities and social partners is specific to the working-time instruments.

802. Measures to ensure compliance with national laws and regulations on working time are closely related to controlling the safety and health of workers and the payment of wages. Indeed, as frequently recalled by the ILO, a principal aim of establishing laws on working time is to combat the negative effects of long working hours on the mental and physical health of workers, reduce the high number of industrial accidents and standardize the practices of employers regarding working time. [2] With reference to the payment of wages, the accurate recording of working time and the corresponding payments, as required by the working-time instruments, is needed to help labour inspectors and workers control entitlements for the hours worked.

[1] ILO: *Hours of work*, General Survey on the Reports concerning the Hours of Work (Industry) Convention, 1919 (No. 1), the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30), the Forty-Hour Week Convention, 1935 (No. 47) and the Reduction of Hours of Work Recommendation, 1962 (No. 116), Report III (Part 3), ILC, 51st Session, 1967, para. 272.

[2] See, for example: J.C. Messenger: *Working time and workers' preferences in industrialized countries: Finding the balance*, ILO, London, Routledge, 2004; and Ji-Won Seo: *Excessive overtime, workers and productivity: Evidence and implications for better work*, ILO and International Finance Corporation (IFC), Geneva, Better Work Discussion Paper Series No. 2, 2011, p. 2.

1. Communication of hours of work and rest

Box 9.1
Hours of work

Article 8(1) of Convention No. 1 provides that:

In order to facilitate the enforcement of the provisions of this Convention, every employer shall be required –

(a) to notify by means of the posting of notices in conspicuous places in the works or other suitable place, or by such other method as may be approved by the Government, the hours at which work begins and ends, and where work is carried on by shifts, the hours at which each shift begins and ends; these hours shall be so fixed that the duration of the work shall not exceed the limits prescribed by this Convention, and when so notified they shall not be changed except with such notice and in such manner as may be approved by the Government;

(b) to notify in the same way such rest intervals accorded during the period of work as are not reckoned as part of the working hours; …

Article 11(2) of Convention No. 30 provides that:

For the effective enforcement of the provisions of this Convention –

…

2. Every employer shall be required –

(a) to notify, by the posting of notices in conspicuous positions in the establishment or other suitable place, or by such method as may be approved by the competent authority, the times at which hours of work begin and end, and, where work is carried on by shifts, the times at which each shift begins and ends;

(b) to notify in the same way the rest periods granted to the persons employed which, in accordance with Article 2, are not included in the hours of work; …

Paragraph 21(b) of the Reduction of Hours of Work Recommendation, 1962 (No. 116), provides that:

For the effective enforcement of the measures taken to reduce hours of work progressively in pursuance of Paragraphs 4 and 5 –

…

(b) the employer should be required to notify the workers concerned, by the posting of notices in the establishment or by such other methods as may be approved by the competent authority, of –

(i) the times at which work begins and ends;

(ii) where work is carried on by shifts, the time at which each shift begins and ends;

(iii) rest periods which are not included in the normal hours of work;

(iv) the days worked during the week;

…

Weekly rest

Article 7 of Convention No. 14 provides that:

In order to facilitate the application of the provisions of this Convention, each employer, director, or manager, shall be obliged –

(a) where the weekly rest is given to the whole of the staff collectively, to make known such days and hours of collective rest by means of notices posted conspicuously in the establishment or any other convenient place, or in any other manner approved by the Government;

(b) where the rest period is not granted to the whole of the staff collectively, to make known, by means of a roster drawn up in accordance with the method approved by the legislation of the country, or by a regulation of the competent authority, the workers or employees subject to a special system of rest, and to indicate that system.

Paragraph 5 of the Weekly Rest (Commerce and Offices) Recommendation, 1957 (No. 103), provides that:

> In any establishment in which the weekly rest period for any of the persons employed is other than the period established by national practice, the persons concerned should be notified of the days and hours of weekly rest by means of notices posted up conspicuously in the establishment or other convenient place, or in any other manner consistent with national law and practice.

803. These instruments require employers to communicate the beginning and end of hours of work, shifts, night work, rest periods and any changes made to working-time arrangements. The Committee considers that the requirement for employers to notify workers of working-time arrangements is intended for "the information of all concerned, including the workers themselves and the inspection authorities".[3] In accordance with Conventions Nos 1, 30 and 14, the purpose of notification is to "ensure effective enforcement" or "facilitate the application" of the provisions on working time. During the preparatory work for Convention No. 1 in 1919, it was emphasized that, without the posting of relevant notices, "it is almost impossible" for labour inspectors to verify the number of hours worked in a workplace. [4] During the preparatory work for the instruments on weekly rest in commerce and offices (Convention No. 106 and Recommendation No. 103), most member States considered that the posting of notices is only necessary when the weekly rest period differs from the customary period in national practice (that is, only in exceptional cases). [5]

A. Methods and forms of communication

804. The Conventions provide for flexibility in relation to the methods and forms of communication of hours of work. They call for notification by means of the posting of notices in "conspicuous" areas in the workplace or other suitable places, or in any other way approved by the Government (or competent authority), or by means of a roster where working conditions vary between different workers within a workplace.

805. There are specific legal provisions or regulations in almost all member States that require employers to communicate hours of work and rest periods to workers. With regard to the methods of communication of hours of work, the posting of the schedule of working hours (which in some countries may be included in collective agreements or internal workplace rules) in the premises of establishments is required by national legislation in most countries, particularly for establishments covered by special schemes or temporary exemptions. This is the case, for example, in *Argentina*, [6] *Austria*, [7] *Bangladesh*, [8] *Belgium, Benin, Burkina Faso, Burundi*, [9] *Cameroon, Canada*, [10] *Cambodia*, [11] *Central*

[3] See ILO: *Hours of work of salaried employees*, Report II, ILC, 14th Session, 1930, p. 257.

[4] League of Nations: *International Labour Conference: First Annual Meeting* (Oct.–Nov. 1919), Washington, Government Printing Office, 1920, p. 229.

[5] ILO: *Weekly rest in commerce and offices*, Report V(I), ILC, 40th Session, 1957, paras 12 and 13.

[6] Section 6 of Act No. 11544.

[7] Section 25(1) of the Working Hours Act (AZG).

[8] Section 105 of the Bangladesh Labour Rules, 2015.

[9] Sections 112 et seq. and 231 of the Labour Code.

[10] Sections 170(3) and 172(3) of the Labour Code.

[11] Sections 22 and 29 of the Labour Law.

African Republic, Dominican Republic, [12] *Ecuador,* [13] *Egypt,* [14] *Equatorial Guinea,* [15] *Gabon, Germany,* [16] *India,* [17] *Peru,* [18] *Portugal,* [19] *Qatar,* [20] *Senegal, Spain,* [21] *Romania,* [22] *Tunisia,* [23] *Bolivarian Republic of Venezuela* [24] and *Zimbabwe* [25]. In many countries, the national legislation requires the communication of working time through internal workplace rules, including in *Algeria, Azerbaijan,* [26] *Bulgaria,* [27] *Colombia,* [28] *Costa Rica,* [29] *Georgia,* [30] *Guatemala,* [31] *Latvia,* [32] *Mexico,* [33] *Oman,* [34] *Panama,* [35] *Russian Federation* [36] and *Uzbekistan*. In *Cyprus,* in manufacturing establishments, notices are mainly provided to employees through the intranet system. In *Denmark,* workers have to be informed by their employers of their normal working day and week (as well as changes to these arrangements) in writing. In *Indonesia,* [37] *Republic of Moldova,* [38] *Poland* [39] and *Romania,* [40] workers may be notified of working-time

[12] Sections 159 and 160 of the Labour Code (the notice must be stamped by the Labour Authority).

[13] Section 63 of the Labour Code.

[14] Section 86 of the Labour Code.

[15] Section 53 of the Labour Act (notices must be reviewed and approved by the labour authority).

[16] Section 16 of the Hours of Work Act.

[17] Section 61 of the Factories Act, 1948, and Rule 59 of the Mines Rules, 1955.

[18] Section 2 of Supreme Decree No. 008-2002-TR.

[19] Section 216 of the Labour Code.

[20] Section 77 of the Labour Code.

[21] Section 34(6) of the Workers' Charter.

[22] Section 17 of the Labour Code.

[23] Section 85 of the Labour Code, which provides that a copy of the working-time schedule and a copy of any amendments thereto shall be sent to the competent labour inspectorate.

[24] Section 167 of the Basic Act on Labour (LOTTT) (weekly rest) and section 1 of Decree No. 44 of 2013.

[25] Under section 82 of the Labour Act, a copy of the collective agreement must be posted in a conspicuous place in every undertaking to which it applies. Collective agreements also have a provision for their posting on noticeboards for easy access by employees.

[26] Section 183 of the Labour Code.

[27] Section 139 of the Labour Code.

[28] Section 108(4), (5) and (6) of the Labour Code.

[29] Section 68 of the Labour Code.

[30] Section 13 of the Labour Code.

[31] Sections 58 to 60 of the Labour Code.

[32] Section 55 of the Labour Law.

[33] Section 423 of the Federal Labour Act.

[34] Section 28 of the Labour Law.

[35] Sections 183, 191 and 128(10) and (11) of the Labour Code.

[36] Section 189 of the Labour Code.

[37] Sections 111 and 124 of Labour Law No. 13 of 2003.

[38] Section 98(4) of the Labour Code. Section 48(2) of the Labour Code provides that once they have been recruited, workers must be provided with the unit regulations and the applicable collective agreement.

[39] Section 150 of the Labour Code.

[40] Section 243 of the Law No. 53/2003, the Labour Code.

arrangements through collective agreements or enterprise rules. In *Norway*, working-time schedules have to be easily accessible to workers, although particular means of notification are not specified. [41]

806. ***Taking into account the need to ensure the application of the provisions on working time and rest, the Committee considers that notification has to be undertaken in such a way that workers and labour inspectors have easy access to the respective information. It considers that, in view of the considerable flexibility in the instruments concerning the forms and methods of notification, modern forms of communication, such as email, text messages or the enterprise intranet, may be effective means of notifying workers of their working schedules, in so far as this does not create obstacles of access by labour inspectors to working-time schedules.***

B. Notification of the working schedule in advance

Box 9.2
Night work

Paragraph 21 of the Night Work Recommendation, 1990 (No. 178), provides that:

> Except in cases of force majeure or of actual or imminent accident, workers should be given reasonable notice of a requirement to perform night work.

Part-time work

Paragraph 12(2) of the Part-Time Work Recommendation, 1994 (No. 182), provides that:

> As far as possible, changes in the agreed work schedule and work beyond scheduled hours should be subject to restrictions and to prior notice.

807. The preparatory work for some of the instruments emphasizes the need for working-time arrangements to be notified in advance. [42] With regard to night work, Recommendation No. 178 provides that, except in cases of force majeure or of actual or imminent accident, workers should be given "reasonable notice" of a requirement to perform night work. The Part-Time Work Recommendation, 1994 (No. 182), simply calls for "prior" notice.

808. While in almost all member States, laws or regulations provide that employers inform workers of working-time arrangements in advance, the required notification period may differ. In *Canada*, [43] *Russian Federation*, [44] *Turkmenistan* and *Singapore*, [45] workers must generally be informed of their working schedule at least one month in advance. In the *Netherlands*, [46] notification must occur "in good time", but at least 28 days in advance. In the *Czech Republic* [47] and *Lithuania*, [48] notification must not normally be later than two weeks in advance (except in certain cases, where the notification period is one week). In

[41] Section 10(3) of the Working Environment Act.

[42] See, for example, ILO: *Hours of work of salaried employees*, 1930, op. cit., p. 257.

[43] Section 170(3) of the Canada Labour Standards Regulations.

[44] Sections 74 and 103(4) of the Labour Code.

[45] Section 36(4) of the Employment Act.

[46] Section 4(2) of the Working Hours Act.

[47] Section 84 of the Labour Code.

[48] Section 99 of the Labour Code.

Hungary, [49] notification has to be provided seven days in advance, while in *Portugal* 48 hours are considered sufficient.

809. The Committee notes the observations made by the *Federal Chamber of Labour (BAK)* that in *Austria* workers in the retail (particularly food) sector normally have contracts of between 20 and 30 hours a week, with an obligation to work additional hours where required, and that employment contracts do not specify the timing of weekly working hours, which are most often fixed by oral agreement. The *BAK* explains that, contrary to national law and the applicable collective agreements, work schedules are not published two weeks in advance, but only three, two, or sometimes one day beforehand. According to the *BAK*, this negatively affects workers, who find it difficult to balance work and family commitments and to lead a decent private life with synchronized periods of free time. The *Canadian Labour Congress* reports that an increasing number of workers in *Canada* do not have stable working hours and calls for the improved predictability of working schedules through the requirement of advanced notice, preferably two weeks in advance, to set and change work schedules.

810. ***The Committee considers that sufficiently advanced communication by the employers to the workers of working schedules is an important element in the protection of workers' rights with a view to enabling them to organize their working and personal lives. The Committee considers that this is particularly relevant in cases where workers are required to work outside core hours, such as during the weekend or at night.***

2. Keeping of records of working time, overtime and the payment of wages for additional hours worked

Box 9.3
Hours of work

Article 8(1) of Convention No. 1 provides that:

> In order to facilitate the enforcement of the provisions of this Convention, every employer shall be required –
>
> …
>
> (c) to keep a record in the form prescribed by law or regulation in each country of all additional hours worked in pursuance of Articles 3 and 6 of this Convention.

Article 11(2) of Convention No. 30 provides that:

> For the effective enforcement of the provisions of this Convention –
>
> …
>
> 2. Every employer shall be required:
>
> …
>
> (c) to keep a record in the form prescribed by the competent authority of all additional hours of work performed in pursuance of paragraph 2 of Article 7 and of the payments made in respect thereof.

Paragraph 21 of the Reduction of Hours of Work Recommendation, 1962 (No. 116), provides that:

> For the effective enforcement of the measures taken to reduce hours of work progressively in pursuance of Paragraphs 4 and 5 –
>
> …

[49] Section 97(4) and (5) of the Labour Code.

(c) the employer should be required to keep, and on request to produce for inspection, a record in a form acceptable to the competent authority of the hours of work, wages and overtime for each worker;

…

Weekly rest

Paragraph 6 of the Weekly Rest (Commerce and Offices) Recommendation, 1957 (No. 103), provides that:

6. Appropriate measures should be taken to ensure the maintenance of such records as may be necessary for the proper administration of weekly rest arrangements and in particular of records of the arrangements made with respect to –

(a) persons to whom a special weekly rest scheme applies in accordance with the provisions of Article 7 of the Weekly Rest (Commerce and Offices) Convention, 1957;

(b) persons to whom the temporary exemptions provided for in Article 8 of the Weekly Rest (Commerce and Offices) Convention, 1957, apply.

Holidays with pay

Paragraph 12 of the Holidays with Pay Recommendation, 1954 (No. 98), provides that:

It should be left to collective agreements, arbitration awards, or national laws and regulations, to prescribe the system of holiday records which should be maintained and the particulars which should be included in such records, as may be necessary for the proper administration of provisions or regulations concerning annual holidays with pay.

A. Keeping of records of working time, overtime and payment of wages for additional hours worked

811. Conventions Nos 1 and 30 provide for the keeping of records on the "additional hours" worked, or in other words, overtime. [50] The Committee has considered that, while these Conventions only require the recording of additional hours, this necessarily also implies the recording of normal hours. [51] Recommendation No. 103 also calls for the maintenance of records as may be necessary for the proper administration of weekly rest arrangements and Recommendation No. 98 calls for records for holidays with pay. In addition, Convention No. 30 requires the keeping of records of the payments made for overtime. Conventions Nos 1 and 30 allow flexibility, in that records of working time may be kept in the form prescribed by law or regulation or in the manner approved by the competent authority (Recommendation No. 103 refers to "appropriate measures" for the maintenance of records and Recommendation No. 98 offers even greater flexibility in relation to record-keeping).

812. In accordance with Article 8(1)(c) of Convention No. 1, Article 11(2) of Convention No. 30 and Paragraph 21 of Recommendation No. 116, the purpose of the keeping of records on working time (including overtime) and the payment of wages is to ensure the "effective enforcement" of the provisions on working time and to control compliance with the relevant provisions on wages.

[50] League of Nations: *International Labour Conference: First Annual Meeting*, 1920, op. cit., p. 35.

[51] ILO: *Hours of work*, 1967, op. cit., para. 276.

813. Most member States require the keeping of records of working time, including *Australia*, [52] *Canada*, *Czech Republic*, [53] *Honduras*, *Hungary*, [54] *India*, [55] *Japan*, [56] *Republic of Moldova*, [57] *Namibia*, [58] *New Zealand*, *Romania*, [59] *Singapore*, [60] *South Africa*, *Sweden*, [61] *Slovakia*, *United States* and *Zimbabwe*. [62] In some countries, this may include quite detailed information, often on the nature of working time, including night work, shift work and periods of stand-by duty. In *Mexico* and *Seychelles*, the keeping of records on overtime and the payment of overtime worked is not required by national law. In *Germany*, the *German Confederation of Trade Unions* indicates that there is no general legal obligation to record working hours, except in specific areas, but that the legislation requires the documentation of working time exceeding the daily maximum of eight hours. In *Spain*, the *Trade Union Confederation of Workers' Commissions* expresses concern at a recent judgment, [63] which found that, since the national legislation only establishes the requirement to record overtime, and not the times at which work begins or ends, or ordinary hours of work and overtime, employers are not required to keep records of working time, and labour inspectors cannot therefore require employers to keep such records, or sanction those who fail to do so.

814. In addition to keeping records of working hours and overtime, in many countries it is required to keep records of the payment of wages, although the level of detail required varies between countries. In *Canada*, [64] the legislation requires the recording of the wages paid on each pay day, as well as vacation pay, general holiday pay, bereavement leave pay, termination pay and severance pay. In *New Zealand*, [65] every employer must keep a record of the wages paid for each pay period and the method of calculation. In the *United States*, [66] employers are required to keep detailed records, including the regular hourly pay rate, total daily or weekly "straight time" earnings, total overtime earnings per week, total wages paid for each pay period, and the date of payment and pay period covered. [67]

815. With a view to ensuring enforcement, labour inspectors and workers need to have access to these records, [68] which is the case in most countries. Workers also need access

[52] Sections 399 and 400 of the Industrial Relations Act, 2016.

[53] Section 96(1) of the Labour Code.

[54] Section 335 of the Labour Code.

[55] Section 18 of the Minimum Wages Act, 1948.

[56] Section 198 of the Labour Standards Act.

[57] Section 106 of the Labour Code.

[58] Section 103 of the Labour Act.

[59] Section 119 of the Labour Code.

[60] Regulations 4 and 5 (First Schedule), section 5 of the Employment Act (Chapter 91), Employment (Employment Records, Key Employment Terms and Pay Slips) Regulations, 2016.

[61] Section 11 of the Working Hours Act.

[62] Section 125 of the Labour Act.

[63] Consejo General del Poder Judicial, Tribunal Supremo, Sala de lo Social, STS 1275/2017 and STS 1748/2017.

[64] Section 24(2)(d) and (e) of the Canada Labour Standards Regulations.

[65] Section 130(1)(g) and (h) of the Employment Relations Act.

[66] Section 211(c) of the Fair Labor Standards Act.

[67] "Straight time" usually refers to gross earnings, excluding overtime payments and (with variations on this point) shift differentials and other payments.

[68] Concerning access to records by labour inspectors, Paragraph 21 of Recommendation No. 116 provides that employers are required to produce records for inspection. See also the relevant requirement in the Labour Inspection

to records so that they can take appropriate action, including seeking clarification from employers of errors in the records, notifying the labour inspectorate of irregularities or bringing claims to the courts, either to seek compensatory time off or obtain outstanding overtime pay. Many countries, including *Latvia*, [69] *Poland* [70] and *Sweden*, [71] grant workers access to their working-time records to enable them to supervise the adequate recording of the hours worked. In *Chile*, [72] at the end of each week, employers have to share working-time records with workers, who sign them, before the employer calculates overtime and undertakes payment. In *Hungary*, the payroll statement contains information that enables workers to check the amount paid, and the reasons for and totals of any deductions made. In the *Czech Republic*, at the request of the workers, employers must allow them to check their working time and wage records and make extracts and/or copies at the expense of the employer. [73]

816. ***While the Committee notes that the working-time instruments provide for flexibility in the keeping of records, it considers that the keeping of effective records of working time is one of the most important means of controlling compliance with working hours and overtime payments, and that they greatly assist labour inspectors in the enforcement of working-time provisions. The Committee considers that labour inspectors and workers should be given access to records so that they can easily verify compliance with the relevant provisions.***

B. New technologies for the recording of working time

817. New forms of work, particularly telework and ICT-mobile work (T/ICTM), are often accompanied by a more flexible organization of working time due to the remote nature of the work, which may make the recording of working time more difficult for employers.

818. In this respect, the Committee notes that many countries have adopted arrangements to enable the electronic recording of working schedules. In the Member States of the EU, all activities of drivers in the transport sector have to be recorded on a tachograph chart or a digital smart card, which makes it possible to control compliance with the statutory limits on driving time, working time and the minimum requirements for breaks and rest periods. [74] In *the former Yugoslav Republic of Macedonia*, [75] employers with more than 25 employees engaged in work at a single location are required to keep electronic records of working time. The Committee further notes that, in some countries, the forms of

Convention, 1947 (No. 81), which has been ratified by 145 member States. Article 12(1)(c)(ii) of Convention No. 81 provides that labour inspectors shall be empowered "to require the production of any books, registers or other documents, the keeping of which is prescribed by national laws or regulations relating to conditions of work, in order to see that they are in conformity with the legal provisions, and to copy such documents or make extracts from them".

[69] Section 137 of the Labour Law.

[70] Section 149 of the Labour Code.

[71] Section 11 of the Working Hours Act.

[72] Section 30 of the Labour Code.

[73] Section 96(2) of the Labour Code.

[74] Regulation (EC) No. 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonization of certain social legislation relating to road transport and amending Council Regulations (EEC) No. 3821/85 and (EC) No. 2135/98 and repealing Council Regulation (EEC) No. 3820/85.

[75] Section 116 of the Law on Labour Relations.

recording working time are optional. This is the case in *Uruguay*, [76] where recording of working time can be on paper, magnetic media or via the Internet. In other countries, such as *New Zealand*, [77] records of wages and time worked must be kept in written form, or in a form or manner that allows the information in the record to be easily accessed and converted into written form. In *Brazil*, where enterprises opt for electronic time-keeping, they are required to use the electronic time-keeping record, which records the arrival and departure of workers at the workplace, and the electronic time-keeping system, which accurately records time-keeping entries. [78] Both systems are made available by the Ministry of Labour and Employment and provide labour inspectors with detailed information on each individual employment relationship, which is also used for tax purposes.

819. The Committee also notes the observations made by the *Federal Chamber of Labour* that in *Austria* there are practically no branches with electronic systems for recording working time, which would enable the transparent recording and verification of the hours worked, which is urgently needed. The Committee notes the observations of the *International Organisation of Employers (IOE)* that, while the collection of data is important to support evidence-led policy-making, the wish to obtain comprehensive data should not lead the ILO and its member States to impose on companies the obligation to monitor working time through overly tight monitoring systems ("industrial-age-type time punch machines"). The *IOE* adds that, on the contrary, the ILO should encourage member States to develop smarter and more cost-effective means of collecting data and monitoring working time, in recognition of the current realities of the world of work. In this respect, the Committee also notes the indications made by *Business New Zealand* that in *New Zealand* the strict requirements placed on employers to record working time, annual leave and payments (failure to comply with which is punishable by significant penalties) sometimes cause problems for smaller employers, who may find the required record-keeping time consuming and difficult.

820. ***The Committee considers that, even where the national legislation lays down comprehensive rules on working hours, rest periods and night work, these rules should be accompanied by reliable tools to record their application which allow their examination by employers, workers and their representatives and labour inspectors. The Committee is of the view that employers should take advantage of the opportunities offered by new technologies to record working and rest time, such as time-tracking software, which offers the potential for more accurate and reliable, easier and less costly ways of monitoring working time.***

[76] Decree No. 108/2007.

[77] Section 130(1)(A) of the Employment Relations Act.

[78] Ministry of Labour and Employment, Order No. 1.510/2009.

3. Ensuring compliance with working-time provisions through adequate inspection

Box 9.4
Hours of work

Article 11(1) of Convention No. 30 provides that:

> For the effective enforcement of the provisions of this Convention –
>
> 1. The necessary measures shall be taken to ensure adequate inspection;
>
> …

Paragraph 21 of the Reduction of Hours of Work Recommendation, 1962 (No. 116), provides that:

> For the effective enforcement of the measures taken to reduce hours of work progressively in pursuance of Paragraphs 4 and 5 –
>
> (a) appropriate measures should be taken to ensure the proper administration of the provisions concerning hours of work by means of adequate inspection or otherwise;
>
> …
>
> (c) the employer should be required to keep, and on request to produce for inspection, a record in a form acceptable to the competent authority of the hours of work, wages and overtime for each worker;
>
> …

Weekly rest

Article 10(1) of Convention No. 106 provides that:

> Appropriate measures shall be taken to ensure the proper administration of regulations or provisions concerning the weekly rest, by means of adequate inspection or otherwise.

Article 14 of the Holidays with Pay Convention (Revised), 1970 (No. 132), provides that:

> Effective measures appropriate to the manner in which effect is given to the provisions of this Convention shall be taken to ensure the proper application and enforcement of regulations or provisions concerning holidays with pay, by means of adequate inspection or otherwise.

A. Effective enforcement measures

821. The traditional and most common form of ensuring compliance with working-time provisions is through labour inspection. In most countries, labour inspectorates are entrusted with enforcing the legal provisions relating to working time. This includes countries where working conditions do not usually fall within the scope of the labour inspectorate, including a number of Nordic countries, such as *Norway* [79] and *Sweden*. [80] In other countries, labour inspectors are entrusted with enforcing some, but not all of the legal provisions on working time. For example, in *Denmark*, the Danish Working Environment Authority only controls compliance with rest periods. In the *United Kingdom*, the Health and Safety Executive and local authorities are responsible for the enforcement

[79] See section 18 of the Working Environment Act, which entrusts the Labour Inspection Authority with the supervision of the provisions of the Act, including with regard to working time.

[80] In Sweden, about 90 per cent of employees are covered by collective agreements that regulate the great majority of working conditions, the enforcement of which is the responsibility of the social partners. For further explanations on the Swedish system, see: M. Ebisui, S. Cooney and C. Fenwick (eds): *Resolving individual labour disputes: A comparative overview* (Geneva, ILO, 2016), pp. 235–236. However, the Work Environment Authority is responsible for the enforcement of working-time provisions (see *Sweden* – CEACR, Convention No. 81, direct request, published in 2018).

of limits on maximum weekly hours and night work, as well as health assessments for night work, while entitlement to holidays and rest breaks is dealt with by employment tribunals.

B. Adequate labour inspection

822. While the provisions referred to above do not contain further details on the term "adequate inspection", relevant guidance is set out in the Labour Inspection Convention, 1947 (No. 81), and the Labour Inspection (Agriculture) Convention, 1969 (No. 129). Indeed, Conventions Nos 81 and 129 refer to "provisions relating to hours" as one of the subjects that are "enforceable by labour inspectors". [81] Conventions Nos 81 and 129 set out a number of universal principles that are essential for the effective functioning of all labour inspection systems in ensuring compliance in all the areas entrusted to them, including hours of work.

823. It is naturally beyond the scope of the present General Survey to address all the issues respecting the organization of national labour inspection systems that may affect the effective application of working-time provisions. The following section is therefore confined to addressing certain issues that arise in relation to labour inspection and working time.

(a) Enforcement of the legal provisions relating to working time and provision of technical information and advice to employers and workers on the most effective means of complying with these provisions

824. With regard to the enforcement of legal provisions on working time, the Committee notes that many countries have undertaken targeted inspections and campaigns to address working-time violations, as reported by *Canada, Croatia, Estonia, Japan, Republic of Korea, Poland, Singapore, Spain* and *United States*. The Committee also notes that member States report on the provision of information and advice to employers and workers during inspections or by telephone as indicated by *Canada*, or through the Internet websites of labour inspectorates, as reported by *Chile*. In addition to targeted inspection campaigns, educational campaigns on working time are reported by *Singapore*. In *Canada*, an interactive course on employment laws for young workers and new citizens is used by educational institutions, immigration gateways and other non-profit groups. In the *United States*, various tools are available to workers, including: (i) a *Timesheet App* for recording working hours and calculating the pay due; (ii) a printable working hours calendar for workers without a smartphone, which also includes easily understandable information on workers' rights and the filing of complaints; and (iii) so-called *"Mini Cards"*, containing information on the basic rights of workers in different sectors and activities in relation to working time and remuneration. Also in the *United States*, various tools are made available to employers, including: (i) "elaws Advisors", which are interactive e-tools providing easily understandable information for employers; and (ii) compliance assistance through a comprehensive library of the texts with which all employers need to be compliant.

825. The Committee also notes that some trade unions call for increased activity by labour inspection services to deal with violations of working-time provisions. For example, in *Madagascar*, the *Trade Union Confederation of Malagasy Revolutionary Workers* calls for the action of the labour inspectorate to be strengthened to deal with permanent and non-authorized overtime, which workers only undertake because they are threatened with

[81] Article 3(1)(a) of Convention No. 81 and Article 6(1)(a) of Convention No. 129.

dismissal. In *Morocco*, the *Democratic Confederation of Labour* indicates that the provisions on working time are not respected by many companies and that workers are not paid for the overtime hours worked daily, and that the rehabilitation of the labour inspection system is necessary for the effective monitoring of these provisions. In the *United Kingdom*, the *Trades Union Congress* indicates that working time is not a priority for the Health and Safety Executive, and that the split responsibility between the Health and Safety Executive, local authorities and sectoral enforcement bodies is weakening inspection in this area. The Committee also notes the comments of the *Confederation of Autonomous Trade Unions of Serbia* on the poor enforcement of working-time legislation and the Government's indication that employers in *Serbia* do not generally comply with the requirement to notify employees formally of extended working-time schedules, fail to pay overtime compensation and neglect their record-keeping obligations.

826. ***Welcoming the combination of preventive and enforcement activities undertaken in various countries to achieve compliance with legal provisions relating to working time, the Committee emphasizes, as the constituents did at the International Labour Conference in 2011, that these functions should be regulated and balanced as part of a comprehensive compliance strategy.*** [82]

(b) Preventive activities specifically relating to working time and occupational safety and health

827. The Committee notes the indication by some countries that labour inspectors have powers to order the reduction of working time where they consider this advisable from a health perspective. While the instruments on working time do not require the authorities entrusted with the enforcement of working-time provisions to be granted such powers, Article 13(1) of Convention No. 81 and Article 18(1) of Convention No. 129 provide that labour inspectors shall be empowered to take steps with a view to remedying defects observed in working methods which they may have reasonable cause to believe constitute a threat to the health or safety of workers.

828. In this respect, the Committee notes that, in the *Federation of Bosnia and Herzegovina*, [83] at the request of the employer, labour inspector or trade union, the competent authority shall decide on the decrease in the number of working hours in unhealthy workplaces on the basis of a technical analysis. Moreover, in *Argentina*, [84] when the labour inspectorate declares a workplace to be unhealthy, the working hours in that establishment have to be reduced to six hours a day or 36 hours a week. In relation to the close relationship between the enforcement of provisions relating to working time and occupational safety and health, the Committee also notes the indication by the *New Zealand Council of Trade Unions* that laws in *New Zealand* relating to working time lie across the jurisdictions of two inspectorates, namely the health and safety inspectorate, which is responsible for enforcing prohibitions on night work of children, and the labour inspectorate, which is responsible for issues relating to minimum rest breaks.

[82] ILO: *Resolution and conclusions concerning labour administration and labour inspection*, ILC, 100th Session, Geneva, 2011, para. 12.

[83] Section 37 of the Labour Law.

[84] Section 200 of Act No. 20744.

C. Requirement of authorization or notification in relation to exemptions

Box 9.5
Hours of work

Article 5 of Convention No. 1 provides that:

1. In exceptional cases where it is recognised that the provisions of Article 2 cannot be applied, but only in such cases, agreements between workers' and employers' organisations concerning the daily limit of work over a longer period of time may be given the force of regulations, if the Government, to which these agreements shall be submitted, so decides.

…

Article 6 of Convention No. 1 provides that:

1. Regulations made by public authority shall determine for industrial undertakings –

(a) the permanent exceptions that may be allowed in preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working of an establishment, or for certain classes of workers whose work is essentially intermittent;

(b) the temporary exceptions that may be allowed, so that establishments may deal with exceptional cases of pressure of work.

2. These regulations shall be made only after consultation with the organisations of employers and workers concerned, if any such organisations exist …

Article 6 of the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30), provides that:

In exceptional cases where the circumstances in which the work has to be carried on make the provisions of Articles 3 and 4 inapplicable, regulations made by public authority may permit hours of work to be distributed over a period longer than the week, provided that …

Article 7 of Convention No. 30 provides that:

Regulations made by public authority shall determine –

1. The permanent exceptions which may be allowed for –

…

2. The temporary exceptions which may be granted in the following cases:

…

3. Save as regards paragraph 2(a), the regulations made under this Article shall determine the number of additional hours of work which may be allowed in the day and, in respect of temporary exceptions, in the year.

Weekly rest

Article 7 of Convention No. 106 provides that:

1. Where the nature of the work, the nature of the service performed by the establishment, the size of the population to be served, or the number of persons employed is such that the provisions of Article 6 cannot be applied, measures may be taken by the competent authority or through the appropriate machinery in each country to apply special weekly rest schemes, where appropriate, to specified categories of persons or specified types of establishments covered by this Convention, regard being paid to all proper social and economic considerations.

…

4. Any measures regarding the application of the provisions of paragraphs 1, 2 and 3 of this Article shall be taken in consultation with the representative employers' and workers' organisations concerned, where such exist.

Article 8 of Convention No. 106 provides that:

1. Temporary exemptions, total or partial (including the suspension or reduction of the rest period), from the provisions of Articles 6 and 7 may be granted in each country by the

competent authority or in any other manner approved by the competent authority which is consistent with national law and practice –

(a) in case of accident, actual or threatened, force majeure or urgent work to premises and equipment, but only so far as may be necessary to avoid serious interference with the ordinary working of the establishment;

(b) in the event of abnormal pressure of work due to special circumstances, in so far as the employer cannot ordinarily be expected to resort to other measures;

(c) in order to prevent the loss of perishable goods.

2. In determining the circumstances in which temporary exemptions may be granted in accordance with the provisions of subparagraphs (b) and (c) of the preceding paragraph, the representative employers' and workers' organisations concerned, where such exist, shall be consulted.

Night work

Paragraph 4 of the Night Work Recommendation, 1990 (No. 178), provides that:

(1) Normal hours of work for night workers should not exceed eight in any 24-hour period in which they perform night work, except in the case of work which includes substantial periods of mere attendance or stand-by, in cases in which alternative working schedules give workers at least equivalent protection over different periods or in cases of exceptional circumstances recognised by collective agreements or failing that by the competent authority.

829. While some provisions in the instruments on working time permit permanent exemptions or special schemes without restriction, as can be seen from the provisions above, some exemptions depend on specific conditions and the involvement of the social partners and/or the public or competent authorities.

830. The Committee notes, from the preparatory work for Convention No. 106, that making the total or partial exemption from the regulations on weekly rest conditional upon compliance with certain compulsory formalities was one of the means intended to ensure their proper application. [85]

831. The Committee further notes that, in all countries that have provided relevant information, the competent authority responsible for deciding on exemptions from the statutory provisions on working time is the labour inspectorate. In some countries, the approval of the labour inspection services is required for overtime work, for example in *Ecuador*, [86] *Cameroon* and *Tunisia*, [87] or for exemptions from statutory rest periods (weekly rest, work on a weekly rest day, a public holiday or at night), including in *Cambodia*, [88] *Chile*, *Guatemala*, *Myanmar*, *Suriname* [89] and *Romania*. In *Norway*, many working-time provisions are subject to a dispensation granted by the labour inspection authority. The granting of such authorization may depend on certain requirements, such as the agreement of the workers concerned, [90] the specific nature of the activity [91] and the consideration of occupational safety and health matters. [92] In other countries, while approval is not explicitly required, exemptions from regular working-time provisions

[85] See, for example, ILO: *Weekly rest in commerce and offices*, Report VII(1), ILC, 39th Session, Geneva, 1956, p. 67.

[86] Section 55 of the Labour Code and Ministerial Decision No. 158.

[87] Sections 83(1) and (2), 91 and 92 of the Labour Code.

[88] Sections 22, 24 and 160 of the Labour Law.

[89] Sections 8(2)(a), 9, 10 and 19 of the Labour Code.

[90] *Chile*, section 38 of the Labour Code; *Myanmar*, section 60(1) of the Factories Act of 1951; and Romania.

[91] *Guatemala*, section 128 of the Labour Code; and *Chile*, section 38 of the Labour Code.

[92] *Chile*, section 38 of the Labour Code.

require notification to the labour inspection services, for example for: overtime (*Greece* [93] and *Montenegro*); overtime exceeding certain limits *(Bosnia and Herzegovina)*; overtime exceeding the weekly limits in production units with more than ten employees (*Italy*); or regular night work (*Slovakia*). [94]

D. Requirement of authorization or notification in relation to all working-time arrangements

832. The Committee notes that in a number of countries, approval by the labour inspectorate is required for all matters related to working-time arrangements, including for any proposed changes to these arrangements, and not only for exemptions. These countries include *Bangladesh*, [95] *Burkina Faso*, *Cambodia*, [96] *Central African Republic*, *Dominican Republic*, [97] *Madagascar*, *Morocco* and *Senegal*. Moreover, all working-time arrangements have to be notified to the labour inspectorate in *Suriname*, [98] *Qatar* [99] and *Tunisia*. [100]

833. In *Morocco*, the *Democratic Confederation of Labour* indicates that there are not enough labour inspection staff to deal with all the tasks assigned relating to working time, which results in that the approval of working-time schedules and receipt of the notification of changes is not possible for most enterprises.

834. ***The Committee considers that approval or prior notification of exemptions from regular working-time arrangements may be an effective measure to avoid infringements of the minimum protection of workers. However, it also emphasizes that the time spent by labour inspectors on administrative tasks should not have a negative impact on the control of compliance with provisions relating to working time by taking away resources from the regular exercise of the principal functions of labour inspectors, particularly in relation to their enforcement activities.***

(a) Adequate human and material resources for the effective functioning of the labour inspection services, [101] including the recruitment and training of labour inspectors in the area of working time [102]

835. The Committee has repeatedly emphasized the crucial importance of providing labour inspection services with the necessary human and material resources so that they can function effectively, [103] for which the allocation of an adequate budget is a

[93] Section 80 of Act No. 4144/2013, Form E8, "Notification of overtime hours carried out".

[94] Section 98 of the Labour Code.

[95] Section 105 of the Bangladesh Labour Rules, 2015: Forms 37, 37(a) or 37(b) are provided at the end of the Rules in order to comply with this obligation.

[96] Sections 22, 24 and 160 of the Labour Law.

[97] Sections 159 and 160 of the Labour Code.

[98] Section 24 of the Labour Code.

[99] Section 77 of the Labour Code.

[100] Section 85 of the Labour Code.

[101] Articles 10 and 16 of Convention No. 81 and Articles 14 and 21 of Convention No. 129.

[102] Article 7 of Convention No. 81 and Article 9 of Convention No. 129.

[103] See Article 10 of Convention No. 81 and Article 16 of Convention No. 129.

prerequisite. [104] While the Committee notes the efforts made by governments in this respect, including the hiring of additional staff, it also notes that the availability of resources continues to be a persistent problem in countries in all regions. [105]

836. In several countries, trade unions refer to the insufficient number of labour inspectors to discharge their duties in the area of working time. In *Austria*, the *Federal Chamber of Labour* observes that the number of labour inspectors is insufficient to carry out effective controls of working hours or to act as a deterrent to prevent infringements, even though the penalties for such infringements appear to be sufficiently dissuasive. In *Bosnia and Herzegovina*, the *Confederation of Trade Unions* calls for the strengthening of the labour inspection services in the *Republika Sprska*, where there are difficulties in the detection of violations of labour rights affecting part-time workers who, although employed under part-time contracts, are usually required to work full time. [106] In *Canada*, the *Canadian Labour Congress* reports that compliance is an ongoing issue, with far too few resources dedicated to enforcement. In *New Zealand*, the *New Zealand Council of Trade Unions* observes that there is a dramatic disparity between the almost 200 inspectors entrusted with occupational safety and health, and the 58 inspectors entrusted with working conditions, of whom a significant proportion are currently assigned to specific issues (wage arrears and migrant worker schemes), which therefore takes away from the resources available for working-time issues. The *General Workers' Union* in *Portugal* indicates that while the human and material resources of the labour inspectorate have been weakened in previous years, the publication of a recent call for interest for 80 new labour inspectors is a positive development.

837. With regard to the technical competence of labour inspectors, the Committee notes that some countries have hired inspectors specifically trained in the area of working time. For example, in *Japan*, special overtime supervision and management officers have been deployed in a newly created Special Task Force to Combat Overtime. In the *United Kingdom*, the Health and Safety Executive has appointed working-time officers. The Committee also notes that labour inspectors in other countries are assisted in the discharge of their duties relating to working time by specific tools. For example, in *Chile* and *Spain*, [107] specific guidelines have been developed to assist in taking appropriate action. In *Chile*, [108] these guidelines are published online and identify 133 of the most frequent working-time violations (including the respective legal provisions, a brief description of the violations and the applicable sanctions, which depend on the number of workers involved).

838. ***The Committee considers that it is essential for member States to allocate the necessary human and material resources to labour inspection through the recruitment***

[104] ILO: *Working together to promote a safe and healthy working environment*, General Survey on the occupational safety and health instruments concerning the promotional framework, construction, mines and agriculture, Report III (Part 1B), ILC, 106th Session, Geneva, 2017, para. 431.

[105] ibid., paras 431 and 432.

[106] *Bosnia and Herzegovina* – CEACR, Convention No. 175, direct request, published in 2014.

[107] In *Spain*, Instruction No. 3/2016 (as amended by Instruction No. 1/2017 of 18 May 2017) on the intensification of control over working time and overtime sets out the strategy, obligations and guidelines for inspections on compliance with working-time provisions. It determines the number of required inspection actions for each regional inspectorate every year, establishing coordination mechanisms to supervise companies operating in multiple autonomous communities. It targets special activities and sectors (those where violations of working-time legislation are most likely) and provides labour inspectors with checklists for the information and documents they should require from employers when visiting the workplaces. It also highlights the need to interview workers and workers' representatives, together with the respective guidelines.

[108] "Classification of violations and guidelines on administrative fines", Aug. 2017.

of an adequate number of inspectors and the allocation of appropriate budgetary provisions, so that labour inspectors can carry out their duties of supervising compliance with working-time legislation effectively.

(b) Adequate number of labour inspections and the availability of statistics for the planning of effective labour inspection activities

839. The Committee has also often highlighted the need for workplaces to be inspected as often and as thoroughly as necessary to ensure the effective application of the respective legal provisions. [109] In this regard, the Committee has referred to the importance of the availability of statistical data to enable the labour inspection services to focus interventions on priorities defined on the basis of objective criteria, such as the level of occupational risks, the employment of certain vulnerable categories of workers (such as young persons and migrant workers) and the presence of trade union representatives at the workplace. [110] In this context, the Committee has emphasized the need for the establishment of a register of enterprises as the basis for any planning activity, [111] and that the information collected during inspections and the statistical information required for annual labour inspection reports in accordance with Conventions Nos 81 and 129 offers an indispensable basis for evaluating labour inspection services and determining the means necessary to improve their effectiveness. [112] The Committee recalls that Paragraph 9 of the Labour Inspection Recommendation, 1947 (No. 81), provides guidance as to the type of information to be included in the annual labour inspection reports, including on whether workers covered by inspection visits are men, women, young persons and children. [113] Noting the predomination of women in part-time work, a recent study conducted by the *European Trade Union Confederation* [114] indicates that statistics disaggregated by sex also play a key role in enforcing gender equality provisions.

840. The Committee notes that several member States, such as *Estonia* and *Spain*, include statistical information on labour inspection activities relating to working time in their annual labour inspection reports (including the number of labour inspections, violations detected and penalties imposed). Some countries have developed electronic databases to collect information for inclusion in annual labour inspection reports. For example, in *Spain*, [115] an information system has been developed to collect and analyse data on all

[109] See Article 16 of Convention No. 81; Article 21 of Convention No. 129; and ILO: *Working together to promote a safe and healthy working environment*, 2017, op. cit., para. 437.

[110] ILO: *Labour inspection*, General Survey of the reports concerning the Labour Inspection Convention, 1947 (No. 81), and the Protocol of 1995 to the Labour Inspection Convention, 1947, and the Labour Inspection Recommendation, 1947 (No. 81), the Labour Inspection (Mining and Transport) Recommendation, 1947 (No. 82), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Labour Inspection (Agriculture) Recommendation, 1969 (No. 133), Report III (Part 1B), ILC, 95th Session, Geneva, 2006, para. 259.

[111] On the importance of maintaining and keeping up-to-date registers of workplaces liable to inspection and workers employed therein, see CEACR – general observation, Conventions Nos 81 and 129, published in 2010.

[112] ILO: *Working together to promote a safe and healthy working environment*, 2017, op. cit., para. 437. On the importance of well-prepared annual inspection reports, see CEACR – general observation, Convention No. 81, published in 2011. In this regard, the Committee also refers to the extremely valuable guidance on the presentation and analysis of information in annual labour inspection reports contained in Recommendations Nos 81 and 133.

[113] See Paragraph 9(c)(iii) of Recommendation No. 81.

[114] *European Trade Union Confederation* (ETUC), *Working time, gender equality, and reconciling work and family life*, available at: https://www.etuc.org/IMG/pdf/A_TT_egalite_u_sexes_EN.pdf [last accessed 8 Feb. 2018].

[115] See annual reports collecting this information, available at: http://www.empleo.gob.es/itss/web/Que_hacemos/Estadisticas/index.html [last accessed 8 Feb. 2018].

labour inspection activities (such as information on the number of inspections, violations, penalties imposed and the amount of the fines collected), including with regard to working time. In this respect, the Committee also notes that general information is available on economic sectors in which there are frequent infringements in the area of working time. As observed in Chapter VI on trends in working-time arrangements, violations of working-time provisions appear to be frequent in certain sectors or activities, including in the informal economy, subcontracting in the construction sector, the health-care sector, the services sector (such as in banking and insurance), tourism and catering, certain manufacturing industries (particularly the garment industry) and the information technology (IT) sector.

841. The *Swiss Federation of Trade Unions* refers to the inadequacy of the supervision of the working-time requirements, and particularly the absence of statistical data (for example, number of inspections and violations, and statistics on psychosocial diseases).

842. ***The Committee considers that the collection and analysis of statistical data are indispensable for the planning and targeting of labour inspection activities to address recurrent types of working-time violations and identify the economic sectors in which such violations occur frequently, as well as the workers particularly affected by these violations. It considers that labour inspectorates should concentrate their efforts on the effective use of the resources available through evidence-based planning, evaluation and follow up, so that they can address the most important compliance issues and the sectors, regions and enterprises that are most in need of inspection.*** [116]

4. Challenges faced by labour inspectorates in securing compliance with working-time legislation

843. General shortcomings in labour inspection services naturally also have an impact on the effective enforcement of working-time provisions. As observed above, such shortcomings include: (1) inadequate human resources and insufficiently trained labour inspectors; (2) inadequate material and financial resources; and (3) the lack of data collection mechanisms and statistics to focus inspection activities on workplaces at risk of non-compliance. Inefficiencies in enforcement systems and follow-up of non-compliance issues are also frequent shortcomings, which are addressed below in the section on penalties.

844. The Committee noted in Chapter VI on trends in working-time arrangements the concerns raised by the *ITUC* and other trade unions on the exclusion from the scope of working-time legislation of specific categories of workers, or workers in particular sectors. This means that labour inspectors do not have the mandate to ensure the application of the relevant legislation in relation to these workers. According to the *ITUC*, these include workers in the informal economy, workers in EPZs and domestic workers. In this context, the Committee also notes the observations of the *Canadian Labour Congress* concerning the increase in non-standard types of working relationship, such as temporary jobs, part-time work and self-employment, and the tendency to categorize workers as independent contractors rather than employees, thereby placing them outside the realm of much social and labour protection.

845. But even where workers are protected by working-time legislation, specific challenges arise in controlling compliance. While the enforcement of provisions

[116] *Serbia* – CEACR, Convention No. 106, direct request, published in 2014.

respecting working time and rest has always been recognized as a particular challenge, [117] the Committee notes that the challenges have been intensified by changes in the world of work since the adoption of the instruments, as described in Chapter VI on trends in working-time arrangements and explained in a number of publications on working time. [118] At the time of the adoption of the instruments, working hours were fairly standardized (at least in industrialized countries). However, working-time arrangements have now become more complex, flexible and irregular. [119] This includes new forms of the organization of work, [120] and particularly the use of information and communication technologies, crowd-work, on-call work and the shared economy. All of these trends, at a time of globalization, the liberalization of trade and the development of extensive supply chains involving several layers of subcontracting, are making it more difficult to control compliance.

846. A common obstacle to the effective investigation of violations is also the lack of cooperation from employers and workers. For example, in *Bosnia and Herzegovina* and *Montenegro*, labour inspectors have encountered workers who are unwilling to make statements indicating that they are working overtime, mostly out of fear of losing their jobs.

A. Challenges to control the application of working-time standards in certain economic sectors and in relation to specific categories of workers

(a) Migrant workers

847. The Committee notes from a recent ILO report that the substantial decent work deficits affecting migrant workers also relate to working hours. [121] Migrant workers are often subject to a series of barriers which trap them in situations of informality, such as the complex and bureaucratic procedures for hiring foreign workers. [122] Moreover, migrant workers who are in an irregular situation are particularly vulnerable to exploitation and discrimination, especially with respect to conditions of work. [123] For example, in the *Macao Special Administrative Region of the People's Republic of China*, the Committee noted that migrant workers are the group of workers most severely affected by working-time violations. [124] In view of the growing numbers of foreign and migrant workers in many countries, the Committee has also noted that the labour inspectorate is often requested to cooperate with immigration authorities.

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[117] See, for example: League of Nations: *International Labour Conference*, Third Session, Geneva, 1921, pp. 342, 355 and 372; and ILO: *Holidays with pay*, Report VII(1), ILC, 37th Session, Geneva, 1954, p. 4.

[118] See Ji-Won Seo: 2011, op. cit., p. 2.

[119] ibid.

[120] Chapter VI. Trends in working-time arrangements.

[121] ILO: *Addressing governance challenges in a changing labour migration landscape*, Report IV, ILC, 106th Session, Geneva, 2017, p. 21.

[122] ibid.

[123] ILO: *Giving globalization a human face*, General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008, ILC, 101st Session, Geneva, 2012, para. 778.

[124] *China – Macau Special Administrative Region* – CEACR, Convention No. 106, direct request, published in 2014.

848. ***The Committee recalls that the primary duty of labour inspectors is to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers, and not to enforce immigration law. To be compatible with the objective of labour inspection, the function of verifying the legality of employment should have as its corollary the reinstatement of the statutory rights of all the workers concerned.*** [125]

849. ***This objective can only be met if the workers concerned are convinced that the primary task of the labour inspection services is to enforce the legal provisions relating to conditions of work and the protection of workers. Workers in a vulnerable situation may not be willing to cooperate with the labour inspection services if they fear negative consequences as a result of inspection activities, such as the loss of their job or expulsion from the country. The Committee therefore considers that any form of cooperation between the labour inspection services and the immigration authorities should be undertaken with caution.***

(b) Domestic workers

850. As observed in Chapter VI on trends and challenges, the working hours of domestic workers around the world are among the longest and most unpredictable, and are therefore difficult to measure and are inadequately documented. [126] With regard to enforcement, for many reasons it is challenging for labour inspectors to establish contact with domestic workers, as they do not tend to lodge complaints. Cases of abuse remain hidden and undeclared domestic workers are part of an invisible workforce. Labour inspectorates do not therefore know who they are, where they work or their working conditions. [127] Moreover, access to private homes is limited in most countries, as labour inspectors need the consent of the householder or prior judicial authorization, which involves procedures that are often lengthy and burdensome. This results in very low levels of intervention in the sector, if any. [128]

851. In this respect, the Committee notes the observation by the *Trades Union Congress* that domestic workers in the *United Kingdom* are excluded from legal protection if it is considered that they "live as part of the family", and that it is difficult to challenge this status due to the risk of members of the household misreporting their real relationship with the domestic worker. The Committee notes that this is emblematic of the challenges to protection of domestic workers in the area of working time and that the Domestic Workers Convention, 2011 (No. 189), provides for progress in this respect. ***Noting that Article 10 of Convention No. 189 encourages respect for equal treatment between domestic workers and of workers generally, in relation to normal hours of work, overtime compensation, periods of daily and weekly rest, and paid annual leave, and noting that Article 17 of Convention No. 189 provides for the establishment of effective compliance mechanisms, including labour inspection, to protect domestic workers, the Committee encourages governments to undertake relevant efforts adapted to the specific situation of domestic workers, in particular in view of the often limited access to private homes in view of privacy conditions.***

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[125] See ILO: *Labour inspection*, 2006, op. cit., para. 78.

[126] See ILO: *Labour inspection and other compliance mechanisms in the domestic work sector: Introductory guide*, Geneva, 2015, pp. 10–11; ILO: *Domestic workers across the world: Global and regional statistics and the extent of legal protection*, Geneva, 2013, p. 57; and ILO: "Working hours in domestic work", Domestic Work Policy Brief No. 2, Geneva, 2011.

[127] ILO: *Labour inspection and other compliance mechanisms in the domestic work sector: Introductory guide*, 2015, op. cit., p. 46.

[128] ibid.

B. Telework and the use of new information and communication technologies

852. The Committee notes the findings of a recent study [129] that telework gives rise to various difficulties in ensuring compliance. The frequent absence of working-time schedules or records impedes the control of compliance. Moreover, not only are the powers of labour inspectors restricted when work is undertaken from private homes, but the places from which telework is undertaken are rarely registered as workplaces, which means that labour inspectors are unaware of their existence.

853. In this respect, the *ITUC* observes that the use of modern technologies not only affects teleworkers, but also office workers, as requests for work can be made outside working hours when workers are not on the premises of the employer. The *IOE* and the *ITUC* both refer to the blurring of the lines between working and non-working time. The Committee further notes the call by the *ITUC* for innovative regulatory approaches to ensure that new technologies are not abused to circumvent working-time provisions. Similarly, the *German Confederation of Trade Unions* indicates that in *Germany* time spent working outside normal working hours and off-site through the use of information and communications technologies is neither documented nor monitored. The *General Workers' Union* in *Portugal* emphasizes the need for the measurement of working time to be made easier in an era of new technology and calls for the involvement of the social partners in this respect. The Committee also notes the indication by the *IOE* that, while overly tight monitoring systems should be avoided, the ILO should encourage member States to develop smarter and more cost-effective means of collecting data and monitoring working time, in recognition of the current realities in the world of work.

854. ***The Committee considers that efforts should be made to ensure the effective planning and recording of the working time of teleworkers so as to ensure that working-time limits and rest periods are observed. It further considers that training and awareness initiatives for both employers and workers is necessary on this type of remote work to ensure that all the parties concerned are aware of the risks involved in these types of work arrangements. Finally, the Committee considers that efforts should be made, in consultation with the social partners, to find innovative solutions to ensure compliance for this type of work.***

5. Other measures for ensuring compliance

855. While Convention No. 30 only refers to the enforcement of the provisions of the Convention through "adequate inspection", the working-time instruments that were adopted later, such as Convention No. 106 (Article 10(1)), Convention No. 132 (Article 14) and Recommendation No. 116 (Paragraph 21), refer to the enforcement or application of provisions concerning working time and weekly rest by means of inspection or "otherwise". In this respect, the preparatory work for Convention No. 106 referred, in relation to supervision, to the practice in member States of involving works councils, the police, local or municipal authorities and public health services in the application of working-time standards. [130]

856. As observed above, the enforcement of working-time provisions in most countries is the responsibility of the labour inspection services. In the event of violations of the

[129] Eurofound and ILO: *Working anytime, anywhere: The effects on the world of work*, Luxembourg and Geneva, 2017, pp. 21–28.

[130] See, for example, ILO: *Weekly rest in commerce and offices*, 1956, op. cit., pp. 68–69.

provisions relating to working time, labour inspectors usually issue infringement reports, which may lead to the imposition of an administrative fine or the referral of the case to the judiciary. [131] Moreover, in many countries, workers' representatives or workers submit complaints of breaches of working-time provisions to the labour inspectorate and/or the labour courts.

857. In the *Netherlands*, there are some working-time provisions for which no penalties are envisaged, and for which labour inspectors are not responsible. In this case, it is up to the workers themselves to take action in the courts. The Government reports that in some cases the sector itself monitors compliance with these provisions, for example in the taxi trade (the Taxi Social Fund).

A. Involvement of the social partners in compliance

858. The Committee considers that the consultation of employers' and workers' organizations constitutes a means of enforcing the application of the provisions on working time. [132] Moreover, the instruments under examination provide for the consultation of organizations of employers and workers, particularly in the case of exemptions from working-time regulations, as well as special weekly rest schemes and the calculation of average hours of work (see Article 6(2) of Convention No. 1, Article 8 of Convention No. 30, Article 4 of Convention No. 14, Articles 7 and 8 of Convention No. 106 and Article 9(3) of Convention No. 132. Moreover, Paragraph 20 of Recommendation No. 116 calls for consultation, among others, on matters relating to the reduction of hours of work, exemptions and the regulation and remuneration of overtime.

859. The Committee notes that the working-time provisions applicable in the workplace are subject to consultation in most countries, and that workers or their representatives participate in the preparation of internal rules. For example, in *Canada*, [133] working schedules (modifications or cancellations) have to be agreed in writing by the employer and the trade union. In *Latvia*, [134] unless otherwise agreed in the collective labour or employment contract, the main provisions respecting working time are set out in the working procedure regulations, which the employer has to draft in consultation with workers' representatives. The situation is similar in *Norway*, [135] where the work schedule has to be prepared in cooperation with the workers' representatives, who also have access to working-time records in order to check compliance. In *the former Yugoslav Republic of Macedonia*, [136] plans for the organization of work in shifts have to be submitted to the trade union no later than ten working days before their implementation. The *General Confederation of Portuguese Workers – National Trade Unions* reports that, in *Portugal*, the employer has to consult workers' representatives for the elaboration of the working schedule. In *Spain*, [137] if employers wish to substantially modify working-time agreements, depending on the number of workers affected, they must either notify the workers'

[131] For example, in *Zambia*, pursuant to section 65 of the Industrial and Labour Relations Act, Cap 268, labour inspectors refer all breaches of the provisions of the Act to the courts.

[132] ILO: *Hours of work*, 1967, op. cit., para. 272.

[133] Section 170 of the Canada Labour Standards Regulations.

[134] Section 55 of the Labour Law.

[135] Section 10-3 of the Working Environment Act, 2005.

[136] Section 124(a)(3) of the Law on Labour Relations.

[137] Section 41 of the Workers' Charter.

representatives or collectively negotiate any such modification. In the *Czech Republic*, the employer has to discuss issues of work organization at night with the trade union or occupational safety and health representative. [138]

860. It was made clear during the preparatory work for the working-time instruments that employers' and workers' organizations should not take part in the enforcement of working-time standards, which was considered to be the function of the inspection services. [139] However, according to a joint ILO and International Finance Corporation (IFC) study, higher union density is associated with a lower rate of excessively long working hours, and the presence of trade unions can improve the effectiveness of monitoring working time. [140] In addition to submitting complaints to the labour inspectorate and/or labour courts, measures that can facilitate compliance with working-time standards include collaboration between the employer and workers' representatives in awareness-raising and training activities on working-time issues and cooperation with the labour inspection authorities (for example during inspections, information campaigns or training on working-time issues). [141]

861. The Committee notes that the social partners in *Cambodia* have cooperated closely with labour inspectors to improve compliance and the enforcement of working-time laws and regulations. The *Confederation of Industrial Chambers of the United States of Mexico* indicates that in *Mexico* representatives of trade unions participate autonomously with labour inspectors during inspections. The Committee also notes the indication by the *Canadian Labour Congress* that in *Canada*, while trade unions provide resources and tools to assist workers in ensuring compliance with existing employment standards, the overall fall in the unionization rate makes it harder to resist the downward pressure on working hours and other working conditions in both unionized and non-unionized workplaces.

862. ***The Committee emphasizes the importance of the participation of workers and their representatives in promoting compliance, and recalls that this requires the provision of adequate and appropriate training, as well as measures to ensure that workers and their representatives receive the necessary information on working time, and that they are able to participate autonomously and without fear of retaliation in relevant activities.***

B. Other compliance initiatives

863. The Committee notes that an increasing number of private compliance initiatives (PCIs) have been developed in recent years with various objectives, including the assessment of conformity with national and international standards in the area of working time. It notes that several certification programmes have been developed aimed at improving compliance with labour standards, which usually set limits for working time and overtime among the requirements to obtain certification (of a product, process or workplace). [142]

[138] Section 15(v) of Act No. 251/2005 on labour inspection (as amended).

[139] See, for example, ILO: *Utilisation of holidays with pay*, 1954, op. cit., p. 11.

[140] Ji-Won Seo: 2011, op. cit., p. 28.

[141] ibid., pp. 30 and 36. See also Article 5(b) of Convention No. 81 and Article 12 of Convention No. 129, which require the promotion of collaboration between the labour inspection services and employers and workers.

[142] Examples of such initiatives include: *UTZ certified coffee, tea, cocoa and hazelnuts*, available at: https://utz.org/what-we-offer/certification/the-standard/ [last accessed 8 Feb. 2018] and *the Flocert fairtrade*

864. There are also other initiatives, such as the Better Work, a joint ILO/IFC programme, which seeks to achieve safe and decent working conditions in global supply chains, while improving competitiveness through, among other measures: (1) advisory and training services; (2) unannounced compliance assessments in participating factories, including in relation to working hours; (3) the possibility of sharing compliance assessment information, thereby showing commitment to buyers; and (4) research, the identification of non-compliance and communication with national governments and entrepreneurs. [143] On this basis, Better Work tries to persuade employers and buyers to ensure compliance with legal limits on working hours, and that workers benefit from sufficient rest and their statutory leave entitlements. [144]

865. In the *United States*, the Fair Food Program, a farmworker and consumer-driven initiative, requires compliance of suppliers with a human rights-based Code of Conduct, which includes provisions relating to the recording of working time and rest periods. Workers can make complaints to the tripartite Fair Food Standards Council which monitors compliance, and violations can lead to the suspension of suppliers from the program, which means they are excluded from selling their products to the participating companies. [145]

866. The Committee notes the conclusions of the Meeting of Experts on Labour Inspection and the Role of Private Compliance Initiatives, held in December 2013, [146] that there are a variety of different types of PCIs and that their impact, sustainability and effects, including in the field of working conditions, require further analysis. [147] However, it was emphasized by all participants that labour inspection should remain a public function, that enforcement cannot be subcontracted or delegated to private bodies, and that PCIs should not exempt enterprises from the obligation of complying with labour laws or from workplace inspections by public authorities. In this context, it was highlighted that PCIs could play a complementary role in compliance and that coordination with labour inspectorates is possible and could work successfully, without undermining the role of labour inspection. [148] Moreover, workers' and employers' organizations should be more closely involved in these initiatives. [149]

867. ***In light of the above, the Committee considers that effective PCIs can contribute to addressing compliance gaps with respect to working time. However, such initiatives are not a substitute for public labour inspection and should not exempt member States from taking the necessary measures in this regard, nor should they take the place of or be used as an excuse for reducing the capacity and frequency of public labour inspections. The Committee considers that the effectiveness of private compliance***

certification, available at: http://www.flocert.net/fairtrade-services/fairtrade-certification/compliance-criteria/ [last accessed 8 Feb. 2018].

[143] For further information, see Ji-Won Seo: 2011, op. cit.

[144] ibid.

[145] For further information, see the details of the programme: http://www.fairfoodstandards.org/resources/fair-food-code-of-conduct/ [last accessed 8 Feb. 2018].

[146] ILO: *Final report: Meeting of Experts on Labour Inspection and the Role of Private Compliance Initiatives* (Geneva, 10–12 December 2013), MEPCI/2013/7.

[147] ibid., para. 7 of the Chairperson's summary.

[148] ibid., para. 11.

[149] ibid., para. 10. In this connection, the UGT reported that some private compliance initiatives in *Spain* have started to involve workers' organizations.

initiatives in the domain of working time, as well as their effective cooperation with the labour inspection services requires further analysis.

6. Penalties for non-compliance with working-time provisions (including overtime, rest periods and annual leave) and other measures to ensure compliance

Box 9.6

Article 8(2) of Convention No. 1 provides that:

> It shall be made an offence to employ any person outside the hours fixed in accordance with paragraph (a), or during the periods fixed in accordance with paragraph (b) [of this Article].

Article 11(3) of the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30), provides that:

> It shall be made an offence to employ any person outside the times fixed in accordance with paragraph 2(a) or during the periods fixed in accordance with paragraph 2(b) of this Article.

Article 12 of Convention No. 30 provides that:

> Each Member which ratifies this Convention shall take the necessary measures in the form of penalties to ensure that the provisions of the Convention are enforced.

Article 10(2) of Convention No. 106 provides that:

> Where it is appropriate to the manner in which effect is given to the provisions of this Convention, the necessary measures in the form of penalties shall be taken to ensure the enforcement of its provisions.

A. Establishment of penalties

868. These provisions require the establishment of penalties to ensure compliance with the measures adopted at the national level. In this respect, the Committee has repeatedly emphasized that it is essential for the credibility and effectiveness of regulatory systems to ensure that penalties for labour law violations are sufficiently dissuasive and that they are defined in the national legislation in proportion to the nature and gravity of the offence. [150]

869. Penalties for the violation of working-time provisions generally take the form of administrative penalties and fines, as is the case, for example, in *Algeria*, *Federation of Bosnia and Herzegovina*, [151] *Cambodia* [152] and *Ecuador*. [153] The national legislation in other countries also envisages prison sentences for working-time offences, for example in *Finland*, [154] *Republic of Korea*, [155] *Singapore* [156] and *Sri Lanka*. [157] Such sentences may

[150] ILO: *Labour inspection*, 2006, op. cit., paras 291–306.

[151] Sections 159 and 171(1) of the Labour Law.

[152] Section 367 of the Labour Law.

[153] Section 628 of the Labour Code and article 7 of Constitutional Mandate No. 8.

[154] Section 2, Chapter 47, of the Criminal Code.

[155] Sections 109 and 110 of the Labour Standards Act.

[156] Section 53 of the Employment Act.

[157] Section 51 of the Shop and Office Employees Act.

be applicable in cases involving intent, gross negligence or the existence of a previous warning. In the *Netherlands*, some statutory provisions do not establish penalties in the event of non-compliance, such as those regulating work on Sundays (the normal day of weekly rest in the country).

870. The *Federal Chamber of Labour* indicates that in *Austria* the penalties set out in the Working Hours Act are sufficiently deterrent and are constantly being increased. However, it calls for heavier penalties for the circumvention of overtime payments through unlawful practices. As it is often no longer possible to obtain compensation through civil litigation, employers deliberately engaging in such practices should be required to pay double the amount. The Committee notes the call made by the *Canadian Labour Congress* for an increase in penalties for labour law violations in *Canada*.

871. ***The Committee encourages member States to ensure that the penalties established in the national legislation for working-time violations (whether they are of an administrative, civil or penal nature) are sufficiently dissuasive to deter violations and are defined in proportion to the nature and gravity of the offence.***

B. Effective enforcement of penalties for violations in the area of working time

872. The Committee has repeatedly emphasized that penalties should not only be prescribed in law, as is the case in most countries, but must also be effectively enforced in order to compel employers to take corrective action and dissuade them from future violations. Obstacles to the enforcement of penalties often include time-consuming court proceedings, lack of political commitment and inadequate cooperation between the labour inspection services and the justice system. [158] An ILO study carried out in 2013, which examined various enforcement procedures in member States and the common challenges faced, found that penalties in some countries are rarely imposed and that effective enforcement procedures are only initiated if the violation has resulted in serious harm to health or safety. [159] The obstacles encountered in this context include the lack of adequate training for labour inspectors and enforcement staff, and the absence of statistical data to evaluate the performance of the enforcement system and take measures for its improvement. [160]

873. In this connection, the *Trades Union Congress* reports obstacles in the *United Kingdom* to the enforcement of paid holiday rights and rest breaks, which have to be pursued through employment tribunals. However, the introduction in 2013 of a system of fees of between £390 and £1,200 for workers lodging claims with employment tribunals resulted in a decrease of 90 per cent in the number of such claims, due to the fact that the average amount of holiday pay of workers is less than £390.

874. ***The Committee encourages member States to take measures to ensure that penalties for violations in the area of working time are effectively enforced. This may require a variety of measures, such as the establishment of mechanisms for the effective cooperation of the labour inspection services with the justice system, additional training for labour inspectors and enforcement staff, and the collection and review of statistical data on the violations detected and follow-up action taken, including the outcome of the***

[158] On the importance of cooperation between the labour inspection services and the justice system, see: CEACR – general observation, Convention No. 81, published in 2008.

[159] ILO: *Labour inspection sanctions: Law and practice of national labour inspection systems*, Geneva, 2013.

[160] ibid., pp. 42–43.

legal proceedings related to violations disaggregated by sex of the workers affected, with a view to evaluating the effectiveness of judicial procedures. The Committee further emphasizes that mechanisms should be in place to ensure that workers face no financial or other barriers in bringing complaints on working time violations to the labour inspectorates or claims to the labour courts.

Conclusions

875. ***Compliance with working-time requirements remains a challenge in today's world of work. In developing countries, many workers, particularly those in the informal and rural economies, are excluded from any form of control to ensure compliance with provisions respecting working hours and rest periods. In industrialized countries, new methods of work and the increasing complexity of working-time arrangements are exacerbating the difficulties faced by labour inspectorates, labour courts and by employers and workers themselves in controlling compliance.***

876. ***Without the effective notification and recording of working time and rest periods, it is not possible to assess compliance with the relevant standards. In this respect, the Committee considers that use should be made of new technologies for the measurement of working hours. Moreover, it is important to ensure that effective mechanisms are in place to secure compliance with working-time provisions, primarily through labour inspection and the application of dissuasive penalties for non-compliance, as well as through the other mechanisms referred to in this chapter.***

877. ***The Committee considers that compliance by workers themselves is an important issue, and that awareness raising is particularly important on the negative impact on health and safety of constant overtime and non-compliance with necessary rest periods.***

Chapter X. Achieving the potential of the instruments

1. Measures to give further effect to the instruments

878. The report form for this General Survey asked governments to provide information on the impact of the 16 instruments under examination. In particular, governments were asked to report on any modifications to national legislation or practice, or any intention to adopt measures, including ratification, to give effect to the provisions of the instruments, as well as any difficulties that may prevent or delay ratification.

A. Taking account of the instruments in the design of national legislations and policies

879. A number of governments indicate in their replies that they have adopted or intend to adopt measures to incorporate provisions giving effect to the working-time instruments into national legislation or to implement them in practice. The Government of *Indonesia* indicates that the working-time Conventions and Recommendations were given consideration when preparing the ministerial regulations regarding working time and rest periods in the energy and mining sectors and in the oil and gas sectors. The Government of *Bosnia and Herzegovina* reports that the new Labour Act of 2016 is in compliance with the ILO Conventions regarding breaks and working hours. The Government of *Zambia* indicates that modifications have been made to national legislation to apply some of the provisions of the ILO instruments on working time, including the Employment (Amendment Act) No. 15 of 2015, which addresses some of the new trends in working time. [1] The Government of the *Central African Republic* indicates that the Labour Code adopted in 2009 takes into account unratified Conventions and Recommendations on working time. Moreover, the Government of *Egypt* reports that a bill is currently being drafted to amend certain provisions of the Labour Code and related legislation to bring them into line with international Conventions and Recommendations, including working-time instruments. The Government of *Montenegro* reports that a draft Labour Act, which is currently being prepared, takes into account ratified Conventions and Recommendations on hours of work. The Government of *Sudan* indicates that the new Labour Code is being amended to take into consideration some aspects of the Part-Time Work Convention, 1994 (No. 175). [2] However, a great number of governments indicate that no legislative changes

[1] Other examples of countries which report that national labour legislation has been modified taking into account the principles enshrined in the ILO working-time instruments include *Estonia*, *Indonesia* and *Iraq*.

[2] Other examples of countries envisaging the modification of their labour legislation to bring it into line with ILO working-time instruments include *Equatorial Guinea*, *Guatemala*, *Jamaica*, *Mauritius*, *Rwanda*, *Samoa*, *Seychelles*, *Syrian Arab Republic* and *Zambia*.

have been made or are currently planned to give effect to ILO Conventions and Recommendations on working time. [3]

B. Prospects for ratification and difficulties that may prevent it

(a) Prospects for ratification

880. A few governments report taking steps towards the ratification of some of the working-time Conventions. The Government of *Equatorial Guinea* reports that a number of ILO instruments on working time are currently being prepared for submission with a view to ratification but that, due to an internal ministerial restructuring, the process has been delayed.

881. Some governments report examining steps for the ratification of some of the Conventions covered by the General Survey, including tripartite consultations. Similarly, the Government of *Rwanda* reports that it will conduct a study and hold consultations with employers and workers' representatives to assess the possibility of further ratifications. The Government of *Zambia* indicates that prospects for the ratification of ILO instruments on working time will be tabled before the Tripartite Consultative Labour Council. The Government of *Tunisia* reports that a study has been undertaken on unratified working-time Conventions in order to facilitate the ratification process. The Government of *Benin* reports that all the necessary measures will be taken to facilitate ratification of the working-time instruments, while the Government of *Seychelles* indicates that ratification might be considered as part of future legislative reviews. The Government of *Iceland* indicates that discussions will be initiated in the national ILO committee in response to the question about ratification.

882. Certain governments report their intention to consider the ratification of ILO instruments in the future. The Government of *Morocco* reports that the possible future ratification of Convention No. 132, and of Convention No. 175 is under review. The Governments of *the former Yugoslav Republic of Macedonia* and *Uruguay* indicate that they intend to initiate the process of the ratification of Convention No. 171. The Government of *Uzbekistan* reports that a review of ILO Conventions, including Convention No. 132, is in progress with a view to their ratification.

(b) Difficulties preventing or delaying ratification

883. A number of member States indicate that ratification of one or more of the instruments under examination is not currently foreseen or intended. [4] The most frequent obstacles to ratification referred to by these countries include legal difficulties related to the content of the instruments with regard to national legislation, and practical obstacles, such as the political and socio-economic conditions prevailing in the country.

[3] For example, *Cambodia*, *Cameroon*, *Canada*, *Costa Rica*, *Côte d'Ivoire*, *Cyprus*, *Ethiopia*, *Germany*, *Honduras*, *Latvia*, *Malawi*, *Mauritania*, *Mongolia*, *Namibia*, *Nicaragua*, *Panama*, *Philippines*, *Poland*, *Singapore*, *Suriname*, *United States* and *Zimbabwe*.

[4] For example, *Argentina*, *Burkina Faso*, *Chile*, *Costa Rica*, *Côte d'Ivoire*, *Cyprus*, *Eritrea*, *Estonia*, *Finland*, *Germany*, *Guatemala*, *Kenya*, *Latvia*, *Madagascar*, *Mali*, *Mauritius*, *Mexico*, *Mongolia*, *Namibia*, *Netherlands*, *Nicaragua*, *Norway*, *Panama*, *Philippines*, *Qatar*, *Republic of Moldova*, *Senegal*, *Singapore*, *Suriname*, *Turkey*, *United Kingdom* and *United States*.

(i) Legislative obstacles

884. The majority of countries reporting on this question indicate that the ratification of certain Conventions is not foreseen as they consider that aspects of their legislation are not in conformity with the provisions of the instruments. The Governments of *Cameroon* and *Slovakia* refer to inconsistency between ILO Conventions and national legislation generally. The Government of *Canada* reports that, although the national legislation is largely in conformity with the main provisions of the Conventions covered by the General Survey, the level of implementation of their specific requirements varies across the 14 Canadian jurisdictions, which prevents their ratification.

885. With respect to the scope of application of Conventions Nos 1 and 30, the Government of the *Republic of Korea* identifies inconsistencies between the scope of application of these Conventions and national legislation, and particularly that the Labour Standards Act applies to all businesses employing more than five persons and does not distinguish between industry, commerce and offices. The Government of *Switzerland* reports that the definition of industrial undertaking in Convention No. 1 is broader than the definition in the Labour Act, which does not include service, transport, mines and construction companies. With reference to Convention No. 30, the Government of *Switzerland* indicates that the scope of application of the national legislation differs from that of this Convention.

886. The Governments of *Algeria* and *Brazil* indicate that their national legislation sets limits for weekly hours of work that are lower than those provided for in the Conventions. The Government of the *Russian Federation* makes similar observations regarding Convention No. 1.

887. With reference to the Forty-Hour Week Convention, 1935 (No. 47), the Government of *Algeria* indicates that, even though the national legislation provides for a 40-hour week, it allows for exceptions that are not envisaged in the Convention. The Government of *Switzerland* reports that, as Convention No. 47 does not distinguish between the different sectors of the economy, its ratification does not seem possible. [5]

888. In relation to Convention No. 106, the Government of *Algeria* indicates that no consideration has been given to the ratification of this Convention, as ratification of Convention No. 14, appears to respond to the needs of the world of work. The Government of *New Zealand* reports that the national legislation is less prescriptive than the ILO Conventions. The Government of *Switzerland* observes that the scope of application of Convention No. 106 differs from that of the Labour Act, which does not apply to the public administrations of the Confederation, cantons and municipalities.

889. With regard to Convention No. 132, the Government of *Denmark* reports that a revision of the Danish Holiday Act is currently being carried out and that the social partners are closely involved in this process as members of the Holiday Act Committee, which has the task of submitting a proposal for a new Act. However, it adds that at this stage it is premature to assess the possibility of the ratification of Convention No. 132 in the future. The Government of *New Zealand* observes that the national legislation is broadly consistent with Convention No. 132, but does not indicate an intention to ratify the Convention.

[5] The Government of *Brazil* indicates that the Stability and Growth Programme, which is currently before Congress, will amend the provision of the Constitution establishing a weekly working week of 44 hours. However, the Government does not indicate whether ratification of Convention No. 47 is envisaged. The Government of *Spain* reports that the national legislation has been in compliance with the principle of the 40-hour week since 1983, but does not indicate any prospect of ratification.

890. In relation to Convention No. 171, the Government of *Denmark* reports that the national legal system is not fully in conformity with the Convention in relation to night work and maternity protection. In the view of the Government, these provisions are too rigid for the system in *Denmark* and no amendment of the national legislation is currently envisaged. The Government of *New Zealand* indicates that the national legislation does not differentiate between the times when work is performed, except for workers under 16 years of age. The Government of the *Russian Federation* reports that the national legislation is not fully in compliance with the provisions of the Convention. The Government of *Sweden* reports that the provisions of the Convention are inconsistent with the general prohibition of work at night. The Government of *Mauritius* indicates that the national legislation is not in compliance with Convention No. 171, as it does not contain a definition of night worker and there are no specific provisions on measures to assess workers' health and the possibility of transfer to day work in the event of incapacity to perform night work. The Government of *Poland* observes that the national legislation does not consider night workers as a separate category of employees. The Government of *Spain* indicates that the national legislation is not fully in conformity with the provisions of the Convention in relation, among other aspects, to the minimum hours to be performed at night to qualify as night work, the interpretation of the term "substantial number of hours" in the definition of "night worker", suitable first-aid facilities, the eight-week period prior to childbirth, remuneration that recognizes the nature of night work and the provision of social services for night workers.

891. With regard to Convention No. 175, the Governments of *New Zealand* and *Switzerland* report that the national legislation does not contain provisions differentiating between full- and part-time workers. The Government of *Brazil* reports that differences between the national legislation on annual leave for part-time workers and the rules established in the Convention are preventing its ratification. The Government of *Denmark* indicates that, although the possibility of ratifying Convention No. 175 was examined in 2008, it was not possible to reach consensus in the Danish ILO tripartite committee, mainly regarding the right to social security and the policy to promote labour supply for certain sectors. Similarly, the Government of *Austria* indicates that an assessment conducted several years ago came to the conclusion that ratification of the Convention would only be possible if certain groups or sectors were exempt from the application of the Convention.

892. With reference to the Protocol to Convention No. 89, the Government of *Brazil* indicates that the national legislation includes several mechanisms to protect pregnant women, such as temporary security of tenure, transfer to another position for health-related reasons, guaranteed return to the previous position upon returning to work and exemption from hours of work for at least six medical appointments and additional examinations. The Government adds that the Consolidation of Labour Laws was amended in 2017 to require the removal of women from unhealthy work or workplaces during the entire period of pregnancy and breastfeeding. Finally, it reports that, although the Protocol to Convention No. 89 includes an additional guarantee by prohibiting night work for women workers during a period of at least 16 weeks before and after childbirth, of which at least eight weeks shall be before childbirth, it is important to consider the extent to which its adoption by *Brazil* would, in practice, lead to greater discrimination against working women due to the standards of protection already set out in national legislation. The Government of *New Zealand* adds that, even though the Protocol allows for variations in the duration of the night period and exemptions from the prohibition of night work, it remains inconsistent with the principles of the Human Rights Act 1993. The Government of *Sweden* is of the view that special provisions for women in the workplace should be avoided wherever possible.

(ii) Practical obstacles

893. Some countries report political or socio-economic obstacles to ratification. The Government of *Bangladesh* indicates that further ratification by the country of any Conventions is not possible until there is an improvement in the socio-economic conditions and the institutional capacity of the Government. The Government of *Malawi* reports that there are few prospects of ratification due to the poor state of the economy and low labour productivity and that, in its view, the introduction of changes, such as a reduction in the maximum statutory hours of work, could harm the already fragile economy. The Government of *Indonesia* indicates that ratification of the Conventions must be adapted to national needs and economic conditions, as well as the social and cultural context of the country. The Government of *Eritrea* emphasizes that the shortage of skilled human resources and the lack of equipment for labour inspectors are among the main reasons for the delay in ratification. The Government of *Switzerland* reports that, due to the current economic situation, a reduction of working hours to 40 a week, as set out in Convention No. 47, seems unlikely.

894. Other countries report practical difficulties that impede the ratification of the instruments. With regard to Conventions Nos 1, 30, 47 and 106, the Government of *Denmark* reports that, as working-time issues, including average weekly hours of work, are mainly regulated by collective agreements that are negotiated and concluded without interference by the State, the ratification of the Convention would be legally binding on a State that does not have full influence over the matters covered by the Conventions. The Government of the *Netherlands* observes that, in principle, it does not consider ratifying a Convention that provides a level of protection lower than that set out in national legislation. With regard to Convention No. 171, it reports that, following the adoption of the Convention, the European Union Working Time Directive (93/104/EC) was adopted and transposed into Dutch law, thereby creating a level of protection at least as high as that offered by the Convention. The Government of *Estonia* reports that ratification of the Conventions would not improve working conditions and working-time provisions in comparison with the current situation at the national level. The Government of *Spain* indicates that the prescriptive approach adopted by Convention No. 171 makes compliance difficult. Similarly, the Government of *Sweden* refers, as an obstacle to ratification, to the fact that the provisions of Convention No. 171 are too detailed.

2. Proposals for ILO action

895. A number of governments and employers and workers' organizations provided comments concerning possible standards-related action, as well as policy support and development cooperation that could be provided to member States and constituents to improve the implementation of the Conventions.

A. Requests for technical assistance or development cooperation

896. The Committee notes that a few countries report having received support from the ILO to bring their legislation into line with ILO Conventions, including the working-time standards. The Government of *Seychelles* reports that, in the context of the review of the Employment Act, the ILO provided effective and productive support to ensure the alignment of the national legislation with international labour standards, including the working-time instruments. The Governments of *Guatemala*, *Seychelles* and *the former Yugoslav Republic of Macedonia* add that activities, such as workshops and round-table

meetings on ILO standards, including those on working time, have been held with effective results.

897. Several countries indicate that they would appreciate the provision of technical assistance in relation to the requirements of the instruments. The Government of *Cabo Verde* considers that, in the framework of a possible revision of the Labour Code in 2019, it would be useful to request ILO technical assistance to improve understanding of the relevant international labour standards, and particularly Conventions Nos 171 and 175. The Government of *China* expresses the wish to strengthen technical exchange and cooperation with the ILO, including the organization of training and exchanges abroad, with a view to developing a better legal and regulatory system respecting hours of work in the country. The Government of *Indonesia* expresses the need for assistance concerning the regulation of part-time work and working time in the land transport sector. The Government of *Madagascar* reports that technical assistance is needed for the effective application at the national level of the working-time instruments. The Government of *Malawi* expresses the need for ILO support on part-time work provisions to keep abreast of changing working-time patterns. The Government of *Myanmar* indicates that technical assistance is required for the enactment of specific legislation on working time and leave for offshore petroleum workers due to the characteristics of the sector. The Governments of *Chile*, *Costa Rica*, *Egypt*, *Islamic Republic of Iran*, *Jamaica*, *Morocco*, *Samoa* and *Sudan* also consider that ILO technical assistance would be useful in support of their legislative reform processes.

B. Need for ILO standards-related action

898. A number of governments and social partners indicate possible standards-related action that could be undertaken by the ILO and its members, including the possibility of consolidating the ILO working-time standards in a new instrument, revising existing working-time instruments and the need to address new and emerging issues in this area.

(a) Comments from governments

899. Some governments suggest the consolidation of working-time provisions in a new instrument: the Government of *Australia* welcomes the work of the Standards Review Mechanism and notes that it may lead to the consolidation of working-time standards, if the Tripartite Working Group so decides. The Government of *Slovakia* considers that the possibility should be examined of consolidating the working-time instruments. The Government of the *Netherlands* suggests that a single new Convention, along the lines of the Maritime Labour Convention, 2006, as amended (MLC, 2006), should not only contain provisions on working time and rest periods, but also guarantee decent work. Other governments proposing the consolidation of the working-time instruments include *Nicaragua* and *Sweden*.

900. Certain governments suggest the revision of the instruments, indicating that some of them were adopted almost a century ago and do not reflect modern realities. The Government of *Austria* suggests that consideration should be given to updating Convention No. 1, which will soon be 100 years old, and Convention No. 30, particularly in view of the ongoing process of the increasing flexibility of employment legislation, especially regarding working time. The Government of *Denmark* indicates that, although ILO standards on working time are still relevant, the current diversity of practices, the differing distribution of hours of work in developing and developed countries and the growing informal economy are aspects that must be taken into account when assessing the impact of the instruments. It adds that a balance needs to be found in working-time

regulation between the protection of workers and the promotion of sustainable enterprises, and that ILO instruments need to take into account the fact that in certain countries, such as *Denmark*, the regulation of working time is left to negotiation between the social partners. The Government of *Sudan* also suggests the need to revise Conventions Nos 1 and 14 in the light of new realities. The Government of *Switzerland* considers that, to achieve a reduction in hours of work, a revision of the Conventions needs to take into account the economic situation of countries, as well as seasonal variations in the work of certain categories of workers.

901. Several countries refer to the need to address certain issues. The Government of *Azerbaijan* calls for hours of work and rest periods in rotational and multiple shift systems to be reviewed by the ILO. The Governments of *Lithuania*, *Samoa* and *Seychelles* also consider that shift work needs to be addressed by ILO instruments.

902. Other governments emphasize the need for the ILO's working-time instruments to take into account new and emerging developments, including the impact of new technologies on hours of rest. The Government of *Austria* suggests that new developments and trends, including the effects of new information technologies on the organization of working time, need to be taken into consideration and discussed within the framework of the ILO Future of Work Initiative. The Government of *Honduras* calls for such aspects to be taken into account as breaks during the working day, hours averaging, compressed work weeks, flexitime and working-time banking. The Government of *Peru* suggests that the ILO should take into account new trends and the role of the media and information technology on working time with a view to protecting workers and their work–life balance. Other governments that call for the impact of new technologies on the organization of working time, as well as the need to regulate teleworking, to be taken into account include *Guatemala*, *Mexico* and *Thailand*.

(b) Comments from employers' organizations

903. The *International Organisation of Employers (IOE)* indicates that Conventions Nos 1 and 30, which have been ratified by and are in force in only 25 and 13 per cent of ILO member States, respectively, no longer respond to current needs in many respects. In the view of the *IOE*, other international standards may be playing a more universal role, such as Article 24 of the Universal Declaration of Human Rights and Article 7(d) of the International Covenant on Economic, Social and Cultural Rights, in creating rights to rest and leisure, including reasonable limitations on working hours. If this is the case, it not only explains why the ratification of the ILO's standards on working time may have waned in favour of these more general instruments, but also means that it is not necessary to revisit the ILO's standards.

904. In the view of the *Confederation of Finnish Industries*, there is no need for new or updated ILO instruments regulating working hours and annual holidays. Similarly, the *Federation of Finnish Enterprises* does not consider that it is necessary to create new standards on working time as there are significant differences in the manner in which working-time regulation is structured in different parts of the world.

905. The *Confederation of the Industrial Chambers of the United States of Mexico* considers it crucial to revisit international labour standards, including Convention No. 1, which are outdated and no longer reflect new trends in labour conditions.

(c) Comments from workers' organizations

906. The *International Trade Union Confederation (ITUC)* considers that it is important to maintain and strengthen existing minimum standards on working time as they fulfil an

important regulatory function. According to the *ITUC*, there is a need for full tripartite consultation on working-time standards to close existing regulatory gaps, provide workers simultaneously with strong protection and maximum choice and autonomy in determining their work–life balance. In the view of the *ITUC*, the following essential issues need to be considered: protecting workers against excessive hours of work; ensuring guaranteed minimum hours of work; maintaining a clear definition of working time; and achieving a working-time regime that enables a sustainable work–life balance and gender parity in unpaid family and care work.

907. Specifically concerning night work, the French *General Confederation of Labour – Force Ouvrière* indicates that, before abrogating Conventions Nos 4 and 41, the ILO should launch a campaign for the ratification of Convention No. 171. It considers that member States which have ratified Conventions Nos 4 and 41, and have not denounced them, have not necessarily ratified Convention No. 89 or Convention No. 171. The abrogation of Conventions Nos 4 and 41 could therefore create a legal gap for certain countries.

908. The *Greek General Confederation of Labour* indicates that it would be too ambitious to consolidate existing ILO standards into one new comprehensive working-time standard. However, there are some regulatory gaps in existing standards that need to be addressed through a new standard, such as overtime, on-call work and more flexibility options for workers.

909. The Finnish Trade Union Confederations indicate that there have been substantial changes in working life since the adoption of Recommendation No. 116. In their view, the definition of normal hours of work contained in Paragraph 11 of Recommendation No. 116 is no longer adequate. However, they emphasize the relevance of Recommendation No. 182, in relation to legislative changes affecting the employment relationship and social security of categories engaged in different types of work.

910. The *General Confederation of Portuguese Workers – National Trade Unions* indicates that, even if Convention No. 30 is a fundamental and relevant instrument, it is no longer adapted to current approaches to the organization of working time.

Chapter XI. Concluding remarks and the way forward

911. The Committee welcomes this opportunity to examine the issue of working time and the choice by the Governing Body of the Hours of Work (Industry) Convention, 1919 (No. 1), the Weekly Rest (Industry) Convention, 1921 (No. 14), the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30), the Forty-Hour Week Convention, 1935 (No. 47), the Night Work (Women) Convention (Revised), 1948 (No. 89), the Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106), the Holidays with Pay Convention (Revised), 1970 (No. 132), Night Work Convention, 1990 (No. 171), the Part-Time Work Convention, 1994 (No. 175), and the Night Work of Women (Agriculture) Recommendation, 1921 (No. 13), the Holidays with Pay Recommendation, 1954 (No. 98), the Weekly Rest (Commerce and Offices) Recommendation, 1957 (No. 103) the Reduction of Hours of Work Recommendation, 1962 (No. 116), the Night Work Recommendation, 1990 (No. 178), the Part-Time Work Recommendation, 1994 (No. 182), and the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948, as the subject of a General Survey. This has allowed the Committee to address in a comprehensive manner working-time issues affecting a very large number of workers throughout the world. The Committee hopes that its first General Survey encompassing all aspects of working time will contribute to a comprehensive overview of the current situation in member States in relation to this significant issue and will assist in identifying potential gaps in international labour standards and obstacles to their enforcement, as well as in clarifying certain aspects of their content. The Committee further acknowledges and appreciates the high response rate to the detailed questionnaire and encourages countries to continue engaging in future General Surveys.

912. The duration and organization of working time are essential elements in any employment relationship. They have a major impact on workers' health, work–life balance and business performance. International labour standards on working time contribute to the human rights approach to the regulation of working time and rest periods. This approach is reflected in the Universal Declaration of Human Rights, pursuant to which everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay. This principle is also recognized by the United Nations International Covenant on Economic, Social and Cultural Rights, as well as by regional instruments.

913. The issue of working time occupies an important place in the history of the ILO, as standard-setting activities on this subject were very intense in the first decades after the foundation of the Organization. With the global economic crisis of 2008, working-time issues again became a primary focus of the ILO Decent Work Agenda, and more recently a relevant aspect of achieving the Sustainable Development Goals (SDGs) of the 2030 Agenda, and particularly SDG 8 to promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all. The 2015 Conference conclusions concerning the recurrent discussion on social protection (labour protection) emphasize that the regulation of the hours of work, including the establishment

of a maximum working day and week, for all workers regardless of the type of employment relationship, is a principle enshrined in the ILO's Constitution and remains an important objective. [1]

914. The Committee wishes to raise a number of specific issues regarding the application of the instruments in national law and practice.

915. ***Daily and weekly limits on normal hours of work.*** Conventions Nos 1 and 30 set a cumulative double daily and weekly limit for hours of work in order to ensure that normal hours of work on average do not exceed eight hours a day over six days. The Committee observes that, while national legislation of the countries reviewed broadly recognizes weekly limits on hours of work, daily limits are not clearly set in many countries. ***Recalling that the establishment of both daily and weekly limits on normal hours of work responds to the need to safeguard the health and well-being of workers and preserve the work–life balance, taking into account production requirements, the Committee urges all governments to take the necessary measures to ensure that both weekly and daily limits on normal hours of work are guaranteed in law and respected in practice.***

916. ***Overtime.*** The examination of national law and practice regarding the performance of additional hours (overtime) shows that the circumstances that justify recourse to exceptions to normal statutory hours of work are not always clearly defined, or go beyond those recognized in Conventions Nos 1 and 30. It also shows that the limits on the number of additional hours allowed in law and practice go beyond the reasonable limits required by the Conventions, and that additional hours are often not compensated either financially or with time off. ***The Committee emphasizes the impact that long hours of work can have on the health and well-being of workers. While recognizing that working-time flexibility may be important for enterprises and workers, the Committee further highlights the need to maintain the number of additional hours performed by workers within a framework that takes into account the health and well-being of workers. The Committee therefore urges all governments to take the necessary measures to ensure that recourse to overtime is restricted to clear and well-justified circumstances, the number of additional hours allowed both daily and weekly is maintained at reasonable levels and all additional hours worked are remunerated with an increase in the rate of pay at least equivalent to the level set out in Conventions Nos 1 and 30.***

917. ***Averaging of working hours over reference periods longer than a week.*** The manner in which hours of work are arranged has an impact on workers' well-being and enterprise performance. The Committee observes that the legislation in a large majority of countries provides for the possibility of averaging working hours over a period longer than a week. The Committee also observes that no clear daily and weekly limits on total hours of work are set in many countries in the case of averaging over long periods. ***While recognizing that working-time flexibility may be important for enterprises in order to adapt to the requirements of modern work organization, the Committee emphasizes the importance of reasonable limits and protective safeguards in devising such flexible arrangements so as to ensure that their implementation takes into account the need to protect the health and well-being of workers and to make it possible for them to reconcile work and private and family life.***

[1] ILO: Resolution and conclusions concerning the recurrent discussion on social protection (labour protection), International Labour Convention, 104th Session, 2015, para. 12.

918. ***Derogations from the principle of weekly rest.*** Although the principle of weekly rest enshrined in Conventions Nos 14 and 106 is widely recognized in national legislation, frequent recourse to special weekly rest schemes and the tendency to provide financial compensation for work performed during weekly rest periods, rather than compensatory time off, is in contradiction with the main purpose of this principle, which is to allow workers to rest and benefit from leisure time for at least 24 hours on a weekly basis. ***In this respect, the Committee emphasizes the importance of taking into account both social and economic considerations when introducing weekly rest schemes and of consulting the social partners before the introduction of such schemes. The Committee also emphasizes the need to duly compensate work performed during the weekly rest period with time off of a duration equivalent to the normal weekly rest and to grant this compensation within an appropriate lapse of time in order to protect workers' health and safety and their participation in family life.***

919. ***Restrictions on the postponement and division of annual leave.*** Analysis of national legislation on this issue shows that the principle of holidays with pay is broadly accepted and that the duration of holidays is frequently in line with the requirements of Convention No. 132. However, the Committee observes a trend in national legislation towards the requirement of qualifying periods to benefit from annual leave entitlements which go far beyond the six months proposed by the Convention, as well as a trend for the exclusion from the calculation of annual leave entitlements of periods of justified absence from work due to sickness, injury and maternity. The Committee also observes a tendency to postpone and divide annual leave into parts beyond the limits set out in the Convention, which is in contradiction with the purpose of annual leave, which is to ensure that workers benefit from a sufficient period of leave to rest and recover from fatigue. ***The Committee emphasizes the importance of limiting the postponement of annual leave to a small portion of the leave entitlement and of ensuring that the postponement of leave may not exceed a reasonable period of time in order to allow workers to recover from physical and mental fatigue and to participate in family life.***

920. ***Protective measures for night workers.*** The Committee observes a trend for an increase in the proportion of night workers in the labour force and recalls that Convention No. 171 affords great flexibility for the progressive application of protective measures for night workers. Despite the very low rate of ratification of the Convention, the Committee observes that the national legislation in a number of countries contains measures to protect night workers from the effects of night work on their health and safety. However, the Committee also observes that the national legislation in many countries does not reflect the protective measures set out in the Convention, namely regarding the protection of maternity, appropriate compensation for night work, the provision of social services and limits on overtime during night work. ***In this respect, the Committee recalls that night work could have an impact on some aspects of workers' health and safety and their work–life balance and emphasizes the importance of taking adequate measures to protect night workers from the risks entailed by night work.***

921. ***Equal treatment of part-time workers.*** Part-time work can provide opportunities for some workers who might otherwise experience difficulties in participating in full-time employment. The Committee welcomes the efforts made by governments and the social partners to promote various working-time arrangements, such as part-time work. Nevertheless, it emphasizes that it is important for workers to be able to avail themselves of full-time employment opportunities, if they so wish. ***Recalling that part-time workers are disproportionately female in many countries and that all part-time workers need to benefit from decent employment and working conditions, as required by Convention No. 175, the Committee emphasizes the importance of adopting or strengthening***

national laws and policies to ensure good quality part-time work, including equal treatment in respect of employment protection (termination of employment and maternity protection), non-discrimination, occupational safety and health and the right to organize and bargain collectively.

922. ***New working-time arrangements and the impact of modern technologies.*** The Committee notes that in recent years zero-hours contracts and other forms of on-call work have grown in frequency. Moreover, information and communication technologies are having an increasingly important impact on the organization of work, as well as on the length and arrangement of working time, contributing to the development of telework and the blurring of boundaries between working time and rest periods. The development of the platform economy (or the so-called "gig economy") and on-demand work is also having consequences for the organization of working time. While recognizing that these working arrangements may offer advantages for both workers and employers, the Committee observes that they are also associated with a number of disadvantages, including the encroachment of work on non-working time and rest periods, the unpredictability of working hours, income insecurity and the stress associated with the perceived need to be constantly connected to work. ***The Committee emphasizes the importance of these issues being regulated by national legislation, taking into account both the needs of workers in relation to their physical and mental health and work–life balance and the flexibility requirements of enterprises.***

923. ***The role of social dialogue and collective bargaining in regulating working time.*** Consultation of the social partners is required by most of the instruments covered by the present General Survey, and tripartite consultations and collective agreements are widely recognized as means of implementing certain of the provisions of these instruments. Other aspects of the regulation of working time require, in light of the respective standards, the adoption of laws or regulations. However, as the Committee observed in its 2005 General Survey (paragraph 323), in an increasing number of countries, hours of work are governed by collective labour agreements or awards, and in some cases, by individual agreements. The General Survey shows that collective bargaining and tripartite social dialogue have been important tools in designing working-time policies and that the social partners play a key role in the regulation and organization of working time. In particular, collective bargaining has been used to design flexible working-time arrangements that can balance workers' needs with business requirements, to the benefit of both workers and enterprises. ***Recalling that the protective provisions of the international labour Conventions on working time apply not only to national legislation, but also to collective agreements, the Committee emphasizes the importance of collective bargaining and social dialogue being possible at all levels, collective agreements being binding on their signatories and those that they represent, and of developing a system established by common agreement between the parties, in order to ensure that collective bargaining as well as social dialogue continues to play an active role in the implementation of the ILO Conventions on working time.***

924. ***Enforcement of working-time provisions.*** The Committee recognizes that compliance with working-time requirements remains a challenge in today's world of work. In developing countries, many workers, particularly those in the informal and rural economies, are excluded from any form of control to ensure compliance with provisions respecting working hours and rest periods. In industrialized countries, new methods of work and the increasing complexity of working-time arrangements are exacerbating the difficulties faced by labour inspectorates, labour courts, and by employers and workers themselves in controlling compliance. Without the effective notification and recording of working time and rest periods, it is not possible to assess compliance with the relevant

standards. ***In this respect, the Committee considers that use should be made of new technologies for the measurement of working hours. Moreover, it is important to ensure that effective mechanisms are in place to secure compliance with working-time provisions, primarily through labour inspection and the application of dissuasive penalties for non-compliance, as well as the other mechanisms referred to in this General Survey. The Committee also considers that compliance by workers themselves is an important issue, and that awareness raising is particularly important on the negative impact on health and safety and work–life balance of the performance of constant overtime and failure to take the necessary rest periods.***

925. The Committee acknowledges the low level of ratification of many of the working-time Conventions, [2] including the most recent Conventions Nos 171 and 175, and observes that challenges persist in the implementation of certain of their provisions. Noting these issues, the Committee considers, as it did in its 2005 General Survey, that the limitation of working hours and the regulation of other aspects of working time remain an important goal both to protect workers and to ensure a level playing field for enterprises. The Committee recalls that, in its general observation on the working-time Conventions published in 2014, it referred to the conclusions of the ILO Tripartite Meeting of Experts on Working-Time Arrangements, held in October 2011, which indicate that the provisions of existing ILO standards relating to daily and weekly hours of work, weekly rest, paid annual leave, part-time work and night work remain relevant in the twenty first century and should be promoted in order to facilitate decent work.

926. However, in Chapter I of this General Survey, the Committee raised the issue of the applicability of certain provisions of Conventions Nos 1 and 30, which present difficulties for implementation at the national level given certain forms of flexible working-time arrangements that may reconcile the needs of workers and employers. This is reinforced by the various working-time arrangements examined in Chapter VI of the General Survey. Moreover, Chapter VII shows the scope of recent trends in this field, which are covered to varying degrees by the existing standards.

927. In this regard, the Committee notes the suggestion by certain governments that there is a need to either consolidate the working-time standards or to revise them, particularly to bring Conventions Nos 1 and 30 into line with new trends in working hours and working-time arrangements resulting from recent economic, demographic and technological developments. The Committee also notes that discussions are being held or are envisaged in the Organization aimed at developing further guidance for the advancement of decent work in the area of working time. ***It draws attention to the fundamental elements that must be taken into consideration if new standards on working time are envisaged: protection of the health and safety of workers, and the preservation of a reasonable balance between working and private and family life. With these fundamental elements in mind, the Committee also draws the governments' attention to the importance of the promotion of equality for men and women workers and the need for full consultation of employers' and workers' organizations on working-time issues and to allow workers to have an influence over their hours of work, while considering the needs of sustainable enterprises. It further draws attention to the possibility of introducing flexible working-time arrangements that respond to the needs of employers and workers, taking into account the new trends referred to in this General Survey, and particularly the impact of new technologies on the organization of working time.***

[2] The ratification rate by Convention is indicated in the first section of each relevant chapter.

928. ***The Committee hopes that this General Survey will make a useful contribution to the work of both the ILO Tripartite Meeting of Experts on working time and work–life balance tentatively planned for 2019 and of the Tripartite Working Group of the Standards Review Mechanism of the ILO Governing Body. Finally, the Committee considers that the question of compliance with working-time standards should be the subject of more in-depth tripartite examination in the future.***

Appendix I

Report form sent to member States and social partners

Appl. 19

C.1, C.14, C.30, C.47, R.116, C.89, P.89, R.13, C.106, R.103, C.132, R.98, C.171, R.178, C.175 and R.182

INTERNATIONAL LABOUR OFFICE

REPORTS ON

UNRATIFIED CONVENTIONS AND RECOMMENDATIONS

(Article 19 of the Constitution of the International Labour Organization)

REPORT FORM FOR THE FOLLOWING INSTRUMENTS:

HOURS OF WORK (INDUSTRY) CONVENTION, 1919 (No. 1)

WEEKLY REST (INDUSTRY) CONVENTION, 1921 (No. 14)

HOURS OF WORK (COMMERCE AND OFFICES) CONVENTION, 1930 (No. 30)

FORTY-HOUR WEEK CONVENTION, 1935 (No. 47)

REDUCTION OF HOURS OF WORK RECOMMENDATION, 1962 (No. 116)

NIGHT WORK (WOMEN) CONVENTION (REVISED), 1948 (No. 89)

PROTOCOL OF 1990 TO THE NIGHT WORK (WOMEN) CONVENTION (REVISED), 1948

NIGHT WORK OF WOMEN (AGRICULTURE) RECOMMENDATION, 1921 (No. 13)

WEEKLY REST (COMMERCE AND OFFICES) CONVENTION, 1957 (No. 106)

WEEKLY REST (COMMERCE AND OFFICES) RECOMMENDATION, 1957 (No. 103)

HOLIDAYS WITH PAY CONVENTION (REVISED), 1970 (No. 132)

HOLIDAYS WITH PAY RECOMMENDATION, 1954 (No. 98)

NIGHT WORK CONVENTION, 1990 (No. 171)

NIGHT WORK RECOMMENDATION, 1990 (No. 178)

PART-TIME WORK CONVENTION, 1994 (No. 175)

PART-TIME WORK RECOMMENDATION, 1994 (No. 182)

GENEVA

2016

INTERNATIONAL LABOUR OFFICE

Article 19 of the Constitution of the International Labour Organization relates to the adoption of Conventions and Recommendations by the Conference, as well as to the obligations resulting therefrom for the Members of the Organization. The relevant provisions of paragraphs 5, 6 and 7 of this article read as follows:

"5. In the case of a Convention:

[…]

(e) if the Member does not obtain the consent of the authority or authorities within whose competence the matter lies, no further obligation shall rest upon the Member except that it shall report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of its law and practice in regard to the matters dealt with in the Convention, showing the extent to which effect has been given, or is proposed to be given, to any of the provisions of the Convention by legislation, administrative action, collective agreement or otherwise and stating the difficulties which prevent or delay the ratification of such Convention.

6. In the case of a Recommendation:

[…]

(d) apart from bringing the Recommendation before the said competent authority or authorities, no further obligation shall rest upon the Members, except that they shall report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of the law and practice in their country in regard to the matters dealt with in the Recommendation, showing the extent to which effect has been given, or is proposed to be given, to the provisions of the Recommendation and such modifications of these provisions as it has been found or may be found necessary to make in adopting or applying them.

7. In the case of a federal State, the following provisions shall apply:

(a) in respect of Conventions and Recommendations which the federal Government regards as appropriate under its constitutional system for federal action, the obligations of the federal State shall be the same as those of Members which are not federal States;

(b) in respect of Conventions and Recommendations which the federal Government regards as appropriate under its constitutional system, in whole or in part, for action by the constituent states, provinces or cantons rather than for federal action, the federal Government shall:

[…]

(iv) in respect of each such Convention which it has not ratified, report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of the law and practice of the federation and its constituent states, provinces or cantons in regard to the Convention, showing the extent to which effect has been given, or is proposed to be given, to any of the provisions of the Convention by legislation, administrative action, collective agreement, or otherwise;

(v) in respect of each such Recommendation, report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of the law and practice of the federation and its constituent states, provinces or cantons in regard to the Recommendation, showing the extent to which effect has been given, or is proposed to be given, to the provisions of the Recommendation and such modifications of these provisions as have been found or may be found necessary in adopting or applying them."

In accordance with the above provisions, the Governing Body of the International Labour Office examined and approved the present report form. This has been drawn up in such a manner as to facilitate the supply of the required information on uniform lines.

REPORT

to be made no later than 28 February 2017, in accordance with article 19 of the Constitution of the International Labour Organization by the Government of ……, on the position of national law and practice in regard to matters dealt with in the instruments referred to in the following questionnaire.

Workers' and employers' organizations may send comments no later than 30 June 2017.

*

Context and scope of the questions

The questionnaire has been prepared in the light of the ILO Declaration on Social Justice for a Fair Globalization and its follow-up. Account has been taken of the fact that "This follow-up seeks to make the fullest possible use of all the means of action provided under the Constitution of the ILO to fulfil its mandate. Some of the measures to assist the Members may entail some adaptation of existing modalities of application of article 19, paragraphs 5(e) and 6(d), of the ILO Constitution, without increasing the reporting obligations of member States". In this context, General Surveys are not only intended to provide an overview on the law and practice in ILO member States concerning certain instruments but also to feed the recurrent discussions with relevant information on the trends and practices in relation to a given strategic objective. This explains the fact that some of the questions are only indirectly linked to a provision of an ILO instrument. These questions have been identified as a request for "Information on trends and practice".

In addition, in order to ensure institutional coherence, the Office has taken into account for the preparation of the questionnaire the report form adopted by the Governing Body for the last General Survey on working time (published in 2005); the conclusions of the Tripartite Meeting of Experts on Working-time Arrangements (17–21 October 2011); the conclusions of the Meeting of Experts on Non-Standard Forms of Employment (16–19 February 2015); as well as the conclusions of the recurrent discussion on social protection (labour protection) at the June 2015 session of the International Labour Conference.

*

The following questions relate to issues covered by Conventions Nos 1, 14, 30, 47, 89, 106, 132, 171 and 175, Protocol to Convention No. 89 and Recommendations Nos 13, 98, 103, 116, 178 and 182. **As appropriate, please give a specific reference (Web link) or include information relating to the provisions of the relevant legislation, regulations and policies, as well as electronic copies thereof.**

ARTICLE 19 REPORT FORM CONCERNING WORKING TIME INSTRUMENTS

Notes: 1. Governments of countries which have ratified one or several of the Conventions and from which a report is due under article 22 of the Constitution will use the present form only with regard to the Conventions not ratified, if any, and the Recommendations. It will not be necessary to repeat information already provided in connection with the Conventions ratified. *The questions contained under the titles "Information on trends and practice" and "Possible needs for standards-related action and for technical assistance" are addressed to all member States.* 2. When reference is made to "national laws and regulations" or "provisions", this should be understood as including laws, regulations, policies, collective agreements, court decisions or arbitration awards. 3. Where the national legislation or other provisions do not cover issues raised in this questionnaire, please provide information on current practices.

Concepts of hours of work Hours of work means the time during which the persons employed are at the disposal of the employer (not including rest periods)	
1. Please provide information on how national laws and regulations define hours of work, rest periods, and stand-by or on-call hours (including to what extent stand-by or on-call hours are counted as hours of work or are to be remunerated). Please specify how many days make up one working week.	Arts 2 and 11(2)(b) of C.30; Art. 8(1)(b) of C.1; Para. 11 of R.116
Scope of application	
2. Please specify the relevant provisions excluding in whole or in part categories of workers, employers and/or sectors, if any, from the application of national laws and regulations regarding working time.	Art. 1 of C.1; Art. 1 of C.30
Limits on daily and weekly hours of work Normal daily and weekly working hours refer to working hours in a day or a week respectively, excluding overtime	
3. Please indicate the provisions, if any, which set limits on normal daily and weekly working hours.	Art. 2 of C.1; Art. 3 of C.30; Art. 1 of C.47
4. **Information on trends and practice** Please indicate if a minimum daily rest period is provided in national laws and regulations. If so, indicate the length.	
Exceptions from the normal hours of work (overtime) Overtime hours are working hours in excess of the normal daily or weekly working hours	
5. (i) Please provide information on the relevant provisions, if any, regulating temporary or permanent exceptions from the normal hours of work and the circumstances under which these exceptions are allowed.	Arts 3 and 6(1)(a) and (b) of C.1; Art. 7(1) and (2)(a) and (b) of C.30
(ii) Please indicate the limits to the total number of hours of overtime allowed during a specified period.	Art. 6(2) of C.1; Art. 7(3) of C.30 Para. 17 of R.116

6. Please specify the relevant provisions regulating payment for overtime and describe, in particular, the level of overtime rates and their variations, as well as compensatory rest periods (extra pay per hour, days off in lieu, and any combinations of these two).	Art. 6(2) of C.1; Para. 19(1) and (2) of R.116
Reduction of hours of work Policies or legal measures that have been used to reduce daily or weekly working hours	
7. (i) Please specify the policies implemented and the measures adopted, if any, for the progressive reduction of working hours.	Art. 1 of C.47; Para. 3 of R.116
(ii) Where applicable, please indicate if the reduction of normal hours of work was applied by stages and, if so, specify which stages were used (spaced over time, progressively encompassing branches or sectors of the economy, a combination of the two, other arrangements).	Para. 8 of R.116
Minimum weekly rest periods The legal period when workers have rest time generally away from the workplace that is measured in consecutive hours or days at the end of a workweek	
8. (i) Please specify the legal requirements on weekly rest days, indicating if these provide for the weekly rest period to be granted simultaneously to all the persons concerned in each establishment and if it must coincide with the day of the week established as a day of rest by the traditions or customs of the country or district.	Art. 2(1) and (2) of C.14; Art. 6(1) and (2) of C.106; Para. 1 of R.103
(ii) Please indicate if national laws and regulations define weekly rest by reference to a specific day(s) of the week or by a number of consecutive hours.	Art. 2(1) and (3) of C.14; Art. 6(1) and (3) of C.106; Paras 1 and 2 of R.103
(iii) Please indicate if and how national laws and regulations related to weekly rest take into account traditions and customs of religious minorities.	Art. 6(4) of C.106
9. (i) Please provide detailed information on possible temporary exemptions, total or partial, from the general rule concerning weekly rest (including the suspension or reduction of the rest period and rotating weekly rest days).	Art. 4 of C.14; Art. 8(1) and (2) of C.106
(ii) If exemptions are allowed, please indicate if national laws and regulations require that workers be granted compensatory rest.	Art. 5 of C.14; Art. 8(3) of C.106
Information on trends and practice (iii) If exemptions are allowed, please indicate if according to national laws and regulations workers can be compensated with extra pay instead of compensatory rest.	
(iv) Please specify the special weekly rest schemes, if any, applying to specified categories of persons or types of establishments.	Art. 7(1) of C.106; Para. 3 of R.103

Rest breaks during the workday	
10. (i) Please indicate whether national laws and regulations require rest breaks (e.g. coffee/tea, meal, prayer, etc.) during the workday and under which conditions workers are entitled to them. If so, please indicate the types and the length of rest breaks, and if they are included in the hours of work.	Art. 8(1)(b) of C.1; Arts 2 and 11(2)(b) of C.30; Para. 7 of R.178
Information on trends and practice (ii) Please indicate the provisions, if any, which allow workers to extra rest breaks between regular hours and starting overtime hours or if rest breaks are required by law during the course of working overtime hours.	
Paid annual leave The minimum number of leave days for workers to be given and paid by the employer over a calendar year, not including public holidays	
11. Please indicate the provisions, if any, requiring a minimum period of service in order to be entitled to paid annual leave.	Art. 5 of C.132; Para. 4(2)(a) of R.98
12. (i) Please indicate the provisions, if any, which regulate the length of the paid annual leave period to which workers are entitled, specifying: (a) whether it is counted in days or weeks; (b) on which basis it is calculated (wage, bonuses); (c) if it increases with length of service or by reason of other factors (e.g. age); and (d) if it differs pursuant to workers' categories.	Arts 3 and 7 of C.132; Paras 4(1) and 6 of R.98
(ii) Please provide information on any category of workers excluded from the scope of national laws and regulations on paid annual leave and the reasons for such exclusions.	Art. 2 of C.132; Para. 3 of R.98
13. Please indicate whether annual holiday with pay can be divided into parts and if national laws and regulations provide for a right to an uninterrupted minimum period. If so, please specify the length of this minimum period.	Art. 8 of C.132
14. Please indicate the provisions, if any, requiring that an employed person receive, upon termination of employment, a holiday with pay proportionate to the length of service for which he/she has not received such a holiday, or compensation in lieu thereof, or the equivalent holiday credit.	Art. 11 of C.132; Para. 4(3) of R.98
15. (i) Please indicate the provisions, if any, allowing the carry-over of unused leave days from one year to the next.	Art. 9(1) and (2) of C.132
(ii) Please indicate if and under which conditions national laws and regulations allow agreements to relinquish the right to paid annual leave. Please also indicate if the possibility exists for the worker to receive cash payment in exchange for annual leave.	Art. 12 of C.132
16. Please indicate if the annual leave period includes sick leave, personal leave or leave for other reasons beyond the control of the employed person. Please specify the relevant provisions.	Art. 5(4) of C.132

Protection of night workers Night work is work that is normally scheduled to take place at night when workers might otherwise be asleep	
17. Please provide information on the definition of "night" and "night worker" in national laws and regulations.	Art. 2 of C.89; Art. 1 of C.171; Para1 of R.178
18. (i) Please specify the maximum length of night work and the limits of night work overtime as determined by national laws and regulations, indicating if these limits are per day or per week.	Paras 4 and 5 of R.178
(ii) Please indicate if national laws and regulations guarantee a minimum period of rest for night workers, with particular attention to the situation of women in agricultural undertakings.	Para. 1 of R.13; Para. 6 of R.178
19. Please provide information on measures to assess workers' health, as well as the possibility for the worker to be transferred to day work in case of incapacity to perform night work.	Arts 4 and 6 of C.171
20. Please indicate which sectors or categories of workers, if any, are exempted from the national laws and regulations on night work.	Art. 2 of C.171
21. Please specify the measures taken, if any, to protect women who work at night in relation to maternity (including transfer to day work during certain periods before and after delivery).	Art. 7 of C.171
22. Please indicate the provisions, if any, establishing compensation for night workers (in terms of working time, pay or similar benefits …) to recognize the nature of night work.	Art. 8 of C.171
23. Please indicate the provisions, if any, on social services (i.e. in terms of transportation, meals, rest), or facilities (first-aid facilities), to be put in place for night workers.	Arts 5 and 9 of C.171; Paras 13–18 of R.178
24. **Information on trends and practice** Please indicate whether there is a growing or declining trend in night work by sectors of the economy and/or in the number of workers.	
Part-time work The term part-time worker refers to an employed person whose normal hours of work are less than those of comparable full-time workers	
25. (i) Please indicate if and how the national laws and regulations define part-time work (including the level(s) of normal hours of work of full-time workers below which a worker is considered to be a part-time worker).	Art. 1 of C.175; Para. 2 of R.182
(ii) Please provide information on any category of workers excluded from the scope of part-time work laws and regulations and the reasons for such exclusions.	Art. 3 of C.175

26. (i) Please indicate the measures taken, if any, to facilitate access to productive and freely chosen part-time work which meets the needs of both employers and workers. Please indicate the policies, if any, addressing situations where part-time work is not the result of a free choice.	Art. 9(1) of C.175
(ii) Please indicate the provisions, if any, facilitating voluntary movement from full-time to part-time work and vice versa and indicate the conditions under which these movements are allowed. Please specify the role of employers in facilitating this process.	Arts 9 and 10 of C.175; Para. 18 of R.182
27. (i) Please indicate the provisions, if any, ensuring that part-time workers receive the same protection as that accorded to comparable full-time workers in respect of: (a) the right to organize, the right to bargain collectively and the right to act as a workers' representative; (b) occupational safety and health; and (c) discrimination in employment and occupation.	Art. 4 of C.175
(ii) Please indicate the measures taken, if any, to ensure that part-time workers receive conditions equivalent to those of comparable full-time workers in the fields of maternity protection, termination of employment, paid annual leave and paid public holidays and sick leave, wages and statutory social security.	Arts 5, 6 and 7 of C.175; Paras 6(d), 7(2), 10, 11, 13, 14 and 16 of R.182
(iii) Please indicate if there exist thresholds on hours of work or earnings to be entitled to certain social security or other benefits. If so, please describe them and indicate if they are periodically reviewed.	Art. 8(1), (2) and (3)(a) of C.175
(iv) Please provide information on measures to overcome specific constraints on the access of part-time workers to training, career opportunities and occupational mobility.	Para. 15 of R.182
Trends in working-time arrangements Working-time arrangements are some of the ways working hours can be organized, normally during the work week. Legal provisions on limits on daily and weekly working hours usually provide the basis for how these arrangements should be organized	
28. **Information on trends and practice**[1] Please indicate if national laws and regulations require employers to consider employees' requests to change their work schedules for personal reasons (e.g. to address family or personal needs).	
29. Please indicate the national laws and regulations, if any, providing for shift-work arrangements[2] (including variable daily shift lengths) and describe the circumstances in which they are permitted.	Arts 2(c) and 4 of C.1; Art. 11(2)(a) of C.30

[1] See also ILO: *Working time in the 21st century*, Report for discussion at the Tripartite Meeting of Experts on Working-time Arrangements (17–21 October 2011).

[2] Shift work is usually defined as a method of organizing working time through which workers succeed one another at the workplace so that the operating hours of the undertaking exceed the hours of work of individual workers. ILO: *Hours of work. From fixed to flexible?* Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 23 of the Constitution). Report III (Part 1B), International Labour Conference, 93rd Session, Geneva, 2005, para. 103.

30. (i) Please indicate the national laws and regulations, if any, providing for hour-averaging schemes[3] and describe the circumstances in which it is permitted. Where appropriate, indicate the length of the reference period that can be used: weekly; monthly; annually; other.	Art. 5(1) and (2) of C.1; Art. 6 of C.30
Information on trends and practice (ii) Please indicate if national laws or regulations forbid the use of averaging hours – or of certain periods for averaging (like **annualized working hours**) – to calculate working time.	
31. **Information on trends and practice** Please provide information on the national laws and regulations, if any, providing for: (a) compressed workweeks;[4] (b) staggered working hours;[5] (c) flexitime;[6] and (d) time-saving account arrangements[7] (time banking).	
32. **Information on trends and practice** Please provide information on the national laws and regulations, if any, providing for on-call work, work on demand, or zero hours contracts. Where appropriate, please indicate if national laws and regulations require employers to provide a minimum number of guaranteed hours as part of the criteria for an employment contract; under which conditions workers have a duty to be available; whether they have the possibility to work for another employer; and whether they are entitled to have advance notice of work schedules.	
33. **Information on trends and practice** Please indicate the national policies, if any, addressing **work-sharing**.[8] Please describe any existing schemes, the extent of hours reduction, and the level of compensation by the State for wage reduction by enterprises.	

[3] Annualized hours and other types of hours-averaging schemes (e.g. mensualized hours or hours averaged over a period of one month) allow for variations in daily and weekly hours of work within specified legal limits, such as maximum daily and weekly hours, while requiring that working hours either achieve a specified weekly average over the period within which the hours are averaged, or remain within a fixed annual total. As long as the maximum limits are respected, including the weekly average or annual total, no overtime premium is payable for hours worked beyond the statutory normal hours. ILO: *Working time in the 21st century*, op. cit., para. 119.

[4] Compressed workweeks are a method of organizing working time under which normal weekly hours of work are scheduled over fewer days. ILO: *Hours of work. From fixed to flexible?*, op. cit., para. 207.

[5] Staggered hours are used to organize working time when workers or groups of workers start and finish work at slightly different, but fixed times. Ibid., para. 214.

[6] Flexitime arrangements are used to allow workers to schedule their own hours of work within specific limits, although workers are normally required to be present during specified core periods under such arrangements. Ibid., para. 231.

[7] Time-saving account arrangements (time banking) permit workers to build up "credits" or to accumulate "debits" in hours worked, up to a maximum amount; the periods over which the credits or debits are calculated are longer than with flexitime arrangements, ranging from several months to a year or even longer. ILO: *Working time in the 21st century*, op. cit., para. 116.

[8] Work-sharing is defined as a labour market instrument based on the reduction of working time intended to spread a reduced volume of work over the same (or a similar) number of workers in order to avoid lay-offs. Messenger, J.C. and Ghosheh, N. (eds): *Work sharing during the great recession. New developments and beyond* (ILO, 2013), p. 3.

34. **Information on trends and practice** Please provide information on: (a) the frequency at which the above working-time arrangements are used; (b) the sectors of the economy in which they are more frequent; and (c) the extent to which the current practice is compatible with relevant national laws and regulations.	
35. **Information on trends and practice** Please indicate the national policies, laws and regulations, if any, addressing the impact of information and communication technologies on availability and working time beyond regular office hours.	
Social dialogue and collective bargaining on working time Social dialogue and collective bargaining are important mechanisms in the arrangement and scheduling of working hours	
36. Please indicate how and to what extent social dialogue is used for the determination of national laws and regulations or other provisions on working time.	Arts 2(b), 5(1) and 6(2) of C.1; Art. 8 of C.30; Para. 20 of R.116; Art. 4 of C.14; Arts 4, 7 and 8 of C.106; Arts 2(2) and 9 of C.132; Art. 5 of C.89; Art. 1(1) of Protocol to C.89; Arts 10 and 11(2) of C.171; Arts 3(1) and 8(4) of C.175
37. Please provide examples of working-time arrangements addressed through collective bargaining agreements, with emphasis on the primary sectors of your economy.	Arts 2(b) and 5 of C.1; Art. 8 of C.30; Paras 3 and 11 of R.116; Art. 5 of C.14; Para. 7 of R.103; Arts 9(3) and 10(1) of C.132; Art. 11 of C.175; Art. 1(1) of Protocol to C.89; Art. 11 of C.171
Consultations of employers' and workers' organizations as required by Conventions	
38. Please provide information on consultations undertaken, if any, at the national level with the most representative organizations of employers and workers prior to:	
(a) the making of regulations determining permanent and temporary exceptions to regular working hours	Art. 6(2) of C.1;
(b) the making of regulations which permit hours of work to be distributed over a period longer than the week	Arts 7 and 8 of C.30
(c) the making of any measure relating to the introduction of special schemes implying total or partial exceptions to the normal weekly rest scheme (24 consecutive hours of rest over seven days of work)	Art. 4 of C.14; Art. 7(4) of C.106

	(d) the determination of a minimum part of annual holidays which cannot be postponed and the time limit up to which the exceeding part of the stated minimum can be postponed	Art. 9(3) of C.132
	(e) the determination of the meaning of the term “night work” and “night workers”	Art. 2 of C.89; Art. 1 of C.171
	(f) the determination of the categories of workers excluded from the night work laws and regulations	Art. 2(2) of C.171
	(g) the determination of the length of the period after childbirth where an alternative to night work should be available to women	Art. 7(b)(1)(ii) of C.171
	(h) the making of laws and regulations concerning night work	Art. 11(2) of C.171
	(i) the exclusion of certain categories of workers from the scope of application of part-time laws and regulations	Art. 3(1) of C.175
	(j) the setting of hours of work and earning thresholds below which workers may be excluded from certain rights	Art. 8 of C.175
	(k) the making of laws and regulations regarding part-time work	Art. 11 of C.175
	Measures of enforcement	
39.	(i) Please specify the relevant provisions requiring employers to: (a) notify, by the posting of notices in conspicuous positions in the establishment or other suitable place, the times at which hours of work begin and end, the rest periods granted and, where work is carried on by shifts, the times at which each shift begins and ends; and (b) keep a record of all additional hours of work and the payments made in respect thereof.	Art. 8(1) of C.1; Art. 11(2) of C.30
	(ii) Please specify all measures, such as the posting of notices and the keeping of records, taken to ensure compliance with national laws and regulations concerning weekly rest.	Art. 7 of C.14; Paras 5 and 6 of R.103
	(iii) Please provide information on the specific measures implemented by labour inspection to address working-time issues (including overtime, rest periods and leave); the role played by social actors and other institutions concerning compliance and enforcement of working-time national laws and regulations, and provision of penalties and application thereof.	Arts 11(1) and 12 of C.30; Art. 10(1) and (2) of C.106; Art. 14 of C.132

Impact of ILO instruments/prospects of ratification
40. (i) Please indicate whether any modifications have been made or are intended to be made to national laws and regulations or practice with a view to giving effect to all or some of the provisions of the Conventions or of the Recommendations concerning working time.
(ii) Please indicate any prospects of ratification and identify any obstacles impeding or delaying ratification of Conventions Nos 1, 14, 30, 47, 89, 106, 132, 171, 175 and the Protocol of 1990 to Convention No. 89.
41. If your country is a federal State: (i) please indicate whether the provisions of the Conventions or of the Recommendations are regarded by the federal government as appropriate, under the constitutional system, for federal action or as appropriate, in whole or in part, for action by the constituent states, provinces or cantons, rather than for federal action;
(ii) Please indicate also any arrangements that it has been possible to make within the federal State, with a view to promoting coordinated action to give effect to all or some of the provisions of the Conventions and the Recommendations, giving a general indication of any results achieved through such action.
42. Please indicate the representative organizations of employers and workers to which copies of the present report have been communicated in accordance with article 23(2) of the Constitution of the ILO and state whether you have received from the organizations of employers and workers concerned any observations concerning the effect given, or to be given, to the instruments to which the present report relates. If so, please communicate a copy of the observations received together with any comments that you may consider useful.
Possible needs for standards-related action and for technical assistance
43. (i) Please provide your country's views on any existing gaps that would have to be addressed by future standards. What suggestions would your country wish to make concerning possible standards-related action on working time to be taken by the ILO, including the revision of standards and prospects of consolidation?
(ii) Has your country formulated any request for technical assistance by the ILO to give effect to the instruments in question? If this is the case, what has been the effect of this support? If not, how could the ILO best provide appropriate assistance within its mandate to support country efforts in the area of working time?

Appendix II

Ratification status

Ratification status

(Conventions Nos 1, 14, 30, 47, 89 and its Protocol, 106, 132, 171 and 175)

Members	C001	C014	C030	C047	C089	P089	C106	C132	C171	C175
Afghanistan	-----	12/06/1939	-----	-----	-----	-----	16/05/1963	-----	-----	-----
Albania	-----	-----	-----	-----	-----	-----	-----	-----	28/06/2004	03/03/2003
Algeria	-----	19/10/1962	-----	-----	19/10/1962	-----	-----	-----	-----	-----
Angola	04/06/1976	04/06/1976	-----	-----	04/06/1976	-----	04/06/1976	-----	-----	-----
Antigua and Barbuda	-----	02/02/1983	-----	-----	-----	-----	-----	-----	-----	-----
Argentina	30/11/1933	26/05/1936	14/03/1950	-----	-----	-----	-----	-----	-----	-----
Armenia	-----	27/01/2006	-----	-----	-----	-----	-----	27/01/2006	-----	-----
Australia	-----	-----	-----	22/10/1970	-----	-----	-----	-----	-----	10/08/2011
Austria	12/06/1924	-----	16/02/1933	-----	05/10/1950	-----	-----	-----	-----	-----
Azerbaijan	-----	19/05/1992	-----	19/05/1992	-----	-----	19/05/1992	20/05/2016	-----	-----
Bahamas	-----	25/05/1976	-----	-----	-----	-----	-----	-----	-----	-----
Bahrain	-----	11/06/1981	-----	-----	11/06/1981	-----	-----	-----	-----	-----
Bangladesh	22/06/1972	22/06/1972	-----	-----	22/06/1972	-----	22/06/1972	-----	-----	-----
Barbados	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
Belarus	-----	26/02/1968	-----	21/08/1956	-----	-----	26/02/1968	-----	-----	-----
Belgium	06/09/1926	19/07/1926	-----	-----	01/04/1952	-----	-----	02/06/2003	28/05/1997	08/06/2016
Belize	-----	22/06/1999	-----	-----	15/12/1983	-----	-----	-----	-----	-----
Benin	-----	12/12/1960	-----	-----	-----	-----	-----	-----	-----	-----
Bolivia, Plurinational State of	15/11/1973	19/07/1954	15/11/1973	-----	15/11/1973	-----	15/11/1973	-----	-----	-----
Bosnia and Herzegovina	-----	02/06/1993	-----	-----	02/06/1993	-----	02/06/1993	02/06/1993	-----	18/01/2010
Botswana	-----	03/02/1988	-----	-----	-----	-----	-----	-----	-----	-----
Brazil	-----	25/04/1957	-----	-----	25/04/1957	-----	18/06/1965	23/09/1998	18/12/2002	-----
Brunei Darussalam	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----

Members	C001	C014	C030	C047	C089	P089	C106	C132	C171	C175
Bulgaria	14/02/1922	06/03/1925	22/06/1932	-----	-----	-----	22/07/1960	-----	-----	-----
Burkina Faso	-----	21/11/1960	-----	-----	-----	-----	-----	12/07/1974	-----	-----
Burundi	30/07/1971	11/03/1963	-----	-----	11/03/1963	-----	-----	-----	-----	-----
Cabo Verde	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
Cambodia	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
Cameroon	-----	07/06/1960	-----	-----	25/05/1970	-----	13/05/1988	07/08/1973	-----	-----
Canada	21/03/1935	21/03/1935	-----	-----	-----	-----	-----	-----	-----	-----
Central African Republic	-----	27/10/1960	-----	-----	-----	-----	-----	-----	-----	-----
Chad	-----	10/11/1960	-----	-----	-----	-----	-----	15/12/2000	-----	-----
Chile	15/09/1925	15/09/1925	18/10/1935	-----	-----	-----	-----	-----	-----	-----
China	-----	17/05/1934	-----	-----	-----	-----	-----	-----	-----	-----
Colombia	20/06/1933	20/06/1933	04/03/1969	-----	-----	-----	04/03/1969	-----	-----	-----
Comoros	23/10/1978	23/10/1978	-----	-----	23/10/1978	-----	23/10/1978	-----	-----	-----
Congo	-----	10/11/1960	-----	-----	04/06/1971	-----	-----	-----	-----	-----
Cook Islands	-----	12/06/2015	-----	-----	-----	-----	-----	-----	-----	-----
Costa Rica	01/03/1982	25/09/1984	-----	-----	02/06/1960	-----	04/05/1959	-----	-----	-----
Côte d'Ivoire	-----	21/11/1960	-----	-----	-----	-----	-----	-----	01/04/2016	-----
Croatia	-----	08/10/1991	-----	-----	-----	-----	08/10/1991	08/10/1991	-----	-----
Cuba	20/09/1934	20/07/1953	24/02/1936	-----	29/04/1952	-----	02/06/1958	-----	-----	-----
Cyprus	-----	-----	-----	-----	08/10/1965	04/01/1994	20/12/1966	-----	04/01/1994	28/02/1997
Czech Republic	01/01/1993	01/01/1993	-----	-----	01/01/1993	15/03/1993	-----	23/08/1996	06/08/1996	-----
Democratic Republic of the Congo	-----	20/09/1960	-----	-----	20/09/1960	-----	-----	-----	-----	-----
Denmark	-----	30/08/1935	-----	-----	-----	-----	17/01/1958	-----	-----	-----
Djibouti	03/08/1978	03/08/1978	-----	-----	03/08/1978	-----	03/08/1978	-----	-----	-----
Dominica	-----	28/02/1983	-----	-----	-----	-----	-----	-----	-----	-----
Dominican Republic	04/02/1933	-----	-----	-----	22/09/1953	-----	23/06/1958	-----	03/03/1993	-----
Ecuador	-----	-----	-----	-----	-----	-----	03/10/1969	-----	-----	-----
Egypt	10/05/1960	10/05/1960	10/05/1960	-----	26/07/1960	-----	23/10/1958	-----	-----	-----

Members	C001	C014	C030	C047	C089	P089	C106	C132	C171	C175
El Salvador	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
Equatorial Guinea	12/06/1985	12/06/1985	12/06/1985	-----	-----	-----	-----	-----	-----	-----
Eritrea	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
Estonia	-----	29/11/1923	-----	-----	-----	-----	-----	-----	-----	-----
Ethiopia	-----	28/01/1991	-----	-----	-----	-----	28/01/1991	-----	-----	-----
Fiji	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
Finland	-----	19/06/1923	13/01/1936	23/11/1989	-----	-----	-----	15/01/1990	-----	25/05/1999
France	02/06/1927	03/09/1926	-----	-----	21/09/1953	-----	05/05/1971	-----	-----	-----
Gabon	-----	14/10/1960	-----	-----	-----	-----	26/04/1973	-----	-----	-----
Gambia	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
Georgia	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
Germany	-----	-----	-----	-----	-----	-----	-----	01/10/1975	-----	-----
Ghana	19/06/1973	19/06/1973	19/06/1973	-----	02/07/1959	-----	15/12/1958	-----	-----	-----
Greece	19/11/1920	11/05/1929	-----	-----	27/04/1959	-----	28/08/1981	-----	-----	-----
Grenada	-----	09/07/1979	-----	-----	-----	-----	-----	-----	-----	-----
Guatemala	14/06/1988	14/06/1988	04/08/1961	-----	13/02/1952	-----	09/12/1959	-----	-----	28/02/2017
Guinea	-----	21/01/1959	-----	-----	12/12/1966	-----	-----	02/06/1977	-----	-----
Guinea - Bissau	21/02/1977	21/02/1977	-----	-----	21/02/1977	-----	21/02/1977	-----	-----	-----
Guyana	-----	-----	-----	-----	-----	-----	-----	-----	-----	03/09/1997
Haiti	31/03/1952	14/05/1952	31/03/1952	-----	-----	-----	04/03/1958	-----	-----	-----
Honduras	-----	17/11/1964	-----	-----	-----	-----	20/06/1960	-----	-----	-----
Hungary	-----	08/06/1956	-----	-----	-----	-----	-----	19/08/1998	-----	09/04/2010
Iceland	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
India	14/07/1921	11/05/1923	-----	-----	27/02/1950	21/11/2003	-----	-----	-----	-----
Indonesia	-----	-----	-----	-----	-----	-----	23/08/1972	-----	-----	-----
Iran, Islamic Republic of	-----	10/06/1972	-----	-----	-----	-----	22/01/1968	-----	-----	-----
Iraq	24/08/1965	12/05/1960	26/11/1962	-----	17/11/1967	-----	05/07/1960	19/02/1974	-----	-----
Ireland	-----	22/07/1930	-----	-----	14/01/1952	-----	-----	20/06/1974	-----	-----
Israel	26/06/1951	26/06/1951	26/06/1951	-----	-----	-----	19/06/1961	-----	-----	-----

Members	C001	C014	C030	C047	C089	P089	C106	C132	C171	C175
Italy	06/10/1924	08/09/1924	-----	-----	22/10/1952	-----	12/08/1963	28/07/1981	-----	13/04/2000
Jamaica	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
Japan	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
Jordan	-----	-----	-----	-----	-----	-----	23/07/1979	-----	-----	-----
Kazakhstan	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
Kenya	-----	13/01/1964	-----	-----	30/11/1965	-----	-----	09/04/1979	-----	-----
Kiribati	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
Korea, Republic of	-----	-----	-----	07/11/2011	-----	-----	-----	-----	-----	-----
Kuwait	21/09/1961	-----	21/09/1961	-----	21/09/1961	-----	21/09/1961	-----	-----	-----
Kyrgyzstan	-----	31/03/1992	-----	31/03/1992	-----	-----	31/03/1992	-----	-----	-----
Lao People's Democratic Republic	-----	-----	-----	-----	-----	-----	-----	-----	04/06/2014	-----
Latvia	15/08/1925	09/09/1924	-----	-----	-----	-----	08/03/1993	10/06/1994	-----	-----
Lebanon	01/06/1977	26/07/1962	01/06/1977	-----	26/07/1962	-----	01/06/1977	-----	-----	-----
Lesotho	-----	31/10/1966	-----	-----	-----	-----	-----	-----	-----	-----
Liberia	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
Libya	27/05/1971	27/05/1971	-----	-----	20/06/1962	-----	-----	-----	-----	-----
Lithuania	19/06/1931	19/06/1931	-----	26/09/1994	-----	-----	-----	-----	26/09/1994	-----
Luxembourg	16/04/1928	16/04/1928	03/03/1958	-----	03/03/1958	-----	-----	01/10/1979	08/04/2008	21/03/2001
Madagascar	-----	01/11/1960	-----	-----	10/11/2008	10/11/2008	-----	08/02/1972	10/11/2008	-----
Malawi	-----	-----	-----	-----	22/03/1965	-----	-----	-----	-----	-----
Malaysia	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
Maldives, Republic of	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
Mali	-----	22/09/1960	-----	-----	-----	-----	-----	-----	-----	-----
Malta	09/06/1988	09/06/1988	-----	-----	04/01/1965	-----	09/06/1988	09/06/1988	-----	-----
Marshall Islands	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
Mauritania	-----	20/06/1961	-----	-----	08/11/1963	-----	-----	-----	-----	-----
Mauritius	-----	02/12/1969	-----	-----	-----	-----	-----	-----	-----	14/06/1996
Mexico	-----	07/01/1938	12/05/1934	-----	-----	-----	01/06/1959	-----	-----	-----

Members	C001	C014	C030	C047	C089	P089	C106	C132	C171	C175
Moldova, Republic of	-----	-----	-----	09/12/1997	-----	-----	-----	27/01/1998	-----	-----
Mongolia	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
Montenegro	-----	03/06/2006	-----	-----	03/06/2006	-----	03/06/2006	03/06/2006	08/11/2016	-----
Morocco	-----	20/09/1956	22/07/1974	-----	-----	-----	22/07/1974	-----	-----	-----
Mozambique	06/06/1977	06/06/1977	06/06/1977	-----	-----	-----	-----	-----	-----	-----
Myanmar	14/07/1921	11/05/1923	-----	-----	-----	-----	-----	-----	-----	-----
Namibia	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
Nepal	-----	10/12/1986	-----	-----	-----	-----	-----	-----	-----	-----
Netherlands	-----	14/07/1965	-----	-----	22/10/1954	-----	02/05/2001	-----	-----	05/02/2001
New Zealand	29/03/1938	29/03/1938	29/03/1938	29/03/1938	10/11/1950	-----	-----	-----	-----	-----
Nicaragua	12/04/1934	12/04/1934	12/04/1934	-----	-----	-----	-----	-----	-----	-----
Niger	-----	27/02/1961	-----	-----	-----	-----	-----	-----	-----	-----
Nigeria	-----	-----	┼	-----	-----	-----	-----	-----	-----	-----
Norway	-----	07/07/1937	29/06/1953	13/03/1979	-----	-----	-----	22/06/1973	-----	-----
Oman	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
Pakistan	14/07/1921	11/05/1923	-----	-----	14/02/1951	-----	15/02/1960	-----	-----	-----
Palau	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
Panama	-----	-----	16/02/1959	-----	19/06/1970	-----	-----	-----	-----	-----
Papua New Guinea	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
Paraguay	21/03/1966	21/03/1966	21/03/1966	-----	21/03/1966	-----	21/03/1966	-----	-----	-----
Peru	08/11/1945	08/11/1945	-----	-----	-----	-----	11/07/1988	-----	-----	-----
Philippines	-----	-----	-----	-----	29/12/1953	-----	-----	-----	-----	-----
Poland	-----	21/06/1924	-----	-----	-----	-----	-----	-----	-----	-----
Portugal	03/07/1928	03/07/1928	-----	-----	02/06/1964	-----	24/10/1960	17/03/1981	27/11/1995	02/06/2006
Qatar	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
Romania	13/06/1921	18/08/1923	-----	-----	28/05/1957	-----	-----	-----	-----	-----
Russian Federation	-----	22/09/1967	-----	23/06/1956	-----	-----	22/09/1967	06/09/2010	-----	29/04/2016
Rwanda	-----	18/09/1962	-----	-----	18/09/1962	-----	-----	13/05/1991	-----	-----
Saint Kitts and Nevis	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----

Members	C001	C014	C030	C047	C089	P089	C106	C132	C171	C175
Saint Lucia	-----	14/05/1980	-----	-----	-----	-----	-----	-----	-----	-----
Saint Vincent and the Grenadines	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
Samoa	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
San Marino	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
Sao Tome and Principe	-----	-----	-----	-----	-----	-----	17/06/1992	-----	-----	-----
Saudi Arabia	15/06/1978	15/06/1978	15/06/1978	-----	15/06/1978	-----	15/06/1978	-----	-----	-----
Senegal	-----	04/11/1960	-----	-----	22/10/1962	-----	-----	-----	-----	-----
Serbia	-----	24/11/2000	-----	-----	24/11/2000	-----	24/11/2000	24/11/2000	-----	-----
Seychelles	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
Sierra Leone	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
Singapore	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
Slovakia	01/01/1993	01/01/1993	-----	-----	01/01/1993	-----	-----	-----	11/02/2002	-----
Slovenia	-----	29/05/1992	-----	-----	29/05/1992	-----	29/05/1992	29/05/1992	12/02/2014	08/05/2001
Solomon Islands	-----	06/08/1985	-----	-----	-----	-----	-----	-----	-----	-----
Somalia	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
South Africa	-----	-----	-----	-----	02/03/1950	-----	-----	-----	-----	-----
South Sudan	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
Spain	22/02/1929	20/06/1924	29/08/1932	-----	24/06/1958	-----	05/05/1971	30/06/1972	-----	-----
Sri Lanka	-----	-----	-----	-----	31/03/1966	-----	27/10/1983	-----	-----	-----
Sudan	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
Suriname	-----	15/06/1976	-----	-----	-----	-----	15/06/1976	-----	-----	-----
Swaziland	-----	26/04/1978	-----	-----	05/06/1981	-----	-----	-----	-----	-----
Sweden	-----	22/12/1931	-----	11/08/1982	-----	-----	-----	07/06/1978	-----	10/06/2002
Switzerland	-----	16/01/1935	-----	-----	06/05/1950	-----	-----	09/07/1992	-----	-----
Syrian Arab Republic	10/05/1960	10/05/1960	10/05/1960	-----	01/12/1949	-----	23/10/1958	-----	-----	-----
Tajikistan	-----	26/11/1993	-----	26/11/1993	-----	-----	26/11/1993	-----	-----	-----
Tanzania, United Republic of	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
Thailand	-----	05/04/1968	-----	-----	-----	-----	-----	-----	-----	-----

Members	C001	C014	C030	C047	C089	P089	C106	C132	C171	C175
The former Yugoslav Republic of Macedonia	-----	17/11/1991	-----	-----	17/11/1991	-----	17/11/1991	17/11/1991	-----	-----
Timor-Leste	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
Togo	-----	07/06/1960	-----	-----	-----	-----	-----	-----	-----	-----
Tonga	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
Trinidad and Tobago	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
Tunisia	-----	15/05/1957	-----	-----	15/05/1957	21/08/2000	28/05/1958	-----	-----	-----
Turkey	-----	27/12/1946	-----	-----	-----	-----	-----	-----	-----	-----
Turkmenistan	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
Tuvalu	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
Uganda	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
Ukraine	-----	19/06/1968	-----	10/08/1956	-----	-----	19/06/1968	25/10/2001	-----	-----
United Arab Emirates	27/05/1982	-----	-----	-----	27/05/1982	-----	-----	-----	-----	-----
United Kingdom	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
United States	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
Uruguay	06/06/1933	06/06/1933	06/06/1933	-----	18/03/1954	-----	28/06/1973	02/06/1977	-----	-----
Uzbekistan	-----	-----	-----	13/07/1992	-----	-----	-----	-----	-----	-----
Vanuatu	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
Venezuela, Bolivarian Republic of	20/11/1944	20/11/1944	-----	-----	-----	-----	-----	-----	-----	-----
Viet Nam	-----	03/10/1994	-----	-----	-----	-----	-----	-----	-----	-----
Yemen	-----	29/07/1976	-----	-----	-----	-----	-----	01/11/1976	-----	-----
Zambia	-----	-----	-----	-----	22/02/1965	-----	-----	-----	-----	-----
Zimbabwe	-----	06/06/1980	-----	-----	-----	-----	-----	-----	-----	-----

Appendix III

Governments that provided reports

Algeria
Antigua and Barbuda
Argentina
Australia
Austria
Azerbaijan
Bahrain
Bangladesh
Belarus
Belgium
Benin
Bolivia, Plurinational State of
Bosnia and Herzegovina
Brazil
Bulgaria
Burkina Faso
Burundi
Cabo Verde
Cambodia
Cameroon
Canada
Central African Republic
Chile
China
Colombia
Costa Rica
Côte d'Ivoire
Croatia
Cuba
Cyprus
Czech Republic
Denmark
Dominican Republic
Ecuador
Egypt
El Salvador
Equatorial Guinea
Eritrea
Estonia
Ethiopia
Fiji
Finland
France
Gabon
Georgia
Germany
Ghana
Greece
Guatemala
Guinea
Honduras
Hungary
Iceland
India
Indonesia
Iran, Islamic Republic of
Iraq
Italy
Jamaica
Japan
Kazakhstan
Kenya
Korea, Republic of
Kuwait
Latvia
Lithuania
Luxembourg
Madagascar
Malawi
Mali
Malta
Mauritania
Mauritius
Mexico
Moldova, Republic of
Mongolia
Montenegro
Morocco
Myanmar
Namibia
Netherlands
New Zealand
Nicaragua
Norway
Oman
Panama
Peru
Philippines
Poland
Portugal
Qatar
Romania
Russian Federation
Rwanda
Samoa
Senegal
Serbia
Seychelles
Singapore
Slovakia
Slovenia
South Africa
Spain
Sri Lanka
Sudan
Suriname
Sweden
Switzerland
Syrian Arab Republic
Tajikistan
Thailand
The former Yugoslav Republic of Macedonia
Togo
Tunisia
Turkey
Turkmenistan
Ukraine
United Kingdom
United States
Uruguay
Uzbekistan
Venezuela, Bolivarian Republic of
Zambia
Zimbabwe

Appendix IV

Workers' and employers' organizations that provided reports

Workers' organizations

Austria

- Federal Chamber of Labour (BAK)

Bulgaria

- Confederation of Independent Trade Unions in Bulgaria (KNSB/CITUB)

Cameroon

- National Trade Union Federation of Workers from Decentralized Local Authorities of Cameroon (FENTEDCAM)

Canada

- Canadian Labour Congress (CLC)

Denmark

- Danish Confederation of Trade Unions (LO)

Finland

- Central Organization of Finnish Trade Unions (SAK)
- Confederation of Unions for Professional and Managerial Staff in Finland (AKAVA)
- Finnish Confederation of Professionals (STTK)

France

- General Confederation of Labour - Force Ouvrière (CGT-FO)

Germany

- German Confederation of Trade Unions (DGB)

Greece

- Greek General Confederation of Labour (GSEE)

Japan

- National Confederation of Trade Unions (ZENROREN)

Korea, Republic of

- Federation of Korean Trade Unions (FKTU)

Madagascar

- Trade Union Confederation of Malagasy Revolutionary Workers (FISEMARE)

Moldova, Republic of

- National Confederation of Trade Unions of Moldova (CNSM)

Morocco

- Democratic Confederation of Labour (CDT)

New Zealand

- New Zealand Council of Trade Unions (NZCTU)

Poland

- Independent and Self-Governing Trade Union "Solidarnosc"

Portugal

- General Confederation of Portuguese Workers - National Trade Unions (CGTP-IN)
- General Workers' Union (UGT)

Seychelles

- Seychelles Federation of Workers' Unions (SFWU)

Singapore

- Singapore National Trade Union Congress (SNTUC)

Spain

- Trade Union Confederation of Workers' Commissions (CCOO)

Sweden

- Swedish Confederation for Professional Employees (TCO)
- Swedish Confederation of Professional Associations (SACO)
- Swedish Trade Union Confederation (LO)

Turkey

- Confederation of Turkish Trade Unions (TÜRK-IS)

United Kingdom

- Trades Union Congress (TUC)

United States

- American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)

Employers' organizations

Brazil

- National Confederation of Industry (CNI)

Denmark

- Confederation of Danish Employers (DA)

Finland

- State Employer's Office (VTML)
- The Commission for Church Employers (KIT)

Italy

- General Confederation of Commerce, Tourism and Services (CONFCOMMERCIO)

Mexico

- Confederation of Industrial Chambers of the United States of Mexico (CONCAMIN)

New Zealand

- Business New Zealand

Portugal

- Confederation of Trade and Services of Portugal (CCSP)

Seychelles

- Association of Seychelles Employers

Singapore

- Singapore National Employers Federation (SNEF)

Sweden

• Confederation of Swedish Entreprise (CSE)

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