



# BetterWork

Haiti

## Practical Guide

Haitian Labor Code

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## Preface

Better Work Haiti is a partnership program between the International Labor Organization (ILO) and the International Finance Corporation (IFC). The program began conducting evaluations and advisory services in 2009. The goal of this program is to promote competitiveness in the garment industry in Haiti by strengthening economic performance at the enterprise level and improving Respect for Haitian labor law and international conventions on fundamental principles and rights at work. The program has a Project Advisory Committee (PAC), comprising representatives of the Haitian government as well as trade union and employers' organizations.

The Better Work program builds a mechanism for effective social dialogue and cooperation in the workplace as a basis for sustainable development. To achieve this objective, employers and employees must have a thorough knowledge of their rights and responsibilities regulated by law. Consequently, the dissemination of information on labor legislation to the actors concerned is essential.

This guide was prepared by Better Work Haiti in close collaboration with the Directorate of Labor, with the aim of providing basic information about Haitian labor law in a way that is easily understood by the various readers. We hope that this publication will be an effective contribution to strengthening social compliance, harmonious labor relations, supportive working environments, and delivering benefits to businesses and society.

December 2016

**Jacques Belzin**

Director of Labor  
Ministry of Social Affairs and Labor (MAST)

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## Foreword

Better Work Haiti has produced this guide to help employers, workers, international buyers and other stakeholders better understand the obligations and rights under the Haitian Labor Law. This guide integrates the main sources of Haitian labor law into one easy-to-use booklet.

For each subject, the key elements of the law are explained in language that is easy to understand. The sources of the law that are relevant to each party are listed so that the actual legal texts can be consulted if desired. The guide covers the most important legal aspects of Haitian labor law, in addition to regulations and decisions relating to the textile sector. The guide reflects the standards established by national law. However, for fundamental rights at work (freedom of association and collective bargaining, elimination of forced labor, abolition of child labor and elimination of discrimination in employment), Better Work Haiti Compliance with the ILO core labor standards.

Better Work Haiti is pleased to have worked in collaboration with the Ministry of Social Affairs and Labor (MAST) on the production of this publication. We see this as an important contribution to maintaining labor standards and increasing good employment opportunities in the country..

November 2016

**Claudine François**  
Chief Technical Advisor  
Better Work Haïti



*Our approach creates sustainable and positive change through evaluations, training, advocacy and research that change policies, attitudes and behavior. By sharing our approach and the results of our work in the field, we seek to influence decision makers and decision makers to promote decent work and better businesses.*





A large, bold, orange letter 'A' is positioned on the left side of the page, set against a light beige background. The letter is stylized with a white triangular cutout in the center.

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**Principles and  
fundamental rights  
in the workplace**

# 1. Age

## 1.1 - LEGAL AGE TO CONCLUDE LABOR CONTRACTS AND FOR EMPLOYMENT

### A) PEOPLE QUALIFIED TO CONCLUDE LABOR CONTRACTS

People aged 18 years and being in full possession of their civil capacity can conclude a labor contract.

People aged under 18 years and authorized by the Labor Directorate, upon the request of their tutors or responsible person and for specified works, compatible with their age and their capabilities, and not affecting their compliance to school obligations.

### B) MINIMUM AGE FOR ACCESS TO EMPLOYMENT

Minimum age for employment in Haiti in the industrial, agricultural and commercial enterprises is 15 years.

Any employer shall have a legal identification document with a picture mentioning the age of the employees.

Individuals aged between 15 and 18 years shall not work in companies unless they have been recognized fit for the job they will be assigned to after a medical examination and subject to certain specific conditions:

- No unsanitary, painful or dangerous jobs from a physical nor moral viewpoint, neither in places selling alcoholic beverages.
- No night-time work
- No long-hour jobs (C182; R190)
- Comprehensive medical examination until 18th birthday
- Certificate or working permit delivered by the Directorate of Labor

The employer shall keep a record including information about individuals of less than 18 years working for him.

LABOR CODE, ART. 20

CONVENTION 138 OF ILO ON MINIMUM AGE (C138), PARAGRAPH 3;

RECOMMENDATION 146 ON THE MINIMAL AGE (R146); LABOR CODE, ART. 335

CONDITIONS: C138; R146; CONVENTION 182 ON THE WORST FORMS OF CHILD LABOR (RATIFIED BY HAITI);

RECOMMENDATION 190 ON THE WORST FORMS OF CHILD LABOR;

LABOR CODE, ARTS 22 PARAGRAPH (A), 333 TO 339;

ART. 11 PARAGRAPH (B) OF THE DECREE OF 2005 ON NATIONAL IDENTIFICATION

## 2. Discrimination

### 2.1 - DÉFINITION AND CRITERIA

Under the Convention 111, discrimination includes any distinction, exclusion or preference based on race, color, sex, religion, political opinion, national ancestry or social origin, that results in destroying or altering the equality of chances or treatment in employments or occupation. The Labor Code provides that all workers are equal before the law and benefit from the same protection and guarantees. (Art. 3)

The Labor Code specifically prohibits:

- Any contract termination motivated by the worker's opinion, his/her union activities, religious activities; his/her membership to any authorized association with a social, literary, political, artistic or sport purpose; his/her sex, race (such terminations are considered abusive) (Art. 50)
- Any wage inequality between female and male workers for a work of equal value (Art 317);
- Making differences between married and single women, with regards to their rights and obligations and with regards to the actual working conditions (Art. 330 paragraph (a));
- Terminating female workers for the sole reason of pregnancy or breastfeeding (Art 330 paragraph (b)).

CONSTITUTION OF 1987, ART. 35-2;

CONVENTION 111 CONCERNING DISCRIMINATION (JOB AND POSITION) (C111) (RATIFIED BY HAITI);

CONVENTION 100 ON EQUAL WAGE (RATIFIED BY HAITI);

LABOR CODE, ARTS , 50, 317, 330 PARAGRAPH (A), (B)

### 2.2 - SEXUAL HARASSMENT

Sexual harassment refers to any physical behavior, verbal or not, of sexual nature, affecting women and men's dignity, and deemed inappropriate, unreasonable and offensive for the worker.

The evidence of sexual harassment in the workplace is established as long as the workers perceive that their reaction to such behavior:

- i. is a condition to keep the job and/or
- ii. will have an impact on decisions concerning their job and/or
- iii. will have an impact on their performance. .

Sexual harassment can also come from a behavior that creates a hostile, threatening and humiliating environment.

LABOR CODE, ARTS 111

## 3. Freedom of Association

### 3.1 - PRINCIPLES OF FREEDOM OF ASSOCIATION

Workers and employers, without any distinction of any kind, have the right, without prior authorization, to form organizations of their choice, and affiliate to such organizations, under the only condition of compliance to their statutes. (C87 paragraph 2; Labor Code, Arts 225-228)

No one shall be constrained to be part or not be part of a union. (Labor Code, Art 228)

CONVENTION 87 REGARDING FREEDOM OF ASSOCIATION AND PROTECTION OF UNION RIGHTS (C87) (RATIFIED BY HAITI);

CONVENTION 98 REGARDING THE RIGHT TO ORGANIZE AND OF COLLECTIVE BARGAINING (C98) (RATIFIED BY HAITI);

LABOR CODE, ARTS 225 TO 228

### 3.2 - ORGANIZING A UNION

Workers' unions cannot be formed with less than ten members; and employers' union shall comply with the required minimum of five people. They should be registered in the Directorate of Labor within the 60 business days' period following their formation.

Unions are classified into four (4) categories: :

- Professional Unions
- Trade Unions
- Industrial Unions
- Mixed Unions

CONVENTION 87 REGARDING FREEDOM OF ASSOCIATION AND PROTECTION OF UNION RIGHTS (C87) (RATIFIED BY HAITI);

LABOR CODE, ARTS 229 À 236, 246

### 3.3 - UNIONS' FACILITIES AND PROTECTION OF UNION RIGHTS AGAINST ANTI-UNION PRACTICES

Facilities should be granted to the workers' representatives in the workplace, in order to allow them to quickly and effectively perform their duties, without hindering the effective operation of the company. (R143)

Workers' representatives in the company should enjoy effective protection against all prejudicial measures that could be motivated by their function or their activities as workers' representatives, their union affiliation, or their participation in union's activities as long as they comply with internal laws and regulations, collective conventions or other applicable arrangements. (R143 paragraph 5). Transfers, demotions and the refusal to allow workers

C87; C98; RECOMMENDATION 143 REGARDING UNIONS' REPRESENTATIVES (R143);

LABOR CODE, ARTS 49, 50, 251

LABOR CODE, ARTS 228, 229, 251

to work overtime, wages and benefits' reduction, changes in working conditions or terminations would be examples of prejudicial actions.

The Labor code provides that any employer who, in order to prevent a worker to affiliate in a union or to exercise his/her union rights, to form a union or to exercise his/her rights as a union member, would terminate or suspend, demote or reduce his/her wage, shall be liable to a fine (Art 251). Any termination motivated by the worker's union activities is considered abusive. In that case, the worker will be entitled to a restitution per a judgment rendered by the labor Court upon request from the Labor Directorate. (Labor Code, Arts 49, 50)

### 3.4 - INTERFERENCE

There is interference when employers act with the purpose of dominating, controlling or weakening workers' organizations. There would be interference if the employer would try to take control of the union in a manner that is not provided by national legislation. Attempts to weaken the union by offering bribes to union members to withdraw from the union, or by giving them artificial promotions in order to hinder their participation in union activities would be considered as interference actions.

According to Haitian legislation, company's CEOs, managers, administrators and employer's representatives who are exercising, in his name, management and administration functions cannot be workers' union members in the same company. (Labor Code, Art 229)

Employers and workers' organizations will receive adequate protection against acts of interference from one towards the others, including measures taken by the employer that tend to create workers' organizations through financial means or other means, with the purpose of placing these organizations under the control of the employer or an employers' organization.

C98; LABOR CODE,  
ARTS 228, 229, 251

### 3.5 - UNIONS' OBLIGATIONS

In the context of their union activities, they have certain obligations such as :

- a. Keeping records of minutes, member's registration and accounting books; ;

LABOR CODE,  
ARTS 241 AND 242

- b. Informing the Labor Directorate, within 15 days following the election, of changes in the Managing Committee's membership;
- c. Informing, within the same time frame, the Labor Directorate of any change made in the articles of association by the General Assembly;
- d. Informing the Labor Directorate, every year, of the number of registered union members;
- e. Maintaining a permanent representation by designating, at least, one delegate, for their relations with the employers and the Labor Directorate.

It is prohibited for any union to :

- Resort to outright violence against people to constrain them to adhere to a union or to hinder their work;
- Incite or engage in criminal acts against property;
- Intentionally provide false information to the Labor Directorate;
- Engage in commercial activities and deal with matters not related to its purpose.

When a trade union is found guilty of one of the offences mentioned above, the Ministry of Social Affairs may, after investigation, apply to the Labor Court for sanctions to be taken against the trade union.

However, the inquiries required by the Ministry of Social Affairs may concern only trade union activities concerning the application of the legal provisions relating to the functioning of trade unions

## 3.6 - STRIKE AND LOCK-OUT

A strike is a concerted cessation of work carried out within an establishment by a group of workers to obtain the claims presented to their employers, which satisfaction is their condition for the resumption of work.

Lock-out is the closure of a workplace or the suspension of work in a company by the employer or his/her refusal to continue to employ a significant number of such employees because of a dispute, in order to force workers to accept certain conditions of work.

The right to strike and lock-out is guaranteed and protected under the law. The illegality of the strike or lock-out is left to the discretion of a labor court judge.

LABOR CODE, ARTS 203 AND 211; DECREE OF MAY 27TH, 1986 -

ANNEX I OF THE LABOR CODE

## 3.7 - COLLECTIVE LABOR CONTRACTS

### 3.7.1 - DÉFINITION

The collective labor contract is an agreement concerning the working conditions concluded between:

- 1) One or more trade union organizations of workers or, in the absence of such organizations, interested workers' representatives duly mandated by these latter, on one hand;
- 2) One or more employers' organizations or any other group of employers or one or more employers individually, on the other hand. (Art. 53)

### 3.7.2 - GENERAL PROVISIONS

If a union exists, the employer must not undermine it by negotiating directly with the elected representatives of the workers. Negotiations must take place in good faith, both sides negotiating by agreeing to compromise, discuss and come to a solution that is supported by everyone.

When, in an enterprise, two-thirds of the workers are members of a trade union association, the employer is obliged to conclude a collective labor agreement with the trade union if the latter so requests; Similarly, the union is obliged to conclude a collective contract with the employer if the latter so requests. (Art. 68)

Collective contracts may contain clauses more favorable to workers than those provided in the Labor Code, but may not deviate from them

C98; LABOR CODE, ARTS 53 TO 70

LABOR CODE, ARTS 53, 59, 61, 68, 70

in any way. (Art. 53) The benefits and obligations of the collective labor contract extend to all employees, whether affiliated to the trade union, and providing services to the institutions covered by the collective agreement. (Art. 59) Where the employer is bound by the clauses of a collective labor contract, these clauses shall extend to the individual contracts of employment concluded with him unless the provisions of the said contracts are more favorable to the employees. (Art. 61)

If there are several unions in the same company, their collective contracts may coexist. However, the terms of a collective agreement granting greater benefits to workers than those granted by another collective contract to another group of workers shall apply to the latter insofar as it is a work performed in the same conditions. (Art. 70)

### 3.7.3 - CONTENT, REGISTRATION AND PUBLICATION

Collective labor contracts must be drawn up in four (4) originals including two (2) for the Labor Directorate and one for each of the parties. They must be written in Creole or French.

These contracts are effective immediately after their registration with the Directorate of Labor. Such registration shall be effected within a maximum period of eight (8) days after signature. The recordings will be published in one of the daily newspapers of the municipality where the company is established or, failing that, in a daily newspaper of the capital no later than ten (10) days after their registration.

Any collective labor agreement must contain the following stipulations:

1. les noms, prénoms et qualités des parties contractantes et la date de son entrée en vigueur;
2. Last names, first names and qualifications of the contracting parties and the date of its entry into force;
3. The free exercise of the workers' rights to organize into unions. The department of social organizations of the Labor Directorate is responsible for checking whether a collective labor contract contains clauses affecting freedom of association;
4. The salary applicable to each category of employees, increases due, bonuses and other wage benefits;
5. The form, frequency and place of payment; the place or places where the services are provided or the work performed;
6. The articulation of the principle of equal pay for equal work, whether nationals or foreigners, men or women;
7. The conditions for hiring and dismissing workers;
8. The working conditions;
9. The provisions containing the procedure for reviewing,

LABOR CODE,  
ARTS 55, 63, 65



amending, terminating all or part of the contract;

10. The arrangements for the organization and operation of apprenticeship and vocational training for the purpose of quickly nationalizing the technical staff in the event of the hiring of foreign technicians;
11. The special conditions of work for women and minors;
12. The place and date of the conclusion of the contract and its signature by the parties or their representatives.

### **3.7.4 - DURATION, MODIFICATION AND TERMINATION OF COLLECTIVE LABOR CONTRACTS**

LABOR CODE,  
ARTS 55 TO 57, 67, 69

Collective labor contracts may be for a limited or unlimited duration. When the collective contract is concluded for a fixed period, its duration may not be less than one (1) year nor more than five (5) years. If the term is not specified, it will be presumed to be concluded for one (1) year.

A fixed-term collective contract due to expire shall be renewed by tacit agreement unless otherwise stipulated. The collective open-ended labor contract may be terminated by the will of one of the parties and in accordance with the provisions laid down therein, without prejudice to the provisions of the Labor Code concerning termination of employment and notice

The termination of a collective labor contract for any reason whatsoever shall not in any circumstances lead to less favorable working conditions for the workers if the company continues to function.

The collective contract ends:

- By termination of all contracts or orders by the company or any of the enterprises party to the collective agreement;
- By mutual consent;
- For the reasons provided for in the Convention itself;
- By the dissolution of the trade union or one of the unions that have signed the collective agreement;
- By denunciation, at the end of a year, in the case of a collective open-ended agreement. In the latter case, the collective agreement shall terminate automatically three months after the notice of termination has been given. (Art. 69)

## 4. Forced Labor

### 4.1 - DÉFINITION

Forced labor shall mean any work or service exacted from an individual under the threat of any penalty and for which the individual has not voluntarily offered himself. No citizen can be forced into forced labor except in the case of a legal conviction.

#### EXAMPLES OF SENTENCES :

Reduction in wages, suspension, termination, removal of the possibility of working overtime in the future, and threats to impose penalties.

#### EXAMPLE OF A COERCIVE MEASURE :

Preventing workers, physically or with the use of locked grids or other similar means, from leaving their place of work to force them to work without their consent.

CONVENTION ON FORCED LABOR (C29) (RATIFIED BY HAITI);

CONVENTION ON THE ABOLITION OF FORCED LABOR (C105) (RATIFIED BY HAITI); LABOR CODE, ART 4

### 4.2 - INVOLUNTARY OVERTIME UNDER THREAT OF SENTENCE

The employer must obtain the agreement of each worker to work overtime regardless of the number of hours to be worked.

There can be evidence of forced labor when workers are:

- Constrained to work overtime to earn the reference minimum wage, if they have no choice to refuse work and/or work under threat of punishment

Or

- Obligated to work overtime beyond national legal limits without their consent, and/or work under threat of punishment.

Or

- Required to work overtime, without remuneration and/or under threat of punishment, to achieve production objectives.

To determine whether the worker has freely agreed to do the work, the vulnerability of the worker could often also be considered.

**EXAMPLE OF FORCED LABOR :**

The XYZ plant has a practice of marking the exit time the workers after 8 hours of work while they continue to work overtime without pay to meet production goals. The refusal of workers to comply with this practice is liable to a suspension on the following day.



**B**

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**Haitian Labor Law**

## 5. Labor Contract and HR

### 5.1 - LABOR CONTRACT

#### 5.1.1 - DEFINITION

The labor contract is any agreement by which a person commits himself to hire out his/her services to another person, under the control or the dependence of the latter, for a remuneration. The individual contract of employment may be verbal or written.

The individual employment contract, when it is written, shall be drafted in French or Creole in two originals, one of which shall be given to each of the contracting parties.

#### 5.1.2 - DIFFERENT TYPES OF CONTRACTS

##### a) Fixed-term/Temporary contract

The fixed-term contract is the one which term is fixed in advance by the will of the parties.

##### b) Open-ended/Permanent contract

The open-ended contract is one whose term is not provided for in advance and which can cease at any moment by the will of the worker or the employer, without prejudice to the legal provisions regulating the termination of the contract of employment.

A contract of a temporary nature which is tacitly renewed shall be regarded as having been transformed into a contract of indefinite duration, granting the worker all the benefits and legal advantages attached to it.

##### c) Apprenticeship contract

The apprenticeship contract is any agreement by which a person undertakes to work for another or an institution in exchange for a professional instruction given by them or a third person in a given art or profession. Apprentice must be at least 14 years of age.

CONSTITUTION OF 1987,  
ART. 5 PARAGRAPH 2;

LABOR CODE,  
ARTS 13, 16, 21

LABOR CODE,  
ARTS 17, 72 TO 78, 113

The apprenticeship contract must be registered with the Manpower Directorate. The Manpower Directorate will set the duration of the apprenticeship for each occupation. The remuneration may never be less than 40% of the statutory minimum wage.

### 5.1.3 - CONTENT OF THE LABOR CONTRACT

The contract must necessarily contain the following statements :

- i. The number of the identity card of each of the contractors and the number of the work book;
- ii. Names, first names, nationality, age, sex, occupation, marital status;
- iii. Accurate indication of the worker's residence;
- iv. The duration and schedules of the working day;
- v. Nature of work to be performed;
- vi. Place or places where the contract will be performed;
- vii. Wage;
- viii. Signatures of the contracting parties or the affixing of fingerprint accompanied by the signature of two witnesses for the party that cannot or does not know how to sign; places and date of the conclusion of the contract.

LABOR CODE, ART. 22

### 5.1.4 - OBLIGATIONS OF THE CONTRACTING PARTIES

#### a) The workers' obligations are the following:

- i. Comply with the working hours in the workplace and observe the legal or regulatory provisions regarding work;
- ii. Perform the work with care, skill and diligence;
- iii. Keep his/her boss informed of possible defects in the raw materials or in the tooling which could have caused damage to the company;
- iv. Treat his/her boss and fellow workers with respect;
- v. Obey the instructions, orders and instructions of the employer or person in charge of the work;
- vi. Not to disclose production, manufacturing or business secrets of the enterprise, neither to compete with and be loyal to the employer;

LABOR CODE, ART 30

- vii. Indemnify the employer for all damage caused by his own fault to premises, raw materials and tools;
- viii. Fulfill all other obligations that would be specifically stipulated in the contract.

**b) The employer's obligations are the following :**

- i. Determine, through internal rules, the working conditions and bring them to the worker's attention;
- ii. Provide the worker with suitable work premises and machinery and tools in the required hygiene, safety and operating conditions;
- iii. Pay to the worker in full and on the due date the remuneration provided for in the contract, after deduction of any legal and contractual charge for the repayment of loans, advances, proven losses and damages affecting the employer's revenues, property or facilities;
- iv. Treat the worker with respect, being careful not to inflict any verbal or de facto maltreatment;
- v. Fulfill all the other obligations strictly stipulated in the contract.

LABOR CODE, ART. 31

### 5.1.5 - FOREIGN LABOR FORCE

No foreigner may engage in a trade or profession of any kind whatsoever on a for-profit basis, whether as a self-employed person or as an employee, if he is not previously provided with a work or employment permit issued by the Manpower Directorate. However, the foreign operator and the personnel of foreign nationality working in a free enterprise are exempted from the foreigner's license and employment permit.

LABOR CODE, ARTS 306 TO 315;

LAW ON FREE ZONES, ART. 33

The employment permit may not be granted for more than one year; It is renewable up to five consecutive years at the discretion of the Manpower Directorate.



## 5.2. HUMAN RESOURCES

### 5.2.1 - INTERNAL REGULATIONS

Internal regulations are mandatory for all employers with 10 or more employees. These rules of procedure must be approved by the Ministry of Social Affairs and Labor (MAST). No provision from the rules of procedure may be less favorable to employees or contrary to labor legislation.

The internal regulations should necessarily cover the following areas

- occupational health and safety rules;
- instructions for accident prevention and first aid in the event of an accident;
- hours of entry and exit of workers;
- work location and hours;
- time for meals and rest during the day;
- different categories of workers and casual work;
- various types of wages and categories of workers to which they relate;
- place, day and time of pay;
- disciplinary measures and procedures for their application; and
- appointment of staff members to whom grievances, demands and claims in general must be presented.

The internal rules of the company should be communicated to the employees. Any company that doesn't comply with the requirement to have internal rules is liable to a fine.

### 5.2.2 - TEMPORARY SUSPENSION OF LABOR CONTRACT

The employment contract can be suspended in the following cases :

- Lack of raw materials to continue working
- Force majeure or fortuitous event, resulting in an immediate but temporary stoppage of work

In case of temporary suspension due to a shortage of raw materials that is beyond the control of the employer or to cases of force majeure or unforeseen events (e.g. natural disasters, accidents involving plant materials, fire, etc.) the employer cannot be held responsible.

The concerned party has the obligation to notify the Ministry of Social Affairs and Labor (MAST) of any suspension of work without pay. It is the

LABOR CODE,  
ARTS 396 TO 403

LABOR CODE,  
ARTS 32 TO 36

employer's responsibility to provide evidence in the event of a dispute.

Any temporary suspension exceeding thirty (30) days may be considered by the worker as a breach of his contract by the employer. However, at the request of the employer, the Directorate of Labor may, after investigation, authorize an extension of the suspension which may not exceed thirty (30) days or one (1) month.

In the case of extension of temporary suspensions authorized by the MAST, the employment contract does not terminate. After the temporary suspension, if the work is not resumed, the contract ends and the employer will be obliged to pay the statutory benefits to the employee.

The employer has an obligation to notify employees of the resumption of activities at least 24 hours in advance by notice published in the newspapers or on the radio, posted at the main door of the establishment or any other means considered appropriate and effective. The contract of a worker who, eight (8) days after the notification, does not resume work, may be terminated.

#### **Other Causes of Suspension of the Employment Contract Without Liability for the Parties:**

- Preventive imprisonment of less than 30 days for the worker.
- Disease evidenced by a medical certificate stating that the employee is unable to perform his employment contract normally. This period of suspension may not exceed a period of three months.

#### **5.2.3 - BREACH OF CONTRACT AND GROUNDS**

The termination of the employment contract can be done in three (3) ways:

##### **1. As a matter of law;**

without the need for legal proceedings or a court decision.

- a) Expiry of the period laid down in the contract
- b) Completion of work in the case of contracts concluded for a specific work
- c) Grounds for termination expressly stipulated in the contract
- d) Death of the employee or duly proven case of force majeure
- e) Complete and final closure of the enterprise as a result of the death of the employer

The automatic termination of the individual contract of employment shall entail no liability for the contracting parties in the first four cases only. The last case remains subject to the legal provisions on notice..

## **2. By mutual consent of the parties**

In the case of a verbal employment contract, this consent may be established in writing or given verbally in the presence of two witnesses. When the contract is written, the cancellation must be confirmed in writing.

There shall be no liability for either party following the termination of the individual employment contract by mutual consent.

## **3. By the will of one of the parties**

An employee who wishes to terminate his employment contract without any liability for himself shall inform the Directorate of Labor on one of the following grounds :

- a) Failure to pay the full remuneration at agreed or customary dates and locations;
- b) Verbal excesses, insults or threats on the part of the employer;
- c) Intentional damage to the instruments or tools of work by the employer or his representative;
- d) Presence of persons carrying contagious diseases if the worker is to remain in immediate contact with the affected person;
- e) Threat to the safety or health of the worker due to lack of hygienic conditions in the workplace or failure to comply with preventive and safety measures prescribed by law.
- f) Breach of obligations imposed on the employer by contract or by law (ref: Obligations of Contracting Parties, 5.1.4).

An employer who wishes to terminate the employment contract of an employee without liability for himself regarding the notice will inform the Labor Directorate on one of the following grounds :

- a) Assault by the worker against his/her employer or fellow worker, verbal excesses, insults or threats and provocation in his conduct resulting in a serious disturbance to discipline and disruption of work;
- b) Offence or contravention against the employer's property;
- c) Absence of the employee without just cause and without the authorization of the employer for 3 consecutive days or four times during the same month;

- d) Refusal by the employee to observe the accident prevention measures or comply with the rules of procedure of the establishment after a written warning or a warning in the presence of two witnesses;
- e) False references or personal certifications by the worker or performance of the work in a manner that clearly demonstrates his/her inability (not applicable to workers with more than 4 months of consecutive service).
- f) Final decision resulting in imprisonment of a worker for more than one month.
- g) Failure to comply with obligations imposed on the employee by contract or by law (ref: Obligations of Contracting Parties, 5.1.4).

#### 5.2.4 - NOTICE PERIOD

The employer or the employee who wishes to terminate the written employment contract must first give written notice to the other party. This notice may be given verbally in the presence of two witnesses in the case of a verbal contract.

The notice is compulsory only for employees who have provided at least three consecutive months of work with the employer. Notice shall not be required in case of fault or failure of any of the parties as listed above.

The notice period will be determined as follows: t :

SERVICE PERIOD	NOTICE PERIOD
From 3 to 12 months	15 days
From 1 to 3 years	1 Month
From 3 to 6 years	2 Month
From 6 to 10 years	3 Month
10 or more years of service	4 Month

The contract of employment shall remain in force throughout the notice period. The party immediately terminating the employment contract shall pay to the other the amount of wages that would have been earned had she worked. (Indemnity of notice).

### 5.2.5 - STATUTORY BENEFITS

#### Calculation - Indemnity of Notice

**1. Monthly Wage :** Calculation based on the most recent wage of the employee.

Example: For an employee earning 10,000 Gourdes per month, the calculation of his indemnity of notice depending on the length of his period of service will be as follows:

SERVICE PERIOD	NOTICE PERIOD	INDEMNITY OF NOTICE
From 3 to 12 months	15 days	10000 X one half (1/2)
From 1 to 3 years	1 month	10000 X 1
From 3 to 6 years	2 months	10000 X 2
From 6 to 10 years	3 months	10000 X 3
10 or more years of service	4 months	10000 X 4

**2. Piecework Wage:** Calculation based on the average daily wage of the employee for the reporting period.

**Average Daily Wage** = total earnings for the reporting period <sup>2</sup> divided by the number of days worked <sup>3</sup>.

For companies working under a 5-6 day work regime per week at 8 working hours per day.

SERVICE PERIOD	NOTICE PERIOD	INDEMNITY OF NOTICE
From 3 to 12 months	15 days	Half-month wage
From 1 to 3 years	1 month	1 month wage
From 3 to 6 years	2 months	2 months of wage
From 6 to 10 years	3 months	3 months of wage
10 or more years of service	4 months	4 months of wage

### 5.2.6 - DISCIPLINARY MEASURES

Disciplinary measures are provided for in the internal regulations of companies that have been approved by the Ministry of Social Affairs and Labor.

LABOR CODE,  
ARTS 46, 47

LABOR CODE, ART. 148

<sup>2</sup> Total of all payments received by the employee for the last 3 months including overtime, weekly rest days, non-working holidays, payment of sick leave and maternity leave.

<sup>3</sup> The actual number of days during which the employee worked in the company (not including weekly rest days, non-working holidays, sick and maternity leaves).

LABOR CODE, ART. 399

**5.2.7 - RECORD KEEPING**

The number of reprimands, warnings and suspensions of each employee, their dates and reasons must be recorded in the business records.

**5.2.8 - ARBITRARY AND ILLEGAL TERMINATION**

Any breach of employment contract motivated by the opinions of the worker, his/her trade union and religious activities, his/her membership in an authorized social, literary, political, artistic or sports association, his/her sex, his/her race is abusive.

In the event of an unlawful and/or abusive termination of the employment contract by one of the parties, the injured party shall be entitled to damages, separate from the indemnities granted for non-observance of the notice. Such damages shall be awarded by a judgment of the Labor Court at the request of the Directorate of Labor; They must be justified and must in no case exceed an amount equivalent to 12 months of the worker's wages

LABOR CODE, ART. 394,  
PARAGRAPH G

CONVENTION 111 ;

LABOR CODE,  
ARTS 49, 50, 87 AND 98

## 6. Worktime

### 6.1 - NORMAL WORKTIME

LABOR CODE,  
ARTS 95 AND 96

Hours of work are the time during which the worker is at the employer's disposal. Rest periods during which the worker is not at the disposal of the employer shall be excluded..

Normal worktime is 8 hours per day and 48 hours per week. Without exceeding nine hours per day for industrial establishments, the parties may agree among themselves to distribute the weekly hours of work other than by eight hours per day, only if :

- the working hours are forty-eight hours a week, or when
- the facility uses the services of its staff six days a week

All hours worked in excess of normal hours of work are overtime.

### 6.2 - BREAK TIME

LABOR CODE,  
ARTS 99, 329 AND 331

#### A) HALF-TIME BREAK

Unless the parties agree otherwise and with the written authorization of the Labor Directorate, the worker shall be granted a half-time rest of a minimum of one and a half hours. This rest shall not be counted within the normal hours of work.

#### B) BREAK FOR PREGNANT WOMEN

During the period of apparent pregnancy, the woman shall be entitled to two rest periods per day of at least half an hour each, in addition to the part-time rest for the meal. .

#### C) BREASTFEEDING BREAK

Any mother breastfeeding her child may, for this purpose, have, at her place of work, and twice a day, half an hour from her working day or, if she prefers, an interval of fifteen minutes every three hours. These moments of rest are paid.

### 6.3 - OVERTIME AND LIMITATIONS

Overtime refers to any hours worked beyond normal working hours. They are paid with a 50% surcharge.

Overtime may be used with the authorization of the Labor Directorate, after consultation with the workers' trade unions where they exist. These hours may not exceed 80 hours per quarter.

Formula for a fixed salary

**Overtime** = Hourly wage x 1.5 (50% increase of the hourly salary)

Example: For a salary of 300 Gourdes per day (for 8 working hours) the calculation will be done as follows: :

**Hourly wage** = 300 Gourdes / 8 hours = 37.5 Gourdes

**Overtime** = 37.5 Gourdes X 1.5 = 56.25 Gourdes.

Formula for piecework

**Overtime** = Average hourly wage \* x 1.5 (50% increase of the hourly salary)

\*réf : Legal compensation/Piecework wage, 5.2.5

### 6.4 - NIGHT WORK

Night work is carried out between 6:00 pm and 6:00 am. It shall be paid with an increase of at least 50% of the day work, without prejudice to the provisions relating to the payment of work on Sundays and public holidays.

In the exceptional case of international subcontracting companies enjoying exemption from customs duties on imports of raw materials used, the work which they are authorized to perform at night shall be paid on the same basis as the day work unless otherwise agreed and only when these subcontractors are obliged to increase their workforce to meet their production needs by permanently employing at least two teams succeeding one another by a rotation system over a period exceeding the

LABOR CODE,  
ARTS 97 AND 98

LABOR CODE,  
ARTS 120, 122



normal duration of eight hours of work.

The authorization will be granted by the Labor Directorate. To obtain this authorization, the company must determine the working conditions of the teams taking shifts by drawing up the internal regulations prescribed by the Labor Code and signing, with its personnel, a collective labor contract duly registered with the Labor Directorate.

Formula for a fixed salary

**Night wage =** Daily wage x 1.5 (50% wage increase)

Example: For a salary of 300 Gourdes per day (for 8 working hours) the calculation of the night wage will be done as follows: :

**Night salary =** 300 Gourdes x 1.5 = 450 Gourdes (8 hours of work)

**Hourly nightly wage =** 450 Gourdes / per 8 hours = 56.25 Gourdes / per hour

Formula for piecework wage

**Overtime worked at night =** Night hourly wage x 1.5 .

#### 6.4.1 - NIGHT OVERTIME

Overtime worked at night shall be paid at a rate of 50% increase from normal night hours, without prejudice to the provisions relating to the payment of work on Sundays and non-working holidays.

Formula :

**Overtime worked at night =** Night hourly wage x 1.5

Example :

**Night salary =** 300 Gourdes x 1.5 = 450 Gourdes

**Hourly wage =** 450 Gourdes / per 8 hours = 56.25 Gourdes

**Night Overtime =** 56.25 x 1.5 = 84.37 Gourdes

## 6.5 - MIXED DAY

The mixed day is the working day including day and night hours and vice versa.

Formula :

**Mixed day wage** = (Hourly wage for day hours x number of hours worked during the day) + (Hourly wage for night hours x number of hours worked during the night)

*Note : Night hours that are part of a mixed day will be paid on the basis of night work (i.e., they are paid at 1.5 (50% wage increase)*

LABOR CODE, ART. 121

## 6.6 - WEEKLY REST, NON-WORKING HOLIDAYS AND NON-WORKING DAYS AUTHORIZED BY PRESIDENTIAL DECREE

### 6.6.1 - WEEKLY REST DAY

After a period of six consecutive working days (regardless of the number of hours worked during this period) or 48 hours per week (including overtime), all workers are entitled to a paid rest. This day of rest includes at least twenty-four (24) consecutive hours.

Payment is made on the basis of the daily wage for workers with a fixed salary. For those doing piecework, payment is made on the basis of the average daily wage. It is the same for those earning a fixed salary and working overtime.

Where workers provide a working day on a weekly day of rest, which is to be paid, payment shall be made as follows :

Formula for fixed salary

**Weekly rest day** = Daily salary + ( Daily salary x 1.5)

If the employee works less than 8 hours during the working day, the payment will be made as follows:

Daily wage + (regular hourly wage x number of hours worked x 1.5)

HAITIAN CONSTITUTION, ART. 275.1;

CONVENTION ON WEEKLY REST (INDUSTRIAL SECTOR) (C14);

LABOR CODE, ARTS 107, 108, 110, 112

LABOR CODE, ARTS 107, 119

Formula for piecework wage

**Weekly rest day** = Average daily salary<sup>4</sup> + (Average daily salary x 1.5)

*NB : LThe total wage for this day worked is equal to the normal daily wage plus the normal daily wage plus 50%. For all work performed on a weekly rest day, all employers must have written authorization from the Labor Directorate.*

**Practical example:**

An employee works for 8 hours during a weekly rest day, his average daily wage over the period considered is 320 Gourdes. The calculation of the payment for this weekly rest day shall be as follows:

**Weekly rest day worked** = 320 Gourdes (payment of the weekly rest day without work) + (320 Gourdes x 1.5 (payment of the weekly rest day worked) = 800 Gourdes

**6.6.2 - NON-WORKING HOLIDAYS AND NON-WORKING DAYS AUTHORIZED BY PRESIDENTIAL DECREE**

LABOR CODE,  
ARTS 108, 110, 112, 119

Workers shall be granted, without reduction of wages, non-working holidays and days of unemployment authorized by Presidential Order, unless they are employed to perform temporary work. The payment must be calculated based on the fixed or average daily wage.

The legal holidays in Haiti are :

- Mardi Gras
- Good Friday
- Corpus Christi
- The Assumption
- The 17th of October, death of Dessalines
- The 2nd of November, All Soul's Day
- The 25th of December, Christmas Day

<sup>4</sup> Average Daily Wage = total earnings for the relevant period / number of days worked

National holidays in Haiti are : (Haitian Constitution)

- January 1st
- January 2nd
- May 1st
- May 18th
- November 18th

In situations where workers work the whole day on a public holiday or a day of unemployment authorized by Presidential Order, the payment for this day will be made as follows:

Formula for fixed salary

**Non-working holiday or Authorized non-working day** = Daily salary + (Daily salary x 1.5)

Formula for piecework salary

**Non-working holiday or Authorized non-working day** = Average daily salary + (Average daily salary x 1.5)

Example

For a worker who earns 240 Gourdes per day (30 Gourdes per hour) and who worked on a weekly rest day or on a non-working holiday, the calculation of the payment for that day will be as follows :

$240 \text{ Gourdes} + (240 \text{ Gourdes} \times 1.5) = 600 \text{ Gourdes}$

If a worker works overtime on a non-working holiday or a day of unemployment authorized by Presidential Order, payment for this hour will be made as follows :

Formula

**Overtime on a statutory holiday or on a day of authorized unemployment** = Hourly pay for the holiday or the authorized unemployment day x 1.5

For example, for an employee who earns 240 Gourdes for a normal work day, the calculation for one (1) hour overtime will be made as follows:

- Hourly wage =  $240/8 = 30$  Gourdes
- Overtime =  $30 \text{ Gourdes} \times 1.5 = 45$  Gourdes

**Overtime on a Statutory holiday or an Authorized non-working day = 45**  
Gourdes  $\times 1.5 = 67.5$  Gourdes

## 7. Wages and Social Benefits

### 7.1 - WAGE

#### 7.1.1 - DEFINITION

Salary refers to the remuneration or earnings that are owed by an employer to a worker under a contract of employment for work performed or to be performed, either for services rendered or to be rendered.

Salary can be paid per unit of time, per piece work or it can be fixed.

#### 7.1.2 - DIFFERENT TYPES OF WAGES

##### a) Minimum Wage

The minimum wage is the amount to be paid as fixed by Legislation

##### b) Piecework Wage (Production Wage)

The piecework wage (task-based) is the wage paid to the worker to perform a given work for an agreed price.

The piecework wage (unit-based) is the wage paid to the worker to perform a given work for an agreed price per unit.

##### c) Basic Wage

Basic salary refers to the salary received by the employee or worker, excluding overtime benefits.

#### 7.1.3 - BONUSSES

The Bonus is an additional and compulsory salary paid by the employer to employees between the 24th and 31st December of each year, regardless of the length of employment.

The Bonus may not be less than one-twelfth of the wages received by the employee during the year (whether remuneration is in cash or in kind, accommodation or commission).

Formula

$$\text{Bonus} = \text{Total earnings during the year} / 12$$

LABOR CODE, ART. 135

LABOR CODE, ARTS 136 AND 137; PRESIDENTIAL DECREE IN FORCE.

LABOR CODE, APPENDIX 8, ART. 22 PARAGRAPH

CONSTITUTION OF 1987, ART. 35.1;

LABOR CODE, ARTS 148, 154 TO 157

### 7.1.4 - STATUTORY AND CONVENTIONAL DEDUCTIONS

The deduction means any levy on the employee's salary by the employer.

**a) Statutory Deductions:** Levies required by law such as :

- 6% for National Office for Pension Insurance (Office National d'Assurance Vieillesse) (ONA)
- 3% for Insurance Office for Occupational Accidents, Sickness and Maternity (Office d'Assurances Accidents du Travail, Maladie et Maternité) (OFATMA) (Sickness and Maternity Insurance)
- DGI <sup>5</sup> (DGI brackets to be added) (DGI Scale)

**b) Conventional deductions:** Levies made pursuant to an agreement between the parties such as :

- Prêt ou avance sur salaire
- Remboursement pour pertes ou dommages affectant les produits, biens ou installations de l'employeur, lorsqu'il peut être prouvé que le salarié est responsable

The amount of said deductions may not exceed 1/6 of the monthly salary up to the amount due, except in the case of termination of the employment contract when the reimbursement guarantees given by the worker are insufficient.

LABOR CODE,  
ARTS 143, 147

<sup>5</sup> See DGI's (Direction Générale des Impôts) tax schedule for income tax

## 7.2 - SOCIAL BENEFITS

### 7.2.1 - PAID LEAVES

Paid leaves are paid time granted to the worker. These leaves include :

**a) Annual Leave**

Any worker whose employment is permanent is entitled, after one year of service, to a paid leave of at least 15 consecutive days, including 13 working days and 2 Sundays.

The worker is entitled to 1 day  $\frac{1}{4}$  (1.25 days) of paid leave per month of work. For an employee with less than one year of service, the number of annual vacation days = the number of months of service x 1.25

LABOR CODE,  
ARTS 123 TO 129, 148

Non-working holidays and interruptions of work due to sickness or maternity benefiting the worker shall not be deducted from the fifteen days of annual leave.

Any agreement to relinquish the right to an annual holiday with pay or to forgo such a holiday shall be void. The annual leave is not cumulative except in case of force majeure and with the express authorization of the Directorate of Labor. The parties may enter into a written agreement which will allow the accumulation of annual leaves over a period not exceeding two years.

In case of suspension, dismissal or resignation of the employee for any reason before the expiration of his year of service, and whatever the duration of employment, the worker is entitled to payment of its portion of annual leave.

Based on the principle of 15 days of annual leave, the calculation of the payment will be made as follows :

Formula for fixed salary

**Annual leave** = Daily wage x Number of days to be paid

Formula for piecework salary

**Annual leave** = Average daily salary x Number of days to be paid

### **b) Congé de maladie**

The worker is entitled to a total of 15 days of sick leave per year without a reduction in salary.

To benefit from this, the worker must submit a medical certificate from a company doctor or a Public Health Service. If the employee does not have one year of service, sick leave will be calculated in proportion to the length of service already provided. Sick leave is not cumulative

Formula for fixed salary

**Sick leave** = Daily salary x number of days to be paid



Formula for piecework salary

**Sick leave** = Average daily salary x number of days to be paid

**Average daily salary** = total earnings during the relevant period / number of days worked during such period

### c) Maternity Leave

Every pregnant woman shall, on production of a medical certificate indicating the expected date of her confinement, be entitled to a maternity leave during which she shall be paid as if she were continuing to work.

Maternity leave is a paid leave of absence. The duration of the maternity leave is set at 12 weeks, of which 6 weeks are currently being paid by the employer. When the OFATMA Maternity Insurance service becomes available, the full duration of the maternity leave will be paid by OFATMA. (The female worker must, however, be duly registered with OFATMA for maternity insurance.)

The duration of the leave shall be six weeks before confinement and, necessarily, six weeks after confinement. In any case, the duration shall be at least twelve weeks in total. When confinement takes place after the scheduled date, the prior portion of the leave shall be extended to the date of confinement and the portion of leave after confinement shall not be reduced to less than six weeks.

- To receive maternity leave, a medical certificate indicating the presumed date of delivery must be produced by the pregnant woman. In addition, the medical certificate must indicate the attestation of the state of pregnancy,
- The expected date of delivery,
- The starting date for the maternity leave, which must precede the expected date of delivery by 4 weeks.

In the case of abortion, premature birth of a non-viable child, the female worker shall be entitled to two (2) to four (4) weeks of paid leave based on the wages she received at the beginning of the leave. To take advantage of this leave, the female worker must provide the employer with a medical certificate stating :

LABOR CODE,  
ARTS 148, 320 TO 324

- premature delivery or abortion with indication of the date of the event.
- The length of the rest period required.

Formula for fixed salary

**Maternity leave** = Daily salary x number of maternity leave days to be paid

Formula for piecework salary

**Maternity leave** = Average daily salary x number of maternity leave days to be paid

**Average daily wage** = total earnings for the relevant period / the number of days worked during such period

## 7.2.2 - SOCIAL SECURITY

### A. OFATMA

#### a) Occupational Accident Insurance

Occupational accident means any physical injury caused by or for reason of work, and any accident occurring during the journey from the worker's place of residence to the place of work and vice versa, insofar as this journey was not interrupted or diverted by a motive dictated by an interest that is personal or independent from their employment.

All employers have the obligation to exclusively insure all of their employees against the risks of occupational accidents through OFATMA. The amount of the contribution varies with the nature of the work ;

- 2% for commercial enterprises,
- 3% for agricultural and industrial enterprises, construction chains and shipping lines,
- 6% for mining companies

The contribution rates may be increased by decree of the President of the

ORGANIC LAW OF THE  
DEPARTMENT OF SOCIAL  
AFFAIRS OF AUGUST 28,  
1967;

LAW OF AUGUST 27, 1967,  
AS AMENDED BY THE  
DECREE OF FEBRUARY 18,  
1975

ORGANIC LAW OF THE  
DEPARTMENT OF SOCIAL  
AFFAIRS OF AUGUST 28,  
1967, ARTS 22, 25, 31, 32

Republic, taking into account the inherent risks of the sectors concerned (see Article 32, law of August 28, 1967)

### **b) Sickness and Maternity Insurance**

For the purpose of sickness-maternity insurance, all employers must register their business with OFATMA within 15 days of the opening of the establishment.

The contribution rate is fixed at 6% of the employee's basic salary, half of which is paid by the employer and the other half by the insured.

Basic salary refers to the salary received by the employee or worker, excluding overtime benefits.

### **B. ONA**

Every employer is obliged to submit all his workers to the pension scheme of the National Old Age Insurance Office.

The rate of the ONA contribution is fixed at 12% of the base salary of which 6% are paid by the employee and 6% by the employer.

#### **Insured Persons' Rights**

- Entitlement to a pension after twenty (20) years of contribution and fifty-five (55) years of age
- Disability pension
- Savings and loans department (Law of August 25, 1971, Article 2)
- Mortgage service (decree of November 4, 1974, Article 1)

#### **Statutory and Conventional Deductions**

Deduction means any levy on the employee's salary by the employer.

**a) Statutory deductions:** Levies required by law, such as :

- 10% levy on bonus, Art. 95 of the Decree of September 24, 2005 on income tax
- 6%, Office National d'Assurance Vieillesse (ONA)
- 3%, Insurance Office for Occupational Accidents, Sickness and Maternity (OFATMA) (maternity and health insurance)
- IRI: see the current budget bill

LAW OF AUGUST 27, 1967,  
MODIFIED BY THE DECREE  
OF FEBRUARY 18, 1975,  
ARTS 1, 2, 4, 6, 17

ORGANIC LAW OF THE  
DEPARTMENT OF SOCIAL  
AFFAIRS OF AUGUST 28,  
1967, ARTS 177, 178, 200;

DECREE OF MARCH 18,  
1968; DECREE OF MARCH  
10, 1976

LABOR CODE,  
ARTS 143, 147

- CAS: 1% of salary, see the current budget bill
- FDU: 1% of salary, see the current budget bill
- CFGDCT: 1% of salary, see the current budget bill

**b) Conventional deductions** : Levies made pursuant to an agreement between the parties, such as :

- Loans or payday advances ,
- Reimbursement for losses or damages to the products, properties or facilities of the employer where it can be proved that the employee is liable.

The amount of said deductions may not exceed  $1/6$  of the monthly salary up to the amount due, except in the case of termination of the employment contract when the reimbursement guarantees given by the worker are insufficient.

## 8. Labor Contracts

### 8.1 - DEFINITION

A labor dispute is any dispute between employers and employees about working conditions.

#### 8.1.1 - INDIVIDUAL LABOR CONFLICTS

An individual labor dispute arises between an employer and a member of his/her staff concerning working conditions, or when it occurs between an employer and several employees on working conditions, without affecting the operation of the company.

#### 8.1.2 - COLLECTIVE LABOR CONFLICTS

A collective labor dispute arises between the employer and a certain number of his/her employees concerning working conditions when it is likely to compromise the smooth operation of the enterprise.

LABOR CODE, ART. 161

LABOR CODE, ART. 162

LABOR CODE, ARTS 162,  
171-181;

DECREE OF JANUARY 16,  
1989 ESTABLISHING THE  
TRIPARTITE CONSULTATION  
AND ARBITRATION  
COMMISSION, AMENDED BY  
THAT OF JUNE 15, 1990

### 8.2 - LABOR CONFLICTS RESOLUTION

#### A) INDIVIDUAL CONFLICTS

All complaints relating to wages, salaries or other benefits due must be submitted to the conciliation of the Labor Directorate within six (6) months (with all claims forming part of the same dispute).

The party left must file a complaint in writing or verbally, personally or through his/her union representative. The party summoned by the Directorate of Labor for conciliation shall appear in person or be represented by a substitute decision-maker. She may also be assisted by a lawyer.

However, the labor inspector/conciliator may request the presence of the employer or his/her legal representatives, if he/she deems it advisable.

If the summoned party fails to appear before the conciliation board of the Directorate of Labor at the first convocation, a second summons will be sent to him/her. If he/she does not respond to the second convocation,

LABOR CODE, ART. 163-170

he/she will be requested to appear within a maximum of 24 hours. If he/she fails to comply, a report of non-compliance to the summons shall be drawn up and the case will be referred to the Special Labor Court.

If the summoned parties appear, the Labor Directorate will hear them, write down their respective complaints, carry out an investigation, a site visit and an appraisal if necessary, or at the request of one of the parties.

If the dispute is related to a positively or implicitly recognized claim, the debtor may be granted a reasonable period of time for payment; On the expiry of the period, a payment order will be made to him by the Labor Directorate.

If, at the expiry of the time limit, the debtor party refuses to pay, a report will be drawn up stating the party's refusal to comply with the payment order and the case will be referred to the Special Labor Court.

If the conciliation fails, a report of non-conciliation will be drawn up and the case will be referred to the Labor Court.

*NB: Any claim for damages must be brought before the Special Labor Court at the request of the Directorate of Labor, which will rule by a judgment.*

## **B) COLLECTIVE CONFLICTS**

In the case of collective disputes, the union, if there is one, or a group of workers, must first submit the complaint to the employer for direct internal negotiations or with the intervention of amiable compositeurs.

If the negotiation fails, the workers', trade union's or employers' delegates shall, in duplicate, sign a list of their grievances which they will transmit to the other party and, by request, to the Labor Directorate. The list of grievances shall be dated and shall clearly indicate what they consist in, to whom they are addressed, the number of employers or workers submitting the complaint, the exact location of the workplace where the dispute arose, the number of people working there, and the names and surnames of the delegates.

As soon as the list of claims is given, neither party can take any retaliatory action against the other party or prevent it from exercising its rights. From that moment, the employer must obtain the prior approval of the Labor Directorate for any dismissal. The parties must respond to all notifications and provide all information required by the conciliators. The conciliation procedure shall not exceed eight (8) days.

If the conciliation fails, the case is referred either to the Labor Court (in the case of conflicts of law) or to the Tripartite Consultation and Arbitration Commission (in the case of other conflicts), after the arbitration committee failed.

### **8.2.1 - ARBITRATION**

The arbitration committee shall rule on all disputes concerning wages, working conditions which are not determined by provisions of laws, regulations, collective agreements or agreements in force, as well as those relating to negotiating and revising the terms of collective agreements.

In case of failure before the arbitration committee, the case will be referred to the Tripartite Consultation and Arbitration Commission.

LABOR CODE,  
ARTS 182 TO 188

### **8.2.2 - SPECIAL LABOR COURT**

Labor courts have general jurisdiction over all disputes relating to contracts of employment and all contentious cases relating to violations of the Labor Code, including claims for damages against workers or employers.

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LABOR CODE,  
ARTS 488 AND 489

## 9. Occupational Health and Safety

### 9.1 - GENERAL PROVISIONS

In order to ensure the occupational safety and health of workers, the employer shall :

- a) protect workers against work-related accidents and illnesses,
- b) inform workers about work-related hazards and necessary precautions,
- c) provide workers with the necessary personal protective equipment, such as goggles, aprons, masks, gloves, and/or shoes, etc.
- d) guide workers in the maintenance and use of protective equipment
- e) protect workers from fire hazards.

*NB: Workers do not have to pay any fee for these measures.*

#### 9.1.1 - HEALTH AND FIRST-AID SERVICES

Employers employing at least 20 workers must use the services of physicians whose role is to avoid any deterioration of workers' health, the risk of infection, to maintain occupational hygiene conditions or to provide first-aid in the event of an emergency. These physicians will be assisted by one or more nurses depending on the importance of the company.

Companies with more than 200 employees will have a permanent medical service with at least one dispensary..

Number of workers	Dispensary	Nurse	Full-time physician	Part-time physician
20 - 99	-	1*	-	1 visit per week
100 - 199	-	1	-	2 visits per week
200 - 500	1	2	-	3 visits per week
501 and more	1	2+ (1 par tranche de 200 travailleurs)	1	

\* of 50 workers

LABOR CODE,  
ARTS 438-441, 451-487

LABOR CODE,  
ARTS 477 TO 480



### 9.1.2 - MEDICAL EXAMS

Workers must have a medical consultation at the time of hiring (within 3 months of hiring) and once a year. The results of the examinations (including pulmonary X-ray, Kahn, Rhx, blood type) will be mentioned on the health card. The examinations will be carried out by the OFATMA's medical service

LABOR CODE,  
ARTS 481 AND 482

## 9.2 - WORKERS' PROTECTION AGAINST RISKS

### 9.2.1 - INDIVIDUAL PROTECTION

The employer, at no cost to the workers, is responsible for providing and maintaining protective clothing and equipment for each worker.

The employer is also responsible for ensuring the efficient use of the equipment provided.

LABOR CODE, ARTS 440,  
441, 450, 451, 456, 465, 473,  
475, 476

Examples of Personal Protective Equipment :

- Mask : Respiratory protection
- Protective glasses
- Seatbelt
- Protective gloves
- Protective clothing
- Noise protection equipment

The employer must install appropriate protective devices on the potentially hazardous parts of machinery and equipment and maintain them to prevent accidents at work.

Examples of Protective Equipment :

- Eye protection
- Finger guard
- Protective belts
- Pulley guard

Mechanical equipment such as forklifts must be provided to lift and move

heavy or bulky packages. Haitian law requires mechanical equipment to carry all loads exceeding 80 kilograms.

Standing workers must be able to sit at regular intervals and/or have cushioning mats and/or footrests. The employer is required to provide seats with backrests to all workers performing their duties in a seated position.

Employers must provide body hygiene facilities to workers in the event of infection or contamination

Examples of contamination :

- Dust
- Grease/oil
- Toxic, infectious or irritating substances

### 9.2.2 - COLLECTIVE PROTECTION

Collective protection concerns all the regulations and provisions adopted by the employer to ensure adequate protection of workers at the workplace. The company must ensure that :

1. The waste and fragments do not accumulate to the point of constituting a health risk;
 

The company must be clean and well maintained. In addition, if there are showers, they should be cleaned and disinfected at least once a day.
2. The area and height of the work premises shall be sufficient to prevent over-crowding of workers and to prevent any congestion by machinery, materials or products.
  - Evacuation plans must indicate escape routes and emergency exits, and fire extinguishers.
  - There must be at least 2 possible emergency exits for all workers. Emergency exits must not be blocked by equipment, products, tools or furniture, etc.
3. Adequate lighting adapted to the needs, natural or artificial, or both at the same time, should be provided <sup>6</sup>.

LABOR CODE, ARTS 439,  
458-460, 461, 468, 476

<sup>6</sup> Better Work recommends the following minimum lighting levels: 300 lux for ironing, 750 lux for cleaning and inspection and 500 lux for other activities.

- 4- Suitable atmospheric conditions are ensured to avoid inadequate air supply and circulation, air pollution and, to the extent possible, excessive moisture, excessive heat or cold, and unpleasant odors <sup>7</sup>.
- 5- Adequate sanitary and personal washing facilities, and drinking water shall be available in suitable places, in sufficient quantities and under satisfactory conditions.
- Toilets must be clean and must never be locked, even during overtime. Their use must not be restricted without a good reason. There must be one toilet for every 25 men and one for every 15 women working in the company.
  - Workers must be able to wash their hands with soap and clean water. Facilities must be located away from the workplace but remain accessible for workers; they must be well maintained.
- 6- When workers must change clothes at the beginning and at the end of work, changing rooms or other suitable facilities must be made available to them;
- 7- Where workers are prohibited from consuming food or drinks in the workplace, suitable premises must be provided for meals, unless appropriate measures have been adopted to take them elsewhere;
- The employer may need a cafeteria, depending on the number of workers, the demand for such space and the absence of other suitable alternatives. A canteen can serve several factories.
- 8- Noises and vibrations harmful to workers' health should be eliminated or reduced as much as possible <sup>8</sup>.
- 9- Dangerous substances are stored safely. The use of chemicals may include the production, handling, storage, transportation, collection, removal or processing of chemicals, or the storage, repair and cleaning of containers and equipment.
- The inventory should refer to the corresponding chemical safety data sheets. Safety data sheets indicating all the risks and precautions to be taken must be accessible to all concerned and their representatives.
  - The label must identify the chemical or substance and

<sup>7</sup> The temperature of the workplace must be cooler than the outside temperature. Better Work recommends a maximum of 30 degrees for the workplace.

<sup>8</sup> According to ILO standards, a sound level less than or equal to 90dB is acceptable for an 8-hour working day.

show its chemical classification. Workers must have no difficulty understanding label inscriptions. When chemicals are stored in different containers, similar labeling is required.

- ♦ Non-compatible chemicals should not be stored together and storage containers should be in good condition. The area must be adequately ventilated. Flammable or explosive chemicals must be stored in a cool space away from heat sources and area must be provided with a fire protection system.
- ♦ The employer must also install exhaust ventilation in areas where hazardous substances are used.
- ♦ Workers must be trained to safely store, handle, use and dispose of hazardous chemicals and substances.
- ♦ The employer must make eyewash stations and substances available for the control of chemical burns if necessary.
- ♦ The employer must ensure that pregnant women do not work in areas where chemicals and hazardous substances are stored and used.

### 9.2.3 - PREVENTION MEASURES

- ♦ Fire-fighting equipment may include fire extinguishers, fire hoses or an automatic fire-extinguishing system <sup>9</sup>.
- ♦ The employer must train an appropriate number of workers in the use of fire-fighting equipment <sup>10</sup>.
- ♦ All workers must participate in emergency simulation exercises <sup>11</sup>.

### 9.2.4 - HANDLING OCCUPATIONAL ACCIDENTS AND DISEASES

Occupational accident means any physical injury caused by or for reason of work. Work-related accidents include those occurring during working hours and during journey times to and from work insofar as this journey was not interrupted or diverted by a motive dictated by an interest that is personal or independent from their employment.

Occupational safety insurance extends to all employees and workers in industrial enterprises. In the event of accidents at work, insured persons shall be entitled to all necessary care, which shall be provided by

<sup>9</sup> Better Work recommends installing smoke alarms and audible and visible alarms.

<sup>10</sup> Better Work recommends that training be conducted at least once a year for at least 10% of the workforce, including both men and women from all sections and in all work periods.

Better Work recommends conducting emergency simulation exercises twice a year..

physicians, dentists, nurses or other medical technicians, including surgery and hospitalization in extremely urgent cases, or by specific request from the attending physician.

Workmen's compensation, health and maternity insurances will be administered by the Insurance Office for Occupational Accidents, Sickness and Maternity (OFATMA).

Employers shall submit to OFATMA a monthly list of all accidents occurring in their establishments, in the form to be provided for this purpose. All workplace accidents resulting in the inability to work for one day or more must be reported to OFATMA.

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## 10. Change of Employer

There is a change of employer when a natural or legal person acquires more than half or the whole business and continues to perform the same work.

The change of employer does not mean termination of the employment contract but transfer to the new employer. Once signed, the contract of employment is fixed in its contents. The contract is therefore transferred by right and the employee retains his seniority and remuneration. The rights and obligations under the contract are maintained.

LABOR CODE, ART. 48

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## 11. Others

### 11.1 - INFORMATION ABOUT THE GARMENT SECTOR IN HAITI

After the boom of the garment industry in Haiti until the early 1980s and the decline in the sector, from the mid-1980s, the industry, when attempting to attract investment and create jobs in the country, was confronted with natural disasters, political instability and competition from Asia. Even before the 2010 earthquake that devastated the country, Haiti was already the poorest country in the Western Hemisphere, with 80% of its population living below the poverty line and 54% in abject poverty. Two-thirds of Haitians depend on the agricultural sector, mainly small-scale subsistence agriculture, which makes them vulnerable to natural disasters usually occurring in the country. In a PBS report classified after the 2010 earthquake, the apparel industry was identified as vital for Haitian workers.

The HOPE and HELP laws, which allow the textile and clothing industry in Haiti to benefit from duty-free access, have succeeded in encouraging American buyers to buy supplies in Haiti, thus increasing production and creating domestic jobs. The combination of a greater duty-free access to the US market along with the large size of the young workforce in Haiti resulted in Haiti becoming the 17th largest apparel supplier in the United States in 2009, with exports amounting to about \$424 million. The garment sector now accounts for three quarters of Haiti's exports, and almost one-tenth of its GDP.

In 2014, total export earnings from the textile and clothing industry accounted for about 90% of national export earnings and 10% of national GDP. The apparel industry is one of Haiti's largest employers and creates jobs for more than 30,000 people

## 11.2 - THE BETTER WORK PROGRAM IN HAITI

In the mid-to-late 2000s, the US Congress passed the HOPE and HOPE II acts (Haitian Hemispheric Opportunity through Partnership Encouragement) laws, which expanded the duty-free access for textiles, clothing and other goods; these benefits were extended to 2020 under the HELP act (Haitian Economic Lift Program).

Better Work Haiti, a partnership between the International Labor Organization (ILO) and the International Finance Corporation (IFC), was launched in June 2009. The program aims to improve the working conditions and competitiveness of the garment industry by improving compliance to the Haitian Labor Code and the ILO Declaration on Fundamental Principles and Rights at Work; it also seeks to strengthen economic performance at the enterprise level.

Better Work Haiti is targeting the clothing industry in Haiti, especially in the capital, Port-au-Prince, and the north-east of the country. Most workers (66%) are women who support several members of their families. The program assists participating plants by organizing independent conformity assessments, as well as providing consultations and training.





## 12. Appendix

### 12.1 - GOOD PRACTICES, HEALTH AND SAFETY AT WORK



#### CHEMICALS PRODUCT

- Label the chemicals with clear marks in Haitian Creole
- Post the MSDS where chemicals are used
- Lead training for employees working with chemicals
- Provide employees of protective clothing, gloves, goggles and / or masks and any other equipment required



#### MACHINES

- Ensure that all sewing machines have a protect - needle
- Install the protectors of pulleys and the eye guard
- Check and record regularly air compressors and boilers



#### SANITARY

- Repair the broken toilet and the bathroom doors
- Mark the restroom doors for a separate use of men and women
- Provide a sink near the washrooms
- Provide adequate ventilation to reduce odors



### ELECTRIC

- Install the internal covers
  - Provide platelets isolated to avoid electric shock
  - Keep safe and unexposed wiring
  - Register on the electrical boxes safety signs
  - Install a charging station to avoid charging the cell phone in a dangerous manner
- 



### EXTINGUISHERS

- Eliminate obstruction
  - Provide visible and easy to read information to the location of fire extinguishers
  - Make sure that the operating instructions are in Haitian Creole
  - Keep monthly records for the inspection and ensure that equipment is fully charged
- 



### FIRST AID

- List of first aid procedures
- Keep an inventory of the contents of the first aid box and ensure that all the necessary equipments and facilities are available
- Ensure that the first aid kits are controlled regularly and contain no expired products.
- Ensure that first aid kits are sufficiently sized to the number of employees, clearly marked and easily accessible



### EMERGENCIES EXITS

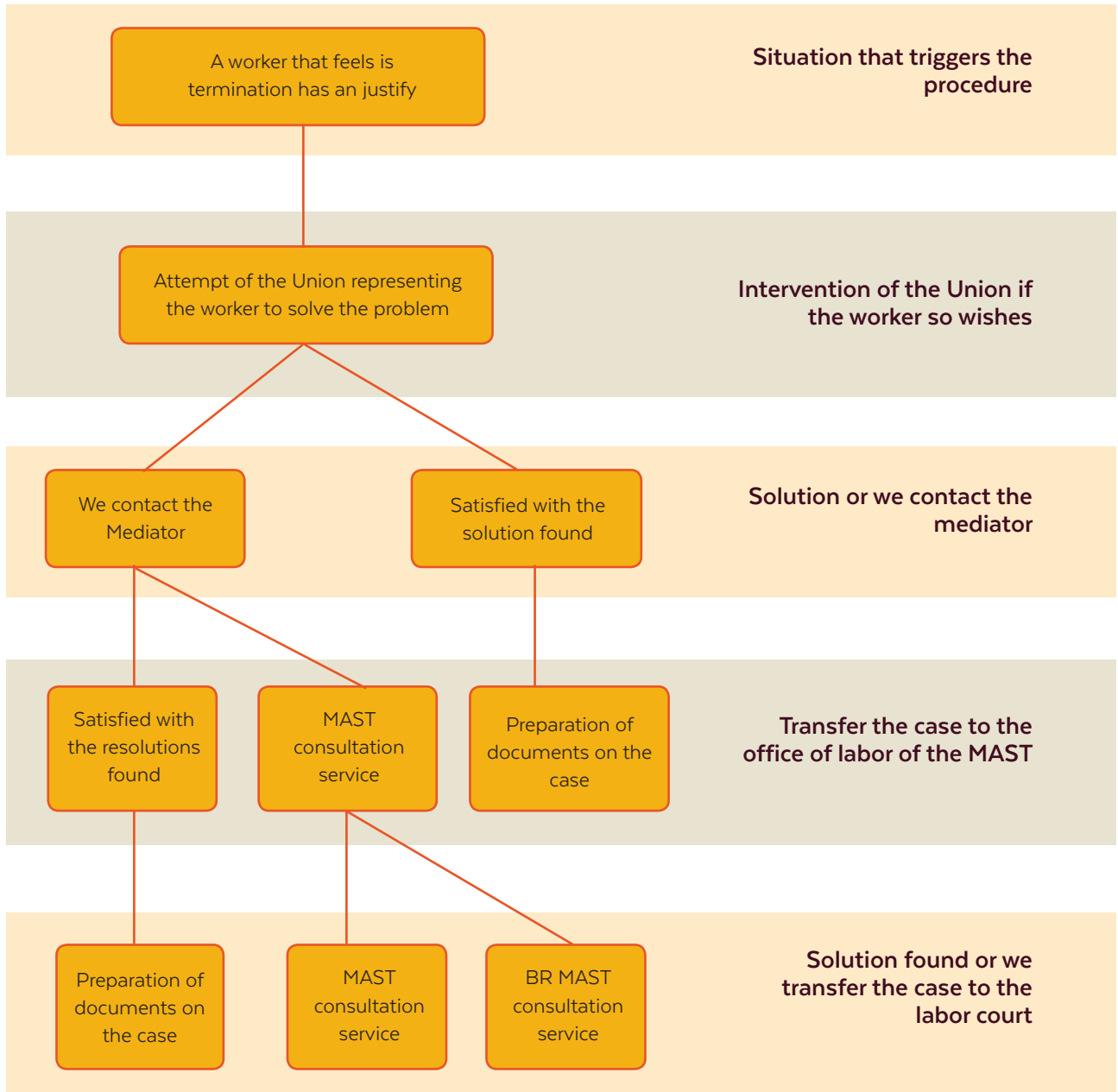
- Make sure that the exits routes are clearly marked and that the width of at least 1 m
- Make sure that all the exit routes are not blocked
- Ensure that all floor surfaces are non-slip
- Display clear signs for exit routes
- Make sure that the exit doors are always unlocked, released and open toward the outside of the building



### EVACUATION PLAN

- Provide an escape plan clearly posted in visible places, for each work area, containing the following information:
- Location of exit doors
- Location of the exit routes
- Location of the fire extinguishers
- Location of the fire alarms
- Location of the first kits Aid
- Location corresponding to this evacuation plan (i.e., the mark 'you are here')
- Exits Arrow

## 12.2 - MEDIATION PROCEDURES



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## 13. Abbreviations

<b>ADIH</b>	: Association of Industries of Haiti
<b>BMST</b>	: Office of the Special Ombudsman
<b>CSI</b>	: International Trade Union Confederation
<b>CAOSS</b>	: Board of Directors of Social Security Bodies
<b>CTMO-HOPE</b>	: Tripartite Commission for the Implementation of the HOPE Act
<b>FDS</b>	: Safety data
<b>HELP</b>	: Haiti Economic Lift Program (Haiti Economic Improvement Program)
<b>HOPE</b>	: Haitian Hemispheric Opportunity Through Partnership Encouragement (Haitian Hemispheric Opportunities Act through Partnership Encouragement)
<b>MAST</b>	: Ministry of Social Affairs and Labor
<b>OFATMA</b>	: Labor, Sickness and Maternity Insurance Office
<b>ONA</b>	: National Office for Old-Age Insurance
<b>SST</b>	: Health and security at work
<b>EPP</b>	: Personal protective equipment
<b>TAICNAR</b>	: Technical Assistance Improvement and Compliance Needs Assessment and Remediation (improvement of technical assistance and evaluation and support for the implementation of corrective measures for compliance)
<b>USDOL</b>	: US Department of Labor









As a partnership between the International Labor Organization and the International Finance Corporation, a member of the World Bank Group, Better Work brings together various groups - governments, global brands, plant owners, trade unions and workers - to improve Work in apparel industry and make the sector more competitive.

#### **CORE DONORS TO BETTER WORK**

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